

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT),
'B' BENCH MUMBAI**

BEFORE SHRI M.BALAGANESH, AM

&

SHRI AMARJIT SINGH, JM

**ITA No.5654/Mum/2017
(Assessment Year :2012-13)**

The Income Tax Officer – 18(2)(4) 303, 3 rd Floor Earnest House, NCPA Marg Mumbai – 400 021	Vs.	Smt. Naina Vijay Jain Prop. Of M/s. Aayush Overseas, 20, Naviwadi, Shyam Bhawan, 2 nd Floor Room No.14, Dadiseth Agiyari Lane, Mumbai – 400 002
PAN/GIR No. ACPJ8536J		
(Appellant)	..	(Respondent)

Revenue by	Shri Rajendra Joshi
Assessee by	Shri Piyush Chhajed
Date of Hearing	03/12/2021
Date of Pronouncement	13/01/2021

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.5654/Mum/2017 for A.Y.2012-13 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-29, Mumbai in appeal No.CIT(A)-29/IT-196/ITO-18(2)(4)/15-16 dated 28/04/2015 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act)

dated 31/03/2015 by the Id. Income Tax Officer-18(2)(4), Mumbai (hereinafter referred to as Id. AO).

2. The revenue has raised the following grounds:-

1. *“On the facts and in circumstances of the case and in the law the Ld. CIT(A) has erred in allowing the appeal of the assessee on the ground that the discrepancies pointed out by the AO are only typographical errors which have no effect on the profit and loss account or computation of income of the assessee ignoring the fact that the A.O, during the course of the assessment proceedings, established that the assessee has inflated the opening stock for AY 2012-13 to the tune of Rs. 1,91,86,326 to deflate the profit.*
2. *On the facts and in circumstances of the case, and in the law, the Ld. CIT(A) has erred in not appreciating the fact that the adjustments made by AO to opening stock of current year was on account of difference in quantity as well as value of stocks as reported in the financials of assessee for A.Y. 2011-12 and for A.Y. 2012-13.*
3. *For the above mentioned reason and any other reasons that may be urged at the time of hearing, it is requested that the order of the CIT(A) be quashed and that of the A.O. be restored.*
4. *The appellant craves leave to amend or alter any ground or add a new ground, which may be necessary.”*

3. The brief facts of this issue are that the assessee is an individual and proprietor of M/s. Aayush Overseas engaged in the business of export of fabrics. She had filed return of income for the A.Y.2012-13 on 25/09/2012 declaring total income of Rs.9,07,426/- together with the tax audit report in form 3CB and 3CD and its annexures. The assessee is trading in fabrics such as fancy clothes and printed fabrics. The assessee purchased the grey polyester fabrics from the market and get them dyed

and printed on the job work. After dyeing and processing on the job work, the printed fabrics are sold by the assessee in the export market. In certain cases, grey polyester fabrics are also sold in resale market without carrying out any processing. During the assessment year under consideration, the turnover of the assessee proprietary concern was Rs.27,66,45,154/- which was totally export sales. The assessee while preparing the financial statements inadvertently mentioned the total sales figure of Rs.27,66,45,154/- in the column of local sales instead of export sales. In fact the assessee had also credited in her profit and loss account a sum of Rs.1,65,50,822/- on account of duty draw back and Rs.82,17,914/- on account of DEPB license, both comprising export benefits. These two incomes go to prove that the entire income was only export income and there was absolutely no local sales earned by the assessee during the year. Based on this mistake committed by the assessee by erroneously showing the export sales in the column of local sales, the Id. AO came to a conclusion that assessee's books are not reliable.

3.1. Similarly, a typographical error took place in Schedule-E of the financial statements wherein balance of scheduled banks were reported at Rs.43,01,046/- with Bank of India and nil balance with Dena Bank instead of reporting it vice versa. The total bank balance remained to be same but interse between the banks, typographical error had occurred. This was pleaded to be a genuine typographical mistake which was not appreciated by the Id. AO and accordingly, the Id. AO concluded that books of accounts of assessee are not reliable.

3.2. The assessee pleaded that irrespective of the aforesaid mistakes, there was absolutely no impact on the profit ultimately disclosed by the assessee and hence, the above mistakes did not have any bearing on the computation of total income of the assessee for the year under consideration.

3.3. Similarly, the Id. AO in para 7 of the assessment order observed that assessee in Clause 24(a) of form 3CD had mentioned that no loan has been squared up during the year whereas, there was some reduction of loan taken from the relatives during the year. In this regard, it was pleaded by the assessee that Clause 24(a) of Tax Audit report deals with particulars of loan accepted during the year and does not deal with particulars of loan repaid during the year. It was submitted that particulars of loan repaid during the year are to be reported in response to Clause 24(b) of form 3CD and accordingly, there was no mistake which had crept in in the tax audit report. Moreover, in Annexure D of tax audit report was stated to be correctly filled because it only reports the transactions from the parties from whom loans have been accepted during the year and in case the parties from whom loans have been accepted during the year were not squared up during the year, the same remark appears. Admittedly, the loan outstanding from other relatives was accepted during the year and those loans were never squared up during the year. With these facts, the assessee pleaded that there was no mistake in Annexure-D as alleged by the Id. AO. The Id. AO however, did not agree to any of these contentions submitted by the assessee.

3.4. Similarly, as far as discrepancy in the quantity chart of closing stock on 31/03/2011 is concerned with that of the opening stock as on 01/04/2011, the assessee admitted that in Annexure E of tax audit report for A.Y.2011-12, there was a mistake in picking up the figures. During the course of assessment proceedings, the assessee submitted complete stock movement register for A.Y.2011-12 and A.Y.2012-13. The said stock movement register was duly reconciled with the books of accounts and the closing stock as on 31/03/2011 was correctly carried forward as opening stock on 01/04/2011. The assessee pleaded that the valuation of closing stock as on 31/03/2011 amounting to Rs.2,53,73,818/- has been correctly taken as opening stock as on 01/04/2011. Hence, there was absolutely no difference in the profit figures because of the alleged discrepancy, as only quantity details were wrongly reflected in Annexure E for A.Y.2011-12 and not for the year under consideration. The Id. AO however disregarded the contention of the assessee.

3.5. The Id. AO in view of the aforesaid various discrepancies proceeded to reject the books of accounts u/s.145(3) of the Act and proceeded to estimate the gross profit of assessee @4% of turnover and made an addition of Rs.1,91,86,326/- in the assessment. The Id. AO also observed that assessee had shown a gross loss of Rs.1,66,73,642/- based on the re-casted trading account prepared by the Id. AO in page 4 of his assessment order and while preparing this re-casted trading account, the Id. AO did not consider the export benefits as part of trading receipts. It was pleaded that the assessee had only export sales of Rs.27.66 Crores during the year under consideration and in any event the export benefits of Rs.2,47,68,736/- would have to be credited to trading account and if

that is done, the net effect would only result in gross profit and not gross loss as wrongly determined by the Id. AO.

3.6. All the aforesaid contentions made by the assessee were duly appreciated by the Id. CIT(A) and Id. CIT(A) deleted the entire addition of Rs.1,91,86,326/- by observing as under:-

“3.3. The submissions of the learned counsel have been carefully considered. The learned counsel has explained that the discrepancies pointed out by the AO are only typographical errors and have no effect on the profit and loss account or the computation of income of the appellant. It Is found from the material on record that the contention of the learned counsel is correct. It Is a fact that the appellant had made the purchases and had export sales. The entire turnover of the appellant was through export sales and as a supporting evidence he has shown that he has credited the duty drawback and the DEPB license amount totalling to Rs.2,47,68,736/-. The assessee did not have any local sales during the year, it was only a typographical error that the sales have been shown under the head local sales Instead of export sales. The books of account which have been duly audited cannot be rejected on the basis of a typographical error in the presentation. As regards the discrepancy of the bank balance, it was explained that the appellant has had bank balance of Rs.41,01,046/- with Dena Bank and NIL balance with Bank of India. But while reporting in the Schedule ‘E’, by mistake the reporting was done vice versa. This again could not be a ground to reject the books of account. Clarification about repayment of loans from relatives as observed by the AO has also been given by the learned counsel. The issue is clear if one goes through the clause 24(a) and clause 24(b) of form 3 CD. As regards the variation in the opening stock, it was explained that there were errors in giving the quantities of closing stock for assessment year 2011-12. The quantities for 2012-13 have been given correctly. In fact, the value has been taken correctly for both the years and the figure of Rs.2,53,73,818/- has been shown as the closing stock as on 31.3.2011 and as opening stock as on 1.4.2011. There cannot be two different figures for closing stock as on 31.3.2011 and opening stock as on 1.4.2011. The AO appears to have made the addition merely on presumption and unfounded beliefs. While he adopted the figure of Rs.61,87,492/- as the value of opening stock for assessment year 2012-13 and made an addition of Rs.1,91,86,326/-, he did not change the figure of the closing stock in the earlier year. Similarly, no change has been made

in the figures of either opening stock or closing stock for the subsequent assessment year i.e. 2013-14 where assessment under section 143(3) has been made. An examination of the material on record shows that the discrepancies pointed out by the AO are mere typographical errors and have got nothing to do with the accuracy of the books of account. The AO has not pointed out any discrepancy in the books of account but has merely pointed out the typographical errors in the presentation and rejected the books of account on this basis. All the discrepancies pointed out/queries raised by the AO have been clarified by the learned counsel both during the assessment proceedings as well as appellate proceedings. The AO has not pointed out any substantial defect in the books of account which would warrant the rejection of the same. In the absence of this, the AO was not on a sound footing to reject the books of account. Moreover, he had not explained as to how the closing stock of the earlier year can be different from the opening stock of the current year. In view of the above, it is felt that the AO had no reason to reject the books of account under section 145(3). Also, on merits, there is no case to make an addition of Rs.1,91,86,326/- on the ground of inflation of opening stock. The AO had also taken a plea that the assessee has shown gross loss, whereas this business would warrant earning of profit. He felt that addition could be made even on this ground. However, the fact is that the assessee has not made loss in the year but has earned a gross profit of 2.92%. Besides, the assessing officer cannot dictate the profit to be made by the assessee and if he does, he has to give concrete reasons as to why the assessee should have made more profit. Without pointing out any defects, the AO cannot reject the books of account and estimate the profit of the assessee. The Hon'ble High Court of Allahabad in the case of CIT vs. UP State Food and Essential Commodities 39 taxman.rnm 106 (Allahabad) held that 'lower GP rate cannot be a ground for rejection of books nor any addition could be made merely on the basis of it.' Similar view has been held by the same High Court in the case of the CIT vs. Hanuman Sugar (Khandsari) Mills Private Ltd 38 Taxmann.com 53 (Allahabad). In view of the above discussion, the appeal of the assessee is allowed.

4. Aggrieved, the revenue is in appeal before us.
5. We have heard rival submissions and perused the materials available on record. We find from the elaborate facts and various discrepancies narrated hereinabove together with the explanations given by the assessee both before the Id. AO as well as before the Id. CIT(A), we find that all the discrepancies pointed out were only typographical

errors and do not have any impact in any manner whatsoever on the computation of total income of the assessee for the year under consideration. We find that the Id. CIT(A) had elaborately dealt with all the contentions raised by the assessee. We find that the main addition of Rs.1,91,86,326/- was made only on the difference in the opening stock by the Id. AO. We have gone through the entire records together with the tax audit reports for A.Y.2011-12 and 2012-13 of the assessee which are enclosed in the paper book comprising of pages 1-111 filed before us. We find that there is mistake in reflecting the quantity figures in the tax audit report for A.Y.2011-12. However, right quantity details have been duly reflected together with the values thereon for the A.Y.2012-13 and there is absolutely no difference in value between the closing stock as on 31/03/2011 and opening stock as on 01/04/2011. Hence, there is absolutely no impact in the computation of profits as per books and computation of total income as per the Act for the year under consideration. Hence, there cannot be any grievance for the revenue at all in the instant case. Moreover, the Id. AO grossly erred in not crediting the export benefits in the sum of Rs.2,47,68,736/- in the recasted trading account prepared at page 4 of his assessment order while working out the gross loss. Infact, we find the assessee had earned only gross profit during the year under consideration. It is a fact that assessee had made only export sales of Rs.27.66 Crores during the year and no local sales were made. We hold that export benefits of Rs.2.47 Crores needs to be considered as trading receipt for the purpose of working out the gross profit of the assessee for the year under consideration. We find the GP disclosed by the assessee for the A.Y.2012-13 was 2.92% and GP of A.Y.2011-12 was 3.02%. Hence, there is absolutely not much variation in the gross profit disclosed by the assessee also. Considering the totality of facts and circumstances, we hold that this is not a fit case for rejection of

books of accounts u/s.145(3) of the Act by the Id. AO. We hold that the Id. CIT(A) had duly appreciated all the contentions of the assessee and rightly granted relief to the assessee in the instant case by allowing the grounds, on which no infirmity is found. Accordingly, the grounds raised by the revenue are dismissed.

6. In the result, appeal of the revenue is dismissed.

Order pronounced on 13/01/2021 by way of proper mentioning in the notice board.

**Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER**

Mumbai; Dated 13/01/2021
KARUNA, *sr.ps*

**Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER**

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai