

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI
BEFORE MS. DIVA SINGH, JUDICIAL MEMBER**

**ITA No. 2369/Del/2017
Assessment Year: 2011-12**

Sri Raghunath Traders, 2046, Katra Tobacco, Khari baoli, New Delhi PAN :AABFS5596C	Vs.	ITO Ward-29(1) New Delhi
(Appellant)		(Respondent)

**ITA No. 2370/Del/2017
Assessment Year: 2012-13**

Sri Raghunath Ji & Sons Traders, 2046, Katra Tobacco, Khari baoli, New Delhi PAN :AABFS5596C	Vs.	ITO Ward-29(1) New Delhi
(Appellant)		(Respondent)

Appellant by	Sh. K.R. Marjani, Adv
Respondent by	Sh. T. Vasanthan, Sr. DR
Date of hearing	24-08-2017
Date of pronouncement	18.10.2017

ORDER

PER DIVA SINGH, J.M. :

These present appeals have been filed by different assesseees. Since as per the common stand of the parties the facts, submissions and arguments more or less remain identical, accordingly, for the sake of convenience both the appeals are being decided by a common order. For ready reference facts recorded in ITA No. 2369 of 2017 are being referred too. The said appeal has been filed by the assessee wherein the correctness of the order dated 1.3.2017 on CIT(A), New Delhi is assailed on the following grounds:

The learned Assessing Officer as well as the Commissioner of Income Tax (Appeals) have erred on facts as well as in law in making and sustaining the trading addition of Rs. 9,37,890/- even though

(a) The quantitative tally is maintained, which is given with the Audit Report.

(b) Turnover is almost three times in relation to last year.

(c) The appellant does not keep separate stock register but it is maintained in ledger by writing quantity of purchases and sale while recording purchases and sales.

2. The learned AR inviting the attention to the impugned order submitted that instead of dealing with specific grounds of the assessee wherein the fall in GP was explained by pointing out that in the year under consideration the turnover of the assessee increased three times and the fall in GP as mentioned was on account of the fact that the business was itself closed in the year under consideration. Thus at whatever prices, the goods were sold the business was being closed. It was also his submission that the assessee was maintaining a quantitative tally and not maintaining qualitative details. The CIT(A), in the facts, it was submitted has relied upon the facts of the sister concern for 2010-11 assessment order wherein the issue had travelled to the High Court also and had been remanded back to the CIT(A) who had followed the order of the predecessor dated 17.5.2013 and without referring to any facts of the present case, the CIT(A) has given a bald finding stating that the appeal of the assessee is dismissed. It was his submission that it is a non speaking order and contrary to settled legal principles accordingly, it was his request that the impugned may be set aside back to the file of the CIT(A) directing him to decide the issues on the basis of the facts available on record. It was also his submission that in fact the order of the Hon'ble High Court in the case of sister concern in fact was decided in the assessee's favour.

3. The learned Sr. DR considering the finding of the CIT(A) had no objection if the issue is restored.

4. I have heard the submissions and perused the material on record. It is seen that the learned CIT(A) referred to the decision of a sister in the immediately preceding year which issue after travelling through the ITAT came up for consideration before Hon'ble High Court who remanded the matter back to the file of the CIT(A). For ready

reference, the relevant extract from the said decision of the Hon'ble High Court is reproduced hereunder:

Finally the appellant approached Hon. High Court of Delhi who gave direction vide its order No.ITA. 743/2014 dated 9th March, 2015.. The relevant extract of the order of the Hon'ble High Court is as under:-

“The assessee argues that the AO and other authorities fell into error in not taking into consideration o quantitative tally of ingredients and raw material was available in the records, it is contended that the opinion was influenced by the fact that the GP Rate claimed was 3.57% for the concerned AY as against the total turnover of 26,14,84607/-. Learned counsel urges that the previous years' turn-over figures t not follow any uniform pattern, both in respect of turn-over as well as in respect of GP Rate, and that: department in all its previous years had accepted the books of accounts and the method of maintains them. In light of this, the assessee urges that the CIT (Appeals) — and ITAT — did not apply their mind considering whether the facts and material placed on record reflected that the relevant documents evidencing procurement of raw material existed and that a qualitative tally of the same had been made. Learned counsel for the assessee argued that the Revenue went ahead with the pre-disposed mind that d quantitative tally of the raw materials was not maintained in the assessee's books.

Counsel for the Revenue contested the asessee's submissions by pointing out that by two appeals the assessee's contention was rejected after due consideration of material on record. Learned counsel highlighted that before the AO, the assessee had contended that due to family problems, the total turnover for the current year in question had been lesser than previous years.

This Court has carefully considered the submissions both before the CIT (Appeals) as well as the ITAT. The assessee categorically appears to have submitted that a quantitative tally of all the raw material consumed in the making/preparation of the final marketable product was being maintained. Even though CIT A gals noticed this contention as a matter of fact, the said authority did not render any finding T\ ITAT instead went by the findings of the lower authority and merely based its conclusion on tin interpretation of Section 145(2) of the Income Tax Act, 1961. In fact, there is an assumption in para 9 of the assessee did not maintain quantitative details of ingredients such as mixing gum starch and oil.

This Court is of the opinion that having regard to the assessee's stand that such details were forthcoming both by way of books as well as through a quantitative tally, the CIT(Appeals) should have addressed himself to the issue and rendered clear findings. Failure to have done so has prejudiced the assessee. Consequently, the impugned order is hereby set aside. The matter is remitted back to the CIT (Appeals) for fresh examination of the books of accounts, specifically with regard to whether the quantitative tally was undertaken of the raw material used by the assessee in its business activities and if so, the interference is to be drawn from it and the other available material on the record. All rights and contentions of the parties are reserved.

4.1. It is see that relying upon the order passed by the learned CIT(A) in the remand proceedings wherein the issue was decided in the above manner, the appeal of the assessee was dismissed, by the CIT(A) holding as under :

I have carefully considered the history of the case and the observations of Assessing Officer, the CIT(A), the Hon. IT AT and Hon. High Court of Delhi. I have also considered the submission of the appellant submitted during the proceedings before me. I am of the opinion that the appellant is misusing the various appellate forums to gain some advantage. The fact of the matter is that the appellant, in spite of all his chest thumping with respect to the quantitative stock being maintained, the facts prove otherwise. Right from the first round of litigation the stand of the appellant has remained ambiguous. The appellant has been claiming that it is maintaining the qualitative and

quantitative stock but the same was not found to be true by even Hon. ITA T The appellant, again before me, has submitted the copies of ledger account of purchase of hing, gum, starch and. oil. It records only the purchases in the respective account. However, what quantity was used to make which quality of hing, cannot be ascertained from this record. As Hon. ITAT, in its order, in miscellaneous application No.63/Del/2014 dated 25/09/2014 had observed that "maintaining quantitative details of manufacturing account and maintaining quantitative tally of purchases sales etc are different things ", I am afraid, that the facts and circumstances have not changed a bit, since then. There is nothing new in what the appellant is submitting as argument or evidence. Even before me during the appellate stage the Ld.AR has stated categorically that it was neither possible nor desirable to maintain the stock register from which the manufacturing account could be prepared. How and how much of an item of raw material is consumed can never be found out. As the Assessing Officer, has also pointed out that the raw material consists of perishable. Items, the same cannot be stored forever. The one which is purchased first must be consumed first (first in first out). The appellant has very conveniently brushed aside the FIFO or LIFO method of maintenance of stock without any logical assertion. Therefore, in the end I hold that the appellant is not maintaining the books of accounts in such a way so as to arrive at the manufacturing account, the stock register admittedly, has not been maintained. The mere recording of sale and purchases and opening and closing stock at the beginning and the end of the year is not sufficient. Hence I hold that the deficiency in the books of accounts is real. Therefore, I have no reason, argument or evidence to temper with the finding of my predecessor in his order No. 13/2013-14 dated 17/05/2013".

4.2. It is seen that the above decision of the learned Commissioner (Appeals) cannot be said to be an order in accordance with law. The assessee has claimed that its business closed in the year consideration. It is also been claimed that the turnover of the assessee increased three times and there was no discrepancies in the quantitative tally. The said facts and arguments it is seen have not been considered. Accordingly, the order to be a non-speaking order it is set aside back to the file of the CIT(A) with a direction to pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

6. In ITA No. 2370/Del/2017, the assessee assails the order dated 1.3.2017 of CIT(A)16, New Delhi pertaining to 2012-13 assessment year in the case of M/s Sri. Raghunath and Sons. A perusal of the said order shows that herein also learned Commissioner(A) relies upon the very same order of the sister concerned in 2010-11 assessment year which had travelled to the Hon'ble High Court and thereafter, it had been remanded back to the CIT(A). In the facts of the present case also the impugned order cannot be said to be a speaking order. Relying upon the reasons as recorded in ITA No. 2369/Del/2017, the said order is also set aside back to the file of the learned Commissioner (A) with an identical direction as the said order cannot be said to be an

order in accordance with statutory provisions. The order is pronounced in the open court at the time of hearing itself.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

(Order pronounced in the open court on 18.10.2017.)

Sd/-

**(DIVA SINGH)
JUDICIAL MEMBER**

SH/ Binita

Copy forwarded to:

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

ASSISTANT REGISTRAR,
ITAT NEW DELHI

		Date	
1.	Draft dictated on	24.08.2017	PS
2.	Draft placed before author	13.09.2017	PS
3.	Draft proposed & placed before the second member	18.10.2017	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	.2017	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	.2017	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		