

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRICHALLA NAGENDRA PRASAD, JUDICIAL
MEMBER & DR. BRR KUMAR, ACCOUNTANT MEMBER**

ITA No.2143/Del/2023

Assessment Year: 2018-19

DCIT, Central Circle-16, New Delhi	Vs.	Suboli Ice and Cold Storage Pvt. Ltd., 6889-6890, KhariBaoli, Sadar Bazar, Delhi-1100 06
PAN :AAOCS5884R		
(Appellant)		(Respondent)

Cross-Objection No.100/Del/2023

(In ITA No. 2143/Del/2023)

Assessment Year: 2018-19

Suboli Ice and Cold Storage Pvt. Ltd., 6889- 6890, KhariBaoli, Sadar Bazar, Delhi-1100 06	Vs.	DCIT, Central Circle-16, New Delhi
PAN :AAOCS5884R		
(Appellant)		(Respondent)

Department by	Miss Amisha Gupta, CIT-DR
Assessee by	ShriMohit Gupta, CA

Date of hearing	30.01.2024
Date of pronouncement	08.02.2024

ORDER**PERCHALLA NAGENDRA PRASAD: JUDICIAL MEMBER:**

The appeal and cross-objection are filed by the Revenue and assessee respectively against the order of learned Commissioner of Income-Tax (Appeals)-26, New Delhi dated 15.05.2023 for the assessment year 2018-19.

2. The Revenue in its appeal has raised the following grounds of appeal:

1. Whether on facts of the case and in law, the Ld. CIT(A) has erred in holding that the assessee has given various documents details of the 8 parties, without appreciating the fact that none of the 8 parties appeared before the Department to confirm that the stock belonged to them.

2. Whether on facts of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.54,10,76,600/- even when he did not verify these parties himself during appeal proceedings, nor gave an opportunity to the AO to examine these 8 parties during the remand proceedings.

3. Whether on facts of the case and in law, the Ld. CIT(A) has erred in accepting the ledgers provided by the assessee of the 8 parties, without appreciating the primary fact that neither did the 8 parties give any confirmation before the A.O, nor could the assessee provide satisfactory details required for making the inquiries during the assessment proceedings.

4. Whether on facts of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.54,10,76,600/- even when the facts show that these 8 parties were not paying any rent through

banking channel, nor could the assessee prove that the stock belonged to these 8 parties.

3. Briefly stated, the facts are that the assessee which is in the business of running cold storage facility, filed its return of income on 26.10.2018 declaring loss of Rs.10,29,061/-. Pursuant to the search operation under Section 132 of the Income-Tax Act,1961 carried on in the case of Rakesh Jain Group on 01.11.2017 there was a survey under Section 133A of the Act in the premises of the assessee including its cold storage facility. During post survey inquiries, the assessee submitted list of 166 entities who regularly maintained the stock in the cold storage to the Investigation Wing. In the course of assessment proceedings pursuant to the survey, summon were issued to the 166 parties to furnish their month-wise, item-wise sales, purchases and stock details. It appears that the data in the register which was impounded was digitized and found that out of 166 parties, namely, only 88 parties were appearing in the register which impounded during the survey. Out of 88 parties, compliance was made only by 59 entities/parties. Summons were returned back from 18 entities and 11 entities did not make any compliance in response to the summons. The assessee was required to furnish further details, like PAN numbers,

names of promoters, bank details etc. of the parties in whose case summons had returned back so that the parties could be identified by the Investigation Wing.

4. In the course of assessment proceedings, a detailed show cause notice was issued to the assessee to furnish supporting evidences, details to establish the genuineness of the parties along with names and addresses from whom the summons were returned back. In response to the show cause notice, the assessee submitted chart showing reconciliation of transactions appearing in the impounded material to the books of accounts of the assessee company. The assessee further furnished copies of ledger that payments against storage charges were received through banking channels in respect of 10 parties out of 18 parties, therefore, the Assessing Officer accepted the transactions with the said 10 parties as genuine. However, with regard to the remaining 8 parties which are stated in the assessment order, the Assessing Officer treated the stock found mentioned against the said 8 parties as belonging to the assessee for the reasons that the parties have paid storage charges in cash and no evidence was furnished to prove the stock belonged to them:

S. Name of the Entity
No.

1. A J Impex
2. G M Trading Co.
3. Garg Store
4. Shree Ganpati Trading Co.
5. Galaxy Corporation
6. N R Enterprises
7. Raj Trading Co.
8. Salasar Enterprise

5. The Assessing Officer valued the stock taking the rates prevailing as on the date of survey and made an addition of Rs.54,10,76,600/- as an unexplained investment of the assessee under Section 69 of the Act. The assessee preferred an appeal before the learned Commissioner of Income-Tax (Appeals) and made an elaborate submissions and evidences contending that the assessee is only providing cold-storage facility to the customers, the stock appearing against the 8 parties does not belong to the assessee, as on the date of survey most of the stocks appearing against those 8 parties were already dispatched from cold-storage to the parties, the

transactions with the said parties cannot be disbelieved simply because the assessee has received charges in cash from those 8 parties. The learned CIT (Appeals) called for the remand report from the Assessing Officer and after considering the remand report deleted the addition against which the Revenue is in appeal.

6. The learned Departmental Representative supporting the order of the Assessing Officer submitted that the assessee has not provided evidences to prove that the stock belongs only to those 8 parties. The learned Departmental Representative submitted that in the absence of adequate evidences furnished by the assessee, the Assessing Officer has rightly considered the stocks held in the names of those 8 parties as an unexplained stocks of the assessee.

7. On the other hand, learned counsel for the assessee submitted that the assessee company is providing only cold storage services and collects "storage charges" from customers who desires to put its goods in the cold storage facility maintained by the assessee company. The assessee company is only a custodian of the goods received by it for storing the goods in under cold storage environment facility. The sale of such goods lying at the cold storage is the sole prerogative of such

customer to whom such goods belongs to. Learned counsel submitted that to illustrate, the services of the assessee company may be equated with the Storage facility available CloakRooms/LuggageRooms Railway/Metros/Airports/Gymnasiums, etc. for keeping the goods for a certain duration by paying the rent to the owner of such storage facility. Accordingly, the assessee is only entitled for storage charges for the period its cold storage facilities has been utilized by such other parties for storing their goods.

8. Learned counsel submits that a survey action was conducted on the assessee's business premises on 02-11-2017. During the course of survey nothing incriminating was found and no evidences of out of books sales, purchases and/or stock were found which is otherwise also a matter of record as the assessee being only a service provided namely " cold storage facility". The income in the form of cold storages charges is booked by the assessee when the complete lot of material is handed over to the party. The same is duly accounted for by the assessee on year to year basis.

9. Ld. Counsel submits that in the impugned assessment order (Page Nos. 26- 87), the Ld. Assessing Officer has treated the stock of few parties which belongs to such parties as coming to the assessee totally on his whims and fancies that too without appreciating the real facts and business model of the assessee. Learned counsel submits that the only reason advanced in the impugned assessment order for making such a huge arbitrary and baseless addition is that the payment were made by such parties in cash.Ld. Assessing Officer has failed to appreciate the fact and documentary evidences filed by the assessee such as the GST registration, ledger accounts and import documents furnished by such parties evidencing that the goods were directly procured by such parties.

10. Learned counsel submits that the very premise of treating the 3rd party stock as the stock of the assessee is prima facie erroneous and objected in toto. However, even otherwise and without prejudice to the above, the additions and basis of making such additions is totally faulty and highlights the extent of sheer arbitrariness, adhocism and bias. Learned counsel submitted that perusal of the impugnedas tt. order divulges the following facts :-

(i) That the Ld. Assessing Officer has erroneously treated the stock lying at the premises of the assessee in his cold storage facility which solely belongs to such parties" as stock of the assessee.

(ii) That the value of the erroneous stock has been adopted in air without any basis. However, it is immaterial since the assessee is aggrieved on the very premise of addition as the stock doesn't belongs to the assessee. The assessee is only a custodian for a limited period of storage of good in cold chain facility.

(iii) That the product mentioned in the table forming part of the impugned asstt. order have been wrongly taken by the assessing officer.

(iv) That most of stock pertaining to "such parties" have already been taken away by such parties much before the date of survey/ even much before 01-04-2017 and thus it remained unascertained as to on what basis, the Ld. Assessing Officer has treated the stock of clients/customers as stock belonging to the assessee.

11. Learned counsel submitted that during the course of asstt. and appellate proceedings, the assessee has submitted copies of GST registration certificates, import documentation on sample basis to substantiate that the goods belong to such parties only. Also submitted complete copies of evidences showing the movement in and out of goods received from customers, income booked with inward receipts, outward gate passes, income invoices, linking with impounded material etc. evidencing that the goods belongs to such parties and the assessee is merely acting as a custodian in lieu of its cold storage charges receivable from such parties. Therefore, learned counsel

submits that it is grossly incorrect to state that such storage facility owner, in the instant case, the assessee company, i.e., M/s. Suboli Ice & Cold Storage P. Ltd. has any rights to sale the goods which actually belongs to other parties who have utilized the storage facilities for a certain period of time. Learned counsel submitted that the assessee is only entitled for storage charges for the period its cold storage facilities has been utilized by such other parties for storing their goods. In view of the above factual position, there is no question whatsoever of treating the said stock belonging to the assessee. Moreover, as a fact of the matter, during the course of survey, no documents were found suggesting any out of book sale or purchase. Rather during the course of survey, inward and outward registers were impounded evidencing that the goods were only kept as a custodian while providing cold storage facility to the customers.

12. Learned counsel placed reliance on the judgment of *Hon'ble Allahabad HC in case of Commissioner of Income-tax, Kanpur v. KesarwaniSheetalaya [2019] 110 taxmann.com 415 (Allahabad)* wherein it was held that where there is no categorical finding of evidence of purchase, sales or unaccounted stock belonging to the

assessee during the course of search or survey was found or established, there was no justification for the authorities to make or confirm the addition treating the stock of the 3rd parties as stock of the assessee in cold storage business.

13. The learned counsel for the assessee further submits that the learned CIT (Appeals) remanded the matter for the comments of the Assessing Officer and in the course of remand proceedings, the assessee has furnished complete details of stock in respect of the 8 parties and the copies of evidences showing the moment of stock into the cold storage and stock out from the cold storage which was received from the customers along with the income booked with inward receipts, outward gate passes linking with the impounded material etc. to show that the goods belong to those parties only and the assessee is merely acting as a custodian. Learned counsel further submits that the assessee also furnished the import bills of the parties for the stock stored by them in the cold storage belong to the assessee. Learned counsel submits that the learned CIT (Appeals) considering the remand report and also the rebuttal to the remand report rightly deleted the addition as the stocks belong only to the parties and the

assessee is only a custodian of the stocks which were placed in the cold storage of the assessee for which the assessee earned only cold storage charges.

14. We have heard the rival contentions, perused the orders of the authorities below and the material placed before us.

15. In this case, the assessment was made by the Assessing Officer based on the books impounded in the course of survey wherein the Assessing Officer noticed that the assessee has not proved the genuineness of the transactions with 8 parties made as reflected in the assessment order. The Assessing Officer was of the view that the stocks stored by those 8 parties in the cold storage of the assessee belong only to the assessee for the reasons that the assessee has received cold storage charges only by cash and the assessee could not properly explain the stocks stored in the names of those 8 parties.

16. In the course of appellate proceedings, the assessee furnished various evidences and the learned CIT (Appeals) called for the remand report and based on the evidences, submissions and remand report and the rejoinder filed by the assessee, the addition made was deleted. The evidences on record, suggests that the assessee company is providing

only cold storage services and collects storage charges from the customers who desired to store their goods in the cold storage facility maintained by the assessee company. The assessee is only a custodian of the goods received by it for storing in its storage. The sale of such goods lying at the cold storage is the sole prerogative of such parties to whom such goods belong to. The assessee is only a custodian of the goods storage in its cold storage facility like clock room, luggage room at railway stations/metros/airports etc. for keeping the goods. The assessee is only entitled for storage charges for the period the goods stored in the cold storage. In the course of proceedings before the Assessing Officer, the assessee furnished documentary evidences such as GST registration, ledger account and import documents of the parties evidencing that the goods were directly procured by the parties and stored in the cold storage belonging to the assessee. However, the Assessing Officer ignored all these evidences and disbelieved that the transactions with the said 8 parties are not genuine merely because the assessee received storage charges in cash. Wherever the storage charges are received through cheques (11 parties out of 18) the Assessing Officer treated those transactions. However, Assessing

Officer as genuine transactions and rejected the contentions of the assessee in respect of those parties wherever the assessee received storage charges in cash. The evidences placed on record, suggests that the goods were imported directly by the parties as is evident from the copies of shipping bills, customers bills etc.

17. Furthermore, we notice that the material impounded in the course of survey on 01.11.2017 also contains copies of inward and outward ledger showing the moments of goods in and goods out belonging to the parties. Evidences also contain to gate passes for goods in and goods out which are all recorded in the names of the parties only. It is not in dispute that the income received from the parties in the form of cold storage charges is recorded as income by the assessee. It is also noticed that as on the date of survey i.e. 02.11.2017, most of the stocks belonging to these 8 parties, were in fact, dispatched to the parties and the details are as under:

PARTY NAME	RECT NO.	DATE	ITEM NAME	LOT NO.	QUANTITY IN	QUANTITY UNIT	GATE PASS NO.	DATE OUT	QUANTITY OUT	Balance	Available Qty as on Date 02.11.2017	Reference in Impounded Material	Income Already offered in F.Y. 15-16	Income Already offered in F.Y. 16-17	Income Already offered in F.Y. 17-18
G.M TRADING CO	2145	19.04.2015	ANJEER	6265	16	BOX	10681	27.04.2015	2	14					
							12279	25.09.2015	1	13					
							13563	16.11.2015	3	30					
							19228	31.01.2017	10	0					
					16			16		0	A4-4/A10-43		Invoice No. 450		
N.R ENTERPRISES	2250	18.07.2015	KISHMISH	671R	41	PETI	13145	12.10.2015	1	40.00					
							13624	23.11.2015	1	39.00					
							15022	14.02.2016	1	38.00					
							17053	08.08.2016	1	37.00					
							18959	11.01.2017	1	36.00					
						41		19015	16.01.2017	36	0.00				
					107			41		0	A4-18/A10-224		Invoice No. 433		
SARG STORE	2231	17.10.2017	BEERA	2344S	102	KATTA	4966	25.10.2017	50	52					
							524	28.10.2017	30	22					
							1031	22.12.2017	22	0					
					107			107		22	A9-18		Invoice No. 1256		
GALAXY CORPORATION	1011	04.09.2017	OHARIA DAAL	10816	80.00	BAG	412	25.09.2017	10.00	70					
							418	26.09.2017	25.00	45					
							491	03.10.2017	10.00	35					
							517	05.10.2017	15.00	20					
							607	12.10.2017	5.00	15					
							628	14.10.17	10.00	5					
						80.00		638	02/11/17	3.00	2				
					80.00		20808	03/04/22	2.00	0					
					80.00				80.00		5	A8-42/A6-21			
A.J. INDIA	2435	16.10.2015	ANJEER	7228	60.00	PETI	13419	26.10.2015	4.00	56.00					
							13666	28.10.2015	8.00	48.00					
							13827	16.11.2015	4.00	44.00					
							13714	17.11.2015	12.00	32.00					
							13727	18.11.2015	6.00	26.00					
							13764	19.11.2015	15.00	11.00					
							13781	20.11.2015	11.00	0.00					
									2.00		0	A4-32			
					5.00	BOX	1455	21.10.2013	3.00	0					
							1972	20.11.2013	3.00	0					
											0	A5-46			
REAL TRADING COMPANY	568106	10-2013	ANJEER	1413	5.00	BOX									

Note
(The sample inward receipts, gate passes, impounded material , invoices issued and import bills provided by clients are enclosed herewith).

18. Learned CIT (Appeals) considering all these evidences has rightly deleted the addition observing as under:

7.1 I have considered the submission filed by the appellant and the material available on record. The appellant is providing cold storage services and charges “storage charges” from customers who desires to put its goods in the cold storage facility. The appellant company ,^Sonly a custodian of the goods received by it for storing the same under cold storage environment facility. The sale of such goods lying at the cold storage is the sole prerogative of such customer to whom such goods belong to. Considering the facts of the ease and submissions made by the appellant following observations/findings can be made:

- i. It is apparent from the perusal of the impounded documents and submissions made by the appellant that most of stock pertaining to “8 parties” have already been taken away by such parties much before the date of survey/ even much before 01.04.2017 i.e. prior to the relevant F.Y. 2017-18.
- ii. During the course of assessment proceedings, the appellant has submitted details of these 8 parties such as their address, GST/VAT Nos, PAN No, TIN Number, Purchase Import Bills etc. w-hieh were also part of the impounded documents.
- iii. Thus, all the 8 parties in the name of which the goods were kept in the cold storage were having GST Registration numbers, PAN and in some cases import bills/ purchase bills and the same were impounded during the course of survey proceedings also showing their complete details.
- iv. The appellant asscessee has recorded all the cash receipts in the regular books of account which were received as rent for keeping goods in the cold storage.
- v. No evidence was gathered or found during the course of survey proceedings or assessment proceedings which shows that these goods kept in the names of alleged 8 parties were kept and sold by the appellant and any monetary transactions were done by the appellant on their behalf.

vi. The registers maintained and the documents in support of the claim submitted by the appellant clearly shows that the goods kept in the cold storage pertains to these parties and by some of the parties imports were also made from outside India however, no effort was made for physical verification of the existence of these parties.

vii. Since many of the purchase/import bills were available on record the same could have been also verified from the banks through which payments were either made or received for such transactions by these 8 parties.

viii During the course of survey nothing incriminating was found and no evidence of out of books sales, purchases and/or stock were found.

Thus, it is apparent that during the course of survey operation documents of VAT/GST profile, import documents evidencing import of goods, copies of inward and outward registers suggesting movement of goods from and to such party evidencing that the goods were directly procured by such party and only kept with the appellant for cold storage purposes. The copies of cold storage bills issued by the appellant to the party have also been impounded and produced. Accordingly, the genuineness and veracity of the party cannot be doubted merely because the cold storage rent was received in cash. Further the assessing officer has no, pointed out, any adverse finding regarding sale of stocks kept in the cold storage by the appellant or keeping the books in the name of Benami parties. The AO has added the sum of Rs. 54,10,76,600/-, by mentioning that the appellant has received the rent in cash and failed to furnish the supportive evidence to establish the genuineness of these parties. The assessment records is also perused and it is found that the appellant response to show cause notice has filed the reply on 02.06.2021 wherein ledger of all the parties as per books were submitted. Further, in reply to final show cause notice also, the appellant has submitted all the details as asked by the A.O. The AO did not make any further effort to get the details of these parties either from the GST Dept, Income Tax Dept., from the banks or through the held enquiry. Thus, it is found that the conclusion drawn by the assessing officer is purely based on suspicion. He had all the materials before him to make further conclusive enquiry but he did not.

7.3 In view of the above facts, it is held that the A.O. has **wrongly** concluded that the appellant was the owner of the stock/ goods kept in the names of 8 parties in spite of the fact that all the relevant

documents were submitted during the course of assessment proceedings and most of the stocks were out from the cold storage even prior to the relevant financial year. Thus, the addition was made by the assessing officer primarily based on suspicion and hence not found to be sustainable. Therefore, the addition of Rs.54,10,76,600/- made by the A.O. is deleted. Accordingly, these grounds of appeal filed by the appellant is allowed.”

19. The Revenue before us, could not rebut any of the findings of the learned CIT (Appeals). In the circumstances, we do not see any valid reason to interfere with the findings and the decisions of the learned CIT (Appeals) in holding that the stocks which were valued by the Assessing Officer belong only to those 8 third-parties and the stock does not belong to the assessee and, therefore, the addition made as unexplained stock is not warranted. Accordingly, we sustain the order of the learned CIT (Appeals) and reject the grounds raised by the Revenue.

20. The cross-objection filed by the assessee is only in support of the order of the learned CIT (Appeals). Since, the order of the learned CIT (Appeals) is sustained, the cross-objection filed by the assessee becomes infructuous.

21. In the result, the appeal of the Revenue and cross-objection filed by the assessee are dismissed.

Order pronounced in the open court on 08/02/2024.

Sd/-

Sd/-

(DR.BRR KUMAR)
ACCOUNTANT MEMBER

(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER

Dated: 08th February,2024.

Mohan Lal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi