IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH '(SMC)', KOLKATA
[Before Shri P.M. Jagtap, Vice President (KZ)]

[Through Virtual Court]

I.T.A. No. 193/Kol/2020
Assessment Year: 2006-07

Sujata Proteins Food Products (P) Ltd...Appellant
C/o. Subash Agarwal & Associates, Advocates
Siddha Gibson, 1, Gibson Lane,
Suite 213, 2nd Floor,
Kolkata – 700 069.
[PAN: AAGCS 8644 B]

Vs

ITO, Ward 11(2), Kolkata..Respondent
P-7, Chowringhee Square,
Kolkata – 700 069.

Appearances by:
Shri Subash Agarwal, Advocate appearing on behalf of the Assessee.
Shri Jayanta Khanra, JCIT, Sr. DR appearing on behalf of the Revenue.

Date of concluding the hearing : July 30, 2020
Date of pronouncing the order : August 07, 2020

ORDER

This appeal filed by the assessee is directed against the order of Ld. CIT(A) – 11, Kolkata dated 30.05.2019 and the solitary issue involved therein relates to the addition of Rs. 10,78,220/- made by the AO and confirmed by the Ld. CIT(A) on account of alleged under valuation of stock of soya nuggets.

2. The assessee in the present case is a company which is engaged in the business of manufacturing of biscuits and trading of soya nuggets. The return of income for the year under consideration was filed by it on 30.11.2006 declaring total income at Nil. From the perusal of quantitative details given in the audit report filed by the assessee along with the return of income, It was noticed by the AO that the assessee company during the year under consideration had

no opening stock of soya nuggets while the corresponding quantity of purchase and sale of soya nugget was 3,62,940 kgs. and 2,96,740 kgs. respectively leaving a closing stock of 66,200 kgs. The value of said closing stock of 66,200 kgs. of soya nuggets was shown by the assessee at Rs. 1,79,775/- only i.e. Rs. 2.71 per kg. Since the average purchase and sale value of soya nugget as declared by the assessee was Rs. 18.32 and Rs. 26.88 per kg. respectively, the assessee was called upon by the AO to offer its explanation as regards the under valuation of closing stock. In reply, it was submitted on behalf of the assessee that the actual quantity of soya nuggets sold during the year under consideration was 3,56,940 kgs. and the closing stock of soya nugget was only 6,000 kgs. It was submitted that there was a clerical mistake in the corresponding quantities given in the auditor's report and actually there was no case of under valuation of closing stock of soya nugget as alleged by the AO. Since this explanation offered by the assessee was not supported by any documentary evidence, the Assessing Officer took the quantitative details given in the auditor's report as correct and made an addition of Rs. 10,78,220/- to the total income of the assessee on account of under valuation of closing stock in the assessment completed u/s 143(3) of the Act vide an order dated 31.12.2008.

3. Against the order passed by the AO u/s 143(3), an appeal was preferred by the assessee before the Ld. CIT(A) and the submissions made before the Assessing Officer were reiterated on behalf of the assessee before the Ld. CIT(A) that there being clerical mistake in the quantitative details given in the auditor's report, the addition made by the AO on the basis of the said report on account of alleged under

valuation of closing stock was not sustainable. The Ld. CIT(A) analysed the quantitative details furnished in the auditor's report as well as the quantitative details furnished by the assessee as correct with reference to the selling rates and after comparing the same with the figures of the immediately preceding year, he rejected the stand of the assessee on this issue for the following reasons given in paragraph no. 3.5 to 3.7 of his impugned order:

> *3.5 A comparison of all the figures condensed into rupees per kg shows that the value of sales for the FY 2004-05 and 2005 06 come close to each other at Rs. 26.52 per kg and Rs. 26.88 per kg respectively. As per the levised computation, the vale of sales drops to Rs. 22.35 per kg. Since all other factors are taken as constant, the value of sales per kg. compares poorly with the last year's results. However, the rates as per original trading accounts compare quite well with the last year's results at around Rs. 26. 52 per kg and Rs. 26.88 per kg.*
> *3.6 The appellant has also relied heavily on the certificate issued by its auditor. The said certificate simply states that the earlier figure of sales (in terms of kgs) was incorrect and that the new figure should be adopted. It does not explain the reason and the related logic. Therefore, to my mind, it does not logically establish a case that the original trading account actually had a typographical error as it also did not explain the resultant rate differences in the rectified submission for closing stock. Therefore, I am inclined to take the said certificate 'with a pinch of salt'.*
> *3.7 In view of the above, in my considered opinion, the approach of the Id. AO is found to be correct and it is upheld. This ground of appeal is, therefore, dismissed.*

Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. The learned counsel for the assessee has reiterated before me the assessee's stand that the quantitative details given in the auditor's report were not correct and

the correct quantitative details as furnished by the assessee before the AO as well as before the Ld. CIT(A) were sufficient to show that there was no under valuation of closing stock. In order to support and substantiate this stand, he has invited my attention to the relevant quantitative details furnished in the auditor's report as well as the revised corrected figures furnished by the assessee as given on page no. 35 of his Paper Book. He has also invited my attention to the month-wise details of purchases and sales of soya nugget given at page no. 33 of his Paper Book to contend that the revised quantitative details as furnished by the assessee were correct and the authorities below were not justified in relying on the incorrect quantitative details furnished in the auditor's report to make the impugned addition to the total income of the assessee on account of alleged under valuation of closing stock. The Ld. DR, on the other hand, has strongly relied on the impugned order of the Ld. CIT(A) in support of the revenue's case on the issue under consideration. He has invited my attention to the analytical working made by the Ld. CIT(A) to come to the conclusion that the quantitative details furnished in the auditor's report were reliable and there was no mistake as claimed by the assessee.

5. After considering the rival submissions and perusing the relevant material available on record, I find that the dispute is essentially about the exact quantity of soya nugget sold by the assessee during the year under consideration. The quantity of sale of soya nugget as shown in the quantitative details given in the auditor's report was 2,96,740 per kgs. leaving the closing stock at 66,200 kgs. while the claim of the assessee is that the quantity of sale of soya

nuggets during the year under consideration was 3,56,940 kgs leaving the closing stock at 6,000 per kgs. It is pertinent to note here that the value of soya nuggets sold during the year under consideration in the auditor's report as well as claimed by the assessee is the same at Rs. 79,78,704/-. Based on this undisputed value of sale of soya nuggets, analytical working was made by the Ld. CIT(A) and as found by him, the quantity of sale as shown in the auditor's report was more reliable as it gave on average selling rate of Rs. 26.88 per kg which was well comparable with the selling rate declared by the assessee in the immediately preceding year. On the contrary, the average selling rate of soya nuggets as shown by the assessee in the revised figures at Rs. 22.35 per kg was much less than the selling rate declared by the assessee company itself in the immediately preceding year and the same being unreasonable and unreliable, the revised working furnished by the assessee, in my opinion, was rightly rejected by the Ld. CIT(A). Moreover, the valuation of closing stock as made by the assessee in the revised working was also not found to be correct by the Ld. CIT(A) by any of the methods of valuation of closing stock. I, therefore, find no infirmity in the impugned order of the Ld. CIT(A) confirming the addition of Rs. 10,78,220/- made by the AO on account of under valuation of closing stock of soya nugget and upholding the same on this issue, I dismiss ground no. 1 of the assessee's appeal.

6. As regards the alternative claim made by the assessee in ground no. 2 that the addition made on account of under valuation of closing stock has resulted in the increase of valuation of closing stock to the extent of Rs. 10,78,220/- and the AO, therefore, may be directed to increase the valuation of opening stock to that extent for the

immediately preceding year, I am of the view that this is a natural corollary in as much as, whatever valuation of closing stock that is adopted for one year becomes the valuation of opening stock for the immediately succeeding year. I, therefore, allow ground no. 2 of the assessee's appeal making an alternative claim and direct the AO to give appropriate relief to the assessee accordingly.

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

Order Pronounced in the Open Court on 7th August, 2020.

Sd/-
(P.M. JAGTAP)
VICE PRESIDENT

Dated: 07/08/2020
Biswajit, Sr. PS

Copy of order forwarded to:

1. Sujata Proteins Food Products (P) Ltd., C/o. Subash Agarwal & Associates, Advocates, Siddha Gibson, 1, Gibson Lane, suite 213, 2nd Floor, Kolkata – 700 069.
2. ITO, Ward 11(2), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy, By order,

Assistant Registrar
ITAT, Kolkata