

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 17.11.2020

+ **ITA 348/2019 & CM APPL. 15854/2019, CM APPL. 15852/2019,
CM APPL. 15853/2019**

PR. COMMISSIONER OF INCOME TAX-20,
DELHI

....Appellant

Through: Mr. Ajit Sharma, Senior
Standing Counsel and Mr.
Luqman Hasan Advocate.

versus

AKSHIT KUMAR

....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (ORAL)

C.M.No.15854/2019 (Exemption)

1. Allowed, subject to all just exceptions.

C.M.No.15852/2019 (delay in filing)

2. In view of averments made in the application, the delay of 70 days in filing the present appeal is condoned.

3. Accordingly, the application is allowed.

C.M.No.15853/2019 (delay in re-filing)

4. In view of averments made in the application, the delay of 140 days in re-filing the present appeal is condoned.

5. Accordingly, the application is allowed.

ITA 348/2019

6. The present appeal under Section 260A of the Income Tax Act ('the Act ') is directed against the impugned order passed by the Income-tax Appellate Tribunal ('ITAT'), New Delhi dated 27.04.2018 allowing the appeal being ITA No. 6527/Del/2017 filed by the Assessee relating to the Assessment Year ('AY') 2014-15.

7. Briefly stated, the Respondent-Assessee, Shri Akshit Kumar filed his ITR on 31.03.2015 for AY 2014-15 declaring his income of Rs.41,60,010/-. The declared sources of income of the Respondent-Assessee were salary, income from business and profession and other sources. The declared income included an amount of Rs. 3,19,580/- under the head income from business and trading of textiles. The case was selected for scrutiny and notices under Sections 143(2) and 142(1) were issued by the Assessing Officer ('AO') from time to time. The AO noticed certain peculiarities which have been summarized by the Appellant-Revenue in the present appeal as under:

“a. In the return of income, the assessee had shown his residential as A-32 Preet Vihar Delhi and was also filing its ITR with AO at New Delhi.

b. It was also noticed that the assessee was having its business at 75A/2 Kon Village Mumbai, Panvel, Raigad.

c. It was further noticed that the assessee was actually residing at Navi Mumbai.

d. It was further observed that the filing address had remained constant for the past several years, when all along the business and residence of the assessee has been based on Navi Mumbai.

e. Not only the assessee, his father Shri Anil Kumar and his mother Smt. Manjusha were also found trading same cloth/fabric under the similar circumstances in different names. Shri Manjusha Anil was working under the name and style of M/s Hitech Trading takes place from 42 & 77, Mumbai – Pune Highway, Khopoli Industrial Estate, Raigaol, Mumbai, On physical enquires at all the business premises it was discovered that there was no fabric/cloth trading business in existence for any of the members.

f. It was quite intriguing that when the assessee was actually residing in Mumbai, earning salary income in Mumbai and had his business also at Mumbai, and there was no business at Delhi, why had it been consistently been filing its ITRs in Delhi with Delhi address.”

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“a. All the sales undertaken by its proprietary concern M/s Loraiya Trading were in cash only.

b. During FY 2013-14, no purchases were made, all the sales were made out of the opening stock available at the beginning of the year.

c. On perusal of the sample voucher of cash sales, they appeared to be fresh, computer printouts, recently signed and back-dated to FY 2013-14.

d. The business of the assessee was trading in fabrics, however as per the balance sheet of M/s Loraiya Trading there is no weighing machine in the fixed asset schedule. It was pertinent to note that as per the stock register, the unit of opening stock of cloth fabric is in Kilogram and not pre-packaged units like boxes or crates which may or may not require being weighed.

e. The assessee had neither shown any building in its fixed asset schedule nor any rent expense in his P/L Account. The assessee had shown huge opening stock of 19,85,109.530 kg.

valued at over Rs.30 crores which would require considerable storage space. It is pertinent to answer if the assessee was indeed selling goods from the opening stock available with it, then where was this stock stored.”

8. The AO conducted on the spot physical verification, under Section 133B of the Act, of the business premises of the Respondent- Assessee, to ascertain if the claimed business was actually in existence or not. As a result of the said survey, the AO concluded that the premises from where the Respondent-Assessee purportedly conducted his business had been abandoned for several years and there was no built-up area in its vicinity. The AO also gave a categorical finding that there was no weighing machine installed. Thus, on the basis of aforementioned facts, the AO held that it was a case of money laundering and a false impression had been created that the entire cash deposits in the bank account of the Respondent- Assessee were purported sale proceeds. The AO also held that the entire cash deposits found in the bank account of the Respondent-Assessee were, in fact unexplained income and not sale proceeds and accordingly made an addition of Rs.4,20,62,550/- on account of unexplained credits while completing the assessment under Section 143(3) of the Act at a total income of Rs.4,62,22,560/-. Thereafter, a rectification order was passed to delete an addition of Rs.3,19,580/- under the head ‘income from business or profession’ from the assessed additions of Rs.4,20,62,550/-. On appeal, the CIT(A) noted that as per the verification report under Section 133B dated 05.11.2016, there was no weighing machine found at the premises of the Respondent-Assessee. This aspect was further juxtaposed with the fact that the Respondent-Assessee in its return (depreciation schedule) did not show

the existence of any weighing machine. The Respondent-Assessee, contested the scrutiny proceedings by relying upon the rule of consistency by referring to the assessment of the earlier years. However, his contention was rejected on the ground that no finding had been given by the AO in AY 2007-08 and the present findings in AY 2014-15 would not be affected by the findings of earlier assessment years as the facts of the present year are entirely different. Accordingly, the order of the AO was upheld. On further appeal, the learned ITAT held that the AO was not justified in law to treat the sales as income from unexplained sources and consequently, addition made by the AO, sustained by the CIT(A) of Rs.4,20,62,550/- was deleted. As a result, the appeal of the Respondent-Assessee was allowed.

9. Mr. Ajit Sharma, learned Senior Standing Counsel for the Appellant-Revenue urged that the learned ITAT was not justified in ignoring the specific findings given by the AO in the assessment order dated 31.12.2016. He submitted that the AO after conducting a detailed enquiry had rightly concluded that Respondent- Assessee's intention was to get assessed at a remote place in Delhi, rather than before the appropriate authorities in Mumbai. He submitted that the very absence of the business place and even a weighing machine in the balance-sheet, coupled with the fact that there was no expenditure on account of rent, depreciation etc. in the profit and loss account of the Respondent-Assessee, the inferences drawn by the AO were correct. He submitted that maintaining a huge inventory of stock in the range of Rs. 20 to 30 Crores year after year and making comparatively small amount of sales, itself raised serious doubts about the genuineness of the business. He further submitted that the finding of the AO to the effect that

the Respondent-Assessee had created a false business with the objective of laundering its unaccounted income is based on the enquiries conducted by the AO under Section 133B and also because the Respondent-Assessee had failed to appear in person even after being summoned under Section 131(1) of the Act to clarify the position. He submitted that learned ITAT had erred by not taking into consideration the findings of the AO raising serious concerns about the genuineness of Respondent-Assessee's claim of doing business which had been fully endorsed by the CIT(A).

10. We have carefully considered the contentions advanced by Mr. Ajit Sharma and have also perused the findings of the Income-Tax authorities and that of the learned ITAT. The learned ITAT after analysing the contentions urged by the parties and also on the basis of the material placed on record observed as under:

“13. We have heard the rival submissions, perused the relevant finding given in the impugned orders as well as the material placed on record. Here in this case we have to analyse various factors and background highlighted by both the parties as to whether the sales of fabric/ cloth bales is to added as unexplained income or sale of existing stocks or not. From the Revenue's perspective, it is palpable that AO had made very genuine efforts to carry out a physical inquiry to find out whether such trading of fabric was done by the assessee from the premises mentioned in the audit report or not. But at the same time it is also and admitted fact that on the date of inquiry, i.e., made on 5.11.2016 at 75A/2, Kon Village, Panvel Taluka Raigad, the assessee has stated to have closed its business long back in July 2015 ending 31st March, 2016 the stock has been shown NIL’, which factum has been shown in audit report and return of income for A.Y. 2016-17. This inter-alia means that entire stock alleged to have been kept by the assessee were sold during the financial

year 2015-16 and all the business was shut down. In her inquiry report AO had stated that the areas specified in the address, heavy constructions was being done for residential housing society and this was not the area was not well addressed and she also stated the details of certain construction sites. On the plot which has been stated to be near the address was in a complete abandoned state which had dilapidated building and even on enquiry, nobody could confirm running of such business. It has been alleged by the AO that similar inquiry was done in the case of assessee's father and mother where again business premises was found to be untraceable at the given addresses. She had also repudiated many evidences as well as explanation given by the assessee which we have already discussed above. Even the Ld.CIT(A) has reiterated and confirmed the said observations of the AO in a very detailed manner. From such finding and observations it does appear that at the time of inspection on 5.11.2016, no trace of assessee's business or business premise could be found. The counter of the assessee on this issue had been that it was carried out from the space provided by M/s S.K. Wheels Pvt. Ltd., however, for that also AO observed that no credible evidence has been brought on record. For other evidences also like electricity bill to prove the location of M/s S.K. Wheels Pvt.Ltd. alongwith rental receipts from where M/s S.K. Wheels was functioning has not been accepted by the AO due to lack of any corroborative and independent evidence. On the issue where such a huge stock of fabrics have been alleged to be kept by the assessee, his main contention has been that same was kept in the premise provided by M/s S.K. Wheels which has given huge godown to the assessee without charging any rent as the said Company belonged to his family members. M/s S.K. Wheels was authorised dealer in Maruti Suzuki cars and in support confirmation from the said company has been given that rent free place has been given to the assessee during the financial year 2013-14. Electricity bill has also been produced to show that premises did existed at 75A/2, Kon Village Mumbai, Panvel, Raigad, the copy of electricity bill as well as the letter by M/s. S.K. Wheels have been placed at the paper

book at pages 152 and 154 of the paper book. Apart from that, certain rental receipts issued by one RA enterprise has been given to show that M/s. S.K. Wheels Pvt. Ltd. was having premises on rent. However, all these evidences adduced by the assessee is how far credible and acceptable in wake of inquiry made by the AO and whether it can be conclusively held that the assessee was carrying out any business from the premises made available by M/s. S.K. Wheels or not. The finding recorded by the AO in light of her inquiry prima facie negates most of the assessee's claim regarding the premises available to the assessee at a given place for carrying out such a large scale of trading of fabric/cloth bales. Such a detailed finding of the AO and Ld. CIT (A) for the existence of any trading business especially at the time of inspection has not been properly countered by the assessee except for adducing certain evidences which again does not have much credentials in wake of actual inquiry conducted by the AO. But such an inquiry in F.Y.2016-17, i.e. post closure of business how far will affect the past history and the year under consideration, i.e., F.Y. 2013-14 is the moot point for our consideration juxtaposed with entire facts and material on record.

14. The finding of the AO in her inquiry conducted in November, 2016 and past assessment records have to be weighed in light of all probable factors and preponderance of probability of such factors has to be seen qua material on record which we shall discuss herein after. One of the most glaring fact which unfolds from the material placed on record is that, prior to the assessment year 2007-08 assessee had made huge purchases of stock the source of such purchases have been reflected in the books of account and audited accounts; and in the assessment year 2007-08, the opening stock of fabric/cloth was valued at Rs. 31,65,48,236/- and in that year itself there was sales of around Rs. 5.89 crores leaving behind the stock of Rs. 25.83 crores thereof. Again huge purchases have been shown in the A.Y. 2008-09 and sales have also been made. The details of opening stock, purchases, sales and closing stock for

various years has already been incorporated above. As on 31st March, 2014 there was a closing stock of Rs.19,53,79,660/- which was also the opening balance in this year and out of the said opening stock, sales of Rs. 4,20,62,550/- have been made and closing stock of Rs. 15,48,57,470/- has been shown on which gross profit of Rs. 15,40,360/- has been disclosed. The controversy to resolve here is, whether the stock in the books have been sold or not; or the entire deposits claimed out of sales in unaccounted money of the assessee. Going by the history of trading account in the earlier years, viz., opening stock, purchases, sales, closing stock, gross profit and the assessments made by the department, we find that way back in the assessment year 2007-08, assessment was passed u/s 143(3)/147, whereby the entire books of accounts have been scrutinised and assessee's income from business have been accepted. This inter-alia means that entire opening stock, sales and closing stock made during that year stands accepted. Again for assessment years 2008-09 to 2011-12, though returns have been accepted u/s 143(1), however the positions of stock were never disturbed and were duly reflected in the audited accounts. In the assessment year 2012-13 again the assessee's trading activity and books of accounts were subjected to detailed scrutiny in proceedings u/s 143(3), wherein the AO had noted the trading account figures like, turnover, profit rate, profit ratios vis-à-vis turnover and stock positions and based on his detailed reasoning, AO had rejected the trading result and has even enhanced the GP rate and thereby making an addition at Rs. 42, 51,463/- in the trading account. Thus, in this manner the entire trading activity of the assessee stood accepted and only addition made was on account of higher profit rate, but the sales made during that year; trading/business carried out by the assessee was duly accepted, including opening and closing stock. Again in the assessment year⁴ 2012-13 the opening and closing stock and trading account including sales has not been disturbed, now in the impugned assessment year 2014-15, the audited balance sheet reflected an opening stock of Rs.

19,53,29,660/- which opening stock stood accepted by the department either under the scrutiny proceedings or by not selecting the return for scrutiny proceedings or by taking any action to disturb such returned income. Hence the quantity and valuation of stock stood accepted which had attained finality. Thus, the quantum and figure of the opening stock which stood accepted in the earlier years has to be taken as an actual stock available with the assessee. Out of the said stock purported sales of Rs. 4,20,62,550/- has been made leaving a closing stock of Rs. 15,48,57,470/-. The trading account was thus reflected in the following manner:-

<i>Item Details</i>	<i>Unit</i>	<i>Opening Qty.</i>	<i>Qty. In</i>	<i>Qty Out</i>	<i>Closing Qty.</i>
<i>Cotton Fabric</i>	<i>Kg.</i>	<i>19,85,109.530</i>	<i>0.000</i>	<i>4,11,716.260</i>	<i>15,73,393.270</i>
<i>Grand Total</i>		<i>19,85,109.530</i>	<i>0.000</i>	<i>4,11,716.260</i>	<i>15,73,393.270</i>

15. Ld. AO or Ld. CIT (A) in the impugned orders have neither said anything about the opening stock or the closing stock coming from the earlier years nor they rejected the trading result or gross profit but instead have treated the entire sales on the credit side as income from unexplained sources. Even if the contention of the AO is accepted that assessee has not made any sales, then in that case the opening stock which has been accepted by the department in earlier years continues to be with the assessee and the same should be reckoned to be reflected as closing stock on the credit side of the trading account. Not only that, if the gross profit is also not disturbed then the GP which is the balancing figure of opening stock and purchases on debit side and sales and closing stock on the credit side has not been disturbed then how the entire stock could have been disposed of by the assessee has not been dealt by the AO. If

the AO's view is accepted that at no point of time there was any business carried out by the assessee, then how can the entire trading activity, stock purchased and sold and income derived there from which stood accepted in earlier years and assessments which have attained finality can be disregarded. If way back in the A.Y. 2006-07 assessee had made huge purchases of stock, the source of which has been disclosed in the books of account and audited financial statement and in the return of income for the assessment year 2006-07; and thereafter year by year assessee has been making purchases and sales or has been selling his stock carried forward from the preceding year which stands accepted, then in the impugned assessment year can it be held that there was no stock in existence at all and only activity done by the assessee was to deposit certain unaccounted cash in the garb of the sale and rotate his unaccounted money year after year. A stock existing in the books of accounts cannot be said to have been vanished in this year, when it has been stated that in subsequent year, that is, in July, 2015 the entire stock was sold and business was closed down which was prior to the initiation of the impugned assessment proceedings and much before the inspection carried out by the AO in November, 2016

16. Though there may be a lot of strength in the AO's inquiry, however the same simply whittles down from the fact that; firstly, it has been done after one and a half year from the closure of the business; secondly, the assessee's purchases and the stock acquired in assessment year 2006-07 and 2007-08 have neither been repudiated nor has been disturbed, which only goes to show that such stock did existed with the assessee and were also subjected to scrutiny from time to time; thirdly, once a huge investment shown in the books of account for the purchases of stock which has subjected to examination in scrutiny proceedings, then it cannot be held that on the first day of April of 2013, the entire stock did not exist; and lastly, the AO has neither rejected the books of accounts nor disturbed the opening and closing stock nor the gross profit; and once that is so, then to treat the entire sales

as income of the assessee will not hold ground, because either there has been sales or the same stock must be appearing in the closing stock at the year ending 31st March, 2014. This finding of stock available in books has not been dealt at all by the authorities below. Not only that, in the subsequent years also once the assessee's stock which has been sold and said sale and income derived there from has not been disturbed then it quite difficult proposition to hold that the sales made by ht assessee out of its opening stock should be treated as income from unexplained sources.

