IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 83 of 2007

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COMMISSIONER OF INCOME TAX RAJKOT-I - Appellant(s)
Versus
VEERDIP ROLLERS P. LTD. - Opponent(s)

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Appearance :
MRS MAUNA M BHATT for Appellant(s) : 1,MR MANISH R BHATT for Appellant(s) : 1,
None for Opponent(s) : 1,

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CORAM : HONOURABLE THE CHIEF JUSTICE Y.R.MEENA

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 11/10/2007

ORAL ORDER

Heard learned counsel for the appellant.

Following question is proposed for admission in this appeal.

> *"Whether on facts and circumstances of the case the Income Tax Appellate Tribunal was right in law in deleting the addition u/s.69B of the Income Tax Act, 1961 made on account of difference in the closing stock furnished before the bank authorities for availing credit facility as against the same disclosed in the books of accounts furnished before the Income Tax authorities?"*

The issue raised in this question is whether there can be any addition on account of difference in the value of closing stock furnished to the Bank and the value of the stock found in the books of account furnished to the Income Tax Authorities. The Tribunal has dealt with this aspect in paragraph 7 as under:

> *"We have heard the rival contentions of both the parties. Looking to the facts and circumstances of the case, we find that the assessee in his paper book has submitted the original application filed by the assessee in the bank to obtain the cash credit facility of Rs.20 lakhs. The bank has given the cash credit facility of Rs.15 lakhs. The Assessing Officer has verified the stock statement which was submitted along with the return. Moreover, the Assessing Officer has also worked out the closing stock of Emery power and machinery spares as per the return and the value comes to Rs.14,07,156. We find that the Assessing Officer has verified the value of stock which was given to the bank, wherein the assessee has inflated the value of stock and shown the value at Rs.21,23,680/- which can be verified from page 1 of the assessment order. The assessee has submitted the bank statement with inflated price of the stock. There is no difference in quantity of the stock. The difference is only of inflated price of the stock which was given to the bank. We find that the Assessing Officer in support of his finding has relied on the decision of Hon'ble Madras High Court in the case of Coimbatore Spinning & Weaving Co.Ltd., v. CIT (95 ITR 735), the decision of Hon'ble Supreme court in the case of Dhanisram Agarwalla (201 ITR 192) and concluded that the assessee was unable to discharge the onus to prove that book of account alone give the correct picture and the statement given to the bank was motivated. In the present case at hand, it is not disputed by the Revenue that in order to avail cash credit facility against hypothecation of stock to the Bank, the assessee has submitted the inflated stock and not the actual stock. The inflated stock was hypothetical and not pledged. The bank official had not verified the said statement showing the inflated stock so produced by the assessee or the same was ascertained from the bank. Considering all these aspects of the case, we are of the considered view that the decision of CIT v. Khan & Sirohi Steel Rolling Mills (200 CTR 595) is applicable to the present case, wherein the decision in the case of Coimbatore Spinning & Weaving Company Ltd., v. CIT (95 ITR 375 (Mad) has been relied on. In the case of Ashok Kumar v. ITO (201 CTR (J&K) 178, Hon'ble High Court of Jammu and Kashmir, has held - "Addition could not be made on the basis of difference between closing stock declared in the trading account and the stock shown in the statement submitted by the assessee to the bank as the stock position shown to the bank*

was on estimate basis and inflated value was shown to avail more credit from bank. Their Lordships have applied the decision of CIT v. N. Swamy (241 ITR 363) (Mad). In view of the above, there is no justification for making any addition on the allegation of inflated stock shown to the Bank. We may mention here that this Bench had occasion to deal with identical issue in some cases and the same has been resolved in favour of the assessee. In the case of DCIT v. M/s. Patidar Silica Pvt.Ltd., in ITA Nos.2104 and 388/RJT/2004 dt. 30.11.2005; in the case of Income-tax Officer v. M/s. Sphykar Alluminium Extrusion P.Ltd., in ITA No.626/RJT/2004 dt.26.11.2005, this Bench of the ITAT has deleted similar addition. The CIT(A) has sustained the addition @ 10% of the excess stock of Rs.80,25,662/- (i.e., Rs.1,42,86,870/- the stock as per bank statement minus Rs.62,61,202 as shown in regular books of accounts. In view of our finding that no addition can be made on this count, the order of the CIT(A) confirming the addition cannot be sustained. The order of the CIT(A) is, therefore, reversed and the addition of Rs.9,75,476 made on account of undisclosed investment is deleted."

Whether the value of the stock shown in the books of accounts is genuine or not has been considered by the Tribunal and considering the facts discussed by the Tribunal referred to above, we see no reason to hold that the finding of the Tribunal is perverse.

Consequently, the appeal stands dismissed at the admission stage.

(Y.R.MEENA,C.J.)

(SMT.ABHILASHA KUMARI,J.)

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