

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

I.T.A. No. 2380/Kol/2019
Assessment Year : 2015-16

DCIT, Circle-14(2), Kolkata	Vs.	M/s Plasto Electronics Pvt. Ltd. (PAN: AADCP 1019 J)
Appellant		Respondent

I.T.A. No. 1441/Kol/2019
Assessment Year : 2015-16

M/s Plasto Electronics Pvt. Ltd. (PAN: AADCP 1019 J)	Vs.	DCIT, Circle-14(2), Kolkata
Appellant		Respondent

Date of Hearing	15.03.2022
Date of Pronouncement	21.04.2022
For the Appellant	Shri Subash Agarwal, Advocate
For the Respondent	Smt. Ranu Biswas, Addl. CITDR

ORDER

Per Shri Rajesh Kumar, AM:

These two cross appeals by the assessee as well as revenue are directed against the order of the Commissioner of Income Tax (Appeals)-5, Kolkata [hereinafter referred to as ‘CIT(A)’] dated 16.05.2019 for the assessment year 2015-16.

2. The revenue has raised following grounds of appeal:

- 1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in facts and law in deleting the addition of Rs. 2,16,34,400/- on account of unexplained share application money with share premium u/s 68 of the I.T.Act, 1961 without making proper appreciation of the findings and observations of the Assessing Officer.*
- 2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in fact and law in deleting the addition of Rs. 23,85,981/- out of total addition of Rs. 61,85,981/- u/s 69 of the I.T.Act, 1961 being under valuation of*

stock found during survey, without considering the findings of survey team and observations of the Assessing Officer.

3. That the Department craves leave to add modify or alter any of the grounds of appeal and/or adduce additional evidence at the time of hearing of the case.

3. In the ground no.1 raised , the revenue has assailed the order of Ld. CIT(A) in deleting the addition of Rs. 2,16,34,400/- as made by the AO on account of share application money with share premium u/s 68 of the Income Tax Act, 1961 (hereinafter referred to as the Act).

4. Facts in brief are that during the assessment proceedings the AO issued notice u/s 133(6) of the Act to eight parties which were duly replied by these parties. The case of the assessee was selected for limited scrutiny on various issues including the one in respect of large share premium by the assessee. The assessee has received Rs. 1,56,84,400/- from these eight parties on various dates. According to the AO, the assessee has failed to prove the identity, creditworthiness of the investors and genuineness of the transactions and accordingly a show cause notice was issued as to why the same should not be treated unexplained cash credit u/s 68 of the Act. Further the AO has issued show cause notice to the assessee in respect of share application money received from Sabya Sachin Ghuwalewala HUF of Rs. 59,50,000/- and accordingly the show cause was given to the assessee as to why the same should not be treated as unexplained cash credit u/s 68 of the Act. The assessee replied the show cause notice furnishing various information such as PAN, Addresses, confirmations and also proofs of identity, creditworthiness of the parties and further stating that these parties are mostly directors or their relatives and not outside parties. It was submitted that no money has been received from unknown sources. However, the AO rejected the contentions of the assessee and treated this amount as unexplained cash credit as the assessee has failed to prove the identity, creditworthiness of the investors and genuineness of the transactions for the reason that these were circuitous rotation of funds by the assessee to these parties. The AO observed that the assessee has repaid money to these parties and then money was received back from these parties by way

of share application money and finally an addition of Rs. 2,16,34,400/- was made to the income of the assessee.

5. In the appellate proceedings the Ld. CIT(A) deleted the addition by observing that the assessee has proved the identity and creditworthiness of the parties/ investors and also the genuineness of the transactions by filing various documents in the form of PANs, ITRs, bank statements and confirmations etc. The Ld. CIT(A) also noted that in response to notices issued u/s 133(6) of the Act, all the investors have replied and filed the details as called for by the AO which are part of the assessment records by passing a detailed order.

6. After hearing the rival parties and perusing the material on record, we find that in this case, the assessee has some outstanding loans to various parties as discussed by the AO in the assessment order and also dealt with by the Ld. CIT(A) in the appellate order which were repaid by the assessee during the year and thereafter the said money was given back to the assessee by way of share application money for allotment of shares at a premium. It was argued before us that the said conversion of unsecured loans into the share capital was necessitated for business and commercial considerations. There were two ways of doing that. First one is to convert the unsecured loans into share application straight away and second alternative was to return and repay the unsecured loans and again bring back that money into the assessee company in the form of share capital. It was argued by the Ld. A.R. that the assessee has followed the second method. The Ld. A.R. submitted before us that it was not in the case of any outside party investing in the assessee company or funds coming from unknown sources/investors not known to the assessee company but all the investors were either directors or their close relatives therefore the order of AO doubting the transactions of share capital just on the ground that the loans were first returned and then investments were brought back to the assessee company is wrong. The Ld. A.R. submitted before us that the Ld. CIT(A) has correctly appreciated the facts of the case and given a detailed findings on all the three ingredients of Section 68 of the Act and allowed the appeal by following various judicial decisions. The Ld. D.R. ,on the other

hand, relied on the assessment order and submitted that the bare filing of documents do not prove genuineness of the transactions as these transactions are of ambiguous nature as first money was returned and again brought back in to the assessee company in the form of share application money.

7. Having gone through the facts on record and order cited below we find that the assessee has returned the unsecured loans outstanding to various parties who happened to be the directors of the assessee company or their close relatives and thereafter the money so repaid was brought back in the form of share application in the assessee company converting the same into the share capital and share premium. We note that the assessee has filed all the documents/evidences relating to these investors in the form of names, addresses, ITRs, PANs and confirmation etc. before the AO which were duly matching with the documents filed by these investors before the AO in response to notices issued to these parties by the AO u/s 133(6) of the Act. In our opinion, the order of Ld. CIT(A) has dealt with each and every aspect of the issue in great depth and thus passed a very speaking and reasoned order while deleting the addition. We therefore inclined to uphold the same on this issue by dismissing the ground no. 1 of the revenue. Ground no. 1 of the revenue is dismissed.

8. The issue in ground no. 2 in the revenue appeal and grounds raised in the cross appeal of the assessee is qua the deletion/confirmation of addition on account of stocks as found by survey team during the course of survey. The revenue has challenged the deletion of stock to the extent of Rs. 23,85,981/- out of total addition of Rs. 61,85,981/- made by the AO u/s 69 of the Act whereas the assessee has challenged the part confirmation of addition to the tune of Rs. 38,00,000/- by the Ld. CIT(A).

9. Facts in brief are that the survey u/s 133 of the Act was conducted on 15.10.2014 during which the survey team has inventoried the stock which came to Rs. 2,93,70,252/- however the stock maintained by the assessee worked out at Rs. 2,31,84,271/- resulting into a difference of Rs. 61,85,981/-. The statement was recorded of one of the directors Shri Sabya Sachin Ghuwalewala during survey and he stated that the explanation with respect of discrepancy in stock would be explained

later on. On that basis during the course of assessment proceedings, the AO issued show cause notice on the assessee as to why the excess of stocks of Rs. 61,85,981/- should not be added into the income of the assessee. The Ld. Counsel for the assessee submitted before the AO that there were factual infirmities and discrepancies in the stock taking done by the survey team at the time survey. The Ld. Counsel pointed out that in some cases double entries were taken, in some instances wrong quantities were taken and rate applied by the survey team were also wrong. The assessee filed reconciliation statement during assessment proceedings which is reproduced as under for the sake of convenience:

Stock Reconciliation Statement			
S.No	Particulars	Amount (In Rs.)	Amount (In Rs.)
DIFFERENCE IN STOCK ON 15.10.2014 AS PER SURVEY TEAM			
	Value of the Physical Stock as per Survey team on 15.10.2014	29,370,253.91	
	Less: Stock as per Books as on 15.10.2014	23,184,272.91	
	Difference as arrived by the Survey Team between physical & book stock as on the date of survey	6,185,981.00	
RECONCILIATION OF THE DIFFERENCE			
	Stock as per books on 15.10.2014 (A)		23,184,272.91
1)	Add: Short Stock taken by Survey team, though the items existed at the premises:		
	(a) Auxiliary Material being item (A) and entries 1 to 34 of Stock reco Page no: 01 of annexed stock reco statement	1,796,873.42	
	(b) Packing Material being item (C) and entries 1 to 2 of Stock reconciliation page no: 02 of annexed stock reco statement	18,942.92	
	(c) Semi Finished Goods being item (F) and entries 125 to 142 of Stock reconciliation page no: 06 of annexed stock reco statement	1,865,018.00	
	VALUE OF SHORT STOCK COUNTED BY SURVEY TEAM (B)		3,680,834.34
	Balance of Stock Value after above adjustment (A)-(B) = (C)		19,503,438.57

2)		
	Less: Stock double counted/wrong rate/ wrong counted by the Survey Team	
	(a) Auxiliary Material being item (A) and entry 41 of Stock reco Page no: 02 of annexed stock reco statement	-3,296.89
	(b) Rmsip Plastic Granules being item (E) Raw Material Stock-in-progress and entries 4 to 6 of Stock reco Page no: 03 of annexed stock reco statement	-9,776,758.22
	c) Wrong rate of HDPE/ Poly Propylene being item no: (E) and entries 7 to 8 of Stock reco Page no: 03 of annexed stock reco statement	3,765,831.75
	(d) Semi Finished Goods being item (F) and entries 146 to 150 of Stock reco Page no: 07 of annexed stock reco statement	-1,275,436.00
	(e) Auxiliary Material being item (A) and entry 42 of Stock reco Page no: 02 of annexed stock reco statement	-473,796.14
	(f) Semi-finished Goods being item (F) and entries 143 to 145 of Stock reco Page no: 06- 07 of annexed stock reco statement	-300,600.00
	VALUE OF DOUBLE/WRONG RATE/ WRONG STOCK COUNTED BY SURVEY TEAM (D)	-8,064,055.50
	Balance of Stock Value after above adjustments (C) - (D) = (E)	27,567,494.07
3)	Less: Sale Rate taken instead of Purchase Rate by the Survey Team	
	(a) Auxiliary Material being item (A) and entries 35 to 39 of Stock reco Page no: 02 of annexed stock reco statement	-410,726.75
	VALUE OF STOCK TAKEN AT SALE RATE INSTEAD OF PURCHASE RATE BY SURVEY TEAM (F)	-410,726.75
	Balance of Stock Value after above adjustments (E) - (F) = (G)	27,978,220.82

5)		
	Less: Sales made but were yet to be entered in the books on the date of survey	
	(a) Finished Goods being item (B) and entry 1 of Stock reco Page no: 02 of annexed stock reco statement	-1,010,970.00
	VALUE OF STOCK SOLD BUT WERE NOT ENTERED IN BOOKS TAKEN AS STOCK BY SURVEY TEAM	-1,010,970.00
	TOTAL BOOK STOCK AFTER THE ABOVE RECONCILIATION AS ON 15.10.2014	28,989,190.82
	LESS: STOCK AS PER THE SURVEY TEAM AS PHYSICALLY COUNTED ON 15.10.2014	29,370,253.91
	Total Value of difference in stock remaining after the above reconciliation due to shortage & wastage not accounted for.	381,063.09

According to the assessee, the survey team has made apparent and clear-cut mistakes while taking the stock as brought out by the reconciliation statement. The statement reveals that it has left the stocks of finished item aggregating to Rs. 36,80,834.34 and there were double entries/wrong rate by the survey team to the tune of Rs. 80,64,055.50/- . similarly the sale rate applied in place of purchase rate which resulted in discrepancy of Rs. 4,10,726.75/-. The discrepancy of Rs. 10,10,970/- has resulted from the sale made but not entered in the books of accounts. The assessee the stock discrepancies as found by the survey team except Rs. 3,81,063.09 which remained unreconciled and needs to be added to the income in place of Rs. 61,85,981/-. The said reply of the assessee was not found tenable by the AO and the

entire amount of stock discrepancy of Rs. 61,85,981/- was added to the income of the assessee.

10. In the appellate proceeding the Ld. CIT(A) partly allowed the appeal of the assessee by observing as under:

"I have considered the submission of the appellant and perused the relevant assessment records. The AO in the assessment order had added back stock difference amounting to Rs.61,85,981/-. During the course of survey, the survey team had inventorised stock at Rs.2,93,70,253/-. The stocks reflected in the books of account was only Rs.2,31,84,272/-. The A/R of the appellant in his submission has objected to the stock inventory on the grounds that the wrong rate has been taken, stock had been doubled counted or wrongly counted by the survey team. He has submitted a reconciliation statement in which he had admitted that the stock outside books amounted to only Rs.34,45,162/- as against Rs.61,85,981/- taken by the survey team. There is some merit in the submission made by the appellant. On examination of the stock reconciliation statement, there are instances when same rate was taken instead of purchase rate by the survey team. Secondly, the books of the appellant were not up to date and stock sold had not been entered into the books. There are also instances of double counting application of wrong rate and stock not inventorised. The inventory of stock amounting to Rs.2,93,70,253/- was done overnight by the survey team. It could not be denied that the stock taking in such a short period could lead to mistakes in stock inventory. The AO cannot pick and choose entries which are suitable for taking additions and ignore those items which would result in reduction of stock inventory. It is pertinent to note that during the survey, no incriminating documents were found relating to undisclosed purchase or sales, not reflected in the books. Therefore, the impugned addition of Rs.61,85,981/- could not be sustained only on the basis of stock inventory made by the survey team, which has been disputed by the appellant. The A/R of the appellant in his submission had admitted discrepancy in stock amounting to Rs.34,45,162/-. The possibility of the appellant under valuing his stock to reduce his tax liability cannot be ruled out. Therefore, it would serve the interest of revenue, if the stock discrepancy is taken at Rs.38,00,000/-. The addition of Rs.61,85,981/- is restricted to Rs.38,00,000/-. This ground of appeal partly succeeds and is therefore partly allowed."

11. The Ld. D.R. submitted before us that the Ld. CIT(A) has wrongly deleted the addition on account of stock discrepancies noticed by the survey team to the tune of Rs. 23,85,981/- as the survey team has taken the inventory during the course of survey and found that the assessee had excess to the tune of Rs. 61,85,981/-. The Ld. D.R. prayed before the bench that the addition as deleted by the Ld. CIT(A) may kindly be restored. The Ld. D.R. has also pointed out that before the Ld. CIT(A) the assessee's counsel has admitted the stock difference of Rs. 34,45,162/- whereas the assessee has challenged the part confirmation of addition on account of excess stock found during

the survey at Rs. 38,00,000/- which is wrong as it should have been only Rs. 3,54,838/-.

12. The Ld. A.R. on the other hand strongly controverted the arguments of the Ld. D.R. by submitting that the stocks were duly reconciled by the assessee copy of which is placed at page 255 to 257 of the PB. The Ld. A.R. drew our attention to the fact that even in the inventory taken by the survey team the stock finished goods of Rs. 36,80,834.34 was left to be considered in the stock whereas several other wrong entries/double entries or application of sale rate in place of purchase rate. The Ld. A.R. submitted that the discrepancies in the stock were only to the tune of Rs. 3,81,063.09/- and therefore the same may kindly be affirmed in place of Rs. 38,00,000/- as sustained by the Ld. CIT(A).

13. After hearing the rival contentions and perusing the facts on record including the reconciliation statement filed by the assessee reconciling the stock as taken by the survey team and as per the books of the assessee before the AO and the Ld. CIT(A), we note that there were several infirmities/mistakes committed by the survey team while doing stock taking physically. From the perusal of reconciliation statement, it is apparent that the assessee has explained the stock differences minutely. It shows that the survey team even has omitted the stock to the extent of Rs. 36,80,834.34 while calculating excess stocks by committing various mistakes such as double accounting of stocks, wrong application of rate and various other reasons. Non of the authorities below has pointed out as to how the stock reconciled by the assessee is not correct. We, therefore, are inclined to accept the assessee's contention that the difference in stock inventory is only to the tune of Rs. 3,81,063.09/-. Accordingly we modify the order of the Ld. CIT(A) on this issue and direct the AO to add Rs. 3,81,063.09. Consequently, the ground no. 2 of the revenue is dismissed and the assessee's appeal is partly allowed.

14. In the result, the appeal of the revenue is dismissed and the appeal of the assessee is partly allowed.

Order is pronounced in the open court on 21st April, 2022.

Sd/-

(Sonjoy Sarma)
Judicial Member

Sd/-

(Rajesh Kumar)
Accountant Member

Dated: 21st April, 2022

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- DCIT, Circle-14(2), Kolkata
2. Respondent – M/s Plasto Electronics Pvt. Ltd. Langlapota, Bishnupur, Rajarhat, 24 Parganas(N), West Bengal-700135.
3. The CIT(A)-5, Kolkata
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata