



आयकर अपीलीय अधिकरण, कोलकाता पीठ “बी”, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA

श्री राजेश कुमार, लेखा सटस्य एवं श्री प्रदीप कुमार चौबे, न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

I.T.A. No. 1708/Kol/2024

Assessment Year: 2016-17

DCIT, Central Circle-1(1), Kolkata	Vs.	Pragati Agri Products Pvt. Ltd. (PAN: AABCP 4702 A)
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	16.10.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	08.11.2024
For the Appellant/ निर्धारिती की ओर से	Shri Sunil Surana, A.R
For the Respondent/ राजस्व की ओर से	Shri Divakar Chakraborty, Addl. CIT Sr. D.R

ORDER / आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-20, Kolkata (hereinafter referred to as the “Ld. CIT(A)”) dated 26.06.2024 for the AY 2016-17.

2. The only issue raised by the revenue is against the deletion of addition of Rs. 2,39,89,250/- by the Ld. CIT(A) as made by the AO on the basis of specific findings during the survey operation on the assessee’s premises.

3. Facts in brief are that the assessee filed return of income u/s 139 (1) of the Act dated 16.10.2016 declaring total income of Rs. 1,56,93,250/- under the normal provisions of the Act and Rs. 1,46,23,127/- as book profit u/s 115JB of the Act. Thereafter a survey operation u/s 133A was conducted on the business premises of the assessee on 31.08.2015 and 01.09.2015. Accordingly the case was selected for scrutiny proceedings u/s 143(3) of the Act. Thereafter a statutory notices were duly issued and served on the assessee. During the course of survey proceedings the assessee furnished provisional profit and loss account which indicated turnover at Rs. 37,11,98,183/- and not profit of Rs. 3,83,85,111/-. The AO noted that in the post survey period the gross profit was declared at 9.81% whereas over all gross profit was declared at 13.08%. According to AO, the assessee has not furnished purchase bills and therefore the necessary verification could not be carried out. Thus, the AO made addition of Rs. 2,39,89,250/- to the income of the assessee by enhancing the value of closing stock in the assessment framed u/s 143(3) of the Act dated 31.12.2018.

4. The assessee preferred an appeal before the Ld. CIT(A) and Ld. CIT(A) allowed the appeal of the assessee. The Ld. CIT(A) noted that no addition could be made on the basis of statement recorded during survey operation unless corroborated by the incriminating material found during the course of survey. The Ld. CIT(A) noted that during the financial years namely FY 2013-14 & 2014-15 the GP rates were 14.58% and 13.38% respectively whereas during the instant financial year the G.P. rate was 13.08% which was more or less consistent. The Ld. CIT(A) while deleting the addition relied on the decision of Hon'ble Supreme Court in the case of CIT vs. S. Kader Khan & Sons [2012] 25 taxmann 413 (SC) wherein the Civil Appeal by the revenue has been dismissed by the Hon'ble Court by holding that statement recorded during survey u/s 133A of the Act has no evidentiary value and any admission made during the course of statement cannot be made the basis of addition and thus confirming the order passed by the Hon'ble Madras High Court in the case of CIT vs. S Kader Khan Son [TC(A) No. 867 of 2007] dated 04.07.2007. The Ld. CIT(A) also relied on a number of decisions as discussed in the appellate order. Finally the Ld. CIT(A) gave a finding that

the addition of Rs. 2,39,89,250/- was made on the basis of presumption and surmises and also tax neutral because enhancing of closing stock in one financial year would also have the corresponding effect in the opening stock which would result in decrease in profit by the same amount. Accordingly the Ld. CIT(A) directed the AO to delete the addition.

5. After hearing the rival contentions and perusing the material on record, we find that the survey was conducted on assessee's premises and during the course of survey statement u/s 133A was recorded. The assessee filed provisional records including provisional profit and loss account before the survey party. According to AO, the assessee has not furnished purchase bills thereby during the assessment proceedings for the want of which necessary verification could not be carried out. The Ld. A.R of the assessee took us through the order sheet entries copies of which are available at page nos. 78-79 of PB. In the order sheet entry dated 28.12.2018 the AO noted that the assessee has produced cash book, sale register, bank book, laboratory test report, ledger, daily production register, purchase register sale tax and purchase tax registers which were test checked. We note that during the course of survey, a statement was recorded by the survey team, however, no incriminating material was found during the course of survey. Therefore, in absence of having any incriminating material, the statement recorded has no evidentiary value as in the held by the CIT vs. S Kader Khan Sons (supra) wherein it has been held that the statement recorded u/s 133A has no evidentiary value and any admission made during the course of survey cannot be the basis for making the addition. The AO has mainly harped on GP declared during the course survey proceedings. We even note that Ld CIT(A) has specifically mentioned that the AO has not mentioned any basis for taking G.P. rate of 17.43% whereas overall GP was 13.08%. In our opinion, it is not open to AO to make the addition merely on the basis of surmises and conjectures unless the books of account are rejected which was also observed by the Ld CIT(A) while allowing the appeal of the assessee. The Ld CIT(A) even examined the comparative gross profit rate from AY 2014-15 to 2016-17 and find that the G.P. Rate during the year is more or less consistent and . Therefore,

the addition made by the AO was deleted by the Ld. CIT(A). Further, the Ld. CIT(A) noted that the AO has not disallowed the purchases or disbelieved the purchases but only enhanced the closing stock which could have the effect the enhancing the opening stock in the subsequent assessment year. It was noted to be tax neutral addition by the Ld. CIT(A) in the appellate order. Considering these facts, we do not find any reasons to interfere in the order passed by the Ld. CIT(A). Consequently the appellate order is upheld by dismissing the appeal of the revenue.

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

Order is pronounced in the open court on 8th November, 2024

Sd/-

Sd/-

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)
Judicial Member/न्यायिक सदस्य

(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 8th November, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- DCIT, Central Circle-1(1), Kolkata
2. Respondent – Pragati Agri Products Pvt. Ltd., 2nd Floor, Vinayak Complex, 55/1B, Strand Road, Posta, Kolkata-700006.
3. Ld. CIT(A)-20, Kolkata
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata