

**IN THE INCOME TAX APPELLATE TRIBUNAL
Delhi Bench "C", New Delhi**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
AND**

SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No. 3254/Del/2015

Assessment Year: 2011-12

PBS Foods Pvt. Ltd., 126-127, First Floor, Vardhman Star Shop Mall, Sector-19, Faridabad PAN-AADCP6496R	Vs.	JCIT, Range-II Gurgaon
[Appellant]		[Respondent]

Assessee by:	Sh. Daksh S. Bhardwaj, Adv
Respondent by:	Sh. Subhash Verma, Sr. DR

Date of Hearing:	13	09	2018
Date of Pronouncement:	19	09	2018

ORDER

N.K. SAINI, AM

This is an appeal by the assessee and is directed against the order dated 16.3.2015 of the learned CIT(A)-I, Gurgaon. Following grounds have been raised in this appeal.

- i. *The learned Commissioner of Income-tax (Appeal)-1, Gurgaon, erred in law as well as on facts, in confirming addition of Rs. 34,75,574/-, made towards the excess consumption of raw material.*
- ii. *The learned Commissioner of Income-tax (Appeal)-1, Gurgaon, erred in law as well as on facts, while confirming the above stated addition, which was based upon the rejection of books of accounts under section 145(3) of the I.T. Act, 1961, and allowing assessee's appeal against the rejection of books of accounts.*

2. From the aforesaid grounds it is gathered that the only grievance of the assessee relates to the confirmation of addition of Rs. 34,75,574/- made by the AO on account of excess consumption of raw material.

3. During the course of assessment proceedings, the learned counsel for the assessee at the very outset stated that an identical issue having similar facts has already been decided by the ITAT Bench 'E', New Delhi in ITA No. 3818/Del/2015 for the assessment year 2010-11 in assessee's own case vide order dated 19.6.2018 wherein by following the earlier order of the co-ordinate Bench in assessee's own case for the assessment year 2009-10, the issue has been decided in favour of the assessee. Copy of the said order was furnished which is placed on record.

4. In his rival submissions, the learned CIT DR although supported the orders of the authorities below but could not controvert the aforesaid contention of the learned counsel for the assessee.

5. We have considered the submissions of both the parties and carefully gone through the material available on the record. It is noticed that an identical issue having similar facts has already been decided by the ITAT Delhi Benche 'E', New Delhi in assessee's own case. The relevant findings have been given in para 6 to 10 of the aforesaid referred to order dated 19.6.2018 which read as under:-

"The Ld. AR for the assessee contended that this issue is covered in assessee's own case vide order dated 08.03.2018 passed by Delhi Bench of Tribunal in ITA No. 1848/Del/2014 in the case of DCIT vs. M/s PBS Foods Pvt. Ltd, for A.Y. 2009-10. However, on the other hand, the Ld. D/R for the Revenue relied upon the order passed by the AO/ CIT(A).

7. When Assessing Officer has not made any addition in AY 2008-09, 2009-10, 2012-13, 2013-14 by disallowing the shortage in production on account of moisture loss claimed by the assessee, the Assessing Officer for the year under consideration should have been come up with cogent reason that rule of consistency, which he is obligated to follow, is not applicable in this case before making any such addition. Moreover, a Co-ordinate Bench of Tribunal in assessee's own case for A.Y. 2009-10 has confirmed the finding returned by Ld. CIT(A) vide order dated 08.03.2018 wherein the identical issue was involved and AO had

made an addition on estimated basis by rejecting the books of accounts. For ready perusal, the finding returned by Co-ordinate Bench of Tribunal in Assessee's own case for A.Y. 2009-10 are as under:-

"5. We have heard the rival submissions and perused the material before us. We find that out of seven years (AY.2008-09 to AY.2014-15) the AO had not made any addition for four years, that in one year the FAA had allowed the relief to the assessee, that in the A.Ys. 2010-11 and 2011-12 order of the AO has been confirmed by the FAA. Thus, the issue of loss due to moisture has been deliberated upon at length by the departmental authorities. While passing the order for the year under appeal, the AO has not mentioned anything as to why he was not following the order of his predecessor about moisture loss. It is true that the principles of res-judicata does not apply to the income tax proceedings, but rule of consistency cannot be ignored. In the matter of Godrej & Boyce Manufacturing Co. Ltd., the Hon'ble Apex Court(394 ITR 449) has observed as under:

“ While it is true that the principle of res judicata would not apply to assessment proceedings under the Act, there is need for consistency and certainty and existence of strong and compelling reasons for a departure from a settled position has to be spelt out.

We find that the assessee had furnished the copies of the reports of Codex Standard for Wheat Flour and INDIAMILLER.com and that the AO had not commented upon those reports. In our opinion, these reports should not have been given proper weightage, as they are prepared by professional agencies. Without pointing out any defect in the reports or without bringing some material on record that could prove that the reports of the agencies were biased, the AO should not have rejected the claim of moisture loss in case of Wheat, Soyaben flour etc. The basis for accepting the moisture loss for certain items and rejecting claim of moisture for other items is not clear from the order of the AO. It is a known fact that there would be variation in moisture loss for various items. The quality of grain, the seasonal changes at the time of ripening of harvest, and seeds used are some of the factors that affect moisture content. In all manufacturing processes loss or wastage is an accepted fact and variation in percentage of such loss is also recognized fact.

Here, we would like to refer to the case of Ceramic Industries (396 ITR 50) of the Hon'ble Rajasthan High Court. The facts of the case were that the assessee was a manufacturer of ceramic products. On the issue of the estimate of the wastage and deleted the additions, the Tribunal accepted the report of the research laboratory which stated that the percentage of wastage was variable depending on various factors. It held that the AO had not found any defects in the purchases, sales, opening and closing stocks. It further held that the AO had not brought on record any cogent material to prove that the assessee had sold under-production out of the books of account. On the questions whether the Appellate Tribunal erred, (a) in deleting the additions made on account of excessive wastage which was restricted to 25 per cent, by the AO, (b) in deleting the additions made under section 69C of the Act and (c) in overruling the decision of the FAA and the AO regarding the rejection of books of account invoking the provisions of section 145(3), the Hon'ble Court held that the Tribunal had not committed any error in deleting the additions and holding that the rejection of books of account invoking section 145(3) was not justified.

Considering the above, we hold that the FAA had rightly allowed moisture content for Wheat- flour and Ragi. He was justified in holding that the AO should not have invoked the provisions of section 145(3) of the Act for rejecting the claim of the assessee about moisture loss.

5.1..Now ,coming to the rejection of books of accounts, we find that the AO had not pointed out any particular defect or discrepancy in the account books maintained by the assessee. He had no material before him to treat the accounts of the assessee as defective or incomplete. It was not the case of the AO that the assessee had not followed either the cash or mercantile system of accounting stipulated in sub-section (1) of section 145 of the Act or that the Central Government had notified any particular accounting standards to be followed by manufacturers flours or the items manufactured by the assessee. Hence, the second part of sub-section (3) of section 145 would not apply. It is fact the AO had not pointed out any defect in the account books maintained by the assessee. In other words, the accounts maintained by the assessee were neither defective nor incomplete. It is said that before rejecting the books of account, the AO has to prove that accounts are unreliable, incorrect or incomplete, that the accounts regularly maintained in the course of business, duly audited under the provisions of Act and free from any qualification by the Auditors, should be taken as correct unless there are strong and sufficient reasons to indicate that they are unreliable. Even though, it is not possible to lay down the exact circumstances in which accounts should be rejected as unreliable or incorrect, yet the accounts may be rejected as unreliable if important entries and transactions are omitted therefrom or if proper particulars and vouchers, bills, etc. are not forthcoming or if they did not include entries relating to particular class of business transaction. In short, books of account should not be rejected light-heartedly. The rejection of books is based on alleged suppression of production. In our opinion, the alleged shortfall in production could have been the basis for other additions but not for invoking the provisions of section 145(3) of the Act.

We would like to refer to the case of *Paradise Holidays* (325 ITR 13) of the Hon'ble Delhi High Court, wherein the court has held as follows:

"The accounts which are regularly maintained in the course of business and are duly audited, free from any qualification by the auditors, should normally be taken as correct unless there are adequate reasons to indicate that they are incorrect or unreliable. The onus is upon the Revenue to show that either the books of account maintained by the assessee were incorrect or incomplete or that the method of accounting adopted by him was such that true profits of the assessee cannot be deduced therefrom."

In light of the above discussion, we hold that the order of the FAA does not suffer from any legal or factual infirmity, as far as rejection of books of accounts is concerned. So, confirming the same we decide the second limb of the ground against the AO.

8. Assessee has brought on record the consumption of raw materials in A.Y. 2012-13 in tabulated form, wherein shortage on account of moisture and other wastage in Wheat, Soyabean, Ragi & Ragi Flour, Vitamins & Minerals and Sugar has been claimed and allowed by the AO as well as Ld. CIT(A) which is extracted as under:-

Chart Showing Treatment of consumption of Raw Material AY 2012-13

Item	Moisture and other wastages claimed by the assessee	Moisture and other wastages allowed by AO	Moisture and other wastages allowed by CIT(Appeals)
Wheat	14	14	No appeal was preferred
Soyabean	12	12	
Soyabean Powder	6.2	6.2	

Ragi and Ragi Flour	12	12	
Vitamins and Minerals	1	1	
Sugar	1	1	

9. In view of what has been discussed above, firstly, we are of the considered view of that there is no material brought on record by the AO as well as Ld. CIT(A) to depart from Rule of consistency in the preceding and succeeding years, shortages on account of moisture loss has been allowed by AO as well as Ld. CIT(A). Secondly, the Assessing Officer has disallowed the shortages claimed by the assessee on account of moisture loss merely on estimated basis. Thirdly, the Assessing Officer has rejected the books of accounts without bringing on record any defects and material discrepancies, particularly when the books of accounts are duly audited having been maintained in the ordinary course of business, so the rejection of books of accounts by the AO without having any cogent material is not permissible under law.

9.1 Fourthly, shortages on account of moisture loss depend on numerous reasons like quality of grains, mode of its storage etc. likewise in the manufacturing process loss or wastage is a universal phenomenon and it cannot be avoided by the manufacturer.

10. In view of what has been discussed above and following the decision rendered by Co-ordinate Bench of Tribunal in assessee's own case for A.Y. 2009-10, we are of the view that addition made by AO by disallowing the shortages claimed by the assessee in the production on account of moisture content in the raw material as well as in the processing process confirmed by the Ld. CIT(A) is not sustainable in the eyes of law, hence ordered to be deleted, consequently, present appeal filed by the assessee is allowed."

6. So respectfully following the aforesaid referred to order dated 19.6.2018, the addition sustained by the learned CIT(A) is deleted.

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

(Order pronounced in the open court on 19.09.2018.)

Sd/-
[KULDIP SINGH]
Judicial Member

Sd/-
[N.K. SAINI]
Accountant Member

DATED: 19.09.2018

SH

Copy forwarded to:-

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Assistant Registrar

<i>Date of dictation</i>	<i>13/9/2018</i>
<i>Date on which the typed draft is placed before the dictating Member</i>	<i>13/9/2018</i>
<i>Date on which the typed draft is placed before the Other Member</i>	
<i>Date on which the approved draft comes to the Sr. PS/PS</i>	
<i>Date on which the fair order is placed before the Dictating Member for pronouncement</i>	
<i>Date on which the fair order comes back to the Sr. PS/PS</i>	
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<i>Date of dispatch of the Order</i>	
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