

IN THE INCOME TAX APPELLATE TRIBUNAL “A (SMC)” BENCH: KOLKATA
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 477/Kol/2021
Assessment Year : 2010-11

M/s Md. Ismail Saree Creations (PAN:AAJFM 9519 P)	Vs.	ITO, Ward-37(4), Kolkata
Appellant		Respondent

Date of Hearing (Virtual)	24.02.2022
Date of Pronouncement	07.03.2022
For the Appellant	Shri R. Chowdhary, A.R.
For the Respondent	Shri Manas Mondal, Addl. CIT

ORDER

Per Shri Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [hereinafter referred to as ‘CIT(A)’] dated 28.07.2021 for the assessment year 2010-11.

2. Though the Registry has pointed out that the appeal is time barred, however, in view of the decision of the Hon’ble Supreme Court in the case of Miscellaneous Application No. 665 of 2021 in SMW(C) No. 3 of 2020, the period of filing appeal during the COVID-19 pandemic is to be excluded for the purpose of counting the limitation period. In view of this, the appeal is treated as filed within the limitation period.

3. The grounds of appeal raised by the assessee are as under:

1. That on the fact and circumstances of the case the Ld. CIT(A) erred in confirming addition of Rs. 13,46,064/- on account of difference in closing stock.

2. That on the fact and circumstances the Ld. CIT(A) erred in confirming of taking sale of Rs. 65,00,300/- instead of Rs. 53,51,628/- as on 24.03.2010 presurvey period and worked at GP of Rs. 19,47,200/- being 30% on sale of Rs. 65,00,300/- by AO (Tax effect is stated in Ground no. 1)

3. *That on the fact and circumstances of the case the Ld. CIT(A) erred in confirming Post Survey period sale of Rs. 22,062 instead of Rs. 11,70,734/- (Tax effect is stated in Ground no. 1)*

4. *That on the fact and circumstances of the case Books of accounts were not rejected yet confirmed the addition of Rs. 13,46,064/- (Tax effect is stated in Ground no. 1)*

5. *For that appellant craves leave to submit further grounds of appeal before or in course of hearing.*

4. The issue raised in first and second ground is against the confirmation of addition of Rs. 13,46,064/- by Ld. CIT(A) as made by the AO on account of difference in the value of closing stock found during the course of survey.

5. The facts in brief are that the return of income was filed on 14.10.2010 declaring total income of Rs. 38,700/- which was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act) on 26.05.2011. The assessee is a trader and dealer in shares. The case of the assessee was selected for scrutiny and statutory notices were issued and duly served upon the assessee. Pertinent to state that a survey was conducted u/s 133A on 24.03.2010 on the business premises of the assessee. A provisional profit and loss account was drawn up during survey by the Survey Team and inventory was estimated at Rs. 29,06,957/- on the basis available data. During the course of assessment proceedings, it was also noted by the AO that after the date of survey till the year end, the assessee made further purchases amounting to Rs. 4,89,982/- and also effected sales to the tune of Rs. 22,062/-. The AO further noted that as per the audited balance sheet, profit and loss account, the closing stocks were shown by the assessee at Rs. 20,12,813/- and accordingly a show cause notice was issued to the assessee to explain the difference in the value of closing stocks as per books of accounts and the inventory at the time of survey. The AO noted that the total sales as on 24.03.2010 were Rs. 53, 51,628/- whereas the estimated the total sales by the survey team up to 31.03.2010 were Rs. 65,00,300/- . The AO also observed that sales made by the assessee assessee between 24.03.2020 and 31.03.2010 were Rs. 11,70,734/- as per the books of account produced by the assessee which

were impounded u/s 131(3) of the Act on 03.05.2010 and released on 17.05.2010 after examination. The AO noted that the assessee has made more sales by Rs. 22,062/- as per the audited accounts than estimated by the survey party. The assessee has furnished detailed submissions and explanation before the AO explaining that there is no difference in the closing stock by filing the following details :

<i>Closing stock as per audit report</i>	<i>Rs. 20,28,813/-</i>
<i>Add:- Sales between 24.03.2010 to 31.03.2010</i>	<i><u>Rs. 11,70,734/-</u></i>
	<i>Rs. 31,99,547/-</i>
<i>Less:- Purchase between 24.03.2010 to 31.03.2010</i>	<i><u>Rs. 2,94,914/-</u></i>
	<i>Rs. 29,04,633/-</i>
<i>Add:- Gross profit on sold goods @ 8.5%</i>	<i><u>Rs. 1,00,000/-</u></i>
	<i>Rs. 39,04,633/-</i>

6. The AO however did not accept the contention of the assessee and relied heavily on the finding of the survey team. The AO noted that stock as per audited books of account were Rs. 20,28,813/- whereas actual stock should have been 33,74,877/- as per findings of the survey team and accordingly added an amount of Rs. 13,46,064/- by treating the same as concealed income. The AO also added Rs. 34,342/- towards profits by estimating that net profit of the assessee should have been Rs. 13,80,406/-.

7. In the appellate proceedings , the Ld. CIT(A) dismissed the appeal of the assessee by observing that the assessee has shown different amount of purchases between 24.03.2010 to 31.03.2010 and also shown lesser GP rate vis-à-vis the GP rate admitted during the course of survey. The Ld. CIT(A) observed that GP rate shown by the assessee as per books of account was 8.5% whereas GP admitted during the survey 29.95% and upheld the order passed by the AO on the ground that there is no mistake in the calculation done by the AO in the valuation of stock.

8. After hearing the rival parties and perusing the records carefully, we find that the survey team has provisionally prepared the profit and loss account as on

24.03.2010 by estimating the various figures on the basis of data available. The books of accounts were duly produced before the AO during the course of assessment proceedings however the AO relied heavily on the findings of the survey team in stead of pointing out of any specific defect in the audited accounts produced by the assessee before the AO. We note that the assessee has replied the show cause notice and explained that there is no difference in the value of stock as per the audited accounts and on the rate of valuation. Even the AO during the assessment proceedings issued notices u/s 133(6) of the Act to the customers and were duly responded. The Ld. CIT(A) affirmed the order of AO by holding that there is no infirmity in the calculation of stock by the AO again not commenting on the books of accounts. In our opinion, the findings of both the authorities are without any basis or material as the books of account duly audited by the auditors were produced by the assessee but not faulted with during the course of assessment proceeding as well as during appellate proceedings. Moreover we note that the AO has not rejected the books of accounts before making the addition on account of stock difference which is also not correct and not as per the provisions of Act. Therefore the addition made on the basis of estimation and surmises cannot be sustained . The case of the assessee is squarely covered by the decision of Hon'ble Apex Court in the case of CIT vs. Kader Khan Son reported in [2013] 352 ITR 480 (SC) wherein it has been held that the statement of the assessee in survey has no evidentiary value until and unless there is a corroborating material brought on record by the Investigation team and thus statement during the survey cannot be basis of making the decision. In above conspectus of facts and the ratio laid down by Hon'ble Supreme Court in the above case ,we are inclined to delete the addition of Rs. 13,46,064/-. Therefore, the ground nos. 1 and 2 are allowed.

9. The issue raised in ground no.3 is against the confirmation of Rs. 22,062/- as made by the AO on account of post survey sale. Since we have already allowed the appeal of the assessee in ground no. 1 and 2 above deleting the addition of Rs. 13,46,064/-. This ground being consequential to the above and is accordingly allowed.

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

Order is pronounced in the open court on 7th March, 2022.

Sd/-

(Sonjoy Sarma)
Judicial Member

Sd/-

(Rajesh Kumar)
Accountant Member

Dated: 7th March, 2022

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s Md. Ismail Saree Creations, 4, Tara Chand Dutta Street, Bura Bazar, Kolkata-700073.
2. Respondent – ITO, Ward-37(4), Kolkata
3. The CIT(A)-National Faceless Appeal Centre (NFAC)
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata

1. Date of Dictation.....
2. Date on which the typed order is placed before the dictating Member and other Member.....
3. Date of which the order came back to Sr. PS.....
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5. Date of dispatch of the order.....