

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC-B” BENCH : BANGALORE

BEFORE SHRI GEORGE GEORGE K, JUDICIAL MEMBER

ITA No.1646/Bang/2016
(Assessment year: 2012-13)

M/s. Ellore Jewel Palace, No. 620, Avenue Road, Bengaluru – 560 002. PAN : AAAFE3111A	Vs.	The Income Tax Officer, Ward-2(2), Bengaluru Now: WARD-5(2)(1), BENGALURU
Appellant		Respondent

Assessee by	:	Shri. H. N. Kincha, CA
Revenue by	:	Shri. Saravanan B, Addl. CIT

Date of hearing	:	29.11.2016
Date of Pronouncement	:	02.12.2016

ORDER

Per George George K, JM :

This appeal instituted, at the instance of the assessee firm, is directed against the order of the CIT (A)-5, Bangalore, dated 28.06.2016. The relevant assessment year is 2012-13.

2. The assessee firm has, in its grounds of appeal, raised two effective grounds, namely:

(1) that the re-opening of the assessment u/s 14 of the Act being without jurisdiction requires to be quashed; &

(2) that without prejudice, the addition made/sustained by the authorities below on account of excess stock found in the year under appeal (after setting off income offered by the assessee in the asst. year 2011-12) being contrary to available facts and law requires to be deleted.

3. Briefly stated, the facts of the issue are as follows:

The assessee, a partnership firm and a retail trader in jewellery, had furnished its return of income for the assessment year under dispute, admitting a total income of Rs.13,77,910/- which was initially processed u/s 143(1) of the Act. Survey operation u/s 133A of the Act was undertaken in the business premises of the assessee firm on 14.6.2011. During the course of survey, excess stock of gold jewellery of 2686.9354 gms was found and, according to the AO, the assessee had agreed to admit the value in variation of stock found at the time of survey. It was the case of the AO that on the basis of established scheme of valuation of stock, the value of gold ought to have been adopted at the prevailing market value as on 14.6.2011 which was approximately Rs.2105/gm for 22 carat gold whereas

the assessee had adopted Rs.1700/gram at the time of survey. Thus, according to the AO, there was under-valuation of stock to the tune of Rs.10,88,208/-. Subsequently, the assessee was required to furnish a return of income by issuance of a notice u/s 148 of the Act. Accordingly, the assessee firm furnished a return of income, admitting a total income of Rs.13,77,910/- as admitted earlier. As recorded in the assessment order under dispute, the assessee had disclosed additional income on account of excess stock found, amounting to Rs.45,67,900/ for the A.Y 2011-12. The additional income was quantified on the basis of valuation of excess stock by adopting the rate at Rs.1700/gram of gold for the FY 2010.11. It was the stand of the AO that the correct method would be that the excess stock found during the survey had to be valued by adopting the prevailing market value of the excess stock on the date of survey and such value of excess stock had to be considered as unaccounted income of the assessee to the financial year during which survey took place. Accordingly, the value of excess stock at Rs.2105/gram for 266.9354 gram was worked out and, thus a sum of Rs.56,55,999/- [266.9354 x Rs.2105] was added to the income returned for the AY 2012-13 on account of excess stock found during the survey. While

concluding the assessment, the AO had set off the income admitted on account of survey for the AY 2011-12 by the assessee as adopted at Rs.1700/gram and the difference of Rs.24,66,120/- [Rs.13,77,910+56,55,999 = 70,33,909 – Rs.45,67,790] was brought under tax net.

4. Aggrieved, the assessee firm took up the issue before the CIT (A) for consideration. After due consideration of the submissions made by the assessee firm, the CIT (A) dismissed the assessee's appeal for the following reasons, namely:

“7.3. I have carefully considered the submissions made by the appellant and also the case laws relied on. However, availability of other routes like rectification/revision is not a bar to issue notice u/iel Power Products Ltd. v. DCIT & Anr. (Del) 52 DTR 253 and SLP dismissed 2011-TIOL-72-SC-IT. In the case of CIT V. First Leasing Co. of India Ltd (Mad) 241 ITR 248, it was held on change of opinion- Bar to re-assessment only if opinion was in respect of the assessment year in question. The facts were already before the assessing authority for preceding year and view taken thereon, is irrelevant – Reopening upheld: ACIT v . Mahindra Holidays & Resorts (India) Ltd [ITAT SB-Chennai] 03 ITR (Trib) 600.

7.4. When there is no discussion on the issue in the assessment order and no details were called for by the assessing officer or filed by the assessee on the issue, no finding either positive or negative was arrived at during the course of the original assessment proceedings. Hence, there is no question of change of opinion. ALA Firm v. CIT (Mad) 102 ITR 622. Ess Kay Engineering Co. (P) Ltd v. CIT (SC) 247 ITR 818. Revathy C.P. Equipments ltd. v. DCIT & Ors (Mad) 241 ITR 856, EMA India Ltd v. ACIT (ALL) 30 DTR 82. Change of opinion comes to rescue of assessee only when assessing officer has taken on permissible views at the time of original proceedings. A wrong application of law cannot be held as permissible view and that can always be changed for appreciation of law. Reopening valid, Som Dutt Builders (P) Ltd v. DCIT (ITAT, Kol) 98 ITD 78. In view of the above discussed judicial pronouncements, the ground taken on the reopening of the assessment is hereby dismissed.

8. As the third ground is related to the second ground which has already been adjudicated in the above paras, no separate adjudication is needed. The third ground is raised without prejudice to the above two grounds, on the additions made on account of valuation of the excess stock by adopting the rate at Rs.1700/- instead of the rate prevailing as on date of the Survey. After careful consideration of the submissions made by the appellant, it is seen from the Survey reports and the sworn statements of the appellant recorded during the survey, the remand report of the assessing officer vis-a-vis rejoinder of the appellant, the valuation made by the assessing officer of excess stock found during the survey adopting the rate prevailing as on the date of survey found to be in accordance with the accepted norms of valuation in the cases where survey u/s 133A of the IT Act are conducted by the assessing authorities. Therefore in view of the same the order passed by the assessing officer is hereby upheld.”

5. Aggrieved, the assessee has come up before the tribunal with the present appeal. During the course of hearing, the learned counsel for the assessee firm reiterated what has been submitted before the first appellate authority. In furtherance, it was submitted that the AO had erred in passing the order in the manner it was passed and the CIT (A) erred in confirming the same. It was, further, submitted that the very opening of the assessment u/s 148 of the Act being without jurisdiction requires to be quashed. In any case, it was argued, the condition precedent for issuance of a Notice u/s 148 of the Act not present, the issue of such a notice was bad in law and all the consequential proceedings being bad in law is liable to be quashed. It was, further, contended that the assessment order having been passed without complying with the requisite legal

procedure and formalities was bad in law and the CIT (A), instead of quashing the assessment order, had erred in confirming the same. In conclusion, it was urged that the addition made/sustained by the authorities below on account of excess stock found in the year under appeal [after setting off income offered by the assessee firm in the year 2011-12] being contrary to available facts and law requires to be deleted.

5.1. On the other hand, the learned DR present submitted that the stand taken by the assessing officer as well as the CIT (A) were commensurate to the effect that the excess stock found during the course of survey had to be valued by adopting the prevailing market value on the date of survey. As such, it was submitted that the AO was within his domain to arrive at a conclusion in just and fair manner, the same requires to be sustained.

6. I have carefully considered the rival submissions, perused the relevant materials on record and also the documentary evidences such as the copies of (i) financial statements; (ii) correspondence made with the AO on various

dates etc. as furnished by the assessee's counsel in the form of a paper book.

6.1. It was a fact that during the course of survey in the business premises of the assessee firm, there was an excess of gold jewellery of 2686.9354 gms . As per the sworn statement of Sri E.V. Subbiah, partner of the assessee firm which was recorded during the course of survey conducted on 14.6.2011, he had voluntarily agreed that 'the total book stock was 48276.885 gms, but, as per physical inventory taken, it was 50963.82 gms. The excess stock of 2686.935 gms was voluntarily admitted as unexplained investment and offered as additional income [Rs.45,67,900/-] for the assessment year 2011-12. which shall be in addition to the regular book profit. [source: pages 78 and 79 of PB]. The above additional income of Rs.45,67,900/- was quantified by the assessee on the basis of adopting the rate at Rs.1700/gms at the time of survey operation. Based on the established scheme of valuation of stock, the AO was of the view that the value of gold should have been adopted at the then prevailing market value in Bangalore on the date of survey i.e., on 14.6.2011 which was around Rs.2105/gm as against the valuation adopted/agreed upon by

the partner of the assessee firm at Rs.1700/gm at the time of survey (supra). Accordingly, the AO had valued the excess stock found at the time of survey at Rs.2105/gm which worked out to Rs,56,55,999/- [2686.9354 x Rs.2105] and the same was brought to tax as additional income of the assessee for the AY 2012.13. However, while concluding the assessment, the AO took care and also fair in giving a deduction of Rs.45,67,790/- [being the income declared by the assessee for the AY 2011-12 in adopting the value of excess stock of 2686.9354 gms only at the rate of Rs.1700/gm]. This very fact has not been refuted by the assessee either. Thus, we are of the view that the stand taken by the AO and, subsequently, confirmed by the CIT (A) doesn't require any interference by this Bench. It is ordered accordingly.

7. With regard to the assessee's objection to the effect that the reopening of the assessment u/s 148 of the Act was bad in law and requires to be quashed etc., we find that the issue has been elaborately deliberated upon by the CIT (A) in his impugned order which, in our view, doesn't warrant any intervention. In essence, this ground of the assessee firm is dismissed.

8. In the result, the appeal of the assessee firm is dismissed.

Order pronounced in the open court on 02/12/2016.

Sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

Place : Bangalore
Dated : 02/12/2016
/NS/

Copy to :

1. Appellant
2. Respondent
3. CIT(A)-II Bangalore
4. CIT
5. DR, ITAT, Bangalore
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore