

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'B' CHANDIGARH

BEFORE: SHRI A.D.JAIN, VICE PRESIDENT AND
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 322/CHD/2020

निर्धारण वर्ष / Assessment Year : 2012-13

Shri Abhinav Malik, Prop. M/s Cure Medics, House No. 3456, Sai Enclave, Sector 49-D, Chandigarh.	बनाम VS	The ITO, Ward 5(4), Chandigarh.
स्थायी लेखा सं./PAN /TAN No: AJQPM2197P		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri S.K. Mukhi, Advocate

राजस्व की ओर से/ Revenue by : Smt. Amanpreet Kaur, Sr.DR

तारीख/Date of Hearing : 20.06.2023

उद्घोषणा की तारीख/Date of Pronouncement : 10.07.2023

आदेश/ORDER

PER VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of the ld. CIT(A)-2, Chandigarh dated 04.11.2019 wherein the assessee has taken the following grounds of appeal:-

- 1. That the orders of Ld. CIT(A) is illegal, erroneous and perverse and thus needs to be quashed.*
- 2. That the Ld. CIT (A) is not justified in concurring with the impugned addition of Rs. 9,71,439/- on account of alleged difference in opening stock by applying GP rate of 17.63% of the alleged difference which is illegal, arbitrary, against the facts and contentions and thus bad in law.*

3. *That without prejudice to above, the appellant also disputes the quantum of addition as highly excessive.*

4. *That the appellant craves leave to add, amend or delete any of the grounds of appeal on or before the disposal of the present appeal.*

2. Briefly the facts of the case are that the assessee filed his return of income declaring total income of Rs.3,03,670/- which was selected for scrutiny and thereafter notices u/s 143(2) and 142(1) were issued. During the course of assessment proceedings, the AO observed that the assessee has shown opening stock of Rs.6,16,750/- for the Financial Year 2011-12 relevant to the impugned assessment year 2012-13 whereas, the closing stock for the Financial Year 2010-11 relevant to assessment year 2011-12 has been shown at Rs.61,26,900/- and therefore, a difference of Rs.55,10,150/- in the opening stock for the year under consideration as compared to the closing stock for the previous Financial Year was noticed by the AO. The assessee was asked to explain the reasons for reducing the same alongwith the documentary evidence. In his submission, the assessee submitted that after filing of the return of income for the Financial Year 2010-11, the assessee undertook a stock audit and detected stock amounting to Rs.55,10,150/- which were not in saleable condition as the stock had expired and the same could not be returned to the respective companies as stock has crossed stipulated time of six

months past the expiry date. Accordingly, the assessee has to destroy the stock as per manufacturing requirement under Drugs & Medicines Act. It was further submitted that upon preparation of Balance Sheet for the Financial Year 2011-12, the accountant, inadvertently took the opening stock of saleable stock only after netting off of the expired stock from the earlier financial year. Further, a list of expired stock destroyed by the assessee was also submitted before the AO.

3. The reply so filed by the assessee was considered but not found acceptable to the AO. As per the AO, on going through the details of expired stock, it reveals that it relates to Financial Year 2007-08 to 2010-11. As per the AO, as per norms of Drugs and Medicines Act, expired medicines cannot be destroyed and after any expired medicines/drugs are lying in the premises of retailer/wholesaler, same will be returned to the manufacturer. Further, the AO referred to the certificate issued by the Chandigarh Chemist Association dated 26.03.2015 wherein it has been stated that as per the nationwide Agreement to All India Organization of Chemists and Druggists and pharmaceutical companies, it has been decided that the companies will replace expired products within 180 days from the date of expiry. It was held by the AO that in the present case, the expired medicines/drugs amounting to

Rs.55,10,150/- has since not been returned to the manufacturer and same is not believable as a person who has stock of expired medicines worth Rs.55,10,150/- has not sent the same to the manufacturer for replacement. In view of the same, the amount of expired stock of Rs.55,10,150/- was treated as saleable stock and thereafter the AO has applied a GP rate of 14.99% as declared by the assessee and has worked out the gross profit amounting to Rs.9,71,439/- which was brought to tax in the hands of the assessee.

4. Being aggrieved, the assessee carried the matter in appeal before Id. CIT(A). It was submitted that there was a clerical error on the part of the Accountant, lack of care on the part of the Chartered Accountant who carried out audit and carelessness on the part of the assessee, which has resulted in inadvertent mistake while finalizing the financial statements wherein the opening stock has been shown net of the expired stock whereas both the expired stock as well as saleable stock should have been separated reflected and accounted for. It was further submitted that there is a contradiction in the observation of the AO wherein at first place, he is saying that the details relevant to the expired stock for the earlier Financial Year has been placed on record and still he treated the expired stock as saleable stock and made the addition applying

the gross profit rate. It was submitted that the addition is, therefore, prima facie contrary to the AO's own finding based upon the documentary evidence in the form of detailed list prepared by the assessee in respect of the expired medicine and related purchase invoices. It was, accordingly, submitted that the expired stock of medicine has been wrongly held as saleable stock and addition has been made which deserves to be deleted.

5. The reply so filed by the assessee was considered but not found acceptable to the ld. CIT(A). As per the ld. CIT(A), the assessee has not submitted any evidence of efforts made with the manufacturer from whom he purchased the medicines to ensure that they take back the expired products, that the assessee has not made any submissions that he has taken similar plea in front of any other tax authority, that the submission that it was clerical error on the part of the Accountant is not acceptable as it belies the test of human probability. It was further held that the opening stock for assessment year 2012-13 is not consistent with similar opening stock for assessment year 2011-12 and assessment year 2013-14. It was, accordingly, held that the AO has been fair enough in treating what was claimed as expired stock as saleable stock and making the addition based upon the GP rate so declared by the assessee.

6. Against the said findings and the directions of the ld. CIT(A), assessee is in appeal before us.

7. During the course of hearing, the ld. AR reiterated the submissions made before lower authorities. It was submitted that there is no basis to hold that the expired stock has been sold by the assessee and there is no evidence which has been brought on record by the AO that the expired stock has been sold out of books by the assessee. It was, accordingly, submitted that even where the expired stock has to be accounted for in the books of account, the same will form part of the opening stock as well as the closing stock and therefore, will have a 'nil' impact on the profitability so declared by the assessee. It was, accordingly, submitted that the additions so made and confirmed by the ld. CIT(A) deserve to be deleted. Further reliance was placed on the Hon'ble Punjab & Haryana High Court decision in case of CIT Vs Satish Estate Pvt. Ltd. (*ITA 126 of 2013 dated 21.01.2014*).

8. Per contra, the ld. DR has relied on the order of the lower authorities.

9. We have heard the rival contentions and perused the material available on record. The undisputed facts which are emerging from records are expired stock worth Rs 55,10,150 which were

purchased during the financial year 2007-08 to 2010-11 were forming part of closing stock during the previous financial year 2010-11, however, the same were not shown as part of the opening stock in the profit/loss account prepared for the financial year 2011-12 relevant to impugned assessment year. The factum of the stock having expired has been accepted by the AO as well as by the ld CIT(A) which in turn means that such stock has crossed its expiry date and therefore, the same cannot be sold to the customers. There is nothing on record that such expired stock has been sold by the assessee. We therefore find that mere non-accounting of the expired stock as part of the opening stock wouldn't have any impact on the profitability so declared by the assessee for the reason that such expired stock would again form part of the closing stock at the end of the financial year. Similarly, whether such stock has been destroyed or returned will not have any impact on the profitability so declared and what efforts have been taken by the assessee or should have been taken by the assessee are not relevant consideration for the reason that the same doesn't affect the profitability so declared by the assessee as the assessee has not claimed any loss on account of writing off of such expired stock which otherwise it is entitled to. In light of aforesaid discussions and in the entirety of facts and circumstances

of the case, there is no basis to impute profits on the alleged sale of expired stock and the addition so made is directed to be deleted.

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

Order pronounced in the open Court on 10th July, 2023.

Sd/-

Sd/-

आकाश दीप जैन
(AAKASH DEEP JAIN)

उपाध्यक्ष / VICE PRESIDENT

Poonam

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)

लेखा सदस्य/ ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar