

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH 'A', CHANDIGARH**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA Nos. 287,288,1438,1439,1440,1441,1442/Chd/2017
Assessment Years: 2001-02 to 2007-08

M/s Krishna Gram Udyog Samiti Vill Mannwala, Dhuri, Dist: Sangrur	Vs.	The DCIT Central Circle II Ludhiana
---	-----	---

PAN No. AAAAK3064H

&

ITA Nos. 1327 TO 1333/Chd/2017
Assessment Years: 2001-02 to 2007-08

M/s Jain Gram Udyog Samiti Bhalwan Road, Dhuri Dist: Sangrur	Vs.	The DCIT Central Circle-II Ludhiana
--	-----	---

PAN No. AAAAJ1893K

(Appellant)

(Respondent)

Assessee By	:	Sh. Deepak Aggarwal Sh. Arsh Kaushal
Revenue By	:	Dr. Gulshan Raj
Date of hearing	:	12/04/2018
Date of Pronouncement	:	25/05/2018

ORDER

PER BENCH:

All the above appeals have been filed by two different Assesseees against the separate orders of the Ld. CIT(A)-5, Ludhiana.

2. Since the issues involved in all the appeals are common therefore they are being disposed off together by way of this common order.

3. Following grounds have been raised in case of Krishna Gram Udyog Samiti:

1. That the Ld. CIT(A) has erred in confirming the action of the Ld. A.O. in making an addition of Rs. 14,49,382/- towards Gross Profit on manufactured @ 15% and trading items @ 3%, on the ground that the assessee failed to produce the supporting vouchers, whereas as per the assessee the Gross Profit rate applied is exorbitantly high without taking into consideration any comparable case, past or future history of the assessee himself therefore, it is prayed that the addition may kindly be deleted.

2. That the Ld. CIT(A) has erred in confirming the action of the Ld. A.O. in making an addition of Rs.5,33,886/- towards Net Profit on trading items @ 20%, on the ground that the assessee failed to produce the supporting vouchers, whereas as per the assessee the addition towards Gross Profit and then towards Net Profit is nothing but misapplication of mind and lack of clarity about the accounting principles therefore, it is prayed that the addition may kindly be deleted.

3.1 Following grounds have been raised in case of M/s Jain Gram Udyog Samiti:

1. That the Ld. CIT (A) has erred in confirming the action of Ld. A.O. in making an addition of Rs.2,40,441/- (entries found recorded in seized document no. A-6/33) on the ground that the special auditor suggested the addition by taking the said transaction as unrecorded sales of the assessee and the explanation of the assessee is not convincing whereas as per the assessee the transaction recorded in the said seized document is that of Sharma Enterprises and there is not even a remote connection between transaction and the assessee, hence the addition needs to be deleted.

2. That the Ld. CIT (A) has erred in confirming the action of Ld. A.O. in making an addition of Rs.29,857/- (entries found recorded in seized document no. A-6/33-34) on the ground that the special auditor suggested the addition and the explanation of the assessee is not convincing whereas as per the assessee the transaction recorded in the said seized document is that of Sharma Enterprises and there is not even a remote connection between transaction and the assessee, hence the addition needs to be deleted.

3. That the Ld. CIT(A) has erred in confirming the action of the Ld. A.O. in making an addition of Rs.7,26,564/- towards Gross Profit on manufactured @ 15% and trading items @ 3%, on the ground that the assessee failed to produce the supporting vouchers, whereas as per the assessee the Gross Profit rate applied is exorbitantly high without taking into consideration any comparable case, past or future history of the assessee himself therefore, it is prayed that the addition may kindly be deleted.

4. That the Ld. CIT(A) has erred in partly confirming the action of the Ld. A.O. in making an addition of Rs.53,138/- towards Net Profit on trading items @ 20%, on the ground that the assessee failed to produce the supporting vouchers, whereas as per the assessee the addition towards Gross Profit and then towards Net Profit is nothing but misapplication of mind and lack of clarity about the accounting principles therefore, it is prayed that the addition may kindly be deleted.

4. Facts of the case:

4.1 The brief history pertaining to the search and seizure action taken in the case of the assessee, consequent 153 C orders, revisionary orders under section 263 and assessment orders subsequent to order under section 263, the facts of the case and arguments taken before the Ld. CIT(A) by the assessee.

5. The case of M/s Krishna Gram Udyog Samiti for the A.Y. 2001-02 in ITA No. 287/CHD/2017 has been taken as a lead case as agreed by both the parties as the facts and the grounds involved in all the cases are similar in nature.

5.1 The assessee is an Association of Persons and is engaged in the running of Rice Mill at Vill. Mannwala, Dhuri, Distt. Sangrur. During the year, under consideration, the assessee maintained the complete books of accounts, such as, Cash Book, Ledger, Journal, Stock Registers based on supporting documentary evidence etc. These books of accounts, duly audited in accordance with the provisions of section 44AB of the I.T.Act. 1961. Return declaring income of Rs. 64,990/- was filed as per the provisions of section 139(1) of the Act and the return of income filed was supported with a Tax Audit Report in Form No. 3CA and 3CD, prepared in accordance with the provision of section 44AB of the Act.

5.2 A search & seizure operation u/s 132 of the Income Tax Act, 1961 carried out at the residential premises of Sliri Ved Parkash and his family members and concerns on 12.10.2006 and the assessee's business premises was covered u/s 133A of the Act. During the search operation, certain documents pertaining to the assessee AOP found and seized. Accordingly, proceedings u/s 153C of the Act were initiated through issuance of notice u/s 153C on 2.12.2008 and in response to said notice, the assessee AOP filed a return of income declaring same income of Rs. 64,990/- as was originally filed u/s 139(1) of the Act. The Audit Report as prepared in accordance with the provisions of section 44AB of the Act made available.

5.3 On receipt of return of income u/s 153C of the Act, the case was taken up under scrutiny and notices u/s 143(2)/142(1), calling for certain information / details etc. were issued and complied with.

5.4 The assessment was completed as per order dated 21.08.2009 as per which, the income of the assessee assessed at Rs. 7,99,023/-, which includes the following additions:-

- (i) Addition on account of Gross Profit = Rs 5,93,193/-
(After rejecting books of accounts)
- (ii) Disallowance of Expenses @ 10% = Rs. 65,810/-

However, the order dated 21.08.2009 of the Ld. Assessing Officer was set aside by the CIT, as per order dated 12.03.2012, by invoking the provisions of Sec 263 of the I.T. Act.

5.5 In pursuance of the order dated 12.03.2012, the assessment proceedings were re-initiated by issue of notices u/s 143(2)/142(1). The assessment had again been completed vide order dated 28.03.2013 by making further addition of Rs. 30,38,467/- to the income already assessed as per order dated 21.08.2009.

6. Ground No. 1 relates to addition on account of undisclosed Gross profit:

6.1 The Ld. Assessing Officer, as per para 11.3 and 11.4 of its order dated 28.03.2013 has made a further addition of Rs. 20,42,575/- by adopting the G.P. ratio of 15% from manufacturing items and 3% from trading items as against adopting of such ratio of 8% and 1% respectively as per order dated 21.08.2009.

6.2 As per the facts on record, it was observed that the assessee was running a business of Rice Shelling and the total turnover during the year

was to the tune Rs.3,99,53,487/-, including the trading purchases amounting to Rs. 2,49,55,003/-.However, in its return of income, the assessee had declared profit of Rs. 9,55,903/- out of its sale proceeds. In the course of assessment proceedings, to buy peace of mind, the assessee agreed to be assessed at a profit @ 8% from manufacturing items and 1% from trading items of the total turnover at the time of initial assessment and accordingly, an addition of Rs. 5,93,193/- was made as per order dated 21 .08.2009. However, the CIT as per its order dated 12.03.2013 set-aside the order of assessment with the directions to make fresh assessment de-novo after conducting proper enquiry and verifying and analyzing seized material and comments of the Special Auditor.

6.3 The Assessing Officer, as per Para 11.3 of its order dated 28.03.2013 made a further addition of Rs. 20,42,575/- with the following observations:-

" 11.3 Now on having a fresh look to the fact and circumstances of the case having particular regard to the observation made by the special Auditor and Worthy CIT, (Central), Ludhiana through his order u/s 263 dated 12.02.2012, it is decided that books of the assessee is unreliable in absence of the basis documents. However, one cannot afford to loose sight of the meticulousness with which the books have been maintained and produced. I am of the opinion that the books as produced verification at this end. could have been manufactured without having the aid of basic documents. Thus, taking into consideration all these facts I am of the consider opinion that G.P. rate of 15% may be adopted for arriving at the true Gross profit of the assessee on manufacturing items. Similarly, G.P rate of 3% be adopted for ascertaining gross profit on trading items."

6.4 It was argued before us by the Ld. AR that the Assessing Officer, though did not categorically held the basis for arriving at the conclusion of adopting the Gross Profit ratio of 15% from Manufacturing Items and 3% from Trading Items but adopted the same and completed the assessment accordingly. This is against the settled principle of law.

6.5 The Ld. AR argued that further, as per order, in such business, the gross profit @8% from manufacturing items and 1% from trading items not held as unreasonable. The Gross Profit ratio adopted by the Assessing Officer is without basis and based merely on conjecture, surmises, and as such, is not sustainable in the eye of law.