17. Thus, in our opinion the sale made by the assessee out of his opening stock cannot be treated as unexplained income to be taxed as income from other sources'; firstly, the stock was available with the assessee in his books of account and trading in such stock including purchase, sale, opening and closing stock (quantity wise and value wise) has been accepted by the department year after year and in some years under scrutiny proceedings, therefore, non existence of stock or business cannot be upheld; secondly, the sale of stock in the earlier years and the sale of balance left out stock in subsequent years has been accepted or has not been disturbed, then to hold that no stock was sold in this year and remained with the assessee will be difficult proposition; thirdly, inquiry and inspection by the AO done much after the closure of business may not be persuasive for the past events especially in wake of facts as discussed above; and lastly, once neither any item in the trading account, nor gross profit has been rejected, then one part of credit side of the trading account, that is, sales cannot be discarded completely so as to hold that it is unexplained money.

18. Our finding given above is peculiar to this case, because here in this case in the earlier years, scrutiny assessment have been done whereby the assessee's opening stock, closing stock and trading activities have been duly accepted and it is not a simple case where mere return income has been accepted u/s 143(1). Thus, we hold that AO is not

justified under law to treat the sales as income from unexplained sources and accordingly addition made by the AO and sustained by the CIT (A) of Rs. 4,20,62,550/- is directed to be deleted.

19. In the result appeal of the assessee is allowed.”

(Emphasis supplied)

11. From the aforesaid extracted portion of the impugned order, it is easily discernible that the enquiry under Section 133B of the Act which has been strongly relied upon by the Appellant-Revenue, was conducted in Financial Year 2016-17 i.e. post closure of the business. The learned ITAT has juxtaposed the same against the other relevant material on record. The crucial factor that prevailed upon the learned ITAT to decide the case in favour of the Respondent-Assessee was the history of the case. The learned ITAT went by the trading account in the earlier years viz. opening stock, purchase and sales, closing stock, gross profits and assessment made by the Department in AY 2007-08 when assessment was framed under Section 143(3)/147 of the Act. The learned ITAT observed that since the entire books of account had been scrutinised and the Respondent-Assessee's income had been accepted, it also means that the entire opening stock, sales and closing stock made during the year stood accepted. Additionally, in respect of AY 2012-13 also, Respondent-Assessee's trading activities were subjected to detailed scrutiny under Section 143(3) of the Act. In the said year, the AO had rejected the trading result and even enhanced the GP rate and made an addition in the trading account. The learned ITAT thus held that in respect of AY 2012-13 the opening and closing stock and trading accounts including sales has not been disturbed. In these circumstances, the

learned ITAT observed that in the impugned AY 2014-15, the audited balance-sheet reflected an opening stock of Rs. 19,53,29,660/- which stood accepted by the Department either under the scrutiny proceedings or by not selecting the return for scrutiny or by not taking any action to disturb such returned income. In these circumstances, it was held that the quantum figure and the opening stock which stood accepted in the earlier years had to be taken as actual stock available with the Respondent-Assessee. In view of these facts, the sales made by the Respondent-Assessee out of its opening stock were not treated as unexplained income, to be taxed as income from other sources. It thus manifests that the learned ITAT has taken into consideration the entire material placed on record including the report of the AO. The learned ITAT has applied the rule of consistency and rejected the enquiry made by the AO in the relevant assessment year. No doubt principles of *res judicata* are not applicable to the Income-Tax proceedings however, it is equally well settled law that rule of consistency is a well-established and recognised principle applicable to the Income-Tax proceedings. Pertinently, the Respondent-Assessee had closed his business in July, 2015 after selling all the stocks and the survey carried out at a later stage would not have strong evidentiary value. Besides, all these aspects are completely factual in nature and we are unable to find any perversity in the impugned order. The factual findings recorded by the Income-Tax authorities, have been examined by the last fact-finding authority i.e. the learned ITAT. In absence of any perversity in the impugned order, we are not inclined to entertain the present appeal, which urges questions of law that are entirely resting on findings of fact. Therefore, in our view no

question of law, much less substantial question of law, arises for consideration. Accordingly, the appeal stands dismissed.

SANJEEV NARULA, J

MANMOHAN, J

NOVEMBER 17, 2020

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