

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.145 & 146/Ind/2017
Assessment Years: 2010-11 & 2012-13**

Shri Amit Tiwari, 304, Sharma Chambers, 5, Jawahar Marg, Indore (M.P.) (Appellant)	बनाम/ Vs.	The DCIT-1(1) Indore (M.P.) (Revenue)
P.A. No.ACVPT3933C		

**ITA Nos.249 & 250/Ind/2017
Assessment years: 2010-11 & 2012-13**

ACIT, Central-2, Indore (Revenue)	बनाम/ Vs.	Shri Amit Tiwari, 304, Sharma Chambers, 5, Jawahar Marg, Indore (M.P.) (Appellant)
P.A. No.ACVPT3933C		

Appellant by	Shri S.N. Agrawal, AR
Respondent by	Shri P.K. Mishra, DR
Date of Hearing:	10.09.2018
Date of Pronouncement:	19.09.2018

आदेश / O R D E R

PER KUL BHARAT, J.M:

This bunch of four appeals by the assessee and revenue pertaining to the assessment years 2010-11 & 2012-13 are directed against two different orders of the CIT(A)-1, Indore both dated 5.12.2016.

2. At the outset, it is pointed out by the Ld. Authorised Representative (A.R.) on behalf of the assessee that the appeals filed by the revenue are below the monetary limit as prescribed by the latest CBDT circular No.3 of 2018 dated 11.7.2018.

3. Ld. D.R. conceded this fact. Therefore, the appeals in ITA Nos.249 & 250/Ind/2017 of the revenue where tax effect is lower than the limit prescribed by the CBDT circular No.3 of 2018 dated 11.7.2018 are dismissed as not maintainable.

4. Now coming to the assessee's appeal in ITA No.145/Ind/2017 pertaining to the assessment year 2010-11, the assessee has raised following grounds of appeal:

1. *That on the facts and in the circumstances of the case the Ld. CIT(A) erred in approving the rejection of the books of account of the appellant by invoking the provision of section 145(3) of the Income Tax Act.*
2. *That on the facts and in the circumstances of the case the Ld. CIT(A) erred in maintaining addition of Rs.17,13,476/- without properly appreciating the facts of the case and submission made before him.*
3. *The appellant reserve its right to add, alter or delete any ground of appeal on or before the date of final hearing.*

5. Briefly stated facts are that the case of the assessee was picked up for scrutiny assessment and the assessment u/s 143(3) of the Income Tax Act, 1961 (hereinafter called as 'the Act') was framed vide order dated 14.12.2012. During the assessment proceedings, the A.O. noticed that the expenses related to cartage and freight are not included in the closing stock by the assessee. Therefore, the assessing officer rejected the books of accounts on this basis and estimated the net profit @ 5% and 8% respectively, thereby he made addition of Rs.42,78,108/-.

Against this, the assessee preferred an appeal before Ld. CIT(A) who after considering the submissions sustained the finding of rejection of books of accounts, however, adopted the average gross profit of the preceding years at 8.87% as against gross profit of 7.48% as adopted by the assessee. Against this, both assessee and revenue filed respective appeals. Ground No.1 of the assessee's appeal is against rejection of books of accounts. Ld. Counsel for the assessee vehemently argued that the assessing officer was not justified in rejecting the books of accounts. He submitted that the A.O. ought to have accepted the book result declared by the assessee. Ld. Counsel submitted that merely because the assessee could not inadvertently included the expenses related to freight and cartage in the closing stock, this should not have been sufficient for rejection of books of accounts. The A.O. has not given any

finding in respect of the other information declared by the assessee.

6. On the contrary, Ld. D.R. opposed the submissions and submitted that the law is very clear. The A.O. is empowered to invoke provisions of section 145(3) of the Act in the event that on the basis of the accounts, the correct figure of the profit cannot be deduced. In support of this, Ld. D.R. relied upon the judgement of the Hon'ble Supreme Court in the case of British Paint India Pvt. Ltd. Vs. CIT reported in 188 ITR 44.

7. We have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the A.O. would be within his power to reject books of accounts, if he is satisfied that the books of accounts placed before him do not give the correct figure of the profit. In the present case, admittedly, the assessee

has not included expenses related to the cartage and freight in his books of accounts, by this it has distorted the correct figure of profit. Therefore, in our view, the assessing officer was justified in the present case to reject the books of accounts. Ground No.1 of the assessee's appeal is dismissed.

