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

\+ ITA 688/2018

PR. COMMISSIONER OF INCOME TAX - 1 ..... Appellant

Through: Mr.Zoheb Hossain, Sr.SC and Mr.Sanjeev Menon, Jr.SC.

versus

ASHWANI KUMAR AND CO.PVT.LTD ..... Respondent

Through: Mr.Rakesh Mukhija, Adv.

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\+ ITA 692/2018

PR. COMMISSIONER OF INCOME TAX - 1 ..... Appellant

Through: Mr.Zoheb Hossain, Sr.SC and Mr.Sanjeev Menon, Jr.SC.

versus

ASHWANI KUMAR AND CO.PVT.LTD ..... Respondent

Through: Mr.Rakesh Mukhija, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **18.03.2024**

1. The Revenue seeks to question the judgment handed down by the Income Tax Appellate Tribunal [**"ITAT"**] dated 30 November 2017 and has proposed the following question for our consideration:-

> "Whether the ITAT was justified in upholding the order of the Commissioner of Income Tax (Appeals) in deleting the addition of INR 9,15,99,354/- on account of unaccounted stock being the difference in the quantity and value of closing stock as shown in the balance sheet and the quantity and value shown in the statement given to bank, without appreciating the fact that no documentary evidence was produced in support of its contention by the assessee at the time of assessment?"

2. In so far as the question of discrepancy in the disclosed value of closing stock is concerned, we take note of the following conclusions as were rendered by the ITAT :-

> "**10.** We have heard the rival submissions and also perused the relevant finding given in the impugned orders. The sole basis of the Assessing Officer for making the addition on account of unexplained investment in the stock is that, assessee had disclosed the value of stock to the bank at Rs.l0,08,30,357/- as against the value of closing stock shown in the books of account as on 31/3/2007 at Rs.4.98 crores. We find that before the ld. CIT(A) as well as before the Assessing Officer, assessee has duly explained that difference amount of Rs.5,10,30,357/-, which has been added by the Assessing Officer, was *firstly*, on account of plant & machinery of Rs.3,64,66,010/- which has been shown in Schedule VIII of the balance sheet; and *secondly*, advance to the suppliers shown at Rs.1,45,64,347 /- reflected in Schedule XI of the balance sheet. Thus, there is no such difference apparently in the value of closing stock. It is also an admitted fact that there is no difference in the quantum and in the actual value of the closing stock as appearing in the books of account and there is no cash element on such difference because the amount aggregating to Rs.5,10,30,357/- is on account of payment given to the suppliers for purchase / expenses incurred through account payee cheques from the bank account and such payments have been shown as amount recoverable and no expenses including purchase have been debited to the profit & loss account, therefore, there is no effect on the profit of the assessee-company for assessment 2007-08 qua this amount. Otherwise also it is quite standard practice that the stock statement given to the bank is to enjoy higher credit limit and if stock statement does not give quantity and item-wise details and simply value has been enhanced (though it is not the case here), then no adverse inference can be drawn so as to hold that higher value of stock shown to the bank is to be reckoned as unexplained investment in the hands of the assessee. The ld. CIT (A), after. proper appreciation of facts and taking note of the details, has given a categorical finding which is not only in accordance to law but is also based on correct appreciation of facts. Thus, we uphold the order of the ld. CIT (Appeals) in deleting the addition of Rs.5,10,30,357/-.
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> **21.** We have heard the rival submissions and perused the relevant finding given in the impugned order as well as the material referred to before us at the time of hearing. As apparent from the records, out of aggregate addition of Rs.9,15,99,354/- made by the

AO on account of difference in value of stock as per books of account and as per stock statement submitted to the bank, an amount of Rs.4,13,83,468/- was the difference in the closing stock as on 31/3/2008, ostensibly same could not have been added in assessment year 2009-10, because it pertains to assessment year 2008-09. The findings of the ld. CIT(A) that such addition on account of difference in value of stock as on 31/3/20008 cannot be added in the impugned assessment year, is thus affirmed.

22. So far as· the difference in value of stock as on 31/10/2008 and 30/9/2008, the difference in the value of stock is not on account of any quantitative difference or item-wise difference, albeit this was the amount advanced to the suppliers and amount on account of freight expenses. In the books of account, assessee has made separate entry whereas before the bank, assessee has included as part of stock-in-hand, the details of which are as under:-

Particulars		As on **30.09.2008**	As on **31.10.2008**
(a)	Advances to suppliers	2,45,41,095	2,21,46,627
(b)	Amount of Freight Expenses	15,79,369	19,48,795

23. This reconciliation was given to the Assessing Officer during the course of assessment proceedings and also during the course of remand proceedings by the ld. CIT (A). The ld. CIT (A) has categorically observed that the Assessing Officer could not point out any discrepancy in respect of stock as on 30/9/2008 vide his remand report dated 11/2/2013. However, in respect of advances made to the parties as on 31/10/2008, the Assessing Officer on enquiry in the remand proceedings pointed out the following discrepancies:-

S.No.	**Particulars**	**Amount**	**Remarks**
1.	Jalpa Machinery(P) Ltd.	13,50,000	Party does not exists at A-31, Mayapuri, Phase - 1, New Delhi.
2.	Sadashiv Marketing (P) Ltd.	45,15,000	Party not available

3.	Punita Bharadwaj	5,00,000	Party were available but did not file the confirmation
4.	North South Enterprise (P) Ltd.	14,50,000	Party were available but did not file the confirmation

When this discrepancy was confronted to the assessee, assessee gave the following documents to prove the genuineness:-

S.No.	Particulars	Remarks
1.	Jalpa Machinery (P) Ltd.	Stated that correct address in A-47, Mayapuri and not A-41, Mayapuri filed the confirmed copy of accounts with PAN details, and photocopy of return of income
2.	Sadashiv Marketing(P) Ltd.	Filed the confirmed copy of accounts with PAN details and photocopy of return of income.
3.	Punita Bharadwaj	Filed the confirmed copy of accounts with PAN details and photocopy of return of income.
4.	North South Enterprise (P) Ltd.	Filed the confirmed copy of accounts with PAN details.

27. On consideration of entire factum and material discussed in the impugned order, we find that so far as the amount of advance given to the suppliers appearing in the books as on 30/9/2008, there seems to be no discrepancy pointed out by the Assessing Officer in respect of stock as on 30/9/2008 in the remand proceedings. Thus,

> the amount of Rs.2,61,20,464/- which has been added by the Assessing Officer on account of difference in stock has rightly been deleted by the ld. CIT(A) which we confirm."

3. In light of the aforesaid conclusions, we are of the considered opinion that no substantial question of law arises in the instant appeals. They shall consequently stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 18, 2024/MJ