

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 120/DEL/2015 (A.Y 2012-13)

(THROUGH VIDEO CONFERENCING)

SMC Food Ltd. 2/1425, White House, Delhi Road District- Saharanpur Uttar Pradesh AABCS9564R (APPELLANT)	Vs	ACIT Central Circle-25 New Delhi (RESPONDENT)
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Appellant by	Sh. Salil Agarwal, Sh. Shailesh Gupta & Sh. Madhur Agrawal, Advs.
Respondent by	Sh. H. K. Choudhary, CIT(DR)

Date of Hearing	26.08.2020
Date of Pronouncement	28.08.2020

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 17/11/2014 passed by CIT (A)-1 New Delhi for Assessment Year 2014-15.

2. The grounds of appeal are as under:-

1. *The order of the learned Commissioner of Income Tax (A) is arbitrary, against law and facts on record.*
2. *The learned Commissioner of Income Tax (A) has erred in confirming addition of Rs 10,66,350/- in respect of profit from undisclosed sale without going through the facts, details as well as documentary evidence filed during*

the course of assessment proceeding and appellate proceeding.

3. The learned Commissioner of Income Tax (A) while passing the order has also admitted the fact that no evidence has been brought on record by the Assessing officer to indicate or establish that there was sale outside the books of accounts.

4. The learned Commissioner of Income Tax (A) while passing the order has confirmed the addition of Rs 10,66,350/- on the basis of the assumption and presumption and without any cogent material on record.

3. A search and seizure was carried out u/s 132 of the Income Tax Act, 1961 in SMC Group of cases on 4/8/2011 including the assessee. Notice u/s 142(1) was issued on 11/4/2013 in response to which a return declaring income of Rs. 3,37,29,450/- was filed on 31/5/2013. Notice u/s 143(2) was issued on 30/10/2013. Notices u/s 142 (1) along with questionnaire was issued on 26/4/2013 and 17/2/2014. The assessee furnished the relevant records and filed reply dated 20/2/2014. The Assessing Officer assessed income at Rs. 4,83,44,860/- after making an addition of difference of Rs.1,46,15,410/- in stock of goods found and books.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that the closing stock of finished goods as per the stock of the company was Rs. 11,46,15,410/-. However, at the time of physical verification of stock during the search, it was found that Rs. 10,21,21,080/- for which the assessee has given explanation that the stock lying at outside factory premises and cold storage was not taken into account at the time of physical verification by the Assessing Officer. The Ld. AR submitted that before the Assessing Officer re-conciliation of stock found with stock as per stock register was produced. The amount of stock in the books of accounts is more by Rs.1,46,15,410/-. As such the company has shown more

profit in the books of account and as such this issue needs no adverse inference. The Ld. AR further submitted that the books were not at all rejected by the Assessing Officer and the Assessing Officer has not taken into account, the Stock lying outside factory premises and cold storages. The Ld. AR through an example has pointed out the GP rate shown by the assessee is more if the Assessing Officer's version is considered. The said illustration is as under:-

Amount (Rs)		(Amount Rs.)	
Opening Stock	100	Sale	150
Purchase	100	Closing Stock	<u>90</u>
Gross Profit	<u>40</u>		
	<u>240</u>		<u>240</u>
Amount (Rs)		(Amount Rs.)	
Opening Stock	100	Sale	150
Purchase	100	Closing Stock	<u>100</u>
Gross Profit	<u>50</u>		
	<u>250</u>		<u>250</u>

Thus, the Ld. AR submitted that the Assessing Officer as well as the CIT(A) has not taken into account the relevant material produced before both the authorities by the Assessee.

6. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

7. We have heard both the parties and perused the material available on record. The books of accounts at any point of time were not rejected by the Assessing Officer. There was no denial by the Assessing Officer that stock was lying outside factory premises and cold storages. The Assessing Officer has not pointed out any defect in the reconciled stock. The CIT(A) has also not taken the cognizance of proper GP rate applied by the CIT(A). Therefore, the Assessing Officer as well as the CIT(A) has not considered the actual material in consonance with the physical stock. The assessee had justified its difference through the documents which was at no point of time doubted by any of the Revenue Authorities. Therefore, CIT(A) was not justified in directing

the Assessing Officer for making an addition on account of difference in stock for sustaining the same for Rs. 10,66,350/-. The appeal of the assessee is allowed.

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

Order pronounced in the Open Court on this 28 Day of AUGUST, 2020.

Sd/-

(R. K. PANDA)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 28/08/2020
R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI