

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'C' : NEW DELHI)**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
and
SHRI ANADI N MISHRA, ACCOUNTANT MEMBER**

**ITA No.6440/Del./2015
(ASSESSMENT YEAR : 2011-12)**

ACIT, Circle 2, vs. M/s. Pragati Prakashan,
Meerut. 240, Western Kutchery Road,
Meerut.

(PAN : AAFFP7627K)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri V. Raja Kumar, Advocate
REVENUE BY : Shri Amrit Lal, Senior DR

Date of Hearing : 20.10.2016

Date of Order : 28.10.2016

ORDER

PER ANADI N MISHRA :

The Appellant, Assistant Commissioner of Income Tax, Circle – 2, Meerut (hereinafter referred to as 'Revenue') has filed this appeal on the following grounds:-

“1. Whether in the facts and circumstances of the case, the Id. Commissioner of Income tax (Appeals) has erred in law and fact in deleting the addition of Rs.51,08,322/- made by the A.O. on account or inflated consumption of paper without considering the fact that the said figure was arrived at by the A.O. on the basis of rates of paper prevailing during the year under consideration as the books of accounts had been rejected by the A.O. u/s

145(3) of the I.T. Act. 1961, since the stock register and other quantitative details had not been mentioned by the assessee in the absence of which neither the turnover of the assessee nor the purchases and material consumed were verifiable.

2. Whether in the facts and circumstances of the case, the Id. Commissioner of Income tax (Appeals) has erred in law and fact in accepting the method of accounting employed by the assessee and restoring back the books of accounts rejected by the A.O. without providing an opportunity to the AO to explain his action of rejecting the books of account on the, mere presumption that the sales and Gross Profit yielded in the year under consideration were better than the preceding years.

3. Whether in the facts and circumstances of the case, the order of the Id. Commissioner of Income tax (Appeals) may be set aside and that of the AO be restored.

4. That the appellant craves leave to add, modify and or delete any ground(s) of appeal.”

2. The assessee is in the business of publication of books. The assessee showed gross profit of Rs.1,02,67,771/- on total turnover of Rs.4,19,28,950/- at gross profit rate of 24.49%. The net profit was shown at Rs.18,91,668/- at net profit rate of 4.51%. The Assessing Officer was of the opinion that the profit was very low. He rejected the books of accounts of the assessee under section 145(3) of the Income-tax Act, 1961 (for short ‘the Act’) giving the following reasons :-

“ The accounts as maintained by the assessee are such from which true income and profit could not be

deduced or ascertained and the same are liable for rejection under the provisions of section 145(3) of the Income Tax Act, 1961 for estimating the turnover as well as profit earned thereupon is liable to be brought to the purview of tax. Similarly in para 28(a) of Form 3CD, the tax auditors have categorically held that *"it has been told by the assessee due to complexity of trade, it is not possible for us to maintain stock register."*

Similarly, in para 32 for calculating the accounting ratio information in sub para (d) material consumed/finished goods produced were stated as "Not Applicable".

From the above it is very clear that neither the turnover of the assessee nor the purchases and material consumed was ascertaining or verifiable nor was the assessee able to get any verification done for purchase or the consumption for which the main raw material was paper. Similarly, in the absence of quantitative details the stock inventories shown by the assessee could not be of verifiable nature and the correctness of the same remained unexplained and totally unverifiable. On the other hand,

The business results as shown by the assessee in its P&L A/c are not at all ascertainable, verifiable or acceptable specially in view of the facts that no quantitative details have been maintained or furnished which is a mandatory requirement not only under the Company Law but also under LT. Act, and the same renders entire books of account liable for rejection under section 145(3) of the LT. Act as the book results are not at all verifiable or ascertainable or can be deduced from the same."

He made estimated addition of Rs.51,08,332 holding this amount to be inflated consumption of paper. The Id. CIT (A) deleted this addition vide order dated 17.09.2015. Revenue is now in appeal before us against the order of the Id. CIT (A).

3. When the matter came up for hearing, at the outset, the Id. Departmental Representative appearing for Revenue while relying on order of Assessing Officer; however, fairly admitted that the issue was covered in favour of assessee and against Revenue by order of Income Tax Appellate Tribunal (for short 'the Tribunal') in the case of the same assessee for Assessment Year 2008-09. He also drew our attention to para 6.1 of the order dated 17.09.2015 of Id. CIT (A) wherein the Id. CIT (A) deleted the addition made by the Assessing Officer by following order of the Tribunal in the case of the assessee for Assessment Year 2008-09. For the sake of convenience and ready reference, para 6.1 of the appellate order dated 17.09.2015 of Id. CIT (A) is reproduced below :-

“6.1 Decision and Reasons:

During the appeal proceedings, AR of the Appellant filed a copy of ITAT Order in its own case passed in ITA No. 2836/Del/2013 on 14/08/2015 by 'F' Bench of Delhi ITAT for A.Y. 2008-09 in which ITAT has deleted the addition and held the action of Ld. CIT Meerut invoking the powers under section 263 of the Act on identical facts. Copy of ITAT order is placed on file. IT AT has categorically held as under:-

" Para 7.2 On the other hand the books of accounts have been rejected by the Ld. CIT without pointing out any error or defect in the books of account. The G.P. rate shown by the assessee is not low and even if it is low, it cannot be a ground for rejecting the books of accounts.

The only ground shown by the Ld. CIT is that the assessee is not maintain stock register, for rejection of books of accounts. Non-maintenance of quantitative details, were held as sufficient cause for rejection of books of accounts.

The assessee submits that this entire printing job is outsourced and he supplies paper to them as per the requirement and they maintain quantitative details and other records and under such circumstances he need not maintain stock registers. this explanation in our view is not acceptable. When paper is supplied the quantitative details have to be maintained as to the purchases, the persons to whom it is supplied etc. similarly when printing books are received, stock registers have to be maintained. But in every case of non maintenance of stock registers or quantitative details don't necessarily mean that books of accounts are to be rejected as not reliable. Courts have held that the situation has to be evaluated on the facts and circumstances of each case.

Para 7. 3 While holding so, we are unable to uphold the finding of Id. CIT that an addition on account of inflated consumption of paper have to be made. The entire addition in this case has been made by the Ld. CIT, on presumptions, conjectures and surmises. She has assumed the size and weight of paper per ream of 500 sheets as well as the rate and quality of the paper. There is no basis for the conclusions that one sheet of 23 x 36 paper makes 16 book pages of normal size etc. she based her conclusion on the market rates of paper and estimated the consumption of paper based on the size of the sheet of paper, which is used for printing of books. She also expressed her doubt as to whether sales are credited at selling price or at discounted rate which as per her is' a normal feature of this trade. Such doubts and suspicion cannot be a basis for making additions to income. While estimating the addition on account of inflated consumption of paper at Rs.75 lakhs, the Ld. CIT reduced the income declared by the assessee instead of adding the same. This means that Lt. CIT estimated the income of the assessee at Rs. 75 Lakhs, which is guess work. We are unable to appreciate these workings and estimations in the absence of any details or evidences based on which the conclusions are arrived at. Income of the assessee cannot be determined in such a manner. Thus this revision made by Ld. CIT has to fail and the addition of Rs.60,91,970 /- is to be deleted."

Further assessee filed the written submission along with copies of audited balance she, copies of sale/ purchase bills etc.

Facts of the assessment year 2008-09 and year under appeal are the same. In the A.Y. 2008-09 Ld. CIT by

invoking the powers under section 263 made the addition of Rs.75 Lacs on inflated purchases and same working has been made by the assessing officer in the year under appeal.

Assessing officer failed to observe the facts of the case as described by assessee. Assessing officer only made the addition on guess work and even not confronted the material from where he picked the figures to worked out the inflated purchases. Assessee submitted the copies of bills and demonstrated the working of business of assessee and same was accepted from past and there is no change in the business activity of the assessee. Even if assessing officer was not satisfied with the details / books of Assessee, he could have estimated the profit on the basis of previous year's profits, which is not done by the assessing officer and even there is no abnormal variation in the profits as mentioned above.

In the case of Shyam Bidi Works v. Commissioner of Income-tax, Central Kanpur (2015) 367 ITR 511 Hon'ble Allahabad High Court has held that Profits estimated in previous years is a safe guide for estimation of profits for assessment year in question for estimating turnover since business activity conducted by assessee remains same. It is also a point of consideration that if the A.O had rejected books of Account he should have estimated the Gross profit of the Assessee on the basis of earlier accepted trading results or could have drawn comparable cases and estimated profit, but strangely he chose to do workings on inflated purchases by relying on the findings of the order u/s 263 in the preceding year. Since, on the same facts, for the A.Y. 2008-09, Hon' ble Delhi ITAT has allowed the appeal of the assessee and cancelled the order of Id. CIT, Meerut passed u/s 263 of the Act (supra), hence addition of Rs.51,08,332/- made by assessing officer is hereby deleted."

3.1 The Id. Authorized Representative of the assessee supported the order of Id. CIT (A) and relied on it.

4. We have heard both sides and have also perused the materials on record. Perusal of para 5.1 of the appellate order dated 17.09.2015 of Id. CIT (A) shows that he has given detailed

reasons for disapproving the rejection of book results. Ld. CIT (A) has also noted that in the year under consideration, the sales of the gross profit are better than the preceding years. Further, in para 6.1 of the appellate order dated 17.09.2015, earlier reproduced in this order; the Id. CIT (A) has deleted the addition based on order of the Tribunal in the case of the assessee for Assessment Year 2008-09, on same facts. The Id. DR appearing for Revenue also admitted that the matter is covered by the order of the Tribunal in the case of the assessee for the Assessment Year 2008-09. The Id. Departmental Representative has not brought out any infirmity in the order of Id. CIT (A). In these facts and circumstances, and following the precedent of coordinate Bench of the Tribunal in assessee's own case in ITA No.2836/Del/2013 (order dated 14.08.2015 passed by 'F' Bench of Delhi, ITAT), we uphold the order passed by the Id. CIT (A) and dismiss the grounds of appeal filed by Revenue.

5. In the result, the appeal filed by Revenue is dismissed.

Order pronounced in open court on this 28th day of October, 2016.

**Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER**

**sd/-
(ANADI N MISHRA)
ACCOUNTANT MEMBER**

Dated the 28th day of October, 2016/TS

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), Meerut.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.