

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI  
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 3402/Del/2011  
(Assessment Year: 2004-05)

ACIT, Circle-1, Muzaffarnagar	Vs.	Rana Papers Ltd, Meerut Road, Muzaffarnagar PAN: AAACR7902B
(Appellant)		(Respondent)

Revenue by :	Shri Surender Pal, Sr. DR
Assessee by:	Shri Ankit Gupta, Adv
Date of Hearing	29/08/2018
Date of pronouncement	22/11/2018

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the revenue against the order of the 1d CIT(A), Muuzaffarnagar dated 04.03.2011 for the Assessment Year 2004-05.
2. The revenue has raised the following grounds of appeal:-
  - “1. *On the facts in the circumstances of the case the CIT(A) has erred in law by deleting the addition of Rs. 1,16,047/- made by the Assessing Officer on account of valuation of closing stock without appreciating the full facts of the case, as during the course of assessment proceedings, the AO noticed that the closing stock was valued by the assessee on the basis of valuation of closing stock of Runner Riser made by the sister concern of the assessee namely M/s Doaba Rolling Mills(P) Ltd. Meerut Road. Muzaffarnagar and since the assessee failed to submit any reasonable basis for changing the valuation of closing stock.*
  2. *On the facts and in the circumstances of the case, the CIT (A) has erred in law in deleting the addition of Rs. 5,00,000/- made by the Assessing Officer on account of low G.P. without appreciating the full facts of the case, as the explanations furnished by the assessee were not convincing and after considering the facts & circumstances of the case, the G.P. declared by the assessee was not accepted.*
  3. *On the facts and in the circumstances of the case, the CIT (A) has erred in law in deleting the addition of Rs. 50,000/- made by the Assessing Officer on account of unverifiable expenses without appreciating the full facts of the case.*

4. *On the facts and in the circumstances of the case, the CIT (A) has erred in law in deleting the addition of Rs. 1,08,02,164/- made by the Assessing Officer under section 68 of I.T.Act, 1961 as unexplained^uns5curedloans as the assessee failed to prove genuineness of the loans at the time of assessment and during the course of remand report by ignoring the decision of Hon'ble Apex Court in the case Sumati Dayal Vs CIT (214 ITR-801) and Hon'ble High Court of Chhattisgarh in the case of Kushal Prased Manhar Vs CIT, {(2010) 236-CIT-192}}, without appreciating the full facts of the case. The order of the Hon'ble Supreme Court as reported in CIT Vs Lovely Exports (P) Ltd, Taxman Vol. 172 page 44(2008) and as quoted by the CIT(A) for allowing this appeal, is not applicable in this case as this decision is applicable in case of share application money & not for unsecured loans.*
  5. *On the facts and in the circumstances of the case, the CIT (A) has erred in law in deleting the addition of Rs. 1,08,02,164/- made by the Assessing Officer under section 68 of I.T.Act, 1961 as unexplained unsecured loans as the assessee failed to prove genuineness of the loans without appreciating the full facts of the case and by ignoring the judicial pronouncement reported in the following cases:-*
    - a. *Shree Lekha Banarjee Vs. CIT, 49 ITR 112 (SC)*
    - b. *Ram Lai Agarwal Vs CIT, 280 ITR 547 (Alld)*
    - c. *ITO Vs. Rai Chand Kothari (HUF) 39TTJ (Tribunal)*
    - d. *Shanker Inds. Vs. CIT, 114 ITR 689 (Cal)*
    - e. *Prakash Textiles Agency Vs. CIT, 121 ITR 89*
    - f. *C. Kant & Co. Vs CIT, 126 ITR 63 (Cal)*
  6. *The order of the CIT (A) be set aside and that of AO be restored.”*
3. Brief facts of the case are that the assessee is a limited company engaged in the business of manufacturing and trading of angles, channels et cetera. It filed its return of income on 31/10/2004 declaring loss of ₹ 72, 68, 946/-. Assessment under section 143 (3) of the income tax act was passed on 27/12/2006 wherein several additions were made to the total income of the assessee. Same were contested before the learned commissioner of income tax (appeals) Muzaffarnagar who passed order dated 4/3/2011 allowing the appeal of the assessee partly against which the learned assessing officer is aggrieved and has filed this appeal. As per the revised ground of appeal filed by the learned AO the deletion of the following addition is contested:-
- a. addition of Rs. 116047 made by the assessing officer on account of valuation of closing stock without appreciating the fact that the valuation of closing stock of Runner Riser in the case of the assessee

sister concern was valued at the rate of ₹ 1 2900 per metric ton whereas in the instant case the same was valued and the rate of ₹ 9 723.24 permit return without furnishing any reasonable cause for the same

- b. addition of ₹ 5 00000/- on account of low cross profit without appreciating the full facts of the case
  - c. addition of ₹ 5 0000/- on account of unverifiable expenses without appreciating the full facts of the case
  - d. addition of ₹ 1 0802164/- under section 68 of the income tax act as unexplained unsecured loan is assessee failed to prove genuineness of the loan and ignoring the judicial precedent.
4. On the first issue of addition on account of valuation difference, the assessing officer has made addition of ₹ 1 16047/- to the closing stock on the basis of the valuation of the closing stock of runner riser made by the sister concern of the appellant. The learned assessing officer observed that assessee has not given reasonable basis at all for changing the valuation of the stock.
5. The learned departmental representative vehemently relied upon the order of learned assessing officer.
6. The learned authorised representative relied upon the orders of the Commissioner of Income tax (Appeals) and stated that the closing stock valuation is according to the order of trade tax as well as data of net realizable value from the books of accounts of the assessee company. It was further stated that identical addition has been deleted by the learned commissioner of income tax appeals, which was not challenged by the revenue before higher appellate forum.
7. We have carefully considered the reason given by the Id AO for making addition and by Id CIT (A) for deleting the addition. Assessee's contention is regarding the acceptability of its valuation. The learned Commissioner of Income tax (Appeals) held that the stock has been valued at net realizable value and on the identical facts and circumstances also deleted the addition in the sister concern's case. As the valuation of the assessee was backed by the trade tax order as well as data derived from appellant's audited accounts we do not find any justification for sustaining the addition on

account of under valuation of closing stock. Further, the addition has been made by the learned assessing officer only based on the valuation made by sister concern in its that case. It was also not known whether the valuation of stock made in that particular concern was on the basis of cost or net realizable value whichever is less. Even otherwise merely because some other assessee has valued the stock at different figure, addition in the hands of the another person cannot be made without finding out that what is the cost of the goods purchased by that assessee as well as the net realizable value in the hands of that assessee. Therefore, in absence of any such finding by the learned assessing officer in the assessment order on in the remand proceedings, we do not find any infirmity in the order of the learned Commissioner of Income tax (Appeals) in deleting the above addition. In the result ground number one of the appeal of the revenue is dismissed.

8. The next addition deleted by the Commissioner of Income tax (Appeals) agitated by the revenue is of ₹ 5 lakhs for decline in gross profit rate. During this year, the assessee has declared a gross profit of 17.82% against the gross profit of 18.11% in the immediately preceding previous year. Therefore, apparently the gross profit of the assessee has come down. The assessee was asked to furnish the details of the turnover vis a vis gross profit rate of past three years and give reasons for the downfall. Before the assessing officer, no plausible explanation was provided and therefore the AO made an addition of ₹ 5 lakhs. The addition was agitated before the Commissioner of Income tax (Appeals) it was contested that addition has been made purely on the basis of presumption where the yield and burning loss was fully verifiable and in conformity to earlier years. The sales and purchase of the finished goods and raw materials are on credit base and are fully verifiable. The learned commissioner Appeals deleted the addition holding that when the books of accounts are verified and the sale and purchase of finished goods and raw materials are also verifiable and are in conformity with the yield and the process loss the addition is not sustainable.
9. The learned departmental representative vehemently supported the order of the learned assessing officer and stated that when there is a downfall in the gross profit rate of the assessee company to the previous year and assessee

did not furnish any plausible explanation the learned assessing officer has correctly made the addition on account of low gross profit.

10. The learned authorised representative relied upon the orders of the learned Commissioner of Income tax (Appeals) and submitted that the audited results were produced which are fully verifiable and are also subject to excise. He further stated that there is no difference in the yield and burning loss compare to the earlier years and even otherwise, the downfall is marginal.
11. We have carefully considered the rival contentions and perused the orders of the lower authorities. In the present case, the whole addition has been made by the learned assessing officer only based on the downfall in the gross profit. However, the book results have been discarded by the learned assessing officer despite there is comparative yield and burning loss in consonance with earlier financial years. On the reading of the order of learned assessing officer, it is apparent that without rejecting the books of accounts the book results have been enhanced by the learned assessing officer. If the assessing officer wanted to reject the books of accounts of the assessee then it is mandatory that he should have pointed out latent, patent, and glaring defects in the books of accounts. In absence of it the addition to the gross profit cannot be sustained. Over and above the books of accounts are audited and there is no finding of the assessing officer that system of accounting followed by the assessee is such which does not result into deducing the correct financial result there from. In view of this we uphold the order of the learned commissioner appeals in deleting the addition on this account. Therefore, the ground number two of the appeal is dismissed.
12. The third ground of appeal is against deleting the addition of ₹ 50,000 made by the AO on account of unverifiable expenses. Before the AO the assessee furnish the details of the manufacturing, another of expenses sum of the expenses could not be verified fully for want of complete bills and supporting vouchers and therefore the learned AO made an addition of ₹ 1 lakh. On appeal before the learned CIT appeal, restricted the addition to the extent of ₹ 50,000. The revenue challenges the deletion of the part addition by the learned CIT appeal.

13. The learned departmental representative supported the order of the AO and the learned authorised representative supported the order of the learned CIT Appeal.
14. We have carefully considered the rival contention and perused the orders of the lower authorities. The learned commissioner appeals upheld the addition on principle basis however, he found that it is on the higher side and therefore he restricted it to ₹ 50,000 out of ₹ 1 lakh disallowed by the learned AO. Even otherwise, we are of the view that those expenses should have been disallowed for which assessee failed to produce cogent evidence. Such instances should have been noted by the learned assessing officer and disallowance to that extent should have been made. The disallowance made by the learned AO is merely based on estimation. Such ad hoc disallowance as such cannot be sustained. Therefore, we do not find any infirmity in the order of the learned commissioner appeals in deleting the addition of ₹ 50,000. The ground number three of the appeal is dismissed.
15. The last ground of appeal is with respect to the addition of ₹ 1 0802164 made by the learned AO under section 68 of the income tax act. During the course of assessment proceedings, the learned assessing officer noted that unsecured loans have increased during the year compared to last year. The learned assessing officer noted that during the year assessee has in nine accounts amounting to ₹ 1 0802164/- is credited on last day of the year. The assessee also received during the year Rs. one crore from dealers securities deposit. The assessee filed copies of the account as appearing in the books of accounts. The AO found that these parties are having running accounts and in the month of March amount has been shown as loan from creditors. The learned AO made addition holding that it is not understandable why a person from whom purchases are made will allow depositing his money with the assessee company. In absence of any plausible explanation furnished by the assessee he made an addition of ₹ 1 0802164 as unsecured loan under section 68 of the income tax act. The learned commissioner of income tax (Appeals) deleted the addition holding that the amount of sundry creditors have been transferred to unsecured loan by the assessee which is a security deposit account as a financial

arrangement. He held that the identity and creditworthiness of the parties are established and creditworthiness of the parties being the creditors is proved.

16. The learned departmental representative vehemently supported the order of the learned assessing officer and submitted that the assessee has failed to give any plausible explanation about the amount transfer to unsecured loan from purchaser.
17. The learned authorised representative vehemently supported the order of the learned CIT – Appeals and stated that when the assessee has shown the identity and creditworthiness of the parties along with the genuineness of the transaction no addition can be made.
18. We have carefully considered the rival contention and perused the orders of the lower authorities. The issue involved in this ground is that during the year the assessee transferred the sum from sundry creditors from whom the goods have been purchased to the security deposit account. It is apparent that identity of the sundry creditors cannot be doubted as they have sold goods to assessee and paid money to them. With respect to the creditworthiness of the parties it is apparent that those parties are of purchase and from the creditors account the amount has been transferred to security deposit account. As the purchase amount has not been doubted the genuineness of the transaction of the transfer of security deposit from the creditors account also cannot be doubted. It is apparent that during the course of appellate proceedings the learned CIT appeal has obtained to remand report from the assessing officer on the various submission and details furnished by the assessee. Same were also confronted to the assessee and obtained the rejoinder to the remand report. The assessee has submitted the detail chart mentioning the name and address of all the parties along with the permanent account number and amount of credit balance with the assessee company. The confirmations were also filed. Even otherwise when the learned assessing officer has allowed the creditors to continue without disallowing the purchases made from those creditors, part of which is transferred to the security deposit account, it is unusual to state that the genuineness of the creditors are not established. In fact the learned assessing officer has accepted the genuineness of the purchases from this

parties. In view of this, we do not find any infirmity in the order of the learned Commissioner of Income tax (Appeals) by deleting the above addition. In the result ground, number four of the appeal of the revenue is dismissed.

19. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 22/11/2018.

-Sd/-

(AMIT SHUKLA)  
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated:22/11/2018  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi