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IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C', NEW DELHI

BEFORE SHRI G.D. AGRAWAL, HON'BLE VICE PRESIDENT  
&  
SHRI C.L. SETHI, JUDICIAL MEMBER

ITA No.3560/Del/2010  
Assessment Year: 1990-1991

Hemant Plastic Industries,  
BN-2, Shalimar Bagh,  
New Delhi.  
AAAFH1412K  
(Appellant)

Vs.

ACIT,  
Circle 27(1),  
New Delhi.  
(Respondent)

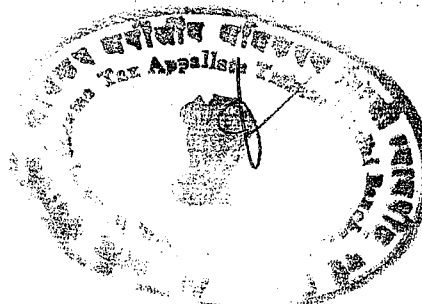
Appellant by : Sh. Ved Jain, Ms. Rano Jain & Sh. Venketesh Chourasia, C/  
Respondent by : Sh. Salil Mishra, Sr. DR

ORDER

PER C.L. SETHI, J.M.

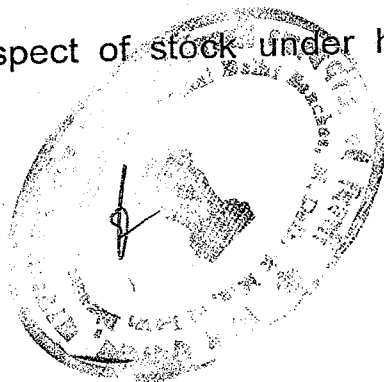
The assessee is in appeal against the order dated 14.05.2010 passed by the Id. CIT(A) in the matter of an assessment made by the AO u/s 254/250/143(3) of the Income Tax Act, 1961 for the A.Y. 1990-91.

2. The first issue raised in this appeal by the assessee is against Id. CIT(A)'s order in upholding the addition of Rs. 3,20,880/- on account of applying gross profit rate at 5% on



the sales in the month of March, 1990 by preparing a profit and loss account and by taking figures arbitrarily.

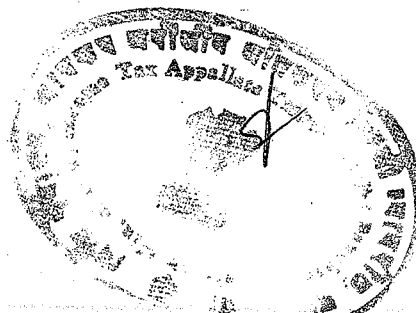
3. The assessee deals in imported plastic powders, PVC resin, etc.. The business premises of the assessee were surveyed on 13.03.1990. The assessee surrendered Rs. 5 lakhs (Rs. 2.10 on account of excess cash found and Rs. 2.90 for excess stock) during the survey operations. During the relevant year, the assessee had taken bank loans/advances against pledge of documents of imported goods in transit, pledge of stock and hypothecation of stock. The records maintained in respect of pledge of documents showed that the assessee had placed documents showing goods in transit worth Rs. 44,04,028/- as on 19.02.1990 and the next entry in this bank account was on 02.05.1990 i.e. after the close of the financial year. This showed that the goods pledged through documents were Rs. 44,04,028/- as against Rs. 36,81,314/- shown by the assessee in its books of accounts as on 31.03.1990. The difference thereof, Rs. 7,22,634/-, was assessed as income as the same was not explained properly by the assessee. Similarly, the examination of documents submitted to bank in respect of stock under hypothecation



account showed stock of Rs. 49,85,414/- as against stock of Rs. 45,84,130/- shown in the books of accounts. The difference, after deducting gross profit rate of 5%, worked out to Rs. 3,20,880/- was assessed as the income as the same was not explained properly by the assessee. The stock pledged on 02.03.1990 was Rs. 38,16,663/-. Out of this pledged stock, the goods worth Rs. 29,14,068/- were released on or before 31.03.1990. Therefore, the actual pledged stock of Rs. 9,02,595/- was not included in the value of closing stock shown in the books of account. The AO, therefore, added the same to the income of the assessee. Thus, in the original assessment u/s 143(3) dt. 30.03.1993, the AO made the following additions on account of purchases of goods outside the books of accounts:

i) Pledge of documents (goods in transit)	Rs. 7,22,634/-
ii) Actual pledge of goods	Rs. 9,02,595/-
iii) Difference in stock under hypothecations	Rs. <u>3,20,880/-</u>
Total	Rs. <u>19,46,109/-</u>

3.1 On appeal (against the original assessment order), the said additions were restricted to Rs. 17,46,109/- by the CIT(A). Aggrieved, the assessee preferred appeal before the Hon'ble ITAT, who restored the matter to the file of the AO for re-examination and verification.



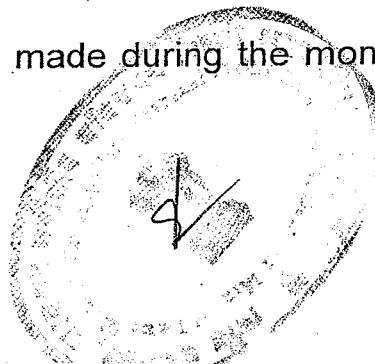
3.2 The set aside assessment was completed vide order dated 31.03.2003. This set aside assessment order did not contain above mentioned additions except Rs. 9,02,595/-. On appeal, again, the Hon'ble ITAT restored the matter to the file of the AO for re-examination and verification.

3.3 The AO, vide the impugned order, made the following additions on account of stock outside the books:

i) Pledge of documents (goods in transit)	Rs. 7,22,634/-
ii) Actual pledge of goods	Rs. 3,04,473/-
iii) Difference in stock under hypothecation	Rs. <u>3,20,880/-</u>
Total	Rs. <u>13,47,987/-</u>

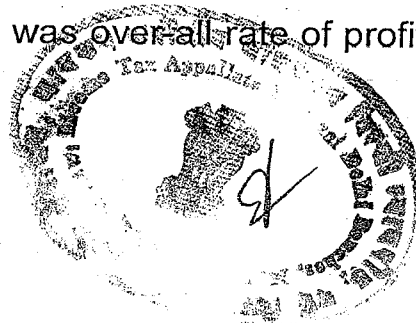
4. Aggrieved with the AO's order, the assessee preferred an appeal before the Id. CIT(A), who has confirmed the AO's action in making the addition of Rs. 3,04,473/- and Rs. 3,20,880/- on account of difference in actual pledge of goods and difference in stock under hypothecation.

5. Regarding the addition of Rs. 3,20,880/- it has been stated by the Assessing Officer that on examination of stock under hypothecation as on 01.02.1990, it was found that the opening stock was worth of Rs. 56,83,064/-. After adjusting the purchases and sales made during the month of February



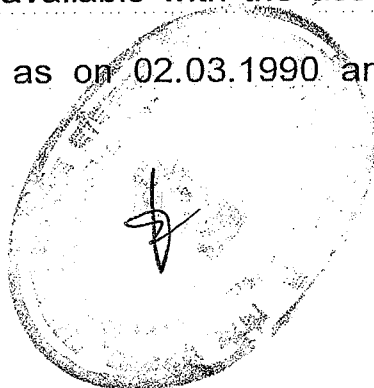
and giving a deduction of 5% on account of Gross Profit on sales, the Assessing Officer determined the value of stock at the end of year at Rs. 49,85,414/- as against the value of stock of Rs. 45,84,130/- declared by the assessee to the bank. Thus, the difference of Rs. 3,20,880/- was added to the income of the assessee.

6. On an appeal, Id. CIT(A) confirmed the AO's action.
7. We have heard both the parties and perused the material on record.
8. In this case, the Assessing Officer has worked out the difference of Rs. 3,20,880/- by assuming that the goods sold during the month of February, 1990 were sold at a gross profit margin of 5%. He has not examined the itemwise purchases and sales made during the month of February, 1990 so as to worked out the actual stock to be valued at cost of market price whichever is lower. It is not uniform that all the goods sold during the month of February, 1990 would have a margin of profit of 5% the assessee has explained the certain goods were even sold at a loss during the month of February, 1990. The profit rate of 5% was over-all rate of profit of whole of the



year, which is not confined uniformly to every sales made in each month. The Assessing Officer has not pointed out any defects in the books of account maintained by the assessee with reference to the purchases and sales recorded in the month of February, 1990. The difference of Rs. 3,20,880/- has been determined by the AO purely on the basis of his own calculation instead of examining and verifying the actual purchases and sales made during the month of February, 1990, and the actual profit earned by the assessee during that month. The CIT(A) has also confirmed the addition on the basis of calculation made by the AO without verifying the amount of actual purchases and sales made during the month of February, 1990. We, therefore, find no basis to make this addition of Rs. 3,20,880/- on account of difference in the value of stock under hypothecation.

9. With regard to the addition of Rs. 3,04,473/- on account of difference in stock as on 31.03.1990 pledge with the bank, it has been stated by the AO that stock of 315 kgs of DPB and stock of LDPE local shown in the closing stock as on 31.03.1990 were not available with the assessee at the time goods were pledged as on 02.03.1990 and thus, the said

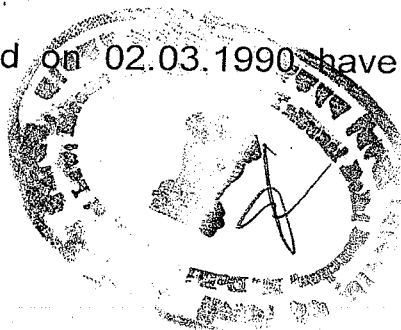


stock worth Rs. 3,04,473/- was not related to the pledge of goods account. The Assessing Officer, therefore, treating the closing stock of Rs. 3,04,473/- on account of DPB and LDPE goods as unexplained and added the same to the total income of the assessee under the head "unexplained investment in purchase of goods".

10. On an appeal, the Id. CIT(A) confirmed the AO's action by observing that the assessee has failed to establish beyond doubt that the stock of Rs. 3,04,473/- was actually a part of the pledge stock as on 02.03.1990 with the help of documentary evidences/purchase invoices.

11. We have heard both the parties and perused the material on record.

12. The copy of register of stock maintained by the Dena Bank in respect of the goods pledged with the bank has been examined by us. The goods pledged as on 02.03.1990 were worth Rs. 38,16,663/- as so found by the AO also. On going through the stock record and the details of each item of stock pledged as on 02.03.1990, it is clear to us that each of the items which were pledged on 02.03.1990 have been duly



accounted for in sales made thereafter on withdrawals of the stock from bank from time to time. In this regard, the relevant sale invoices under which each of the items, which were pledged on 02.03.1990, have been sold have also been produced before us. The sales of items have been recorded in the books and taken into account while determining income of the assessee. It is also not the case where the stocks shown as on 31.03.1990 were procured outside the books of the assessee. The assessee has valued the stock as on 31.03.1990 on the basis of rate of cost of goods shown in the invoices dated 30.03.1990 and 31.03.1990 by applying FIFO Method. We, therefore, find no reason to sustain the addition of Rs. 304473/- on account of alleged discrepancy in stock, which is accordingly deleted.

13. In the result, the appeal of the assessee is allowed.

This decision is pronounced on 26<sup>th</sup> December, 2011.

  
(G.D. AGRAWAL)  
VICE PRESIDENT

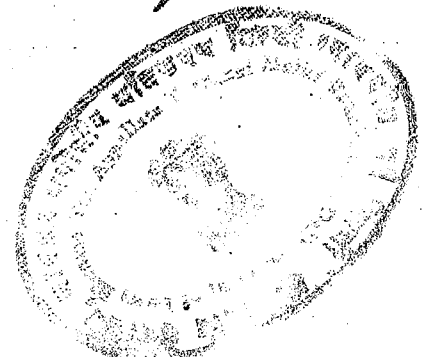
Dated:  
\*Kavita

CTD 26/12/11

  
(C.L. SETHI)  
JUDICIAL MEMBER

Copy forwarded to: -

1. Appellant





\*Kavita

Copy forwarded to:-

1. Appellant *RDS*
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

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By Order,

DEPUTY REGISTRAR

सहायक पंजीकार

Assistant Registrar

आयकर अपीलिय अधिकरण

Income Tax Appellate Tribunal

नई दिल्ली/ New Delhi



