

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'B' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 1818/KOL/2019
Assessment Year: 2013-2014**

Priyo Gopal Bishoyi Grandson, Appellant
C/o. Subash Agarwal & Associates, Advocates,
Siddha Gibson,
1, Gibson Lane, Suite-213, 2nd Floor,
Kolkata- 700069
[PAN: AADFP4291P]
-Vs.-

Assistant Commissioner of Income Tax,..... Respondent
Circle-44, Kolkata,
3, Government Place (West),
Kolkata-700001

Appearances by:

Shri Siddharth Agarwal, Advocate, A.R., appeared on behalf of the assessee
Shri P.P. Barman, Addl. CIT, appeared on behalf of the Revenue

Date of concluding the hearing: September 29, 2022

Date of pronouncing the order: September 30, 2022

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals)- 13, Kolkata dated 28.06. 2019 passed for Assessment Year 2013-14.

2. The assessee has taken 3 grounds of appeal, out of which peripheral arguments are being taken in Grounds No. 2 & 3, which do not call for recording any specific finding separately.

3. The substantial grievance of the assessee has been raised in Ground No. 1, wherein it is pleaded that the Id. CIT(Appeals) has erred in

confirming the addition of Rs.44, 06, 108/- on account of alleged difference in the stock found during the course of survey.

3. Brief facts of the case are that the assessee has filed its return of income on 29.09. 2013 disclosing total income of Rs.85,22, 230/-. The assessee at the relevant time was engaged in the business of retailer of H/L Cotton & Art Silk, hosiery & readymade garments under the name & style of M/ s. Priya Gopal Bishoyi Grandson. A survey under section 133A of the Income Tax Act was conducted at the business premises of the assessee on 11. 12. 2012. According to the facts emerging out from the assessment order, during the course of survey, the survey team computed the physical stock available in the store and worked out its valuation on the basis of ORIEL POS (Software System). According to the Revenue, the assessee has been maintaining its accounts in Tally Software and when the stocks were matched by the Survey Team by taking figures from the accounts maintained and under Tally Software, vis-a-vis physical stock taken under ORIEL POS Software, then a huge difference was found. During the course of assessment proceeding, the assessee was asked for an explanation. In order to appreciate all these aspects more scientifically, we take note of the assessment order where all these details are being noticed by the Id. Assessing Officer in a tabular form. The relevant part reads as under:-

"In response to this, the assessee has furnished his explanation on 26.02.2016 raising certain points in support of his claim as below"

(a) *The assessee has explained that there was casing by the Deptt. of mistakes of Rs.18,75,185/- while calculating the physical stock valuation. The details of physical stock valuation as per survey team and by the assessee are as follows:-*

(b)

	<i>Physical value of stock as per MRP/selling price</i>	<i>Less: Casting mistake made in totalling of sheets</i>	<i>Actual physical value of stock as per MRP/selling price</i>	<i>Less: Profit element on such stock @17%</i>	<i>Value of the stock inventory arrived at cost price</i>
<i>By survey team</i>	52815246			8978592	43836655
<i>Vide assessee's submission</i>	52815246	1875185	50940061	8659810	42280251

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Further on 04.03.2016, the assessee filed rectified casting mistakes of Rs.21,14,900/- and accordingly the value of physical closing stock arrived at Rs.4,25,28,255/- as computed below:-

Physical value of stock as per MRP/selling price	Less: Casting mistake made in totalling of sheets	Actual physical value of stock as per MRP/selling price	Less: Profit element on such stock @17%	Value of the stock inventory arrived at cost price
52815246	2114900	50700346	8619058	42081288

(b) Further, as per the assessee's submission, inventory of stock at Tally ERP-9 of Rs.3,40,49,791/- was as on 04.12.2012 but the physical stock was taken on 11.12.2012. The assessee filed a reconciliation of stock as per Tally ERP as on 11.12.2012, the date of survey as follows:-

	Opening stock as on 05.12.2012	Purchases on 05.12.12 to 11.12.12	Sale at cost 05.12.12 to 11.12.12	Closing stock as on 11.12.12
As per Tally	34049791	5621459	1996070	37675180

Therefore, the stock discrepancy as per books and actual physical stocks comes to Rs.44,06,108/- [4,20,81,288 - 3,76,75,180].

(c) Further, the assessee has stated that they used two accounting software i.e. Tally ERP-9 and Oriel POS. The details of stocks as per different software and methods are as follows:-

	Tally ERP as discussed in para 2(b) above	<u>ORIEL POS</u> FIFO METHOD	<u>Oriel POS</u> Specific identification Method
As on 11.12.2012, the date of survey	37675180	43148359.11	41905247.09

4. The assessee thereafter submitted detailed submissions, which have been noticed by the Id. Assessing Officer. However, he did not accept the contention of the assessee and assigned five reasons, which are recorded on pages no. 3 & 4 of the assessment order. We take note of these reasons also, which read as under:-

"The assessee's above submission is considered but could not be accepted as certain points are not satisfactory explained:-

(a) *It was not known whether final accounts at the end of the year were made as per the stock of Tally ERP software or Oriel POS software as both the softwares were being used. If survey operation would not have carried out, it would have been not known that there were two systems of stock inventory were being used. The assessee would have made final accounts at the end of the year as per the stock of Tally ERP software but when the survey team pointed out about two different accounts of stock, the assessee has, then only claimed that they were using Oriel POS software for valuation of stock to cover up the discrepancies of stock.*

(b) *As per the assessee's statement assessee has been maintaining inventory of stock in Oriel POS software then why stock was also maintained in the Tally ERP software is remained unexplained.*

(c) *During the course of survey, stock as per Tally ERP was Rs.3,40,49,791/-, which was up to the date of 04-12-2012, The assessee has updated the stock of Tally ERP upto the date of survey i.e. 11-12-2012 and stock as on survey date reconciled to*

Rs.3,76,75,180/- but the physical stock found during the course of survey was Rs.4,22,80,251/-, which was discussed in para 2(b) above. Therefore, a stock discrepancy of Rs.44,06,108/- was still exists after updating the Tally ERP which was not satisfactorily explained.

(d) As per the assessee's above submission, the inventory valuation of stock of the concern is being maintained in the accounting software ORIEL POS wherein the purchases and sales are tracked and cost specific and identifiable inventory items that are either in or out of stock are maintained on an individual basis via BAR CODE codification in SPECIFIC IDENTIFICATION li METHOD and direct sales report are generated on the actual valuations for specific cost of stock-IN or stock-OUT, which are thereupon entered in the Tally ERP-9 accounting software. Here, the question arises that if the actual valuations were entered in the Tally ERP-9, then the stock as per Tally ERP-9 is obviously correct. Therefore, the discrepancies of stock of Rs.47,57,056/- really exists.

(e) There is no mention in the audit report that valuation of closing stock is done by Oriiel POS software. The assessee has stated that they have maintained the inventory' valuation software ORIEL POS since 2010 but in the Audit report of F.Y.2010-11 also, it was not mentioned that the valuation of closing stock is done by Oriiel POS software.

Under these facts and circumstances, the claim of the assessee is rejected and the excess stock of Rs.44,06,108/- as discussed in para 2(b) above is added to the total income of the assessee as undisclosed stock. Penalty proceedings u/s 271(l)(c) are being initiated separately for furnishing inaccurate particulars /concealment of income.

[Addition: Rs.44,06,108/-]".

5. The appeal to the Id. CIT(Appeals) did not bring any relief to the assessee.

6. The Id. Counsel for the assessee while impugning the findings of both the authorities contended that basically revenue has compared two un-comparable systems and worked out the excess stock. He pointed out that ORIEL POS is a Software, under which Bar Code is being placed on each item and under this Software, the purchases and sales are tracked and cost specific identifiable inventory items can be worked out. He pointed out that had any one single system taken up by the Revenue, then no excess stock would have been worked out. For buttressing his contention, he took us through the accounts. He placed on record the accounts for A.Ys. 2011-12 to 2013-14 and submitted that in A.Y. 2012-13

an assessment order was passed under section 143(3). The ld. Counsel for the assessee drew our attention towards page no. 102 of the paper book where a detailed written submission was filed before the ld. Assessing Officer explaining the method of accounting. It was contended that both the accounts give two different figures, namely for A.Y. 2011- 12, the following table would depict the difference and similarly A.Y. 2012-13:-

Assessment Tear: 2011-2012

	TALLY ERP-9	Difference in valuation	As per Audited Trading Account (ORIEL POS)
Closing stock	3,03,76,184.62	48,06,554/-	3,51,82,738.00
Gross Profit	1,94,31,207.87	48,06,554/-	2,42,37,761.25
Income Tax paid			21,08,594/-

Assessment Tear: 2012-2013

	TALLY ERP-9	Difference in valuation	As per Audited Trading Account (ORIEL POS)
Closing stock	2,33,48,269.31	1,06,39,423/-	3,39,87,692.00
Gross Profit	1,95,46,535.81	1,06,39,423/-	3,01,85,958.50
Income Tax paid			27,61,487/-

7. Ld. Counsel for the assessee took us through page no. 36 of the paper book, where Trading and Profit & Loss Account for the year ended on 31st March, 2012 is available. He submitted that in these audited accounts, the stock as on 31.03.2012 has been worked out at Rs.3, 39,87,692/- and this very figure is available in the table extracted supra. In other words, for the purpose of income tax, assessee has been accounting the stocks on the basis of ORIEL POS Software. This calculation is prior to the survey carried out on the premises of the assessee, i.e. survey was conducted on 11.12.2012 and this statement is of 31st March, 2012. This exhibits that assessee has been computing its income for the purpose of income tax on the basis of ORIEL POS Software. The ld. Counsel for the assessee pointed out as to how this discrepancy

results into two different figures of income. We have already extracted those comparative studies in the apart of this order. On the strength of all these details, he pointed out that the stock has been calculated at Rs.3, 76,75,180/- on the date of survey on the basis of Tally Software, whereas value of physical stock has been taken at Rs.4, 20,81,288/- on the basis of ORIEL POS Software and if an exercise is being taken on such different method of Software, then some discrepancy bound to happen.

8. On the other hand, ld. D. R. relied upon the orders of ld. Assessing Officer as well as of ld. CIT(Appeals). He submitted that this aspect was not brought to the notice of revenue at the time of survey. It is not ascertainable whether income is being offered on the basis of the calculation made as per ORIEL POS Software.

9. On due consideration of the above facts and circumstances, we find that Revenue has erred in comparing two accounting statements, which are un-comparable to each other because Revenue has taken book stock on the basis of Tally Software, whereas physical stock on the basis of ORIEL Software. It is also observed that ld. Assessing Officer failed to appreciate the explanation of the assessee in right perspective. The assessee with the help of audited accounts explained to the ld. Assessing Officer that taxable income is being computed on the basis of ORIEL POS Software details. During the course of hearing, this fact has been demonstrated before us from the audited accounts. For Financial Year 2011- 12, i.e. Assessment Year 2012- 13, the assessee has shown Closing Stock at Rs. 3,39, 87,692/-, whereas as per Tally Software, this Closing Stock was of Rs. 2,33,48, 269/-. In the Audited Accounts for A.Y. 2012- 13, which is prior to the date of survey, Closing Stock has been shown equivalent to the amount declared in ORIEL Software. The ld. Counsel for the assessee took through all these details available in the paper book on pages no. 30 to 50. Thus we are satisfied that excess stock has been worked out by the ld. Assessing Officer on the basis of an erroneous mathematical exercise. This stock has been worked out not on account of

particular items, rather on account of valuation difference, which has been worked out by appreciating two different Softwares for the purpose of book stock, vis-a-vis actual stock and if some exercise is being carried out in this manner, then difference is bound to happen. The ld. Assessing Officer failed to appreciate this aspect during the assessment proceedings, when it was duly explained by the assessee. We have made reference to Closing Stock for A.Y. 2012- 13 simply for the reason that these details are not being put up before us as a consequence to the survey, rather these details were put up before the Revenue prior to the survey. Therefore, in our opinion, addition is not sustainable. We allow this ground of appeal and delete the addition of Rs. 44, 06, 108/- made to the income of the assessee on account of unexplained excess stock.

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

Order pronounced in the open Court on September 30, 2022.

Sd/-

Sd/-

(Rajesh Kumar)
Accountant Member

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 30th day of September, 2022

- Copies to :*
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Circle-44, Kolkata,
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 - (3) Commissioner of Income Tax (Appeals)-13 , Kolkata;*
 - (4) Commissioner of Income Tax- , Kolkata;*
 - (5) The Departmental Representative*
 - (6) Guard File*

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By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.