



**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.207/Rpr/2011
Assessment Year : 2008-09

Asst. Commissioner of Income Tax 1(2), Raipur.	Vs.	M/s. A.S.A Impex Pvt Ltd., Arihant Complex, Station Road, Raipur
PAN/GIR No.AAECA 9213 A		
(Appellant)	..	(Respondent)

Assessee by : Shri Y.K.Mishra, AR
Revenue by : Smt Sheetal Verma, DR

Date of Hearing : 08/01/ 2018
Date of Pronouncement : 15/01/ 2018

ORDER

Per Pavan Kumar Gadale, JM

This is an appeal filed by the Revenue against the order of the CIT(A)-
Raipur, dated 12.8.2011 for the assessment year 2008-2009.

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

"1. Whether in law and on facts & circumstances of the case, the
CIT(A) has erred in deleting the addition of Rs.74,53,612/- on
account of low GP.

2. Whether in law and on facts & circumstances of the case, the
CIT(A) has erred in deleting the addition of Rs.17,92,,800/-
which was made on account of payment of relatives
u/s.40A(2)(b) of the I.T.Act, out oif freight and transportation
expenses.



3. Whether in law and on facts & circumstances of the case, the CIT(A) has erred in disallowing Rs.12,13,271/- made out of commission expenses paid to related parties.

3. Apropos Ground No.1 of appeal, the relevant facts are like this. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has shown turnover of Rs.44.09 crores on which Gross profit was shown at 1.46 crores which is 3.31% as compared to preceding year, where, the G.P. was shown at 6.07% in an almost identical turnover. The Assessing officer required the assessee to substantiate with cogent reason regarding fall in gross profit and net profit as compared to preceding assessment years. The assessee failed to furnish any explanation. Therefore, the Assessing Officer rejected the books of account u/s.145(3) of the Act and enhanced the G.P. to 5% as against 3.31% shown by the assessee.

4. Before the CIT(A), the assessee filed the books of account and other documents. It was submitted that the Assessing Officer was not justified in rejecting the books of account as the assessee had produced books of account, such as cash book, bank book, journal, ledger, purchase/sale bills files and file containing vouchers to substantiate the expenses incurred through the books and the Assessing officer has not pointed out any specific discrepancy in the purchases and sales. The books of account of the assessee are audited u/s.44AB of the Act. Without giving any proper



findings, the rejection of account by the Assessing Officer is bad in law. It was also submitted that the assessee has maintained regular books of accounts audited u/s.44AB of the Act and the quantitative details as required by clause 28B of Form No.3CD regarding finished goods i.e. opening stock of finished goods, finished goods purchased during the year, finished goods sold and closing stock of finished goods were prepared and audited by a qualified Chartered Accountants were enclosed with Form No.3CD, which have been forming part of audit report and produced before the Assessing Officer. It was submitted that the assessee has adopted a consistent and regular method of accounting and valuation of stock during the year in question. The assessee has relied on various judicial pronouncements to contend that once the assessee has maintained stock register in proper form and audited, the Assessing Officer cannot reject the books of account u/s.145(3) of the Act.

5. The CIT(A) on considering the submissions of the assessee and also the judgements cited before him, has held that the rejection of books of account by the Assessing Officer is not justified and consequently, deleted the estimation made by the Assessing Officer by observing as under:

"I have carefully considered the stated facts with reference to the facts obtaining from the cord and gone through the assessment order, I have also gone through the books of account, Stock Register and other



evidences produced and furnished before me. I find that there is no dispute with regard to the fact that the appellant has maintained quantitative details in-the form of Register of finished goods. In the case of CIT vs. Smt Poonam Rani 326 ITR 223 (Delhi) it was held that where an' addition was made because of mere fall hi gross profit without any defect in the accounts except for the absence of stock register. Deletion of addition was upheld by the High Court In Ashok Refractories Pvt Ltd. Vs. CIT (2005) 148 Taxman 635 (Cal.) it was held that the rejection of the¹ books of account only in the absence of stock register having regard to the availability of the other' materials from which the income could be deduced, was contrary to the proviso to section 145 unless' there was a finding or opinion either that the records were incorrect and incomplete or that the" method of accounting applied was such that the income could not be deduced from the accounts so maintained by the-appellant. The 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 incomplete 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 rejected merely on the ground that item wise stock was not maintained in the stock register. Thus 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. In S.N. Namasivayam Chettier v. CIT (1960) 38 ITR 579 (S.C.), the Hon'ble Supreme Court held that non-production of stock register and manufacturing accounts when the appellant maintained regular accounts would not form the basis for rejecting the accounts, particularly, when there were other material from which the income could be deduced. It is only if, after taking into account all the materials including the one of stock register, it was found that from the method of accounting followed, the correct profit of the business were not deductible, the operation of the proviso to section 13 of the



1922 Act would be attracted. The rejection of the books of account was not justified having regard to proviso to section 145 as it stood prior to its amendment applicable to the relevant assessment year. The absence of stock register itself would not justify the rejection of books of account unless coupled with certain other factors. There was material from which even without the stock register the accounts could be verified. Considering all the above facts and circumstances of the case, decision relied upon and after, verification of books of account, I am of the view that there was no finding to the extent that the accounts were not correct and complete or that the AO was of the opinion that the income could not be deduced from the accounts maintained by the appellant. In the absence of such conclusion, the books of account could not be rejected. Hence, the impugned estimated addition on GP. Being without any evidence is unsustainable on facts and in law and hence, the same is deleted.

6. Ld D.R. vehemently opposed the decision of the CIT(A) and submitted that the gross profit shown by the assessee is decreased as compared to preceding assessment years. The assessee had not produced quantitative details of the finished goods and, therefore, the Assessing Officer is justified in rejecting books of account u/s.145(3) of the Act and estimating the gross profit at 5%.

7. Contra, Ld A.R. of the assessee supported the order of the CIT(A). Ld A.R. submitted that in the preceding assessment year as against the gross profit shown at 6.07%, the net profit was shown at 0.15%. For the assessment year under consideration as against gross profit at 3.31%, the net profit was shown at 0.19% which is comparable increased. He also submitted for the succeeding assessment years, the gross profit and net



profit shown by the assessee is accepted by the department. Ld A.R. relied on the decision of Hon'ble Delhi High Court in the case of CIT Vs. Smt. Poonam Rani, 326 ITR 223 (Delhi), wherein it was held that where an addition was made because of mere fall in gross profit without pointing out any defects in the accounts except for the absence of stock register is unjustified. He also further relied on the decision of Hon'ble jurisdictional High Court in the case of ACIT Vs. Shri Roopchand Tharani, 208 TAXMAN 223, wherein, it was held since specific points were not pointed out, the books of accounts could not be rejected and profit rate could not be applied. Ld A.R. relied on the decision of Hon'ble Supreme Court in the case of S.N. Namasivayam Chettier vs CIT (1960) 38 ITR 579 (SC), wherein, it was held that non-production of stock register and manufacturing accounts when the assessee maintained regular account would not form the basis for rejecting the accounts, when there were other material from which the income could be deducted. Further, he relied on the decision of ITAT Raipur Bench in the case of ITO Vs. Nirmal Kumar Khetpal(HUF), ITA No.47/BLPR/2011, for the assessment year 2007-08, wherein the net profit had increased as compared to last year although there was slight decline in G.P. percentage, it was held that the Assessing Officer did not reject the books of accounts either on the ground of different invisible loss projected or on the account of day-to-day



stock book not being maintained, the revenue had not proved the case by a substantive material that the gross profit disclosed was low.

8. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. In the instant case, the undisputed facts are that the books of account maintained by the assessee, such as cash book, bank book, journal, ledger, purchase/sale bills files and file containing vouchers were produced before the Assessing Officer. The Assessing Officer has not pointed out any specific error in the books of accounts. It is also an admitted fact that the assessee is following mercantile system of accounting regularly, which is duly audited u/s.44AB of the Act. The only basis adopted for enhancing the gross profit is that as compared to preceding year, the G.P. shown in the present year is less, which is not a ground to adopt the gross profit more than the shown by the assessee. There may be various factors for decreasing gross profit year to year. Only when there is no defect pointed out in the books of account, the Assessing Officer cannot reject the books of account u/s.145(3) and consequently, enhanced the gross profit. The assessee has filed a chart wherein in the preceding assessment year as against the gross profit shown at 6.07%, the net profit was shown at 0.15%. It is also submitted by Id. AR of the assessee the gross profit and net profit shown by the assessee in the succeeding assessment years has been accepted by the department.



Considering the above, it cannot be said to be a ground that in the present assessment year the net profit has fallen as compared to the previous and succeeding assessment years. We also find that the decisions relied by Id. CIT(A) in the impugned order are applicable to the facts of the assessee's case. In view of above, we are of the considered view that the CIT(A) was fully justified in holding that the Assessing officer erred in rejecting the books of account and deleted the addition made on estimation by the Assessing officer. Therefore, this ground of appeal of the revenue is rejected.

9. In ground No.2 the revenue is aggrieved by the deletion of addition of Rs.17,92,800/- on account of payment to relatives u/s.40A(2)(b) of the I.T.Act, out of freight and transportation expenses.

10. The Assessing Officer found that the assessee has claimed freight and transportation expenses at Rs.64,71,254/-. During the assessment proceedings the AO found that out of total expenses, an amount of Rs.17,92,800/- was paid to the following persons at the fag end of the year:-

DT. Of PAYMENT	NAME	ADDRESS	AMOUNT	TDS PAID ON
31/03/2008	Shri Ranjit Agrawal	Dhubri	442800/-	07/07/08
31/03/2008	Shri Sawarmal Agrawal (HUF)	Kolkata	459000/-	07/07/08
31/03/2008	Shri Mohanlal Agrawal(HUF)	Kolkata	475200/-	07/07/08
31/03/2008	Shri Ramchandra Ranjit Kur(HUF)	Dhubri	415800/-	07/07/08
TOTAL			1792800/-	



The AO observed that the payment has been made by the assessee to the persons specified u/s.40A(2)(b) of the Act and the assessee has not made any payment during the year under consideration to the service provider. The Assessing Officer also observed that the TDS has been paid against those payments on 7.7.2008, which shows that it was an afterthought. Therefore, the Assessing Officer disallowed Rs.17,92,800/- and added the same to the income of the assessee.

11. Before the CIT(A), the assessee submitted that the assessee is following mercantile system of accounting and duly audited by Chartered Accountant. As regards to non-submission of income tax returns before the Assessing Officer, it was submitted that the Assessing Officer has not given sufficient time to file the same of the recipients. The TDS deducted from the bill upto 28.2.2008 were paid on or before 31.3.2008 and the bills raised during the month of March were paid on 7.7.2008 i.e. well before the due date of filing of the return of income u/s.139(1) of the Act and the assessee has paid the TDS accrued interest thereon.

12. The CIT(A) observed that the assessee has maintained books of account on the basis of mercantile system of accounting. The assessee has deducted TDS from the bills paid to the parties and deposited the same with Government exchequer. The assessee has also furnished income tax



returns of the income of the recipients. In view above narrated facts, the CIT(A) deleted the addition made by the Assessing Officer.

13. Before us Id D.R. submitted that the payments were made to relative, hence, the CIT(A) is not justified in deleting the same.

14. Contra, Id A.R. of the assessee supported the order of the CIT(A) and submitted that the assessee has furnished sufficient documents to substantiate the claim. The assessee has maintained proper books of accounts and the payments were made to the recipients through banking channels. The TDS has been deducted from the payments made to the recipients.

14. We have heard the rival submissions and perused the record of the case. The facts of the case are that the assessee has paid Rs.17,92,800/- out of freight and transporting expenses to four persons. We find that the assessee has deducted the TDS out of the amounts paid to recipients and deposited the same in the Government exchequers, which has not been disputed by the revenue. .It is also on record that the TDS deducted from the bill upto 28.2.2008 were paid on or before 31.3.2008 and the bills raised during the month of March were paid on 7.7.2008 i.e. well before the due date of filing of the return of income u/s.139(1) of the Act and the assessee has paid the TDS and interest accrued thereon. Considering the facts in



entirety, we are of the considered opinion that the CIT(A) is fully justified in deleting the addition of Rs.17,92,800/-, which is hereby confirmed and ground No.2 of revenue is dismissed.

16. Ground No.3 of appeal relates to deletion of Rs.12,13,271/- out of commission expenses paid to related parties.

17. Brief facts relating to this ground are that the assessee claimed commission payment and brokerage of Rs.12,13,271/- which was paid to the following persons at the fag end of the year :-

SN	NAME	AMOUNT (RS.)	DT.OF PAYMENT	TDS PAID ON
1.	Shri L.K.Bhura (HUF)	104725/-	20.02.08	07.07.08
2.	Shri K.C.Bhura (HUF)	105850/-	20.02.08	07.07.08
3.	Smt. Manisha Singhi	108080/-	20.02.08	07.07.08
4.	Shri Ankit Losalka	109765/-	20.02.08	07.07.08
5.	Shri Ranjit Agrawal	140252/-	27.03.08	07.04.08
6.	Shri Mahesh K. Bihani(HUF)	190185/-	31.03.08	28.07.08
7.	Smt. Sandhya Tyanani	224697/-	31.03.08	28.07.08
8.	M/s Krishna Trade Corporation	229717/-	31.03.08	28.07.08

The Assessing Officer observed that in order to substantiate the claim, the assessee has only filed ledger copy of account, however, copies of bills submitted by the parties were not produced, neither the nature of services rendered nor particulars of the parties for whom the assessee claimed services were furnished. The AO also observed that although the TDS was



deducted, the remittances were made on 7.7.2008. In view of this, he was of the opinion that it is a colourbale device to reduce the taxable income by diverting the income to different persons and, therefore, he disallowed Rs.12,13,271/- and added the same to the income of the assessee.

18. On appeal, the CIT(A) observed that almost all the recipients of the commission income were assessed to tax and their PAN particulars were filed. The books of accounts have been examined with respect to commission expenses. The recipients of commission have provided services to the assessee and received commission as consideration from the assessee and deducted the TDS from the commission amounts to the recipients. He also observed that the said payment was wholly and exclusively for the business purpose. Accordingly, he deleted the disallowance.

19. Ld. Department Representative supported the order of AO.

20. Ld. AR supported the order of CIT(A) and submitted that the TDS amount was deducted from the recipients amount and deposited in the Government Exchequer before filing of the return of income u/s.139(1) of the Act. The name and address of the recipients of commission were disclosed to the AO and the AO has not raised any doubts about the veracity of the commission payment.



21. We have rival submissions and perused the materials available on record. The undisputed facts of the case are that the AO has made addition of Rs.12,13,271/- on account of commission paid to the brokers on the ground that the payments have been made at the fag end of the year and TDS was paid on 07.07.2008 observing that the expenses are claimed to reduce the taxable income of the assessee. It is a fact that the assessee has deposited the TDS amount deducted from the recipients commission on 07.07.2008, which is before the due date of filing of return of income u/s.139(1) of the Act. It is not a case of the revenue that the TDS amounts have not been deposited by the assessee. The AO has not doubted the payment of commission to the recipients. The CIT(A) has properly appreciated the facts of the case and relying on various judicial pronouncements on this issue has deleted the addition. In our considered view there is no infirmity in the order of the CIT(A), which is hereby confirmed.

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

Order pronounced on 15/01/2018.

Sd/-

(N.S Saini)
ACCOUNTANT MEMBER

sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

Raipur; Dated 15 /01/2018



B.K.Parida, SPS

Copy of the Order forwarded to :

1.	The Appellant : Asst. Commissioner of Income Tax 1(2), Raipur.
2.	The Respondent. M/s. A.S.A Impex Pvt Ltd., Arihant Complex, Station Road, Raipur
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