IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI

BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER
AND
SH. O.P. KANT, ACCOUNTANT MEMBER

ITA No. 1551/Del/2012
Assessment Year: 2008-09

ACIT, Circle-1, G-Block Shopping Complex, Sector-20, Noida	**Vs.**	M/s. Prisma Electronics, B-14, Phase-II, Noida.
PAN : AAFFP7026A		
(Appellant)		**(Respondent)**

Appellant by	Sh. Ankur Garg, CIT(DR)
Respondent by	Sh. Rohit Jain, Adv. & Ms. Shaily Gupta

Date of hearing	22.08.2016
Date of pronouncement	19.10.2016

ORDER

PER O.P. KANT, A.M.:

This appeal by the Revenue is directed against the order dated 12/01/2012 passed by the learned Commissioner of Income-tax (Appeals), Ghaziabad, for assessment year 2008-09 raising following grounds:

"1. That the learned CIT(A) has erred in law and on facts in deleting the addition of suppressed closing stock-of Rs.40,08,68/- made by the Assessing Officer (AO) after rejecting book results and making due enquiries.

2. That the learned CIT (A) has erred in law and on facts in deleting the addition of Rs.1,01,762/- under the head 'Detention and Demurrage Charges' treating the expense as normal business expenditure as per section 37 of the I.T. Act. The detention and demurrage charges are paid over and above the normal loading and

unloading charges and these penal charges never fall within the ambit of section 37 of the I.T. Act, 1961.

3. That the learned CIT (A) has erred in law and on facts in allowing the deduction u/s 80IB resulting in deletion of Rs.5, 97,794/-, without appreciating the fact that as per provisions of sub clause-(ii) of section 80IB(2) 'Industrial undertaking should not be formed by the transfer to a new business of machinery or plant previously used for any purpose'. The assessee was running the industrial undertaking under a proprietor ship which was converted into partnership on 1.4.2004, resulting in transfer of plant & machinery previously used.

4. That the learned CIT (A) has erred in law and on facts in deleting the trading addition of Rs. 15,69,58,867/- without considering the facts put forth by the AO in the assessment order. In the remand report, the issue was not answered on merit

5. That the learned CIT (A) has erred in law and on facts in accepting the submission that M/s Dixon Technologies (India) Pvt. Ltd.(Dixon) had been awarded contract for supply of 9,00,000 colour televisions(CTVs) and out of said contract appellant was sub-contracted 4.70 lakh CTVs, without appreciating the fact that Dixon is also a partner in assessee firm.

6. That the learned CIT has erred in law and on facts in not appreciating the fact that the Agreement dated 19.9.2007 entered with the Dixon and Prisma Electronics, the assessee, and Hotline Electronics Limited does not have any clause as to on what price the TV sets shall be supplied to Dixon for onward sales to Electronic Corporation of Tamil Nadu (ELCOT) and through which the/ Dixon and assessee used as a means of minimizing the profitability.

7. That the appellant craves leave to, add, alter and amend any of the grounds of appeal on or before hearing.

8. That the order of Ld. CIT (Appeals) being erroneous in law and on facts deserves to be set aside/cancelled and the order of the AO to be restored."

2. The facts in brief of the case are that, the assessee, a partnership firm, was engaged in business of manufacturing of Colour TVs . During relevant period of time, the assessee company had two units i.e. one at

Noida and other at Jammu. The assessee filed return of income on 30/09/2008, declaring total income of Rs.55,81,664/-. The case was selected for scrutiny and notice under section 143(2) of the Income-tax Act, 1961 (in short 'the Act') was issued and served within the stipulated period. In the assessment completed under section 143(3) of the Act, the Assessing Officer made various additions/disallowances. On appeal, the learned Commissioner of Income-tax (Appeals), referred the additional evidences produced by the assessee to the Assessing Officer and after taking into account the comments of the Assessing Officer in remand report as well as the submission and rejoinder of the assessee, allowed relief to the assessee on major issues. Aggrieved, the Revenue is in appeal before the Tribunal raising the grounds as reproduced above.

3. The ground No. 1, is related to the addition towards closing stock of Rs.40,08,683/- stated by the Assessing Officer as suppressed. The Assessing Officer observed that items worth Rs.40,08,683/-, a list of which is produced by the Assessing Officer on page 5 of the assessment order, were purchased in the month of March 2008, however neither the consumption of same was shown, nor the same were included in the closing stock. According to the Assessing Officer, the assessee did not furnish any explanation in respect of the items of Rs.40,08,683/- and thus the assessee had suppressed the value of the closing stock to the tune of Rs.40,08,683/-, accordingly, he made addition to the returned income of the assessee. Before learned Commissioner of Income-tax (Appeals), the assessee contended that all the items referred by the Assessing Officer were duly accounted for in the closing stock declared by the assessee. The assessee furnished additional evidences in this respect which were forwarded by the learned Commissioner of Income-tax(Appeals) to the Assessing Officer. The Assessing Officer after taking into account the additional evidences, sent remand report to the learned

Commissioner of Income-tax (Appeals), in which he admitted that the assessee's contention was appeared to be correct. After taking into account the remand report of the Assessing Officer as well as analyzing submission of the assessee, the learned Commissioner of Income-tax (Appeals) deleted the addition.

3.1 Before us, the learned Commissioner of Income Tax (Departmental Representative) relied on the findings of the Assessing Officer and stated that addition was made by the Assessing Officer after making due enquiries and rejecting book result of the assessee.

