

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI D.T. GARASIA, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.3441/M/2014
Assessment Year: 2009-10**

Mr. Kiran A. Rochlaney, 191-E, 9 th Cavel Cross Lane, Dr. Viegas Street, Kalbadevi Road, Mumbai-400 002 PAN: ADZPR1370E	Vs.	Income Tax Officer 14(1)(2), 2 nd Floor, Earnest House, Nariman Point, Mumbai – 400 021
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Dharmesh Shah, A.R. &
Shri Dhaval Shah, A.R.

Revenue by : Shri Rajesh Kumar Yadav, D.R.

Date of Hearing : 11.01.2018

Date of Pronouncement : 14.02.2018

ORDER

Per D.T. GARASIA, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 18.03.2014 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10.

2. The short facts of the case are as under:

During the course of assessment proceedings, the Assessing Officer (hereinafter referred to as the AO) observed that there were discrepancies in quantity of various items appearing in opening

stock, closing stock, sales and purchases shown by the assessee. The assessee could not furnish any satisfactory explanation and from the quantitative chart furnished by the assessee, the A.O. noticed that there were many items where stocks were not tallying. The A.O. observed that some stocks were sold out of books as they were not appearing in closing stock. Similarly, the A.O. observed that some items were appearing in sales and closing stock without appearing in opening stock and purchases. Thus, the A.O. on account of mismatch of stock rejected the books of accounts of the assessee and recomputed the gross profit ratio based on purchase and sale rates of principal items of garments which were readily available. Accordingly, A.O. calculated G.P. ratio at 20% of the total turnover shown by the assessee and made an addition of Rs.30,57,048/- on account of difference between Gross Profit as shown by the assessee and as calculated by the AO.

3. Matter carried to the Ld. CIT(A) and the Ld. CIT(A) has partly allowed the appeal by observing as under:

“9. I have gone through the submission of the assessee. I have also gone through various details submitted by the assessee and the remand report of the A.O. I have also considered appellant's comments on the remand report. In the assessment, addition in gross profit was made on account of difference found by the A.O. in quantitative details submitted by the assessee with regard to opening and closing stock, sales and purchases. The AO rejected the books of account and estimated the GP @ 20% on the total turnover. The AO added back Rs.30,57,048/-, (i.e. the difference of Rs.40,61,541/- -Rs.10,04,404/-). The appellant has not clarified/substantiated the low GP @ 4.94% shown by him during the assessment and appellate proceedings but only stated that the GP addition may be deleted.

9.1 I have observed that the appellant relied on the decision in the case of his brother Shri Sharad A Rochalaney for AY 2009-2010, vide Order No.CIT(A)-25/IT-353/14(1)(2)/201 1-12 dated 20/01/2014 where in the assessee has shown 10.23%

OP and the GP addition was sustained at @ 11.23% and the appellant got relief of 8.77% GP addition made by the AO. In this present case, there is no reason and material on record to clarify and show that the low OP shown by the appellant is justified and acceptable to the Department. The main reason on the part of the AO in estimating the GP@20% after rejecting the books of account is the because of low GP. This can be seen from his own brother's case, who has shown GP @10.23% whereas the appellant has shown only @4.94%, the difference of @5.29% GP rate and there is no valid reason for the vast difference of GP rate between the two brothers' business though they do the same and similar business. The appellant and his brother have done the same business and it is not known as to why there is a vast difference of GP rate although the line of business, the place of business etc are all similar and identical. The appellant is not correct in stating that the addition in his brother's case was deleted. The CIT(A) adjudicated the appeal and retains certain percentage and allows partial relief to the appellant. In this case, I want to adopt the same measure and yardstick and to conclude that an addition of 12% in G.P. rate on total turnover will meet the end of justice. The assessee has shown G.P. @ 4.94%. Thus, after confirming addition of G.P. @12.% on total turnover of Rs.2,03,07,709/- which comes to Rs.24,36,925/- the appellant will also get partial relief. Since the assessee has shown gross profit at Rs.10,04,494/- addition of Rs.14,32,431/(Rs.24,36,925- - Rs.10,04,494/-) is confirmed. Therefore, the assessee gets relief of Rs. 16,24,616/- accordingly. This ground of appeal is partly allowed."

4. During the course of hearing, the Ld. A.R. submitted that the assessee had submitted the details before the Ld. CIT(A) and the assessee had submitted purchase and sale rate before the Ld. CIT(A) and Ld. CIT(A) has called for the remand report. All the discrepancies were verified by the assessee before the AO. In the remand report, it was explained that the difference in stock reconciliation was based on incorrect assumption and presumption and the AO has accepted the working given by the assessee but the assessee has requested to decide the matter on merit. In the case of his brother, the similar line of business the Ld. CIT(A) has sustained the GP of 11.23% while there is no reason for confirming the GP@ 12% on total turnover. The Ld. A.R. submitted that no addition is called for.

5. On the other hand, the Ld. D.R. relied upon the order of the Revenue authorities.

6. We have heard the rival contentions of both the parties. We find that Ld. CIT(A) has decided the appeal in the case of the assessee's brother Shri Sharad Rochlaney for the A.Y. 2009-10 wherein the assessee has shown GP of 10.23% and addition was sustained @ 11.23%. The Ld. CIT(A) has also observed that two brothers are doing the same and similar business and his brother has done the same business and why there is a vast difference of the GP at the line of same business. Therefore, in the interest of justice and fairplay, we direct the AO to take the GP @ 11.23% in the case of the assessee.

7. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 14.02.2018.

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Sd/-
(D.T. Garasia)
JUDICIAL MEMBER

Mumbai, Dated: 14.02.2018.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.