

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER

ITA No.2614/Mum/2016  
(Assessment Year 2009-10)  
ITA No.2615/Mum/2016  
(Assessment Year 2011-12)

M/s. Alkarim Scrap Traders Pvt. Ltd.,  
204, Quay Street, Darukhana,  
Mumbai .  
PAN: AAECA 1442P

..... Appellant

Vs.

The Income Tax Officer 6(1)(1),  
Mumbai.

.... Respondent

Appellant by : None  
Respondent by : Shri S.R.Kirtane

Date of hearing : 28/11/2016  
Date of pronouncement : 30/11/2016

**ORDER**

Both the appeals relate to the same assessee involving a common issue for assessment years 2009-10 and 2011-12 and accordingly, they have been consolidated and heard together for the sake of convenience and brevity.

2. These appeals are directed against separate orders passed by CIT(A)-12, Mumbai dated 13/01/2016 and 11/01/2016, which in turn, arise out of two orders passed by the Assessing Officer for assessment years 2009-10 and 2011-12 under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short 'the Act') dated 18/02/2015 and 24/2/2014 respectively.

3. The only dispute agitated by the assessee in both the assessment years is with regard to the action of the income tax authorities in determining the total income by adopting the G.P. rate of 8% as against the declared gross profits. At the time of hearing, no appearance has been made on behalf of the assessee, but a letter dated 23/11/2016 has been submitted by the appellant company, which reads as under:-

*"I Minaz Mohan Gadhia, Director of above Company, furnish the submission in above case as under:-*

*Asst. Yr. 2009 - 10 & 2011- 12*

*Ld. Assessing Officer has accepted sales turnover & Expenses claimed.*

*Ld. Assessing officer calculated Gross Profit @ 8% on turnover and deducted expenses debited to profit and loss account and derived at total income. During the financial year 2008-09 & 2010-11, your appellant had made, purchases from certain parties whose M.Vat registration No. were subsequently cancelled and purchases could not be proved.*

*Your honour, appellant company is dealer of scrap material of iron and steel Ld. Assessing officer derived GP ratio of 8% on the basis of statistic data as available to him of iron and steel manufacturing industries which has no relation with the GP margin on re-selling of scrap material of iron and steel, wherein 1.5% to 2.5% GP margin is reasonable and acceptable which your appellant has declared.*

*Expecting justice from your honour. Financial condition of your appellant is such that no counsel or advocate can be appointed."*

3.1 On the aforesaid basis, the appeal is being disposed off after considering the above submissions and hearing the Ld. Departmental Representative on merits.

4. In brief, the relevant facts are that assessee was found to have made purchases from certain concerns, which were found to be bogus, and the Assessing Officer invoked the provisions of section 145 of the Act and rejected the book results declared. The Assessing Officer determined the total income

by adopting G.P rate of 8% of the total turnover declared by the assessee as against the G.P rate of 1.48% declared by the assessee for assessment year 2009-10 and 2.36% for assessment year 2011-12. As a consequence, additions of Rs.19,87,938/- and Rs.37,80,128/- have been made to the returned income for the assessment years 2009-10 and 2011-12 respectively. The said additions have since been sustained by the CIT(A), against assessee is further in appeal before the Tribunal.

5. Before me, the only plea raised by the assessee in its written submission is that the G.P rate of 8% adopted by the Assessing Officer is wrong inasmuch as, it relates to Iron & Steel industries, whereas assessee is a dealer/trader of Iron & Steel scrap material. In this manner, it is sought to be pointed out that the G.P.rate declared by the assessee in both the assessment years is reasonable.

6. On the other hand, Ld. Departmental Representative pointed out that the Assessing Officer had justifiable reasons to make the additions inasmuch as the correctness and fairness of the accounts book stood discredited in view of the findings contained in the assessment order, which in any case are not being challenged by the assessee .

7. I have carefully considered the rival submission. Quite clearly, assessee company does not dispute the action of the Assessing Officer in rejecting the books of account and estimating the income for the captioned assessment years. The only point of dispute brought out by the appellant before me is the level of estimation made by the Assessing Officer. It is pointed out that the G.P rate of 8% adopted by the Assessing Officer is on a higher side because the

Assessing Officer has considered the profit rates of businesses, which are engaged in Iron & Steel manufacturing, whereas assessee is merely a dealer/trader of Iron & Steel Scrap. In my considered opinion, the plea of the assessee is very much emerging from the assessment order itself, inasmuch as, the business of the assessee has been regarded as dealer of Iron and Steel. Thus, the Assessing Officer has misdirected himself in adopting the G.P rate @8%. At the same time, it is also quite clear from the assessment order that the unreliability of the book results declared by the assessee stood established and in any case, the same is not being disputed by the assessee. Under these circumstances, the plea of the assessee to determine the income based on the G.P rate declared in the books of account itself is also unjustified and inexplicable. So however, considering the excessive rate of estimation made by the Assessing Officer, I deem it fit and proper to reduce the estimation, and for that matter, it is hereby directed that the G.P rate of 4% be adopted in both the assessment years in order to determine the total income assessable in the hands of the assessee. As a consequence, the respective orders of the CIT(A) are set-aside and the Assessing Officer is directed to recompute the income of the assessee accordingly.

8. In the result, appeals of the assessee are partly allowed, as above.

Order pronounced in the open court on 30/11/2016

Sd/-  
(G.S.PANNU)  
ACCOCUNTANT MEMBER

Mumbai, Dated 30/11/2016  
Vm, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**