

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A": NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
AND  
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

ITA No.4540/Del/2013  
Asstt. Year: 2006-07

ITO, Ward 3 (1) New Delhi.	Vs.	Birla Electricals Ltd. 43A/1, Mezzanine Floor, Gurudwara Road, Dilshad Garden New Delhi – 110 095 PAN AAACB5347A
<b>(Appellant)</b>		<b>(Respondent)</b>

Department by:	Shri Sridhar Dora, Sr.DR
Assessee by :	None
Date of Hearing	10/12/2018
Date of pronouncement	13/12/2018

**ORDER**

**PER L.P. SAHU, A.M.**

The appeal filed by the Revenue is directed against the order of Ld. Commissioner of Income Tax (Appeals)-VI, New Delhi dated 09.05.2013 pertaining to the assessment year 2006-07 on the following grounds :-

1. *“The Ld. CIT(A) has erred in law and on facts in restricting the addition made on account of rejection of books of accounts of the assessee u/s 145(3) to Rs. 3,36,71,457/- (Correct figure Rs.3,56,71,457) against Rs. 4,22,60,755/- made by the Assessing Officer thereby allowing a relief of Rs. 65,89,300/- without taking into consideration the fact that the assessee failed to produce books of account and failed to substantiate its claim w.r.t. sharp fall in GP rate with supporting documents.*
2. *The Ld. CIT(A) has erred in law and on facts in deleting the addition made by the AO rejecting the books of accounts by failing to appreciate the fact that the case of the assessee squarely falls under the ambit of the findings of the Hon'ble Apex Court in the case of MIs Kachwala Jems Vs. JCIT, Jaipur (288 ITR 10) of 2007.*
3. *The appellant craves leave for reserving the right to amend, modify, alter, add, or forego any ground(s) of the appeal at the time before or during the hearing of this appeal.”*

2. The case was fixed for hearing many times but none present on behalf of the assessee, therefore, the case has been heard ex parte qua assessee. The brief facts of the case are that the appellant filed return of income on 29.11.2006 declaring Nil income and carrying forward business loss and unabsorbed depreciating amounting to Rs. 6,73,54,090/-. Initially return was processed u/s 143(1) and later on the case was reopened by issuing notice u/s 148 of the Income Tax Act. In response, the assessee submitted that the original return filed on 29.11.2006 may be treated as return filed in response to notice for

reassessment proceedings. Thereafter statutory notices were issued to the assessee.

3. The assessee company was carrying the business of trading in home appliances during the year under consideration. Further AO on perusal of assessee's trading, profit & loss account, calculated the cost of goods sold at Rs. 5,25,52,509/- (purchase of Rs. 2,08,53,514/- and decrease in stock Rs. 3,16,98,995/-) as against the sale thereof at Rs. 1,60,65,800/- declared by the assessee giving a GP rate of (-) 227% as against the GP rate of Rs. 48% in the assessment year 2005-06 and 26% for the assessment year 2004-05. During the course of reassessment proceedings the assessee was asked to produce the books of accounts, stock register and supporting bills and vouchers and final opportunity was given to the assessee. However, the assessee was unable to produce the requisite documents on the given date and show cause notice was also issued by the AO to explain as to why the books of accounts should not be rejected u/s 145(3) of the Income Tax Act and assessment should not be completed to the best of his knowledge i.e. u/s 144. The case was fixed for hearing on 20.12.2011. Assessee filed part details on 20.12.2011 and case was adjourned to 26.12.2011 giving final opportunity to the assessee to produce books of accounts and other pending details. On the given date on 26.11.2011 the AR of the assessee expressed his inability to produce books of accounts and other documents stating that the same had been misplaced during shifting of their office from SION Mumbai to Gurgaon. Finally the AO observed that the assessee could not produce books of accounts, registers and other supporting documents, therefore, the AO rejected the books of accounts of the assessee u/s 145(3) of the Income Tax Act and completed the assessment u/s 144 of the Income Tax Act. Ld. AO made analysis of the GP earned by the

assessee from the assessment year 2004-05 to 2007-08 and calculated average GP rate as under :-

A.Y.	2007-08	2005-06	2004-05	2006-07
Sales	12716416	65306948	108580376	16065800
Purchases	12535964	37377377	112282061	20853514
(Increase)/decrease in stock	(3229694)	(3435675)	(18299816)	31698995
Cost of purchase	9306270	33941702	93982245	52552509
Profit/(loss)	3410146	31365246	14598131	(36486709)
%	3410146	31365246	14598131	(36486709)
Average rate	36%			

4. Accordingly, the AO calculated the gross profit at Rs. 57,74,048/- at the average GP rate of 36%, as indicted in the above table, thereby making total addition of Rs. 4,22,60,757/- in the trading results declared by the assessee. Feeling aggrieved from the order of the AO the assessee appealed before the Ld. CIT(A), where he submitted detailed written submissions. The assessee also challenged the validity of reopening of the case which was rejected by the Ld. CIT(A). The Ld. CIT(A), however, after considering the detailed submissions of the assessee and relying some case laws, accepted the plea of the assessee regarding wrong rejection of books of accounts made by the AO u/s 145(3) of the Income Tax Act, but sustained the addition on account of loss on revaluation of stock of Rs. 3,24,51,089/- and discount given against the previous year's sale of Rs. 32,13,004/-. Accordingly, the ld. CIT(A) gave relief to the appellant of Rs. 65,79,300/- . Feeling aggrieved from the order of the Ld. CIT(A), the revenue is in appeal before the Income Tax Appellate Tribunal.

5. Ld. DR relied upon the order of the lower authorities and he submitted that the Ld. CIT(A) is not justified to accept the plea of the assessee regarding the rejection of books of accounts by the AO. Ld. CIT(A) has wrongly stated that the AO has failed to point out any defect or discrepancy in the books of accounts maintained by the assessee whereas the books of accounts were never produced before the AO and on the last date of hearing of the reassessment proceedings the AR of the assessee showed his inability to produce the books of accounts, on the pretext that the books of accounts were lost during shifting of business from SION Mumbai to Gurgaon. Ld. AO has after taking reasonable rate of gross profit for the two previous assessment years and one subsequent year of the assessee's business rightly calculated average GP rate at 36%.

6. After hearing the Ld. DR we observed that the assessee had failed to produce the books of accounts for the impugned assessment year. Ld. AO gave more than sufficient opportunities for the production of books of accounts for completing the assessment. During the reassessment proceedings, considering the part reply of the assessee, the AO observed as under :-

*A. It can be seen from the above table that the assessee has shown gross profit at the rate of 26%, 48% and 34% of the purchase cost of the goods for A.Y. 2004-05, 2005-06 and 2007-08 while the company has declared a gross profit of (-)227% for the period under assessment. Please explain as to why the rate of gross profit for the preceding year should not be applied in the period under assessment. Any explanation/reply in this regard must be supported by books of account, stock register and sales and purchase bills.*

*“B. The sundry creditors are shown at Rs. 5.58 crores as on 31.3.2005 and at Rs.11.20 crores as 31.03.2006. It can be seen that the sundry creditors has been increased by Rs. 5.61 crores in the year under assessment. Assuming a theoretical situation where there was no payment to the sundry creditors outstanding as on 31.3.2005 and there was also no payments made for total purchases amounting Rs. 2.08 crores and also there wqas no payment of indirect expenses amounting to Rs. 2.46 crores claimed to have incurred during the relevant previous year (excluding provision for doubtful debts shown at Rs. 1.58 crore). These expenses summed up to Rs. 4.5 crore only and do not justify an addition of Rs. 5.61 crore in sundry creditors during the relevant previous years. You are requested to explain the difference.*

*C. The total purchases as per P&L account are declared at Rs. 208,53,514/- while as per Annexure –BA (furnishing particular of payment made to person specified u/s 40A(2)(b) to the Audit Report, the purchases amounts to Rs. 1071,10,094/- from the related parties as detailed under :*

- |   |                         |
|---|-------------------------|
| <i>i) Birla International Pvt. Ltd.</i> | <i>Rs. 285,36,222/-</i> |
| <i>ii) Birla Power Solution Ltd.</i>    | <i>Rs 785,73,872/-</i>  |
|   | <i>Rs 1071,10,094/-</i> |

*While as per the details filed by you the purchases from Birla Power Solution Ltd are declared at Rs 34,47.784/- and purchases from Birla International Pvt.Ltd. are declared at Rs 30,93,130/- Thus. the purchases amounting to Rs.1005,75,180/- have not been accounted for in your*

*books of accounts. You are requested to show cause as to why purchases should not be treated as unaccounted purchases.*

*D. You have been repeatedly requested to produce the books of accounts alongwith complete vouchers and bills; however, the same have not been produce before the undersigned for examination. Further, in view of the deficiencies as pointed out in the preceding paras, the correctness and the completeness of your accounts is not satisfactory and hence, you are requested to show cause as to why your books of accounts should not be rejected u/s 145(3) of the Income Tax Act and the assessment should not be completed to the best of my judgment.”*

9. The plea advanced on behalf of the assessee for defending non-production of accounts, as made before the authorities below, to our mind does not hold good. It is notable that the AO has demanded the production of accounts right from beginning of proceedings. Thereafter, sufficient opportunities were given to the assessee and the assessee also appeared on some of the dates and filed part reply. However, no such fact of missing of accounts was unfolded by the assessee at any of the dates except the last date of hearing. Besides, the finding of Ld. CIT(A) as mentioned in his order “AO had also not pointed out any particular defect or discrepancy in the accounts books maintained by the assessee”, in our considered opinion, would have no locus standi once the assessee did not produce any books of accounts before the AO. Ld. CIT(A) is, therefore, not justified to accept the plea of the assessee regarding wrong rejection of books of

accounts. Therefore Ld. CIT(A) was not justified to give relief of Rs. 65,89,300/-.

10. In the result appeal of the revenue is allowed.

Order pronounced in the Open Court on 13<sup>th</sup> December, 2018.

sd/-

**(H.S. SIDHU)**  
**JUDICIAL MEMBER**  
Dated: 13/12/2018

***Veena***

Copy forwarded to

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

sd/-

**(L.P. SAHU)**  
**ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT, New Delhi