

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH ‘C’**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. 3618/Ahd/2015

निर्धारण वर्ष/Assessment Year: 2012-13

Ambuja Ginning Pressing & Oil Co.P.Ltd. Palitana Road Taluka Talaja Dist : Bhavnagar 364 140. PAN : AABCA 7985 Q	Vs	IT, Ward-1(2) Bhavnagar.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Sakar Sharma, AR
Revenue by :	Shri S.K. Dev, Sr.DR

सुनवाई की तारीख/Date of Hearing : 06/09/2018

घोषणा की तारीख /Date of Pronouncement : 04/10/2018

ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER : Assessee is in appeal before the Tribunal against order of Id.CIT(A)-6, Ahmedabad dated 30.11.2015 passed for the assessment year 2012-13.

2. Sole grievance of the assessee is that the Id.CIT(A) has erred in confirming addition of Rs.58,02,095/-, which was added by the AO with the aid of section 69C of the Income Tax Act, 1961.

3. Brief facts of the case are that the assessee at the relevant time was engaged in the business of manufacturing of cotton wool, cottonseeds, oil and allied products. A survey under section 133A of the Income Tax Act

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was carried out at the business premises of the assessee on 18.1.2012. The assessee has filed its return of income electronically for assessment year 2012-13 on 28.9.2012 declaring total income at Rs.10,39,970/-. The case of the assessee was selected for scrutiny assessment and notice under section 143(2) of the Act was issued and served upon the assessee. On scrutiny of the accounts, it revealed to the AO that during the course of survey excess stock having value at Rs.58,02,095/- of cotton was found. This stock was admitted by Shri Tulsibhai V. Patel, Director of the Company in his statement recorded during the course of survey. It was disclosed that income would be offered on this excess stock. The ld.AO further observed that while filing return, the assessee did not offer this income and only declared income at Rs.10,39,790/- . Therefore, he issued a show cause notice inviting explanation of the assessee as to why addition equivalent to Rs.58,02,095/- be not made with help of section 69C of the Act. In response to the query of the AO, the assessee filed detailed reply vide letter dated 24.2.2015. This reply has been reproduced by the AO in the assessment order from page nos.3 to 6. The assessee made two fold submissions. In the first fold of submission, it tried to explain that there was no excess stock. According to the assessee, on account of rain there was moisture content which resulted in increase in weight of the cotton and due to that excess stock was worked out. It was also contended that such variation of 1% is possible considering the volume of quantity stated by the assessee. In his second fold of submissions, it was contended that the assessee has already accounted for this excess stock in the value of closing stock, and hence no separate addition be made. The ld.AO has rejected first fold contention raised by the assessee. Thereafter, he made addition of Rs.58,02,095/-. Finding recorded by the AO reads as under:

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“6. Respectfully, considering the reply of the assessee, however the same is not and acceptable.

In para 1 assessee is stated as under "It is categorically submitted that no evidence of whatsoever nature was found in the course of survey evidencing incurring of any expenditure to acquire alleged excess stock on the basis of which your assessee agreed and admitted additional income of Rs. 58,02,095/- in the course of survey."

During the course of survey in the presence of representative of the assessee stock was taken and assessee has provided details of stock as per its Books of accounts. After ascertained variation in stock as per Books and stock found during the survey, assessee has given ample time to explain the variation of stock. Onus on the assessee to prove genuineness of transaction, however assessee was failed during the course of- survey proceedings to provide any evidentiary, proof for excess stock, even though ample time given to explain them. Therefore, as a natural justice during the course of statement recorded in survey proceedings in Q. 18 the Director of the company Shri Tulsibhai V Patel has categorically ask to explain for difference of stock found from company's premises. No evidentiary supporting evidence such as Purchase Bills, vouchers of labour charges, Transporter receipts, Weight sleep could be provide by assessee to prove genuineness of stock acquired. Therefore, Shri Tulsibhai V Patel Director of the company has accepted the stock difference as unaccounted stock and also ready to pay and paid tax thereon. Therefore, assessee's view at this juncture cannot be accepted. .

Further, assessee has submitted with reply four Cash Memo dated 19.01.2012 for purchase of raw cotton on 19.01.2012. It is not understood that assessee what has to prove by this. Stock difference if any found during the course of survey proceedings cannot be changed by this action because of survey proceedings started at 12.45 of 18.01.2012 and stock was taken during the proceedings on 18.01.2012. Therefore, purchase if any made by the assessee on

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19.01.2012 is not affected the facts of stock difference found on 18.01.2012.

Considering, the above referred facts, whereas assessee is failed to prove genuineness of stock holding on 18.01.2012, view taken by assessee for weight loss /increase is immaterial and not tenable and accepted. Therefore, the reply of the assessee is rejected on various issues.

7. Considering the above referred facts, value of excess stock of Rs 58,02,095/-as determined during the course of survey proceedings and accepted by the Director of the company as unaccounted income in addition to its regular income and ready to pay and paid taxes thereon. However, assessee has declared income of Rs 10,39,790/- in its return of income without offering committed additional income of Rs.58,02,,095/- during the course of survey. Therefore, an amount of Rs 58,02,095/- is treated as unaccounted income of the assessee on account of excess stock found during the course of survey in addition of its regular income and added to the total income u/s 69 of the Act. Penalty proceeding u/s 271(1)(c) of the Act for concealment of income by way of furnishing inaccurate particulars of income is initiated separately.

8. Subject to the above, the total income of the assessee determined as under:-

<i>Total Income as per return of income</i>	<i>10,39,970</i>
<i>Add: Addition on account of unaccounted income u/s 69 as discussed in para 8</i>	<i>58,02,095</i>
<i>Assessed Income Rounded off u/s. 288A</i>	<i>68,42,065</i> <i>68,42,070</i>

4. Appeal to the Id.CIT(A) did not bring any relief to the assessee.

5. Before us, the Id.counsel for the assessee submitted that the assessee has already accounted for this excess stock in the value of closing stock,

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and therefore, this separate addition made by the AO amounts to double addition. He made reference to various accounting details incorporated in the paper book. On the other hand, the Id.DR contended that survey was carried out at three more sister concerns, who are identically situated and they have offered the income. Similar treatment be given to the assessee also. He further contended that such details have noticed by the Id.CIT(A) on page no.11 of the impugned order.

6. We have duly considered rival submissions and gone through the record carefully. We deem it appropriate to take note of the reply given by the assessee on his second fold of submissions. Reply reads as under:

“...After taking into account the above explanation, auditors both under the provisions of Companies Act, 1956 as well as Income-tax Act, 1961 were satisfied that assessee has not made any unaccounted investment in procuring stock items which were found to be excess on the date of survey by survey party. Accordingly no accounting effect was given in quantity records as well as in financial records for the said discrepancy. However, to honour the commitment of additional income admitted during the course of survey, the stock value was increased by the amount admitted in the course of survey, i.e. Rs. 58,02,095/- leading to reporting of higher income by this amount. It is, therefore, submitted that no addition u/s 69C is requires to be made merely because directors have agreed and included said additional income in the return of income as provisions of section 69C cannot be invoked without bringing any evidence of incurring of expenditure by assessee and which has not been found recorded in the books.”

7. A perusal of the above reply would indicate that the assessee has included value of above stock in the closing stock. At this stage, it is pertinent to observe that as far as first fold of contention is concerned, the Id.counsel for the assessee did not make any arguments. It is an admitted fact that during the course of survey excess stock was found. It was

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admitted by the director. Now this discovery of discrepancy cannot be brushed aside by merely submitting that on account of water contents in the cotton bales, their weight has been increased resulting into excess stock. This aspect ought to have contested at the time of survey by the directors. He should have not admitted working of the excess stock and objected the calculations made by the department. Subsequently, it cannot be stated that cotton was having water contents on account of rain etc. There should be a specific circumstances or specific reply. This is missing. Therefore, we do not find any merit in the first fold of contention. The assessee is having excess stock of Rs.58,02,095/-. This value of excess stock should suffer tax. Second question is, whether by inclusion of this stock in the value of the closing stock, the assessee has recognized income offered by it or not. The AO without looking into the reply of the assessee extracted (supra) separately made addition. Therefore, in the given facts and circumstances, we deem it appropriate to remit this issue to the file of the AO to consider the above reply of the assessee. It is to be ascertained that excess stock found at the time of survey valued at Rs.58,02,095/- should suffer tax. If the assessee has already included this amount in the value of closing stock, then separate addition would result double addition. We further make it clear that the AO would verify the fact about the enhancement of closing stock by a sum of Rs.58,02,095/-. There should not be any corresponding expenditure debited by the assessee. In other words, the assessee will not be entitled for corresponding expenses because this must have already been debited in the regular course of business. If it is found that the assessee included a sum of Rs.58,02,095/- in the value of the closing stock, and not debited any corresponding expenditure, then there should not be further addition, because this stock

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will ultimately suffer tax on account of sale without allowing corresponding expenditure. With the above directions, the appeal of the assessee is partly allowed.

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

Pronounced in the Open Court on 4th October, 2018.

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

**Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER**