



**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.80/RPR/2013

Assessment Year : 2010-2011

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| ACIT, Circle-1(2), Central Avenue Building, Civil Lines, Raipur (CG) | Vs. | Balajee Structural (India) Pvt.Ltd., Ring Road No.2, Telibandha, Raipur (CG) |
| PAN/GIR No.AABCB7575P | | |
| (Appellant) | .. | (Respondent) |

Revenue by : Shri Ajit kumar Laskar, DR
Assessee by : Abhishek Maloo Jain/P.C.Maloo, AR

Date of Hearing : 09/01/ 2018
Date of Pronouncement : 11 /01/ 2018

ORDER

Per Pavan Kumar Gadale, JM

This is an appeal filed by the Revenue against the order of the CIT(A)-Raipur, dated 23.5.2013 for the assessment year 2010-2011.

2. The department has raised the following grounds of appeal:

" 1. Whether in law and on facts and circumstances of the case, the CIT(A) has erred in deleting the addition of Rs.2,10,12,267/- made by the AO on account of direct expenses by invoking provisions of section 145(3) of the I.T.Act, 1961.



2. Whether in law and on facts and circumstances of the case, the CIT(A) has erred in deleting the addition of Rs.18,86,815/- made by the AO on account of indirect expenses by invoking provisions of section 145(3) of the I.T.Act, 1961.

3. Whether in law and on facts and circumstances of the case, the CIT(A) has erred in deleting the disallowance of Rs.3,69,635/- made by the AO on account of depreciation on crane."

3. At the outset, Id A.R. of the assessee contended that the CIT(A) has not upheld the action of the Assessing Officer in rejecting books of account u/sx.145(3) of the Act on the ground that merely because the quantity of raw material consumed and finished goods produced have been quantified with some degree of estimation, the books of account cannot be said to be unreliable or prone to rejection. Against the above findings of the CITA), the department has come up in appeal. He submitted that when the CIT(A) has considered that the books of account of the assessee is correct, there should not be any estimation to the income is not tenable by the Assessing Officer. He submitted that the CIT(A) has properly appreciated the facts and deleted the additions made by the Assessing officer.

4. Ld D.R. supported the order of the Assessing Officer.,

5. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. We find force in the submission of Id A.R. of the assessee that when rejection of books of



account by the Assessing officer u/s.145(3) is not sustained by the CIT(A), there is no ground to estimate the income by the Assessing Officer. We find that the CIT(A) has discussed and decided the issues as under:

"I have carefully gone through the assessment order and written submissions of the appellant as also the case laws cited above. The rejection of books of account is based on low gross profit, constant yield and maintenance of quantitative records in respect of issue of raw material, production and burning loss which is not on the basis of actual weighment. The appellant has rightly pointed out that working of gross profit, in respect of core business by the AO is incorrect. The gross profit of core business should have been worked out by the AO after excluding commission income also. As per working furnished by the appellant, the gross profit from core business after excluding commission income, is 0.39% as against gross loss of 0.67% of immediately preceding year and thus, it is better. Secondly, the appellant has maintained quantitative details as required under Excise rules. Monthly returns are also submitted to the Excise Authorities and no discrepancy was noticed so as to establish that the yield shown by the appellant is unreasonable or on lower side in comparison to yield prevailing in this line of industry. The yield shown by the appellant in respect of furnace division is 81% as against 76% of the immediately preceding year and in respect of rolling mill division it is 93% which is at par with that of immediately preceding year. In the immediately preceding year, in scrutiny assessment, the Department has accepted the books of accounts on the basis of yield of furnace division at 76% and 93% of Rolling Mill division. In the case of Dy. CIT v. Alidhara Texpro Engineers Pvt. Ltd. (2011) 43 SOT 1 (Ahd.), it was held that where in the assessee's case all items were excisable and the A.O had not pointed out any defect in the excise registers or other records of assessee which were maintained in the same pattern as maintained in the earlier years, there was no justification on part of AO to reject book results of assessee and make addition on account of low net profit, hi the case of CIT vs. Smt Poonam Rani (2010) 41 DTR (Del) 194 ; (2010) 326 1TR 223 : (2010) 192 Taxman 167, it was held that the AO has not pointed out any particular defect or discrepancy in the books of account maintained by the assessee CIT(A) was satisfied that the appellant had furnished complete details, including quantitative data in respect of purchase of raw material, manufacture of copper wire and sale of finished products. Thus, the accounts maintained by the assessee cannot be said to be incomplete or inaccurate.

6.1 It is a matter on record that the appellant has maintained quantitative records of raw material consumed and finished product produced. The books of accounts were subject to tax audit which was produced before the A.O.



together with bills and vouchers and the same was examined by test check. The A.O. has not come across any material defect in account so as to hold that any profit has been suppressed. The appellant has satisfactorily explained that there was no decline in GP rate as alleged by the A.O and the yield was also better. The A.O. has not brought any material on record to disbelieve the book result shown by the appellant. If there is no suppression of material facts, the authority cannot embark upon a speculative lent of notional profits. The assessment should be based on cogent facts and there sufficient reasons must be given to indicate that they are unreliable- mere disparity in consumption of electricity in certain months cannot be the reason for rejection of accounts- such variation can be due to various factors beyond the control of assessee- rejection, therefore, not justified. The A.O examined the audited books of account but had not pointed out any specific discrepancy nor has he detected any suppression in sales or inflation in purchases/expenses. No evidence whatsoever was brought on record to prove that, the appellant, in fact, earned more than that returned as per the books of account kept in the regular course of business. The assessment order is evidence to the fact that there was no specific finding given by the A.O to the effect that the method employed by the appellant was such that correct profits could not be deduced there from. It is also not the case of the appellant that it has not followed the mercantile system of accounting. It is also not the case of the appellant that it has not followed any particular accounting standards which are notified by the Central Government.

6.3 It is also not in dispute that the appellant has maintained books of account regularly and these are duly audited u/s 44AB of the I.T. Act and the quantitative details were prepared and were duly audited. The variation in percentage of GP/NP or payments in cash, in the absence any cogent reasons could not, by itself, have been a ground to hold that proper income of the appellant cannot be deduced from the accounts maintained by it and consequently, could not have been a ground to reject the accounts invoking section 145(3) of the Act. There is no finding in the assessment order of the A.O that the actual cost of finished goods purchased by the appellant was less than what was declared in the account books. There is no finding by the A.O that actual quantity of finished goods sold by the appellant was more than what it was shown in the accounts books. There is no finding by the A.O that the finished goods were sold by the appellant at a price higher than what was declared in the account books. From the Tax Audit Report, it is discernible that the appellant did maintain stock records and the A.O has not pointed out any incorrectness in the same, I am of the considered opinion that merely because the quantity of raw material consumed and finished goods produced have been quantified with some degree of estimation the books of account cannot be said to be unreliable or prone to rejection.

6.4 As assessment has to be completed on the basis of records and material available before the AO and personal knowledge and excitement on events



and extraneous facts should not lead the AO to a State of affairs where the salient/primary/direct evidences are overlooked and should not influence the AO for resorting to adhoc additions/disallowances.

6.5 In a case where the transactions of the appellant have been accounted, documented and supported by the material evidences for deriving logical conclusions, without proving falsity of the same, adhoc additions/disallowances should not be made by the AO in a routine manner merely on presumption, probabilities, suspicion and surmises since the same action of the AO degenerates the spirit for which the quality assessments were emphasized by the Board. (Mukesh R Marolia v. Addl. CIT [2006] 6 SOT 247 Mumbai).

6.6 If general/casual/routine observations of the AO are to be considered as material evidence for the purpose of framing an assessment, the AO shall have blanket and arbitrary powers to dispose of the scrutiny assessments according to his whims and fancies which is not the spirit of the circulars issued by the Board on scrutiny assessment. An assessment cannot be made arbitrarily and in order that an assessment can be sustained, it must have nexus to the material on record. (CIT v. Mahesh Chand [1983] 199 ITR 247,249 (All.).

6.7 It is the settled position that, though the AO has very wide powers and is not fettered by technical rules of evidence and pleadings, there is one overriding restriction on his judgement and that is, that, he must act honestly and diligently on the material, howsoever, inadequate it was, and not vindictively, capriciously or arbitrarily. "Probability cannot be construed as material evidence to form an opinion by the AO to conclude an assessment and for drawing adverse inference against the appellant unless there is evidence to substantiate such probable inference."

6.8 Assessment has to be made based on the real income theory, i.e., income to be determined for taxation must invariably be proved to have been the correct quantum of ground that the item wise stock register was not maintained, and, therefore, the accounts were sought to be rejected, was absolutely perverse and could not be sustained in the absence of any opinion expressed or any finding arrived at to the effect that the accounts maintained were incorrect or that the method of accounting applied was such that the income could not be deduced. In the absence any such finding, the account books could not be rejected merely on the ground that item wise stock was not maintained in the stock register. Thus the rejection of account books was not justified. In ITO v. Bothra International [2008] 117 TTJ (Jd.) 672 it was held that where the A.O laid no material on record to suggest that there had been any suppression of income nor that the appellant carried any activity outside the books, merely because of decline in GP rate, books of account could not be rejected. In Delhi Securities Printers v. Dy. CIT [2007] 15 SOT



353 (Delhi) it was held that rejection of books of account merely because appellant has not maintained stock register, without pointing out any specific defects in books of account of any nature whatsoever, could not be said to be justified. Such adhoc addition is also unsustainable in view of the decision of the Hon'ble High Court of Gujarat in CIT Vs. Sanjay OH Cake Industries (2005) 197 CTR (Guj) 520 wherein it was held that the A.O having not pointed out any specific omission or suppression in the assessee's books of account nor the excise or sales tax authorities having found any discrepancy or irregularity in the maintenance of stock and records, addition made on account of suppressed production and sales could not be sustained.

6.11 It is gathered that the disallowance out of direct expense i.e., raw materials and manufacturing expense was made by the AO considering it excessive in comparison to the sales. The very basis of disallowance is incorrect. As rightly contended by the appellant, the raw material and manufacturing expenses is related to production and not with sale. The production has increase from 43309 MT to 46058 MT whereas the expenses on account of raw materials and manufacturing expenses have reduced in comparison to the immediately preceding year. The average cost of raw material has decreased by Rs.6504/- per MT and manufacturing expenses has been decreased by Rs.340/- per MT. It is not the case of the AO that the purchase of raw material and manufacturing expenses like purchase of coal, furnace oil and electricity expenses are not fully supported by bills and vouchers. The AO has not pointed out *any* instance to prove that the expenses are overstated or unverifiable. The disallowance has been to increase and assess the gross profit at par with that of the immediately preceding year. As discussed above, the gross profit has not decreased, rather, there is better gross profit from core business. Thus, the disallowance has been made under misconception. Had the facts been considered in proper perspective by the AO, there would have been no disallowance on these grounds. In the case of Lakshmi Udyog Mandir Pvt. Ltd. vs. Deputy Commissioner of Income Tax (2011) 12 ITR 36 (Chd) (Trib), it was held that *AO comparing expenses of raw materials and other direct expenses in the some ratio as these were incurred by the assessee in the preceding year, made addition of Rs.4,01,010/- on account of disallowance out of raw material consumption and Rs.73,362/- out of direct expenses. During the year under consideration, the assessee who was carrying on its manufacturing activities of glass syringes, had stopped activities due to change in trend in the market There is no merit in comparing the raw material consumption and other direct manufacturing expenditure with only the sales made during the year. Additions not justified.*

6.12 In view of the fact that there is no case of rejection and estimation of income, the gross profit is not on lower side, the direct expenses are not excessive and are verifiable and also after considering the judgements



discussed above, the disallowance of Rs.2,10,12,267/- made by the AO, being purely arbitrary, cannot be sustained.

6.13 As regards indirect expenses, the AO has made the disallowance for the reason that cash payment has been made by the appellant in respect of transportation/freight charges, labour expenses, vehicle running maintenance, crane running and maintenance, advertisement, publicity, printing, office expenses and canteen expenses. Salary expenses and commission expenses were disproportionately increased. The AO has not come across any single instance where the expenditure claimed in cash is unverifiable or overstated. It is a prevailing practice in the business to make payment in cash on account of various expenses of petty amount. In my considered view, payment of cash for business expenditure and disproportionate increase in expenses cannot be the ground in itself for making disallowances. Increase in salary or commission also cannot be a ground for its disallowance, unless it is proved that those expenses were not for the purpose of the business. The increase in expenses may provoke enquiries but cannot be a reason for disallowance. In the case of *Susee Auto Plaza Pvt. Ltd. vs. Addl. CIT (2010) 3 ITR (Trib.) 166 (Chennai)*, it was held *that disallowance of administrative expenses based on working of percentage and comparison with other assessment years, was not a valid method for making disallowance without seeking any farther enquiry*. In the case of *Assistant Commissioner of Income Tax vs. Rama Kishan Verma (2012) 147 TTJ (Jp)(UO) 1*, it was held *that disallowance cannot be made on the ground that payments were made in cash. No evidence is collected to suggest that payments were not genuine. The AO could have examined the person who made the payment and verified the vouchers. We feel that the CIT(A) was justified in deleting the disallowance*.

6.14 Considering the facts and circumstances of the case, as also decisions relied upon by the appellant and those cited above, I am of the view that there was no finding to the extent that the accounts were not correct and complete or that the A.O was of the opinion that the income could not be deduced from the accounts maintained by the appellant. In the absence of such conclusions, such estimated addition, particularly without bringing on record any instance of undervaluation of closing stock or suppression in sales or inflation in purchases or expenses, cannot be made to the income returned based on audited account, Hence, the estimated disallowances- being without any evidence- are deleted."



As regards to deletion of Rs.3,69,635/- on account of disallowance of depreciation, the A.O has dealt till issue In para 7 at page 5 of the assessment order. It was stated that two cranes were purchased and capitalized in the month of May 2009 and on 29.03.2010. Depreciation on both the cranes were disallowed by the AO for the reason that there is no evidence regarding payment of transportation charges for the crane purchased In May 2009 and the transport charges for purchase of crane in Mar-2010 were shown as payable to claim depreciation.

The appellant has submitted that the assessee had purchased cranes from Escorts Construction Equipment Limited, Ballabgarh, Hariyana who has paid the freight charges of Rs.29,500/- for each crane and charged the same in the tax invoice raised for crane. The crane purchased in the month of May was received and put in to use on 08.05.2009 and another crane was received and put in to use on 29.03.2010. These cranes were dispatched by the supplier on 30.04.2009 and 20.03.2010 respectively. Part payment against crane was made in advance and the balance payment was made on dispatch of the goods. Copy of tax invoice and ledger account of supplier was also filed before me. Accordingly, the appellant claimed that depreciation on crane is fully allowable.

11. I have carefully gone through the assessment order and submissions of the appellant. Perusal of tax invoice reveals that the transport charges have been separately charged along with the price of crane by the supplier. Payments to the supplier were made in advance and before delivery of the crane. The first crane was purchased in May and another one was in March and both had reached before the end of the previous year and were put to use and, therefore, depreciation claimed thereon are allowable. Accordingly, the disallowance made by the AO amounting to Rs.3,69,635/- is hereby deleted."

6. Before us, except relying on the order of the Assessing Officer, Id D.,R. could not point out any specific error in the above quoted order of the Id CIT(A). Hence, we do not find any good reason to interfere with the order of the Id CIT(A), which is hereby confirmed and the grounds of the revenue are rejected.



7. In the result, appeal filed by the revenue is dismissed.

Order pronounced on 11 /01/2018.

SD/-

(N.S Saini)
ACCOUNTANT MEMBER

SD/-

(Pavan Kumar Gadale)
JUDICIAL MEMBER

Raipur; Dated 11 /01/2018

B.K.Parida, SPS

Copy of the Order forwarded to :

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| 1. | The Appellant : ACIT, Circle-1(2), Central Avenue Building, Civil Lines, Raipur (CG) |
| 2. | The Respondent. Balajee Structural (India) Pvt.Ltd., Ring Road No.2, Telibandha, Raipur (CG) |
| 3. | The CIT(A)- Raipur |
| 4. | Pr.CIT- Raipur |
| 5. | DR, ITAT, Raipur |
| 6. | Guard file. //True Copy// |

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Raipur