6.6 It was argued that the assessee, at the time of initial assessment, keeping in view the nature of business, had agreed to be assessed @ 8% from manufacturing items and 1% from trading items of the turnover to buy peace of mind otherwise there was no extra income from such business. However, the Assessing Officer, as per order dated 28.03.2013 has made a further addition of Rs. 20,42,575/-(now stands at Rs. 14,49,382/- after order of the CIT(A)) by enhancing the gross profit ratio at 15% from manufacturing items and 3% from trading items though the assessee is maintaining regular books of account in respect of his business of rice Sheller and these books of accounts had already been audited u/s 44AB of the Act. and the assessee in its return of income had declared Gross profit @ 2.40% and Net Profit @ 0.09% out of its sale proceeds.

6.7 It was argued that in the course of assessment proceedings, the assessee produced the books of accounts but some of the supporting vouchers could not produce due to the reason that these have been lost in transit and in support of its contention; the assessee produced a copy of the FIR registered with the police authorities.

6.8 The Id. AR argued that in the given circumstances, as per settled law, it is the duty-of the Ld. Assessing Officer to estimate the profit in a fair and reasonable manner either by following the history of the assessee's own case or by following the comparable cases of the area. As is evident

from the assessment order itself, the estimation of profit based neither on the assessee's own case nor on the comparable cases of the area. The gross profit of 2.40% declared by the assessee is quite reasonable and is in accordance with the gross profit ratio normally expected out of such business. The assessee, at the time of initial assessment, keeping in view the nature of business, had agreed to be assessed at such profit ratio of the turnover to buy peace of mind otherwise there was no extra income from such business to that as declared in the return of income.

6.9 Hence, it was argued that the assessing officer has enhanced the estimation of gross profit in revised assessment made in pursuance of directions u/s 263 from 8% to 15% in case of Mfg turnover and 3% in case of trading turnover without any independent enquiry or comparative results of third party ought to be deleted.

6.10 It was argued that in addition the Assessing officer has estimated net profit @ 20%. It is an established accounting / assessment principle that only net profit is assessable in case of estimation of income so gross profit addition is uncalled for hence the gross profit addition ought to be deleted.

6.11 Ld. DR in addition to placing reliance on the orders of the lower authorities has submitted his further arguments in written form which are as under:

" In the above case, it is humbly submitted the date of search is 12.10.2006 and FIR referred and heavily relied by the Assessee in all the cases is dated 13.11.2006. This FIR is post search and is referring to "all the relevant documents of vehicle and SOME other valuable documents were in the vehicle". No list of such documents was reported to the police. It is clear from the wording i.e. SOME other valuable documents were in the vehicle that filing of FIR is after thought and misleading. No result of FIR was ever submitted before any authority below. Supporting documents were not produced before the AO and the CIT (A). Hence, CIT (A) has rightly upheld the addition on account of GP and NP. It is further submitted that the following decisions may kindly be considered with regard to addition on account of GP/NP rate:

1. Smt Davawanti Vs CIT [2016] 75 taxmann.com 308 (Delhi)/r20171 245 Taxman 293 (Delhi)/r20171 390 ITR 496 (Delhi)/r20161 290 CTR 361 (Delhi) (Copy

Enclosed]

where Hon'ble Delhi High Court, in para 22 of its order, upheld order of Hon'ble ITAT estimating GP @15% and estimating sales at Rs.1 crore.

2. Kachwala Gems Vs CIT [2007] 158 Taxman 71 (SC)/r2007] 288 ITR 10 (SC)/r2006] 206 CTR 585 (SO (Copy Enclosed)

Assessing Officer, on finding that assessee had not maintained and kept any quantitative details/stock register for goods traded in by it; that there was no evidence on record or document to verify basis of valuation of closing stock shown by assessee; and that GP rate declared by assessee during assessment year did not match result declared by assessee itself in previous assessment years, rejected assessee's books of account and resorted to best judgment assessment under section 144. Hon'ble Supreme Court held that since cogent reasons had been given by Assessing Officer for doing so, there was no reason to take a different view .

6.12 We have heard the arguments of both the parties and gone through the orders of the lower authorities. The following facts emerged from the perusal of the records.

6.13 The assessee has filed his return declaring total profits @ 3.75%. During the assessment proceedings the assessee has offered 1% on trading goods and 8% on manufacturing goods. The Ld. CIT invoked jurisdiction of Section 263 and in the consequent order the profit was estimated @3% on trading goods and 15% on manufacturing goods. The assessee could not submit books of account in the subsequent proceedings before the Assessing Officer which necessitated the estimation of profits. A definite ground work is *sine-qua-non* on part of the Assessing Officer before resorting to the provisions of section.

6.14 Where the assessee is unable to reconcile the quantities handled by it as between purchases and sales, subject to adjustment as between opening and closing stocks or where no quantity accounts are kept, the accounts are to be taken as unproved, so that the income returned may well be rejected and income estimated. In the case of *ITO v. Girish M Mehta* [2008] 296 ITR (AT) 125 (Rajkot), it was pointed out, that the pre-condition for estimating business income of the assessee, where an assessee keeps accounts is that the

assessee's books should have been found to be unreliable or otherwise not capable of proving the assessee's income.

6.15 We have considered the profit percentage of the assessee in the earlier years as declared in the regular returns. And also the case law cited by the Ld. DR in the case of Dayawanti Vs. CIT wherein the assessee in the business of perfumery used in production of Gutka declared G.P. of 8.6% to 10.7% the Hon'ble High Court directed to estimate G.P. @ 15%. Similarly in the case of Kachwala Gems Vs. JCIT 288 ITR 10 (Supreme Court) the Hon'ble Supreme Court upheld the estimation of G.P. in the absence of any other material and held that the estimation should be honest and fair and should not be arbitrary though it contains certain degree of guess work.

6.16 Hence keeping in view the original profits, revised profits declared by the assessee and the estimation done by the Assessing Officer and keeping in view the history and the earlier profits declared by the assessee we hereby feel it fit and justice would be met if the G.P is estimated at 2% for trading goods and 12% for manufacturing goods. The Assessing Officer is directed to recomputed the profits @ 2% on trading goods and 12% on manufacturing goods.

6.17. This ground of appeal of the assessee is allowed for statistical purposes.

7. Ground No. 2 relates to addition of Rs. 5,33,886/- on account of undisclosed Net Profit:

7.1 Brief facts of the issue are that the Ld. Assessing Officer has made a further addition of Rs. 5,99,696/- (now stands at Rs. 5,33,886/- after the Ld. CIT(A)'s order) with the following observations:-

"12. Since, the assessee admitted of not having the ground documents on the basis of which the net profit was arrived at, on estimation of net profit percentage is similarly called for. In the Profit & Loss A/c, the assessee disclosed net profit % with respect to gross profit of 3.75%. Having regard to the total facts and circumstances, it is decided to adopt a

figure of 20% which works out to Rs. 5,99,696/- (29,98,470 x 20%). This sum is added to the disclosed total income of the assessee."

7.2 Before us it was submitted by the Ld. AR that it would also not be out of place to mention that at the time of initial assessment, as per order dated 21.08.2009, an addition of Rs. 65,810/- was made by disallowing various expenses debited to P&L Account. The Assessing Officer has made further disallowance of expenses of Rs. 5,99,696/-. Thus, the disallowance of total expenses debited to P&L comes to Rs. 6,65,506/- (65,810 + 5,99,696). Thus, apparently, the disallowance of expenses debited to P&L Account unreasonable and not in consistent with its own findings, as stated supra.

7.3 In this connection, it was argued that at the outset, the estimation of net profit of 20% on the Gross Profit is without bringing any comparable case in support thereof and /or bringing any positive evidence on record to arrive at such ratio.

7.4 The Ld. AR vehemently argued that the income of the assessee from the Rice Mill has assessed on estimate basis by rejecting the books of accounts of the assessee. Therefore, as per the settled principle of law, when the assessee's books of accounts have rejected and a profit has estimated, then, as per the accounting principle, no separate addition of net profit percentage is called for.

7.5 Ld. DR relied on the order of the Assessing Officer and order of the Ld. CIT(A).

7.6 We have heard the arguments of both the parties and perused the facts on record.

7.7 In addition to the estimation of G.P. the Assessing Officer has also further estimated Net Profit @ 20% on trading items. Regarding the estimation of Net Profit in addition to G.P. we are unable to agree with the arguments of Ld. DR and also the findings of the Ld. CIT(A) as the double estimation of profits are contrary to the established accounting principles and also contrary to the principles of estimation of profits in the absence of books of accounts and even by invoking the provisions under section 145(3) which can be invoked (a) where Assessing Officer is not satisfied about the correctness or completeness of the accounts; or (b) where method of accounting cash or mercantile has not been regularly followed by the assessee ; (c) Accounting Standards as notified by the Central Government have not been regularly followed by the assessee. Even this doesn't give any power to the Assessing Officer to estimate the Net Profit separately in addition to estimation of gross profit. Hence the addition made by the Assessing Officer on account of estimation of profits towards net profit on trading items is liable to be deleted on merits as well as on established principles.

7.8 As a result ground no. 2 of the appeal of the assessee is allowed.

8. In the result appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court.

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Dated : 25/05/2018
AG

Copy to:

1. The Appellant, 2. The Respondent, 3. The CIT, 4. The CIT(A), 5. The DR