3.2 On the other hand, the learned Authorized Representative of the assessee submitted that all details in respect of the items worth Rs. 48,08,683/- were produced before the Assessing Officer and explained that the same were appearing in the closing stock already declared. He further submitted that in the remand report, the assessing officer himself has admitted that the contention of the assessee in respect of the items appearing in closing stock was found to be correct and thereafter filing further appeal on the same issue was not justified. Accordingly, prayed that the finding of the learned Commissioner of Income-tax (Appeals) might be sustained.

3.3 We have heard the rival submissions and perused the relevant material on record. We find that the learned Commissioner of Income-tax (Appeals) forwarded the additional evidences submitted by the assessee and the Assessing Officer was satisfied with the explanation of the assessee. The learned Commissioner of Income-tax (Appeals) has observed on the issue in dispute as under:

> *"3.2.6. After careful consideration of all the facts on record and rival submissions as contained in assessment order and in appellant's submission, my observations/conclusions in respect of Ground of appeal No. 2 , are as under:-*

As can be perused from the above; the A.O. has himself expressed his satisfaction-after verifying the entire details of stock during remand proceedings in the original assessment, the A.O. had observed the discrepancy simply because the issue of stock for Jammu Unit had not been taken into account by the A.O. Now when the full picture has been submitted before A.O.; the A.O. has verified the same and has stated that "…….. the assessee's contention appears to be correct. Your Honour may consider and take a view as per provisions of rule 46A of I.T. Rules……..."

I have also gone though the entire details and submissions and I am fully convinced that the appellant has been able to satisfactorily explain the discrepancies as observed by the A.O. and that there is no suppression in the valuation of closing stock. Therefore, the addition of Rs. 40,08,683/- is hereby deleted."

3.4 The learned Commissioner of Income-tax (Appeals) has also observed that dispute emerged because of the reason that issue of stock of Jammu Unit had not been taken into account by the Assessing Officer at the time of assessment proceedings. We find that in remand proceedings, the Assessing Officer himself has analysed the submission of the assessee and satisfied himself that the items worth Rs.48,08,683/, under reference, were appearing in the closing stock. In our opinion, once the Assessing Officer has himself admitted that there was no understatement of the stock and accordingly on the basis of his comments, the learned Commissioner of Income-tax (Appeals) has allowed relief to the assessee and then subsequently filing further appeal on the same issue is not justified unless any discrepancy or intentional misreporting of facts by the Assessing Officer in remand report is observed. In our opinion, the findings of the learned Commissioner of Income-tax (Appeals) on the issue in dispute is well reasoned, and no interference on our part is required, accordingly, we confirm the finding of

the learned Commissioner of Income-tax (Appeals) on the issue in dispute . The ground of the Revenue is dismissed.

4. The ground No. 2 relates to deletion of addition of Rs.1,01,762/- under the head "Detention and Demurrage Charges"

4.1 The Assessing Officer disallowed the expenses of Rs.1,01,762/- debited under the head "Detention and Demurrage Charges"in the profit and loss account by the assessee, on the ground that same were penal in the nature and the assessee did not offer any explanation in this regard. Before the learned Commissioner of Income-tax (Appeals), the assessee filed details of expenses and submitted that same were contractual payment made to various parties like PAL Road Carriers, Ahuja Road Lines etc., for delay in loading/unloading of material. The learned Commissioner of Income Tax (Appeals) forwarded the additional evidences submitted with assessee, to the Assessing Officer, who after going through the additional evidences and submission of the assessee did not offer any adverse comments. The learned Commissioner of Income-tax (Appeals) after considering the submission of the assessee, remand report and rejoinder of the assessee, deleted the disallowance holding that there is no element of any violation of Statutory Acts or laws.

4.2 Before us, the learned Commissioner of Income Tax (Departmental Representative) relying on the order of the Assessing Officer submitted that the "Detention & Demurrage Charges" were paid over and above the normal loading and unloading charges and same being penal in nature, were not allowable under section 37 of the Act.

4.3 On the other hand, learned Authorized Representative of the assessee, relied on the findings of the learned Commissioner of Income-tax (Appeals) and submitted that detail of expenses was submitted before the learned Commissioner of Income-tax (Appeals), who forwarded the same to the Assessing Officer. He further submitted that in

the remand report, the Assessing Officer did not dispute to the submission of the assessee that the detention and demurrage charges were normal business expenditure.

4.4 We have heard the rival submission and perused the relevant material on record. We find that the assessee has given detail of bills in respect of "Detention and Demurrage Chargesô before the learned Commissioner of Income-tax (Appeals), which are reproduced by the learned Commissioner of Income-tax (Appeals) in the impugned order on page 29 as under:

> *"For example, bill No. 1536 dated 28.05.2007 for Rs.4,200/- raised by M/s. Pal Road Carriers upon Dixon Technologies India Pvt. Ltd. on account of Prisma Electronics, included a sum of Rs.1,000/- paid towards one day detention charges. Similarly, bill no. 1349 dated 01.05.2007 for Rs.8,700/- raised by M/s. Pal Road Carriers upon Dixon Technologies India Pvt. Ltd. on account of Prisma Electronics, included a sum of Rs.5,000 paid towards one day detention charges."*

4.5 The complete detail of the expenditure under reference including invoices raised by the parties were forwarded to the Assessing Officer, who did not dispute the expenses were in violation of the statutory acts or laws and therefore not allowable under section 37 of the Act.

4.6 The learned Commissioner of Income-tax (Appeals) has given his finding on the issue in dispute as in under:

> *"5.2.6. After careful consideration of all the facts on record and rival submissions as contained in assessment order and in appellant's submission, my observations/conclusions in respect of Ground of appeal No.4 , are as under:-*
>
> *On this issue also the appellant has brought on record a copy of invoices raised in respect of "Detention and demurrage charges". The same has been verified by the A.O. and the A.O. has not made any adverse comments in the remand report.*

It is clear from the perusal of the details and submission that these "Detention and demurrage charges" represent contractual charges paid for delay in loading/unloading of material and are part of normal business activities. There is no element of any violation of statutory Acts or Laws. Rather these payments are in the nature of compensation for breach of contractual obligations. Various court's decisions cited by appellant in its submission above squarely favour the view that there is no penal element in this expense.

Hence the addition of Rs. 1,01,762/- is deleted.

(Relief: Rs. 1,01,762/-}"

4.7 In our opinion, the action of the Assessing Officer in filing appeal on the issue which has already been admitted or not objected by him, in remand report, is not justified unless some discrepancy or misreporting of facts on the part of the Assessing Officer is observed. We find that order of the learned Commissioner of Income-tax (Appeals) on the issue in dispute is well reasoned and no interference on our part is required. Accordingly, we uphold the same and the ground of the Revenue is dismissed.

5. The ground No.3 relates to deduction of Rs.5,97,794/- under section 80IB of the Act, which was disallowed by the Assessing Officer, but allowed by the learned Commissioner of Income-tax (Appeals). In the ground, the Revenue has challenged the deletion only on the one reason that converting the proprietorship into a partnership firm resulted into transfer of plant and machinery previously used by the undertaking. The facts in respect of issue in dispute are that the assessee claimed deduction under section 80IB of the Act amounting to the Rs.5,97,794/- pertaining to Jammu Unit. The Assessing Officer disallowed the deduction on the ground that following two conditions of the provisions under section 80IB of the Act were not satisfied by the assessee:

(i) in a case where the industrial undertaking manufactures or produces articles or things, the undertaking employees 10 or

more workers in any manufacturing process carried on with the aid of power or employs 20 workers in manufacturing process carried on without the aid of the power.

(ii) The industrial undertaking is not formed by splitting up, or the reconstruction of a business already in existence or it is not formed by the transfer to a new business of machinery plant previously used for any purpose.

5.1 Before the learned Commissioner of Income-tax(Appeals) the assessee furnished the additional evidences in support of the claim that it satisfied both the conditions. It was explained by the assessee that Labourers were hired through labour contractor and Provident Fund (PF) and Employees State Insurance(ESI) in respect of those labourers were paid by the assessee, which were sufficient proof in support of employing 10 or more workers. In respect of second condition, the assessee submitted that deduction under section 80IB was disallowed in earlier years on this ground but the Tribunal in assessment year 2005-06 and 2006-07 has allowed the issue in favour of the assessee.

5.2 The learned Commissioner of Income-tax (Appeals) forwarded the submission and additional evidences of the assessee to the Assessing Officer and after considering the remand report, and submission and rejoinder of the assessee, the learned Commissioner of Income-tax (Appeals) deleted the disallowance of deduction under section 80IB of the Act.

5.3 Before us, the Revenue has challenged the disallowance only on the second ground that the assessee was running the industrial undertaking under a proprietorship which was converted into partnership on 01/04/2004, which resulted in transfer of plant and machinery previously used and therefore this was in violation of the clause (ii) of

section 80IB(2) of the Act which says that the industrial undertaking should not be formed by transfer to a new business of machinery or plant previously used for any purpose.

5.4 The learned Commissioner of Income-tax (Departmental Representative) relied on the on the findings of the Assessing Officer.

5.5 On the other hand, the learned Authorized Representative of the assessee relying on the finding of the learned Commissioner of Income-tax (Appeals) submitted that issue in dispute in assessment year 2005-06 and 2006-07 has also been decided by the Tribunal and Hon'ble Allahabad High Court in favour of the assessee.

5.6 We have heard the rival submission and perused the relevant material on record. According to the assessee, in the process of converting proprietorship concern into profit partnership firm the entire undertaking has been transferred from the proprietorship concern to the partnership firm and there is no splitting or reconstruction of the business of the undertaking. Whereas, according to the Assessing Officer this conversion of proprietorship concern into partnership amounted to reconstruction of the business of the undertaking. We find that the issue has already been decided in favour of the assessee by the judgment of the jurisdictional High Court reported in (2015) 377 ITR 207 (All). The relevant paragraphs of the judgment are reproduced as under:

> ñ*12. The same principle is applicable in the instant case. Admittedly, the undertaking was in existence since 2002. The proprietorship concern changed into a partnership firm. The benefit under Section 80-IB of the Act is available to the partnership firm and the conditions imposed under Section 80-IB(2)(i) does not come in the way.*
>
> *13. In Commissioner of Income Tax Vs. Bullet International, (2012) 349 ITR (All) a Division Bench of this Court held that the exemption granted to a proprietorship concern, which converted from a proprietorship into a partnership concern was still entitled for exemption under Section 10A of the Act.*

14. In the light of the aforesaid, we hold that the Tribunal was justified in dismissing the appeals of the revenue holding that the assessee was entitled for deduction under Section 80-IB of the Act and was not hit by the provisions of Section 80-IB(2)(i) of the Act. The Tribunal was also justified in holding that upon conversion of the proprietorship concern to a partnership concern there was no transfer of plant and machinery to the partnership firm, inasmuch as there was a transfer of the industrial undertaking as a whole along with its assets and liabilities.

Consequently, for the reasons stated aforesaid, all the appeals fail and are dismissed.

The questions of law as indicated aforesaid are answered accordingly."

5.7 Thus respectfully, following the finding of the Hon'ble jurisdictional High Court, we uphold the finding of the learned Commissioner of Income-tax (Appeals) on the issue in dispute. The ground of the appeal is dismissed.

6. The grounds No. 4, 5 and 6 of the appeal are related to the issue of rejection of books of accounts and estimating gross profit which led to addition of Rs.15,69,58,867/- by the Assessing Officer. This addition has been deleted by the learned Commissioner of Income-tax (Appeals). The facts in brief in respect of issue in dispute are that the Assessing Officer compared the trading results of two units of the assessee with respect to the trading results of immediately preceding year. The Assessing Officer found that in respect of Noida Unit, in immediately preceding year, the gross profit rate of 24% was declared on turnover of Rs.1,01,88,242/-, whereas in the present year gross profit rate of only 1.85% on turnover of Rs.86,47,15,391/- was only shown. In response to the query of the Assessing Officer for explaining the steep decline in gross profit rate, the assessee submitted that in relevant year it got bulk order for Electronics

Corporation of Tamilnadu (ELCOT) and margin was very low in that order. According to the Assessing Officer, the assessee did not produce any documentary evidence in support of decline in gross profit rate except producing the copy of agreement between Dixon Technologies (India) Limited. The Assessing Officer observed that a tender for supply of 30 lacs Colour TV sets was allotted to M/s. Dixon Technologies (India) Limited by Electrics Corporation of Tamil Nadu (ELCOT) and those TVs were to be supplied during the period from 01/12/2007 to 30/09/2008 . The Assessing Officer further observed that agreement was executed on 19/09/2007 between Dixon Technologies India Ltd. and the assessee for supply of Colour TVs to ELCOT but there was neither any clause as to what price the TV sets should be supplied to Dixon Technologies India Ltd. for onward sales to ELCOT, nor any clause as how many TV sets should be supplied. The Assessing Officer further observed the sales of the assessee for the month from December 2007 to March, 2008 and found that sales of only Rs.86,61,331/- were made by the assessee during the period. According to the Assessing Officer, presuming all the sales for the month of December, 2007 to March, 2008, were made to Dixon Technologies India Ltd. for onward sales to ELCOT, the total sales during the year under consideration to ELCOT, were to the tune of Rs.86,61,331/- which constituted only 1% of the total turnover of the Noida Unit of Rs.86,47,15,391/-. In view of these observations, the Assessing Officer concluded that sales to ELCOT could not be the only factor which reduced the gross profit from 24% in last year to 1.85% during the year under consideration. The Assessing Officer referred to the addition of closing stock, and disallowance of deduction under section 80IB of the Act and held that he was not satisfied with the correctness and completeness of the accounts maintained with assessee and accordingly rejected the book results of the assessee and estimated

gross profit rate of 20% on the turnover declared by the assessee, which resulted into addition of Rs.15,69,58,867/-.

6.1 Before the learned Commissioner of Income-tax (Appeals), the assessee made a detailed submission explaining that there was no fall in gross profit rate during the year under consideration as compared to the immediately preceding year. The submission of the assessee had been reproduced by the learned Commissioner of Income-tax (Appeals) in the impugned order. The assessee explained that in the immediately preceding year, out of the total turnover of Rs.1,01,88,242/- the amount of Rs.96,59,400/- was towards job work charges, whereas in the year under consideration job work charges constitutes very small amount and major amount out of turnover of Rs.86,47,15,391/- were sales and, therefore, no comparison of results of year under consideration could have been made with the immediately preceding year. The assessee also challenged rejection of books of accounts only on the ground of low gross profit rate. The relevant submission of the assessee reproduced by the learned Commissioner of Income-tax (Appeals) in the impugned order are as under:

"7.2.2 During appellate proceedings, the counsel of the appellant attended and has made following written submissions vide his letter dated 30-08-2011 as under: -

"During the relevant previous year, the appellant manufactured/assembled bulk television sets on highly subsidized rates for Dixon Technologies India (P) l td. ('Dixon') under a contract from Government of Tamil Nadu, through Electronic Corporation of Tamil Nadu ('ELCOT'), which resulted in fall in the gross profit ratio of the Noida unit from 24% (in AY 2007-08) to 1.85% (in AY 2008-09).

The assessing officer required the appellant to explain why there was a steep fall in gross profit ratio from 24% in assessment year 2007-08 to 1.85% in assessment year 2008-09 in respect of the Noida unit.

In response thereto, it was explained to the assessing officer that Dixon had been awarded tender by ELCOT under which Dixon was required to supply colour televisions in bulk at highly subsidized rates, which resulted in substantial fall in the gross profit rate.

The assessing officer, without appreciating the submission of the appellant, proceeded to reject the books of accounts of the appellant only on the ground that there was substantial fall in the gross profit rate and estimated the income by applying an ad-hoc rate of 20% on turnover of the appellant.

Before dealing with the specific allegations of the assessing officer, it would be relevant to set out the exact nature ef activity undertaken by the appellant hereunder:

No fall in G.P. rate

During the year. Dixon had, out of total contract of supplying 9,00,000 colour televisions (CTV) in bulk received from ELCOT at per unit price of Rs.2,571.64, sub-contracted manufacture of CTV's to the appellant and another company called Hotline Electronics. The appellant was sub-contracted the order of manufacture and supplying 4,70,581 CTV's to Dixon.

It may also be mentioned here that during assessment year 2007-08, the appellant had undertaken manufacturing of CTV's for Dixon on 'job work' basis only, whereunder the appellant received Rs. 95 per set as conversion/ labour charges. Copy of ledger account maintained by the appellant in respect of job work carried out for Dixon for AY 2007-08 has been submitted in submissions dated November 22, 2010, attached herewith at pages 26 to 109 (@63 to 73) of the Paper book-I.

On perusal of the aforesaid, it will kindly be appreciated that in the assessment year 2007-08, the appellant received job charges of Rs.96.59,400, out cf total receipts of Rs. 1,01,88,242 of the Noida Unit.

During the relevant previous year, the appellant manufactured 4,70,581 CTV's on subcontract basis, which were sold to Dixon. The appellant sold CTV's to Dixon at a price of Rs.2,000-2,200 approx per CTV (depending upon the model), which was fixed in such a

manner that after removing the cost of raw material and other direct manufacturing cost, the appellant was left with the agreed margin of Rs.95 per set, as was earned when the appellant manufactured television sets for Dixon on job work basis.

Due to higher volume of business, the appellant, during the relevant previous year, earned substantial profit of Rs. 1,59,84,211 in absolute terms, as compared to profit of Rs.24,47,304/- during the immediately preceding previous year, i.e. an increase of about 653 %.

On perusal of the nature of activity carried out by the appellant, it will kindly be appreciated that a simplistic comparison between the gross profit ratio of assessment year 2007-08 and assessment year 2008-09 in percentage terms would be totally misleading since the business model in the two years was completely different. As explained above, while during the assessment year 2007-08, the appellant had only carried on job work for Dixon, in the year consideration, the appellant manufactured CTV's on sub-contract basis. This is for the simple reason that in the assessment year 2007-08, the appellant had shown job receipts only as income whereas in the year under consideration, the amount received towards sales was shown as income.

Thus, even though the appellant continued to receive the same amount of Rs.95 per CTV as profit, since the denominator during the year under consideration is much larger (being the sales value) as compared to a much smaller denominator in the assessment year 2007-08 (i.e., job receipts), the GP ratio computed by dividing gross profit to total receipts was, for obvious mathematical reasons, not at all comparable, resulting in misleading impression.

To put it simply, in the assessment year 2008-09, year under consideration, GP ratio was derived at by dividing gross profit over total turnover of Rs.86,47,15,391/- a much larger base/denominator, as against smaller base of Rs.1.01 crores in the year year.

On the other hand, there was actually no fall in the gross profit rate during the year under consideration, as explained hereunder:

		Noida Unit
Total CTVs manufactures	(A)	4,70,581
Margin Per CTV	(B)	Rs.95

Total margin	C= (A) X (B)	Rs.4,47,05,195
Gross profit declared	D	Rs.1,59,84
Gross profit ratio	D/CX100	35.75%

On perusal of the aforesaid, it will kindly be appreciated that gross profit rate, in fact, increased to 35.75%, if one were to take the same base as in the immediately preceding assessment year, which is much higher than gross profit rate of 24% declared in the said year.

The Assessing Officer, on the other hand, compared the following fares:

	Noida Unit		**Jammu Unit**	
	F.Y. 2007-08	2006-07	F.Y. 2007-08	2006-07
Sales	86,47,15,391/-	1,01,88,242/-	9,04,75,218/-	4,04,67,454/-
Gross Profit	1,59,84,211/-	24,47,304	83,07,015/-	40,60,915/-
GP Rate	1.85%	24%	9.18%	10.03%

The aforesaid simplistic comparison of the profit rates, without appreciating the business model was bound to give misleading results.

It is thus, respectfully submitted that there was no fall in the gross profit rate as compared to the earlier year.

Independent comparable instance

It is further respectfully submitted that, as stated above, Dixon had sub-contracted a part of the manufacturing activity to an independent third party, viz. M/s Hotline Electronics Ltd. (Hotline) under an agreement dated 19.09.2007, whereunder, Hotline, too, agreed to manufacture televisions for Dixon at a margin/conversion charges of Rs.95 per television. Copies of sample invoices raised by Hotline on Dixon and the detailed calculation of the working of margin of Rs.95 earned by Hotline under the said agreement are placed at pages 408 to 420 of the Paper book - II.

It would, therefore, be appreciated that the assessing officer erred in doubting the genuineness of the arrangement between the appellant and Dixon, which arrangement was also adhered to by an independent third party, viz Hotline. The price charged and the profit

earned by appellant was very much comparable with the price and profit of an independent third party.

Rebuttal of AO's allegation

The assessing officer has, in the assessment order, alleged that during the relevant previous year the gross turnover of the Noida unit of the appellant was Rs.86,47,15,391, whereas the appellant had manufactured television sets worth only Rs. 8 6,61,3 31 /- for ELCOT, which is about 1% of the total turnover of the said Noida unit and, therefore, this factor alone could not have reduced the gross profit from 24% to 1.85% of the total turnover.

In this regard, it is respectfully submitted that the assessing officer failed to appreciate that Dixon had been awarded contract for supply of 9,00,000 CTVôs vide purchase order dated 25.01.2007. Out of the said contract, the appellant was sub-contracted 4.70 lacs CTVôs.

During the year under consideration, the appellant manufactured and supplied CTVôs worth Rs.97,14,40,285.8/-, details whereof is under:

Month	**Amount (In Rs.)**
April	3,90,39,387.31
May	15,86,25,543.5
June	13,74,71,987.8
July	13,51,61,338.2
Aug	11,78,55,368.3
Sep	14,01,50,553.4
Oct	15,47,26,826
Nov	3,98,32,618.05
Dec	86,06,099.54
Jan	3,94,03,166.14
Feb	5,59,657.51
Mar	7,740.07
Total	97,14,40,285.8

The assessing officer, it is respectfully submitted, erred in referring to the subsequent agreement dated 19.09.2007 to hold that the CTV's were to be supplied from December, 2007 to September, 2008.

The assessing officer failed to appreciate that the aforesaid contract was basically extension of the contract by Dixon in view of ELCOT

placing additional order of supplying 4,45,000 CTV's vide purchase order dated 31.07.2008 (refer page 422 of Paper book - II).

As explained hereinabove, the appellant had carried out the aforesaid work of manufacturing CTV's for Dixon/ELCOT since April, 2007. A copy of the consortium agreement dated 15.11.2006 is enclosed herewith at page 405 of the Paper book - II.

The observation of the assessing officer that the appellant manufactured CTV's worth Rs.86,61,331/- only for supply to ELCOT is, therefore, factually incorrect. In that view of the matter, the aforesaid allegation made by the assessing officer is, it is respectfully submitted, devoid of any merit and is based on incorrect appreciation of facts.

Addition made by AO - totally unrealistic

It is further submitted that huge addition of Rs. 15,69,58,867 made by the assessing officer leads to unrealistic figures, which further substantiates the contention of the appellant that the assessing officer has proceeded on totally erroneous basis, as explained hereunder:

As stated above, the appellant sold CTV's to Dixon at a price of Rs.2,000-2,200 approx per CTV (depending upon the model). Dixon, on the other hand, had been awarded contract for supplying 9,00,000 CTV's at per unit price of Rs.2,571.64 vide purchase order dated 25.01.2007, which was further reduced to Rs.2,047 in subsequent purchase order dated 31.07.2008 (refer page 421 of the Paper book - II).

Addition of Rs. 15,69,58,867, made by the assessing officer, on 4,70,581 units supplied by the appellant transforms into per-unit addition of Rs.333.50 (approx.).

If aforesaid addition per unit of Rs.333 is added to sale price of appellant of Rs.2000-2200, it leads to price range of Rs.2,333 -2533, which would be almost equivalent to final price of Rs.2,571,64 awarded to Dixon by Elcot, and infact, much lower than the reduced price of Rs.2,047 as per the purchase order. Meaning thereby, Dixon, after addition of Rs.333, is left with nil/ negative margin, which it far from reality.

The aforesaid calculation also exposes the error in the calculation/ estimations of the assessing officer.

Rejection of books of accounts - legally erroneous

It is further submitted that it is settled law that merely on account of fall in the gross profit, the books of accounts cannot be rejected without pointing out any discrepancy in the books of accounts and/or specifying as to how on the basis of books of accounts maintained by the assessee, it is not possible to correctly deduce taxable profit there from.

Your Honour's kind attention, in this regard, is further invited to the following decisions wherein it has been held that no trading addition can be made on the basis of mere fall in the G.P rate:-

- *The Jodhpur Bench of Tribunal in **ITO vs. Arun Kumar Gupta (2006) 103 TTJ 134 (Jd.)** held that assessing officer having not pointed out any defect in the assessee's books of account and the assessee having explained that the marginal decline in the GP rate was on account of substantial increase in the sales during the year, books of account could not be rejected.*

- *In **Bombay Steel Centre v ITO (1995) 83 Taxman 85(Ahd), (AT**) the assessing officer made an addition to the declared trading results by estimating the sales and applying a G.P. rate of 21% thereon as against rate of 16% shown in the year under consideration and 15.36% declared by the assessee and accepted by the assessing officer in the immediately preceding year. The Tribunal held that the assessee had not maintained day-to-day stock records, but the declared results were supported by regular books of accounts, vouchers and inventory of stock. The addition made in the trading results was deleted by the Tribunal.*

- *The Delhi Bench of Tribunal in **Chandra Timber Traders v DCIT (1996) 54 TTJ 544 (Del)** held that Low profit without any other defect being found in the account books is not a sufficient ground for rejection of accounts.*

- *The Chandigarh Bench of Tribunal in **ITO v Janta Pharmacy (1996) 84 Taxman 38 (Chd) (Mag)** held that books of accounts could not be rejected simply because gross profit*

was slightly low compared to earlier years and inventory had not been prepared when no defects were found in accounts.

- *In **Bhagwati Emporium v ITO: (1995) 80 Taxman 227 (Ahd.)** the assessee carried on business in cloth of different variety and readymade garments on retail basis. The ITO found that cash hook, ledger, purchase register, etc. were duly maintained, but not the stock register. The ITO observed that though it was true that in the business of cloth generally the stock register was not maintained, in the instant case, there was no way to verify the closing stock. The Tribunal observed that it was not possible for the assessee to furnish details of monthly sales of the cloth of each mill. It was impossible to maintain a record of this nature. The failure to furnish those details could not have been a valid ground for rejecting the entire book results particularly when no entry in. the books of account was found to be erroneous, the Tribunal held. The Tribunal held that therefore, addition made by adopting G.P. rate of 15% as against 10.55% disclosed by assessee could not be justified.*

- *In **Smt. Salinderjit Kaur v ITO (1995) 52 TTJ 388 (Chd)** AO noted that the G.P. rate of the assessee has fallen from 21.7% to 15.9% and the assessee is not maintaining day to day production register. AO rejected the book results and made the addition. The Tribunal held that mere non-maintenance of production register cannot lead to rejection of book results of assessee.*

- *The Indore Bench of Tribunal in **Jagdish Oil Mills v ITO (1995) 52 TTJ 102** held that rejection of books on account of low G.P. rate, without disclosing any defect in the books, is not justified.*

- *The Jaipur Bench of Tribunal in **ACIT v Mewar Polytex Pvt. Ltd. (1995) 51 TTJ 698** held that mere low G.P. rate or one irregularity cannot justify rejection of entire books of account particularly when in the past department had never rejected the books of account of the assessee and had finalized the assessments as per book results only. Trading addition deleted as there was no justification for estimating higher turnover or applying higher G.P. rate on the basis of preceding year in changed circumstances.*

- *The Delhi Bench of Tribunal in **Miracle Menthol Distillary v ITO (1993) 46 TTJ 13 (Del)** deleted the additions made by applying higher G.P. rate holding that the additions are based on surmises and conjectures. The Tribunal observed that G.P. rate cannot remain static and is likely to vary from year to year depending on the facts and circumstances prevailing.*

- *The Hyderabad Bench of Tribunal in **Toco Engg. Co. v ITO (1986) 18 ITD 267** held that mere low gross profit rate is not a valid reason for rejecting assessee's book results under proviso to section 145.*

- *In **Arjun Sewing Machine Co. v ITO (1982) 14 TTJ 5 (Jab)** the ITO applied a gross profit rate of 50% to the declared rate of 34%. The Tribunal observed that the ITO was wrong in applying a rate of 50% without any particular defect was not justified.*

- *The Jabalpur Bench of Tribunal in **Banarasidas Bhanot & Sons v ITO f19831 16 TTJ 143** held that when assessee has given valid explanation for fall in profit rate, the addition made by the ITO observing that the rate of profit of the contractor fell by 20% is unjustified and deleted the same.*

- *In **Harlal Hemraj v ITO (1982) 14 TTJ 505 (Jai**) the Tribunal held that occurrence of minor discrepancies in the normal course and fall in profit rate during previous year would not form basis for rejection of trading results.*

- *In **ITO v Arun Oil Industries (1985) 13 ITD 769 (JP)** assessee carried on business of extraction and sale of groundnut oil. ITO rejected accounts of assessee on ground that stock register maintained by it showing yield of oil from groundnut was imaginary, worked out yield of oil at higher percentage than that shown by assessee. The Tribunal observed that no omission, manipulations, etc. was pointed out by ITO nor was there any information on record in respect of other manufacturers regarding purchase, quality, witness, and climate, efficiency of crushing and other relevant variables. The Tribunal held that ITO was not justified in rejecting book results of assessee and making addition on account of alleged shortage of yield of oil.*

- *The Jodhpur Bench of the Tribunal in **ITO v Prakash Chand : (2006) 100 TTJ 639 (JD)** even held that even if stock register is not maintained, that could not be the sole'basis of rejecting the books of accounts. The Tribunal observed that the assessing officer had not pointed out any specific defect in the books of account and he had also not found any inflated purchase or suppressed sales. The Tribunal held that mere non-maintenance of stock register cannot be a basis of rejecting the books of accounts. The assessing officer having not pointed out any specific defect in the assessee's books of account, there was no basis for rejecting the books of account and applying a higher GP rate without citing any comparable case, the Tribunal held.*

- *In **Keystone India (P) Limited V. DCIT: 99 TTJ 386 (Ahd.)** the Tribunal held that the AO having not pointed out any specific defects in the maintenance of books of account by the assessee, rejection of book results only on the ground of fluctuation of G.P. rate is not tenable.*

- *It was similarly held by the Ahmedabad Bench of Tribunal in **Surat District Co- operative Milk Producers Union Ltd: 99 TTJ 390***

- *The Rajkot Bench of Tribunal in **Girish M. Mehta: 99 TTJ 394** held that before rejecting the books of account, Department has to prove that accounts are unreliable, incorrect and incomplete. The accounts regularly maintained in the course of business, duly audited under the provisions of the IT Act and free from any qualification by the auditors, should be taken as correct unless there are strong and sufficient reasons to indicate that they are unreliable. The Tribunal further held that for rejecting the books of account, it is the Revenue's onus to prove that either the books of accounts maintained by the assessee are not correct and complete or the method of accounting adopted is such that true profit cannot be deduced therefrom.*

On perusal of the aforesaid, it will, thus, kindly be appreciated that various Courts and Benches of the Tribunal have consistently held that mere fall in the gross profit rate cannot be the reason for making any trading addition. In fact, the Courts/Tribunal have gone to the

extent of holding that in any running business, gross profit rate cannot remain static.

In the present case, as stated above, the gross profit rate, in fact, increased to 35.75%, if one were to take the same base as in the immediately preceding assessment year, which is much higher than gross profit rate of 24% declared in the said year. There was, thus, no fall at all in the GP rate as compared to the immediately preceding assessment year.

That apart, in the assessment order the assessing officer has not been able to pinpoint any discrepancy, whatsoever, in the accounts maintained by the appellant. Thus, even assuming without admitting that there was a fall in the G.P. rate, that fact, by itself, could not have resulted in rejection of the books of accounts and estimation of the trading profits.

In view of the aforesaid, it is submitted that the assessing officer erred in rejecting the books of accounts of the appellant that, too, on an erroneous basis that there was fall in the GP rate of the appellant.

Conclusion

In view of the aforesaid, it is respectfully submitted that the assessing officer erred in estimating the profits of the appellant on an ad-hoc basis on the ground that there was fall in the gross profit as compared to profits as shown in the immediately preceding year. The aforesaid action of the assessing officer is, therefore, based on incorrect/erroneous appreciation of the facts of the case and the position in law and deserves to be deleted.

It is, thus, respectfully prayed that huge addition of Rs. 15,69,58,867 made by the assessing officer calls for being deleted in toto."

6.2 The learned Commissioner of Income-tax (Appeals) also forwarded the submission of the assessee and additional evidences submitted by the assessee on the issue in dispute to the Assessing Officer for his comments, however, Assessing Officer did not offer any comment on the submission of the assessee whereas admission of the additional

evidences was not objected by the Assessing Officer. After considering the remand report, submission and rejoinders of the assessee, the Ld. Commissioner of Income-tax (Appeals) deleted the addition with following observations:

"7.2.6. After careful consideration of all the facts on record and rival submissions as contained in assessment order and in appellant's submission, my observations/conclusions in respect of Ground of appeal No.6 to 6.3 , are as under:-

On this issue, first of all my finding is that it is not a case where A.O. found any discrepancy or defect in the assessee's books of accounts. On the other hand the appellant has produced all the records, details and copies of accounts to show that books of accounts were correctly and completely maintained. The A.O. has also submitted in the remand report that he has no objection to the evidences brought on record. Thus, I hold that there is no case of rejection of books of accounts.

Further I find that appellant has satisfactorily explained the change in business circumstances in this year viz-a-viz last year. In the earlier year i.e. A.Y. 2007-08, the appellant had under taken the manufacturing of CTVs for Dixon on Job work basis, wherein the appellant used to receive Rs. 95/- for each set as conversion/labour charges. The appellant received total job work charges of Rs. 96,59,400/-, out of total receipts of Rs. 1,01,88,242/-.

As against that; in the present year, the appellant was awarded a contract for manufacture and supply of 4,70,581/- set of CTVs to Dixon. To re-iterate, this year the contract is not for job work but for entire manufacture and supply.

Naturally the sale volume has zoomed to around Rs. 100 Crore as against a pittance amount of sale of Rs. 6,14,857/- last year. The appellant had actually earned a loss on the manufacturing and sale activity last year, but because of the huge contract awarded, it earned a healthy G.P. of 1.85%, resulting indeed a hefty gross profit of 1,48,87,501/- on its manufacturing and sale activities; which,when combined with the profit of Rs. 25,44,153/-on job work activity, give an overall gross profit of Rs. 1,59,84.211/-.

Thus, when the entire details and break up of activities in the two years are compared minutely; we find that the comparison between 24.02% of last year with 1.85% G.F. declared of this year is actually erroneous because the two figures are not comparable since they represent different activities.

The correct comparison is available in a chart brought on record by the appellant when accounts are separated for ***(a) manufacturing and sale activities, and (b) job work activity.*** *As mentioned above, the major activity this year is of manufacture and sale , on which appellant has earned a healthy G.P. rather than a loss in the last year. After segregation, we find that the job work activity has decreased as compared to last year and correspondingly there is a decline in G.P. on job work from 26.34% last year to 21.20% this year. But that is not a very major decline and is well explained by the fact that there are minimum over heads specially in form of "wages and workers expenses", which do not decrease proportionately i.e. in proportion to the decrease in job work volume.*

Over-all I find that appellant has done well in its business in terms of profitability and that is evident in form of over-all profit declared. Thus, the AO's observation of fall in G.P. is not found to be appropriate. Correspondingly the application of section 145A(3) and enhancement of G.P. by A.O. are also not sustainable. I delete the addition of Rs. 15,69,58,867/-

In the result addition of Rs. 15,69,58,867/- is deleted."

6.3 Before us, the learned Commissioner of Income Tax (Departmental Representative) addressing the grounds submitted that the learned Commissioner of Income-tax (Appeals) has not taken into account the reasons for falling gross profit rate of the assessee pointed out by the Assessing Officer. Relying on the order of the Assessing Officer, the learned Commissioner of Income Tax (Departmental Representative) prayed that the addition of gross profit made by the Assessing Officer might be sustained.

6.4 On the other hand, the learned Authorized Representative of the assessee relied on the submission made before the learned Commissioner of Income-tax (Appeals) as well as on the finding of the learned Commissioner of Income-tax (Appeals) on the issue in dispute.

6.5 We have heard the rival submissions and perused the relevant material on record. We find that the assessee has explained fall in gross profit rate as computed by the Assessing Officer. The assessee has thereafter for the purpose of comparison of results with last year converted the result of this year in the form of job work and explained that gross profit rate of the assessee in the year under consideration should have been 35.75%, which is much more than the gross profit rate of 24 percent declared by the assessee in the immediately preceding year. After detailed discussion of the submission of the assessee and taking into consideration the remand report of the Assessing Officer, the learned Commissioner of Income-tax (Appeals) has deleted the addition. After perusal of the above submission of the assessee, we are also agreed with the conclusion of the learned Commissioner of Income-tax(Appeals). The Assessing Officer failed to notice functions carried out with assessee in immediately preceding year, which the assessee explained before the learned Commissioner of Income-tax (Appeals). We also agree with the finding of the learned Commissioner of Income-tax (Appeals) that the Assessing Officer has not found any discrepancy or defect in the books of accounts of the assessee and, therefore, rejection of books of accounts merely on the low gross profit rate was not justified.

6.6 In our opinion, the order of the learned Commissioner of Income-tax (Appeals) on the issue in dispute is well reasoned and no interference on our part is required. Accordingly, we uphold the finding of the learned Commissioner of Income-tax (Appeals) on the issue in dispute. The grounds No. 4, 5 and 6 of the appeal are dismissed.

7. The Ground nos. 7 and 8 of the appeal being general in nature not required to be adjudicated upon by us.

8. In the result, appeal of the Revenue is dismissed.

The decision is pronounced in the open court on 19th October, 2016.

Sd/-	Sd/-
(H.S. SIDHU)	**(O.P. KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 19th October, 2016.
Laptop/-
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi