

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH : KOLKATA

[Before Hon’ble Sri Aby T.Varkey, JM & Shri Waseem Ahmed, AM]

I.T.A Nos. 1124 & 1125/Kol/2015

Assessment Years : 2008-09 & 2009-10

Shri Sitangshu Seth
Hooghly
[PAN : AWTPS 2130A]
(Appellant)

-vs.- I.T.O., Ward-1(4)
Hooghly

(Respondent)

For the Appellant : Shri S.M.Surana, Advocate and Shri D.K.Sen
For the Respondent : Shri Provash Roy, JCIT, Sr.DR

Date of Hearing : 07.12.2016.

Date of Pronouncement : 28.12.2016.

ORDER

Per Aby T.Varkey, JM

These appeals preferred by the assessee are against the order of CIT(A)-6, Kolkata dated 08.07.2015 and 13.07.2015 respectively for AY 2008-09 and 2009-10 respectively.

2. Ground No.1 in both the appeals are general in nature and so is not adjudicated.

3. Ground no.2 in both the appeals are same. The facts for A.Y.2008-09 are considered and adjudicated which decision applies to A.Y.2009-10. Ground No.2 relates to confirmation of addition of Rs.5,93,880/- on account of closing stock submitted by the assessee to the bank and in the regular books of account and stock register maintained by the assessee.

4. The brief facts of the case is that the assessee, an individual is a re-seller of C.T.V. and electronics goods. For A.Y.2008-09 he filed the return declaring total income of Rs.1,80,760/-. Later on the case was selected for scrutiny. During the assessment proceedings the AO noted that he was in receipt of an information collected from State Bank of India, Arambagh Branch which he received in pursuance to the notice u/s 133(6) of the Act that the stock valuation of the assessee’s business as on 31.03.2008 as

submitted by the assessee to the bank was Rs.24,89,000/- whereas the assessee declared the valuation of closing stock in his books of accounts as on 31.03.2008 at Rs.18,95,120/- which according to the AO resulted in unaccounted stock investment from undisclosed sources of Rs.5,93,880/- and was added to the assessee's total income. Aggrieved the assessee preferred an appeal before CIT(A), who was pleased to confirm the same. Aggrieved by the decision of the Id. CIT(A) the assessee is before us.

5. We have heard both the parties and perused the records. We take note that the assessee is a dealer in electronic goods. During the assessment proceedings pursuant to the notice u/s 133(6) of the Act issued by the AO to the State Bank of India the bank replied that the assessee has shown as on 31.03.2008 closing stock valuation of Rs.24,89,000/-. The AO notes that the assessee in his books of account has declared the valuation of closing stock only at Rs.18,95,120/-. The AO confronted the assessee in respect to the difference in valuation of Rs.5,93,880/-, for which the assessee replied that it has submitted non audited stock statement to the bank as on 05.04.2008, and reconciled the difference by stating that inventories valuation of Rs.18,95,120/- and also receivables of (sundry debtors) Rs.5,93,880/- so total valuation of stock comes to Rs.24,89,000/-. It has been pointed out by the assessee that at the time of preparation of the audited balance sheet as on 31.03.2008 the receivables sundry debtors was to the tune of rs.8,82,954/- and the valuation of the closing stock was Rs.18,95,120/-. So therefore there is no discrepancy in the closing stock shown by the assessee in its audited balance sheet. This answer of the assessee could not convince the AO so he made the addition of Rs.5,93,880/-. The Id. CIT(A) called for a remand report from the AO where in he (AO) was directed to ask from the bank as to whether verification of the closing stock as on 31.03.2008 was conducted by the bank. The AO in his remand report notes that the bank did not answer specifically to the queries in this regard but has received a letter on 23.05.2014 wherein it has replied "*bank officials verified as per the bank laid down norms*" The AO thereafter also brought to the notice of the Id. CIT(A) that the bank has written a letter on 01.04.2014 which reads as follows :-

- “1. That assessee had duly submitted stock statement as on 31.03.2008 and the copy of the same enclosed for your perusal.
2. Bank officials verified the stock as per Bank’s laid down norms. The drawing power is granted on Hypothecation basis and not on lock and key system. Bank can arrange for stock audit by renowned Chartered Accounts if necessary.”

Thereafter also the AO wrote to the bank to specifically state as to whether the closing stock has been verified by the bank authorities or not, for which the AO notes that there was no reply from the bank. So thereafter the Id. CIT(A) decided the matter by stating that since the bank has categorically claimed that stock was verified, he was of the opinion that the difference in the stock valuation shown to the bank as well as that emerged from the books of accounts of the assessee as on 31.03.2008 of Rs.5,93,880/- has been rightly added by the AO and thus he confirmed the addition. We do not agree with the said finding of the Id. CIT(A). We take note that during the remand proceedings the AO wrote to the State Bank of India several times and finally the bank answered the same by a letter dated 01.04.2014 which has been reproduced above. From the perusal of the same it is understood that the bank has simply said that “*Bank officials verified the stock as per Bank’s laid down norms.* “ and also clarified that the bank can arrange for stock audit by a renowned Chartered Accountant, if necessary. From the same we decipher that the bank has not stated that it has specifically checked/verified the stock physically. Thereafter also the bank on 23.05.2014 also gave the same reply and though the AO has asked questions pin pointedly as to whether the stock has been verified as on 31.03.2008 has not been answered by the bank positively or negatively. So the fact remains that the bank has not replied positively as to the facts that whether they have physically verified the stock as on 31.03.2008 and therefore we cannot saddle the addition on the assessee when the assessee has categorically stated that to the bank the assessee has shown the closing stock as on 05.04.2008 which fact emerges from the reply given by the assessee to the AO which we note from page-2 of the assessment order. It is a common knowledge that the balance sheet prepared as on 31.03.2008 is only in respect to the closing stock as on that date and not the previous date or the

subsequent date. So even if there is a variation in the closing stock as on 05.04.2008, it cannot give rise to any fact which will point out that there is a inflated closing stock shown by the assessee to the bank for hypothecating the goods for the purpose of credit notes in CC Account as on 31.03.2008, which is reflected in the balance sheet which is audited. We find that the Id. CIT(A) erred in going through the replies forwarded by the State Bank of India to the AO which forms part of the remand report to come to a conclusion that the State Bank of India has physically verified the stock as on 31.03.2008 when the fact remains that the assessee's contention was that the closing stock shows to this bank was dated 05.04.2008 and the fact remains that bank has never stated that it has physically verified the stock of the assessee. Therefore we set aside the order of the Id. CIT(A) and we direct the deletion of the addition made by the AO of Rs.5,93,880/- which was added by the AO as concealed income from other sources. This ground of appeal is allowed.

6. In the result the appeal of the assessee on this issue is allowed.

7. Next coming to ITA No.1125/Kol/2015 we find that ground no.2 is similar to that of ground no.2 in A.Y.2008-09. Following the decision of ours in A.Y.2008-09 we direct the deletion of addition of Rs.10,12,480/- on account of closing stock difference.

8. Ground No.3 raised by the assessee in A.Y.2009-10 reads as follows :-

“3. For that Ld. CIT(A)-6, Kolkata in consideration of the facts and circumstances of the case, is not justified in making fresh addition of Rs.1,11,246.00 on account of bogus purchase without confronting the appellant.”

9. The brief facts of the case is that the AO noted that during the assessment proceedings after perusal of the ledger accounts submitted by the assessee that the assessee has made under statement of his purchase from the suppliers and after discussing the facts on page 3 and 4 of the assessment order has made the addition of Rs.6,60,911/-. Aggrieved the assessee preferred an appeal before the Id. CIT(A). The Id. CIT(A) allowed the appeal of the assessee and confirmed only Rs.1,97,168/- and

ordered deletion of Rs.,4,63,742/-We note that before the Id. CIT(A) the assessee has made the following submissions :-

That the Ld. A.O wrongly made addition of Rs. 6,60,911/- on account of discrepancy in purchase and solely on the basis of suppliers' ledger account.

(A) Firstly, in case of "Sonex,TV Appliances Pvt. Ltd. " all the payments were made-through Bank.

(B) Secondly, purchase of Rs. 4,27,685.00 dated 31.03.2009 was received on 02.04.2009 and duly shown in the purchase register.

(C) Thirdly, purchase' of Rs. 88,014/- dated 20.03.2009 is conspicuous by its absence in purchase register. This suppression in purchase entails suppression in sale too. Only the profit element escaped taxation.

(D) That purchase from Asahi Electronics Pvt. Ltd. for Rs. 5, 13,441.00(Rs. 6,99,406 - Rs.1,85,965.00), the appellant candidly admits, is actually suppression in purchase, although payment of the said purchase was made by A/c. payee cheque absolutely through Bank. As both purchase and sales are suppressed, the gross profit element may kindly be added in consonance with the principles of the natural justice.

(E) That the discrepancy in opening balance of Rs. 95,901/- (Rs.4,57,857 - Rs.3,61,956.00) in respect of Kitchen Appliance Ltd." which the A.O termed "inflated credit balance is not at all related to "the relevant assessment year but earlier to it. "

10. Thereafter the Id. CIT(A) has called for the remand report and which has been reproduced by the Id. CIT(A) in page-6 of the impugned order. Thereafter the assessee's reply for the remand report was also filed which has been noted by the Id. CIT(A) at para 5.2. in para-7 of the impugned order. The Id. CIT(A) notes that during the hearing on 03.07.2015 the written reply to the remand report was filed. Thereafter the Id. CIT(A) has decided the matter wherein he has taken note of the admission made by the assessee in respect to the undisclosed purchases worth Rs.88,014/- from Sonex TV Appliances Pvt. Ltd. And Rs.5,13,441/- from Asahi Electronics Pvt. Ltd thus totaling of undisclosed purchases of Rs.6,01,455/-. Thereafter the Id. CIT(A) agrees with the contention that in the case of undisclosed purchases only the profit element need to be brought to tax and thereafter taking into account the fact that since unexplained expenses has already been claimed by the assessee in the profit and loss account, the gross profit margin being on sales according to him was considered as a fair indicator of the profit made corresponding to the unaccounted purchases of Rs.6,01,455/- and thus he worked out the same as Rs.1,11,246/-. As per grounds of appeal of the assessee is

concerned we note that the assessee is aggrieved by the addition of Rs.1,11,246/- on account of bogus purchases being made without confronting the appellant is per se found to be false. In the light of the admission made by the assessee before the Id. CIT(A) and which is underlined by us (supra) we take note that assessee's statement before the Id. CIT(A) which have been reproduced above, wherein the assessee has candidly made admission which has been forwarded to the AO for remand report and thereafter the Id. CIT(A) in all fairness has taken the written submission from the assessee and thereafter passed the order after hearing the assessee. In such a scenario the grounds of appeal raised by the assessee that without confronting the assessee in respect to the addition of Rs.1,11,246/- has no legs to stand and therefore is devoid of merits. Therefore we dismiss the appeal on this issue.

11. In the result, the appeal of the assessee for A.Y.2008-09 is partially allowed.

Order pronounced in the Court on 28.12.2016.

Sd/-
 [Waseem Ahmed]
 Accountant Member

Sd/-
 [Aby T.Varkey]
 Judicial Member

Dated : 28.12.2016.

[RG PS]

Copy of the order forwarded to:

1. Sri Sitangshu Seth, At & P.O. Arambagh, Satitala, Dist. Hooghly, PIN:712601.
2. I.T.O., Ward-1(4), Kolkata.
3. CIT(A)-6, Kolkata. 4. CIT-8, Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Asstt.Registrar, ITAT, Kolkata Benches

ITA Nos.1124 & 1125/Kol/2015
Sri Sitangshu Seth
A.Yr.2008-09 & 2009-2010