

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'B(SMC)' BENCH, KOLKATA**

Before Shri P.M. Jagtap, Vice-President

**I.T.A. No. 1590/KOL/2019
Assessment Year: 2015-2016**

Mukesh Kumar Singhania,.....Appellant
13/2/1, Umesh Chandra Chatterjee Lane, 4th Floor,
Howrah-711104
[PAN: AKUPS6101]

-Vs.-

Assistant Commissioner of Income Tax,.....Respondent
Circle-48, Kolkata,
3, Government Place (West),
Kolkata-700001

Appearances by:

Shri Rajeeva Kumar, Advocate, for the Appellant
Shri Jayanta Khanra, JCIT, Sr. D.R., for the Respondent

Date of concluding the hearing : February 19, 2020

Date of pronouncing the order : March 20, 2020

O R D E R

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-14, Kolkata dated 04.04.2019 and the solitary issue involved therein relates to the addition made by the Assessing Officer and sustained by the Id. CIT(Appeals) on account of the alleged difference in stock found during the course of survey to the extent of Rs.22,73,052/-.

2. The assessee in the present case is an individual, who is carrying on the business of trading in Marble and Granite under the name and style of his proprietary concern M/s. Radha Marble and Granite. The return of income for the year under consideration was filed by him on 17.03.2016

declaring total income of Rs.21,10,690/-. A survey under section 133A of the Act was carried out at the business premises of the assessee on 19.08.2014. During the course of survey, the physical stock as inventorised by the survey team was valued at Rs.28,70,327/-. The stock as per the books of account of the assessee on the date of survey, however, was only to the extent of Rs.4,20,327/-. The assessee during the course of survey accepted the said difference in stock of Rs.24,50,000/- and agreed to declare the same as his additional income. In the return of income filed on 17.03.2016 for the year under consideration, the assessee, however, did not offer any additional income on account of the difference in stock of Rs.24,50,000/- as found during the course of survey. In this regard, it was explained by the assessee during the course of assessment proceedings before the Assessing Officer that the difference in stock pertained to the immediately preceding year, i.e. A.Y. 2014-15 and the same was reduced by Rs.1,76,948/- as purchase bill for the said amount was not accounted for in the books of account on the date of survey. This explanation of the assessee was not found acceptable by the Assessing Officer for the following reasons given in the assessment order:-

“(a) During the course of survey, the P/L account was prepared which shows the opening stock of Rs.21,10,690/-. However, in the instant explanation the opening stock shown of Rs.45,47,134/-. This shows clear manipulation of books of accounts for AY 2014-15 where in the adjustment was made to inflate the closing stock so that difference of stock on the date of survey will be nullified.

(b) The assessee in his statement recorded on the date of survey clearly accepted the difference and admitted to pay the tax on it, and will disclose in return of income for AY 2015-16”.

The Assessing Officer accordingly treated the excess stock of Rs.24,50,000/- found during the course of survey as explained and an addition to that extent was made by him to the total income of the

assessee in the assessment completed under section 143(3) of the Act vide an order dated 12.12.2017.

3. Against the order passed by the Assessing Officer under section 143(3) of the Act, an appeal was preferred by the assessee before the Id. CIT(Appeals) and the following submission in writing was made on behalf of the assessee before the Id. CIT(Appeals) in support of his case that the addition of Rs.24,50,000/- made by the Assessing Officer on account of alleged excess stock found during the course of survey was not sustainable:-

“That the Id. AO erred in law as well as in facts in making addition as discrepancy in stock inasmuch as in view of the facts and circumstances of the case no such discrepancy exist and no addition was at all called for.

The Id. AO made an addition of Rs.24,50,000/- as difference in stock value between the physical stock and book stock as determined by the survey team. The survey u/s 133A took place on 19th August, 2014 and continued to next morning of 20th August, 2014.

The appellant was carrying business during the AY 2015-16 mainly as a Private Limited Company in the name of Radha Marble & granite Pvt. Ltd. The survey team determined the value of stock at Rs.2,34,95,282/- as stated in the question no. 4 or statement recorded on 20th August, 2014, and also on 27th August, 2014, the stock as found recorded in the books of the aforesaid pvt. Ltd. company was Rs.20,62,49,551/- on the date of survey and the difference between the book stock of Rs.28,70,327/- was taken as the stock value physical stock (2,34,95,282 - 2,06,24,955/-) belonging to the sole proprietorship firm of the appellant namely Radha Marble & granite as recorded in question no. 5 & 6 of the statement record on 20.08.2014 as well as on 27.08.2014 (certified copy of statement recorded is enclosed).

Thereafter the value of physical stock as determined to be belonging to the proprietorship firm was compared with books of the sole proprietorship firm and it was found that the stock recorded in books of sole proprietorship firm on date of survey was Rs.4,20,327/- and the difference (2870327-420327)= Rs.2450000/- was considered to be

that of sole proprietorship firm as recorded in question no. 7 of the statement recorded 20.08.14 & 27.08.2014.

As per the question and answer recorded in point no. 10 of the statement recorded on 20.08.14, the survey team determined the aforesaid difference as opening stock for AY 2015-16 and the opening stock as on 1.4.2014 was determined at Rs.47,24,083/- vide question no.11, 12 and 13 of the statement recorded on the difference of Rs.24,50,000/- was taken to be income for FY 2013-14 (AY 14-15).

Accordingly the difference of Rs.24,50,000/- was assessed in the AY 2014-15 and tax was paid thereon.

The AO has made addition of Rs.24,50,000/- without considering the explanation provided during the hearing, the closing stock as on 31.3.2014 shall be the opening stock as on 1.4.14 as per normal accounting principles. The difference in stock is already taxed in the FY 14-15 and the same cannot be taxed again in AY 2015-16. The sale proceeds of the difference stock is offered for tax in AY 2015-16.

That the Id. AO erred in law as well as in facts in considering the stock difference at Rs. Instead of Rs.22,73,052/- and also that the same has already been taxed in the assessment year 2014-15 and again considering the same in assessment year 15-16 amounts to taxing the same income twice. Without prejudice the ground no. 2, the AO did not took recorded on cognizance of the question no. 10 of the statement 27.08.2014 whereby the difference of Rs.176948/- was already explained and the difference in stock was Rs.2273052/- and not Rs.24,50,000/-“.

4. During the course of appellate proceedings before the Id. CIT(Appeals), a further submission was also made on behalf of the assessee before the Id. CIT(Appeals) in writing as under:-

“(1) The copy of profit and loss account for the FY 2013-14 as on date of survey as recorded by the survey team vide which the profit was Rs.1664994/- and closing stock as on 31.3.14 was RS.22,74,083/- (vide page no. 35 & 36 of ID Mark evidence no. RGM-13 of the survey team which is enclosed herewith).

(2) The copy of the trial balance for the period 1.4.14 to 11.8.14 (as recorded by the survey team on the date of survey vide page no. 8 to 11 of ID mark evidence no. RMG 6 is enclosed. Your honour will find that there was no

purchase recorded therein upto date of survey during the period 1.4.14 onward, as the proprietorship firm was not doing the trading business in that period (the business was being carried over in the private limited company namely Radha Marbles & Granite P. Ltd.).

The survey team valued the physical stock at Rs.2,34,95,282/-. The stock recorded in the books of the private limited company namely Radha Marbles & Granite P. Ltd. was found as RS.2,06,24,955/- (vide page 70 of ID mark evidence No. RMG 12 of the survey team which is enclosed). The difference of Rs.24,50,000/- was considered by survey team as belonging to the proprietor firm namely Radha Marbles & granite. Since there was no purchase found during the period 1.4.14 to date of survey in the proprietorship firm, the survey team taken the differential stock amount as the stock being carried forward from last year, i.e. closing stock as on 31.3.2014 of the proprietorship firm.

4. Accordingly the differential amount of the stock was added with the closing stock of 31.3.2014 of Rs.22,74,083/- and taken at Rs.47,24,083/- considered as closing stock as on 31.3.14 and the net profit for the assessment year 2014-15 was also increased by and recalculated at Rs.41,14,994/- which was originally found at Rs.16,64,994/- vide page no. 35 & 36 of ID Mark evidence no. RGM-13, already enclosed as per point no. 1 above (vide point no. 10 to 13 of final statement recorded on 20.8.14 which is already submitted).

5. The appellant accepted their calculation for AY 2014-15 (1.4.13 to 31.3.14 and increased the closing stock by the amount of Rs.24,50,000/- as reduced by Rs.1,76,948/- (which was explained during the hearing u/s 131 post survey and paid tax on the same (copy of calculation by survey team for AY 14-15 enclosed).

6. The closing stock of 31.3.14 was considered as opening stock of 1.4.14 and the same was sold and sale as well as income thereon was duly disclosed in Income tax return and tax was paid.

7. The survey team proposed to add the same amount twice and demanded tax in AY 14-15 as well as AY 15-16. The total difference in stock was Rs.24,50,000/- only and the appellant has paid tax on same as computed by survey

team in AY 14-15 and demanded tax on same again in AY 15-16 is not as per law as the same cannot be taxed twice.

8. The AO did not consider the facts in details although the same was duly explained to him and added Rs.24,50,000/- without discussing the submission given by the appellant during the course of hearing”.

5. The ld. CIT(Appeals) did not find the submission on behalf of the assessee to be fully acceptable and proceeded to sustain the addition of Rs.24,50,000/- made by the Assessing Officer on account of the alleged excess stock found during the course of survey to the extent of Rs.22,73,052/- for the following reasons given in paragraph no. 3.3 of his impugned order:-

“3.3. I have considered the submission of the appellant and perused the relevant assessment records. The business premises was surveyed by the department under section 133A. The appellant during the course of survey had admitted stock discrepancy of Rs.24,50,000/- and cash discrepancy of Rs.4,60,000/-. However, in his return of income he had only offered the cash discrepancy of Rs.4,60,000/- to tax but discrepancy of stock amounting to Rs.24,50,000/- was not included. The AR of the appellant before the AO and also during appeal proceedings have given the argument that the stock discrepancy of Rs.24,50,000/- had been disclosed in AY 2014-15. He further submitted that the difference was reduced by Rs.1,76,948/- as purchase bills were not taken into account in the books and this was explained while recording his statement on 27.8.2014. The AO had not accepted the explanation of the appellant on the ground that there was clear manipulation of books of account for AY 2014-15 and that the appellant in a statement recorded during the course of survey had admitted that stock discrepancy of Rs.24,50,000/- relates to the current year as he had offered to pay advance tax for the same. In the appeal proceedings the AR of the appellant have given the same arguments. After perusing the relevant records including statement given by the appellant during survey, I see no reason to disagree with the findings of the AO. However, the discrepancy to be reduced by Rs.1,76,948/-. The addition of this ground is partly confirmed. This ground of appeal partly succeeds and, therefore, is partly allowed”.

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

6. I have heard the arguments of both the sides and also perused the relevant material available on record. The Id. Counsel for the assessee has reiterated before the Tribunal the submissions made before the authorities below that the difference in stock as found during the course of survey pertained to the immediately preceding year, i.e. A.Y. 2014-15 and after offering the same as income for A.Y. 2014-15, the closing stock for A.Y. 2014-15 was increased by the assessee to that extent, which was brought forward as opening stock for the year under consideration. He has contended that the impugned addition made by the Assessing Officer in the year under consideration thus has resulted into double addition and the Id. CIT(Appeals) was not justified in confirming the same. The Id. D.R., on the other hand, has submitted that this claim made on behalf of the assessee that the amount in question added to his income for the year under consideration on account of the difference in stock as found during the course of survey was already offered by the assessee as his income for A.Y. 2014-15 requires verification and since neither the Assessing Officer nor the Id. CIT(Appeals) has verified the same, the matter may be sent back to the Assessing Officer for such verification. I find merit in this contention of the Id. D.R. Even the Id. Counsel for the assessee has not raised any objection for sending the matter back to the Assessing Officer for such verification. I accordingly set aside the impugned order of the Id. CIT(Appeals) confirming the addition made by the Assessing Officer on this issue and restore the matter to the file of the Assessing Officer for deciding the same afresh after verifying the claim of the assessee that the amount in question on account of difference in stock as found during the course of survey was already offered as income for A.Y. 2014-15. If the claim of the assessee is found to be correct on such verification, the Assessing Officer shall delete the addition of the same amount made in

the year under consideration as the same would tantamount to double addition.

7. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open Court on March 20, 2020.

**Sd/-
(P.M. Jagtap)
Vice-President)**

Kolkata, the 20th day of March, 2020

- Copies to :
- (1) ***Shri Mukesh Kumar Singhanian,
13/2/1, Umesh Chandra Chatterjee Lane, 4th Floor,
Howrah-711104***
 - (2) ***Assistant Commissioner of Income Tax,
Circle-48, Kolkata, 3, Government Place (West),
Kolkata-700001***
 - (3) *Commissioner of Income Tax (Appeals)-14, Kolkata;*
 - (4) *Commissioner of Income Tax- , Kolkata*
 - (5) *The Departmental Representative*
 - (6) *Guard File*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.