8. Ground No.2 is against sustaining the addition of Rs.17,13,476/-. Ld. Counsel for the assessee submitted that the Ld. CIT(A) was not justified in not accepting the rate of profit as declared by the assessee.

9. On the contrary, Ld. D.R. supported the order of the A.O.

10. We have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. We find that the Ld. CIT(A) has decided the issue by observing as under:

“5.3 As regards, the estimation of the profits by applying section 44AF & section 44AD of the Act is concerned the contention of the appellant is found to be justified in view of the turnover and the gross receipts shown. It is seen that the appellant has shown gross profit percentage of 7.48% for the year under consideration as against 9.59% for A.Y. 2009-10 and 7.79% for A.Y. 2012-13. As has already been noted in para above the appellant has submitted a working of valuation of Closing stock incorporating the impact of freight, cartage etc. not considered in the valuation. As per the working the stock is undervalued to the extent of Rs.1323134/- which works out to 0.87% of the total turnover and gross receipts shown by the appellant. From the details on record, it is seen that the gross profit percentage of the appellant has shown a variation from 9.07% in A.Y. 2007-08, 9.35% in A.Y. 2008-09, 9.59% in A.Y. 2009-10 and 7.48% in the year under consideration i.e. A.Y. 2010-11. As against this the net profit of the appellant is 2.88%, 2.0%, 2.11% and 2.98%. There is thus a fall in gross profit in the year under consideration and there is a marginal rise in the net profit. The fall in gross profit is partly attributable to the fact that the turnover has gone up from Rs.2.69 crores to Rs.11.10 crores and gross receipts of job work have gone up from Rs.76.45 lacs to Rs.4.06 crores. The average gross profit for the above 4 years comes to 8.87% as against gross profit of 7.48% for the year under consideration i.e. a difference of 1.39%. Considering all the facts of the case it would be reasonable to estimate the additional net profit at 1.13% (0.87% + 1.39%/2) of the total turnover and gross receipts of Rs.151635080/- which works out to Rs.1713476/-. The addition is therefore confirmed to the extent of Rs.1713476/- as against Rs.4756260/- (Rs.478152/- (+) Rs.4278108/-) made by the A.O. The appellant gets relief of Rs.3042783/-. The above grounds of the appellant are therefore partly allowed.”

11. From the above finding of the Ld. CIT(A), it is clear that the Ld. CIT(A) has adopted the profit on the basis of past history of the assessee. The only contention of the assessee in the present year is that gross turnover of the assessee has increased, therefore, the profit cannot be estimated merely on the basis of the past history. We are

unable to accept the submissions of the assessee as the Ld. CIT(A) has rightly adopted the gross profit on the basis of past history and the impact of not taking into account the expenses related to freight and cartage. This ground of appeal of the assessee is also dismissed.

12. Now coming to the assessee's appeal in ITA No.146/Ind/2017 for the A.Y. 2012-13, the assessee has raised identical grounds in this year also, which reads as under:

1. *That on the facts and in the circumstances of the case the Ld. CIT(A) erred in maintaining the rejection of the books of account of the appellant by invoking the provision of section 145(3) of the Income Tax Act.*
2. *That on the facts and in the circumstances of the case the Ld. CIT(A) erred in maintaining addition of Rs.18,03,514/- without properly appreciating the facts of the case and submission made before him.*
3. *The appellant reserve its right to add, alter or delete any ground of appeal on or before the date of final hearing.*

13. The counsels for the parties have adopted the same argument as were made in ITA No.145/Ind/2017. For this, grounds of appeal were disposed of in ITA

No.145/Ind/2017 above in para nos.5 to 11. In the same reasoning, these grounds of the assessee are also dismissed.

14. In the result, both the appeals of the assessee for the A.Y.s 2010-11 & 2012-13 are dismissed and the revenue's appeals for the A.Ys. 2010-11 & 2012-13 are also dismissed.

Order was pronounced in the open court on 19.09.2018.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIALMEMBER

Indore; दिनांक Dated : 19/09/2018

VG/SPS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Sr. Private Secretary, Indore