

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Yogesh Kumar US, Judicial Member

ITA No. 1590/Del/2021 : Asstt. Year: 2017-18

Ultimate Creations, 1159, Kucha Mahajani, Chandni Chowk, New Delhi-110006 (APPELLANT)	Vs	ACIT, Central Circle-04, New Delhi-110055 (RESPONDENT)
PAN No. AACFU8689F		

**Assessee by : Sh. Ved Jain, Adv. &
Ms. Supriya Mehta, CA
Revenue by : Sh. Amit Katoch, Sr. DR**

Date of Hearing: 09.11.2023

Date of Pronouncement: 07.02.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-23, New Delhi dated 31.08.2021.

2. Following grounds have been raised by the assessee:

"1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.

2. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs. 6,13,75,028/- made by the AO on account of excess stock found during the course of survey holding the same as unexplained investments under section 69 read with the section 115BBE of the Income Tax Act.

(ii) That the abovesaid addition has been confirmed ignoring the detailed submissions and explanations along with the evidences brought on record by the assessee

reconciling the difference in stock found during the course of survey.

3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition by misinterpreting the statements of the partner of the assessee firm recorded by the survey authorities.

4. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition ignoring the contention of the assessee that books of accounts of the assessee are duly audited and no defect has been pointed out by the learned AO at the time of survey or during the course of assessment proceedings.

5. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition ignoring the contention of the assessee that the addition has been made by the AO without bringing any corroborative evidence on record to justify the additions made by him.

6. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition ignoring the contention of the assessee that no adverse finding has been given by the AO as to the submissions and explanations given by the assessee reconciling the difference of closing stock."

3. Brief facts of the case are that the assessee is a firm engaged in sale and purchase of gold jewellery and the assessee has filed return of income on 17.11.2017 declaring total income of Rs.2,67,72,020 /-.

4. During the year under consideration, a survey operation u/s 133A of the Act was carried out at the assessee's business premises on 29.11.2016. During the course of survey operation at the premises of the assessee firm, inventory of the stock was physically inventoried and physical stock valuing to Rs.

8,53,07,745/- was found, whereas, the value of stock as per books of account on that day was worked out at Rs. 2,39,32,717/-. Thus, excess stock of Rs.6,13,75,028/- was alleged during the survey. This difference in stock was then confronted to Shri Sanjay Malhotra - partner of the assessee firm who stated that "*I am not able to explain it right now*". A copy of such statement of Sh. Sanjay Malhotra dated 29.11.2016 and 30.11.2016 recorded during the course of survey.

5. Subsequently, notice u/s 142(1) dated 03.09.2019 was issued and vide Q.36 (PB Pg. 43), the assessee was show caused as to why addition of Rs.6,13,75,028/- not be made on account of unexplained/ unaccounted stock in the hands of the assessee firm.

6. The assessee submitted that:

- i. The stock comprising of 30 Kg gold bar approximately was sold on the day before survey and out of which approximately 20 Kg gold bar was undelivered to some of the parties which was kept aside in the premises of the assessee firm. The assessee had prepared all the sale invoices on 28.11.2016 however the goods could not be delivered on the same day and such undelivered goods were kept aside in the premises of the assessee.
- ii. Moreover, the survey was initiated on 29.11.2016 and got concluded on 30.11.2016, therefore the assessee firm was not in position to deliver the goods to respective parties during this tenure of survey proceedings.

- iii. However these goods were delivered to the respective parties post survey and copies of acknowledgement of goods by the receiving parties were also duly furnished. A copy of invoices of all the undelivered goods along with the acknowledgement of receiving parties is placed at PB Pg. 53-56.
 - iv. Further, a copy of ledger A/c of the assessee in the books of respective parties namely Shri Rathi Steel Supplier, Vishal Chain & Jewellery Pvt. Ltd. and Chain Shah Jewellers was also annexed to this reply. Further copy of complete bank statement evidencing receipt of payment against sale of such goods, stock ledger of different items of stock, details of actual closing stock as on 29.11.2016, inventory report prepared by survey team and a complete reconciliation of difference between the physical stock found by the survey team and the stock found in the books of the assessee were duly furnished before the AO as annexure to Reply dated 18.11.2019.
 - v. That differential of inventory as per valuation report was solely on the basis of statement of Mr. Sanjay Malhotra and no corroborative evidence in support of such statement was brought on record by the AO. Also, Mr. Sanjay Malhotra, had clearly stated that "*I am not able to explain it right now*". He never admitted that the difference in stock represented undisclosed income.
7. Thereafter, the Assessing Officer issued notices u/s 133(6) dated 03.12.2019 to all the three parties namely, Shri Rathi

Steel Supplier, Vishal Chain & Jewellery Pvt. Ltd. and Chain Shah Jewellers. All the three parties duly replied and acknowledgement the purchase of goods and their delivery on 01.12.2016 & 02.12.2016. Copy of such replies given by all the three parties to the AO are placed at PB Pg. 138-157 along with the supporting documents.

8. Thereafter, the assessee applied to the JCIT to give direction under Section 144A. In response to such application the JCIT called for a report from the Assessing Officer. The Assessing Officer submitted its report dated 19.12.2019. In this report, the AO admitted that the contention of the assessee has been verified and also stand cross verified with each of the parties. The JCIT thereafter issued direction to the Assessing Officer (PB PG. 161-168) Relevant page 168, Para 7 to examine the facts properly and draw conclusion after considering all the materials available and details gathered.

9. The Assessing Officer after considering the submissions, explanations, documents and evidences and the independent inquiry made by the AO himself and made an addition of Rs.6,13,75,028/- on account of unexplained investments u/s 69 of the Act.

10. Aggrieved, the assessee filed appeal before the CIT(A) who affirm the order of the Assessing Officer.

11. During the course of appellant proceedings, assessee reiterated its replies and explained that the difference was on account of goods pertaining to certain parties remaining undelivered and a copy of reconciliation was duly submitted

before the AO. It was also submitted by the assessee that neither any defect or discrepancy was pointed out in such evidences furnished by the assessee nor any adverse material was brought on record by the AO to rebut the explanation of the assessee. It was submitted that the AO himself had conducted an independent inquiry from the respective parties and those parties duly submitted their responses acknowledging the delay in delivery of such goods. The addition was made solely on the basis of statement of Sh. Sanjay Malhotra recorded during the course of survey proceedings without bringing any corroborative material on record. It was argued that the assessee has duly reconciled the difference in value of closing stock found during the course of survey and as recorded in the books of accounts of the assessee. Nothing contrary was pointed out by the AO or CIT(A) to demonstrate that any anomaly or defect existed in the reconciliation furnished by the assessee and the excess stock found during the course of survey was on account of undelivered goods kept at the premises of the assessee.

12. The assessee has duly submitted the following documents before the AO. No defects or discrepancies were pointed out in the documents filed by the assessee.

- Copy of all the undelivered invoices dated 28.11.2016 with a copy of acknowledgement dated
- 01.12.2016
- Copy of ledger account of each party
- Copy of bank statement evidencing payments received from each party
- Copy of stock ledger in the books of the assessee

- Copy of details of actual closing stock as on 29.11.2016
- Copy of inventory report as on the date of survey
- Copy of Reconciliation of inventory
- Copy of valuation report dated 30.11.2016 prepared during the course of survey

13. On the other hand, the Id. DR strongly relied on the order of the Assessing Officer and the order of the Id. CIT(A).

14. Heard the arguments of both the parties and perused the material available on record.

15. We have gone through the invoices of undelivered goods along with their acknowledgement, ledger of the assessee, bank statement, evidencing, receipt of payment with respective such goods by three parties namely, Sh. Rathi Steel, Vishal Chain & Jewellery Pvt. Ltd. and Chain Shah Jewellers. Each party has duly acknowledged the delay in delivery of such goods and all the payments for sale of such goods were received via banking channels. Moreover, the Assessing Officer himself had conducted independent inquiry from each of the three parties by sending notice u/s 133(6) to them and despite confirmations received from each of the three parties, the additions were made by the AO. Notices sent by AO to the three parties u/s 133(6) are placed at PB Pg. 125-130 and their responses were placed before us in the paper book.

16. The Id. CIT(A) in his order has held at Page 15 Para 4.3.15 that "*Survey at premises of the appellant took place on 29.11.2016 and statement on oath of Sh. Sanjay Malhotra was recorded on 10.03.2017. The fact is that Sh. Sanjay Malhotra could not explain*

the difference in stock even three months after the survey. Hence, claim of the appellant that excess stock was on account of sale to three parties is held to be an afterthought and this claim of the appellant is hereby rejected."

17. It is relevant to note that the Id. CIT(A) has erred in mentioning the date of recording of statement of Sh. Sanjay Malhotra as the statement of Sh. Sanjay Malhotra was recorded on 29.11.2016 & 30.11.2016 and not on 10.03.2017. Therefore, the reasoning given by the Id. CIT(A) that assessee has reaffirmed after 3 months for rejecting the explanation of the assessee for difference in stock is incorrect and against the facts and hence not sustainable. It is important to point out no incriminating documents were found during survey. There was no evidence of any sale or purchases outside the books of accounts. The books of accounts with all purchases and sales invoices were available during survey. The contention of the Revenue that it is an afterthought is incorrect, keeping the fact that payment from these parties have been received in bank account as is evident from PB Pg. 98 & 99 where these payments are credited in the Bank A/c. The sale invoices are dated 28.11.2016 and were duly recorded. Each of these parties on cross verification by the AO has confirmed that they have made the payment, invoices have been issued and delivery against invoices was recorded on 1st & 2nd December 2016.

18. The assessee having given the explanation which was plausible explanation which stands verified in inquiry by the Assessing Officer, the same cannot be rejected arbitrarily by indulging into surmises. It is also relevant to point out that the

assessee has produced complete books of accounts during assessment proceedings. No defects have been pointed out and the books of accounts have been accepted. Thus when the difference in physical stock found during survey and as recorded in the books is duly reconciled by the assessee and supporting evidences have also been furnished before the Assessing Officer & Id. CIT(A) in which no defect or discrepancy whatsoever has been pointed out by the Assessing Officer or Id. CIT(A), no addition is called for.

19. Reliance is placed on the following judicial pronouncements:

- Sh. Ram Pal Gupta Vs. DCIT, Central Circle, Jammu. And (Vice-Versa), 2022 (11) TMI 974 - ITAT Amritsar, Dated: - 15-11-2022

"10. We heard the rival submission considered the documents available in the record. Perusal of the above documents the assessee filed the reconciliation and the evidence related basis of valuation. The valuation of stock is based on cost & market price whichever is lower. The stock of goods cannot be valued suo-moto without any basis. The reconciliation was accepted by the Id. CIT(A), no discrepancy was found in the number of item of the stock. The Id. CIT-Dr was unable to bring any contrary fact against the submission of assessee Accordingly, the addition made by the Id. AO is quashed and the balance addition which was up-held by the Id. CIT(A) is also liable to be deleted."

- Sh. Satish Kumar Garg Vs. DCIT, Central Circle, Income Tax Department, Ajmer, 2020 (9) TMI 618 - ITAT Jaipur, Dated: -11-9-2020

"21. We have heard the rival contentions and perused the material available on record. The survey was conducted at

the assessee's premises on 13.10.2010 during the middle of the financial year 2010-11 where the stock as per books was determined at Rs.104,788 and the physical stock has been determined at Rs.523,698, therefore, there was excess stock found during the course of survey amounting to Rs.418,910/-. During the course of assessment proceedings, the assessee submitted a reconciliation explaining the reasons for such difference in terms of stock being valued at market price, not valued at per the specification of particular products, stock received but invoices received after the date of survey etc. The AO has rejected the said reconciliation and explanation so offered along with documentary supporting documentation for the reason that the same was not offered during the course of survey. To our mind, given that the survey was conducted during the middle of the financial year, it is quite likely that there could be some timing mis-match in terms of receipt of physical stock and entries made in the books of accounts and thereafter, once the entries are made in the books of accounts, and necessary reconciliation prepared and submitted, the same should have been examined by the AO and cannot be dismissed summarily. The Id. CIT(A) is also of the same view that the said action of the AO is not justified and where the assessee is able to show with evidence that admission made during survey was mistaken, the same should be examined on merits. The Id. CIT(A) has thereafter examined the reconciliation statement and has held that the assessee has only partly been able to substantiate the differences and reconciliation so submitted. We have also gone through the reconciliation statement and find that the assessee has reasonable explained the differences in the stock with its explanation and supporting documentation. In respect of point no. D, we find that valuation of stock has to be at cost price and not selling price and rate of gross profit of 10% has rightly been reduced to arrive at the correct stock valuation and the addition so made is hereby deleted. In respect of point no. E, the Id. CIT(A) has granted relief of ? 92,082/- and sustained the addition of Rs.6,705/- which is not pressed by the assessee. In respect of point no. F, the assessee has submitted the relevant purchase bills and affidavit of

suppliers stating that the goods were dispatched and delivered to assessee prior to survey and invoices were delivered subsequently and the quantity and other particulars matches and therefore, there is no basis for such addition of Rs.166,260/- which is hereby deleted. In respect of point no. G, the assessee has explained the reason for recording short opening stock and we find the said explanation satisfactory. In respect of point no. J and K, the assessee has reasonable explained the difference on account of product differentiation and the addition so made is hereby deleted. In light of aforesaid discussion, the ground of appeal is allowed.”

20. Similar view has been taken in the following judicial pronouncements:

- CIT Vs. AGEW Steel Mfg. (P.) Ltd. [2014] 46 Taxmann.Com 120 (Gujarat)
- CIT Vs. Forech India Ltd., [2010] 231 CTR 267 (Delhi)
- Shri Babulal Vani Prop. M/s. Babulal Ramlal Vani, Shri Gordhanlal Vani (Deceased) Prop. M/s. Gordhanlal Ramlal Vani (Through Son & Legal Heir Shri Yogendra Vani) Vs. ACIT (2019) (10) TMI 248 - ITAT Indore
- Chawla Brothers (P.) Ltd. Vs. ACIT (2010) (5) TMI 528 - ITAT, Mumbai

21. Therefore, merely because some differences were found in stock during survey would not indicate any automatic addition be made in the hands of the assessee when assessee has duly reconciled the differences with necessary evidences and neither the AO nor Id. CIT(A) has pointed out any defects or discrepancies in the reconciliation submitted by assessee or the documents and evidences furnished by the assessee.

22. Thus, in view of the abovementioned facts and circumstances of the case and the judgments relied upon by the assessee, the addition made by the AO of Rs. 6,13,75,028/- on account of excess stock found during the course of survey is directed to be deleted.

23. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 07/02/2024.

Sd/-
(Yogesh Kumar US)
Judicial Member

Sd
(Dr. B. R. R. Kumar)
Accountant Member

Dated: 07/02/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR