

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER
AND SH. N. K. CHOUDHRY, JUDICIAL MEMBER

I. T. A. No. 216/(Asr)/2017

Assessment Year: 2013-14

Avtar Kaur,
H.No. 22, Daulatpuri,
Jalandhar

[PAN: AMMPK 1337Q]

(Appellant)

vs. Asstt. Commissioner of Income
Tax, Circle-II, Jalandhar

(Respondent)

Appellant by : Sh. S. S. Kalra (C.A.)

Respondent by: Sh. Charan Das (D.R.)

Date of Hearing: 30.10.2018

Date of Pronouncement: 02.01.2019

ORDER

Per Sanjay Arora, AM:

This is an Appeal by the Assessee directed against the Order by the Commissioner of Income Tax (Appeals)-1, Jalandhar ('CIT(A)' for short) dated 23.02.2017, partly allowing the assessee's appeal contesting her assessment under section 143(3) of the Income Tax Act, 1961 ('the Act' hereinafter) dated 28.03.2016 for the Assessment Year (AY) 2013-14.

2. The appeal raises two issues, which we will take up in seriatim. The assessee, in retail franchise business of a popular brand of apparels and allied products (Reebok), in view of, as stated, problems being faced by its' Principal (Reebok India Company, or 'RIC' for short), closed her said business during the relevant year. The issue arising is the trading loss, if any, incurred by the assessee

on the disposal of the stock-in-trade of the said business. While the assessee claims to have sold its brought forward (from the preceding year) stock for Rs. 5.55 lacs, incurring thus a loss of Rs. 39.33 lacs, the Revenue has assessed it at a profit of Rs. 4.99 lacs. The assessee's, admittedly not maintaining any stock register, case is that of the opening stock of Rs. 171.06 lacs, that for Rs. 126.18 lacs was returned back to the principal. The balance stock of Rs. 44.88 lacs left with it being not saleable, was accordingly sold to the street vendors (thariwalas) for Rs. 5.55 lacs, resulting thus in the claimed loss (refer trading account at PB pg. 7). The same has been sold in cash, even as no receipts, etc. could be expected from and, thus, obtained from the street vendors, while the (cash) sale account was presented in the assessment proceedings (PB pgs. 8 – 42). There is, under the circumstances, no valid reason for the rejection of assessee's books of account, which stands though endorsed by the Id. CIT(A). The Revenue's case, on the other hand, is that the loss booked by the assessee is not evidenced. The assessee's normal gross profit (GP) rate is in the range of 20%, being at 21% for AY 2011-12, so that a GP rate of 10%, i.e., on the balance goods with it, admittedly sold, *itself implies a rebate of 10%* (on sale value).

3. We have heard the parties, and perused the material on record, and given our careful consideration to the matter.

3.1 The assessee before us strongly objected to 'rejection' of its' trading results, i.e., invocation of section 145(3) *qua* the disposal through sale of its' opening stock, resulting in a trading loss of Rs. 39.33 lacs and, instead, estimating it as sold at rate/s yielding a gross profit rate of 10%, or Rs. 4,98,631/-. The adjudication by the Id. CIT(A) of this issue is as under:

'08. During the course of appellate proceedings, the assessee stated that there was no difference in opening stock as such since the assessee had clearly shown the adjustment of purchase returns of Rs. 1,26,18,099/- in its trading account. These were on account of closure

of business with M/s Reebok who operate through their allies such as Goshies, Berkley & Royal Trading. The assessee has also provided a copy of its account in the books of M/s Goshies Apparel Pvt. Ltd. which constituted the major purchase returns. The assessee has also filed a copy of the termination agreement between the assessee and M/s Reebok India Co. which clearly states that the franchise has been terminated w.e.f. 30.10.2012. (*)

09. The Assessing Officer has not raised an issue with the purchase returns or with the debit notes produced by the assessee during assessment including the quantity and value of goods return. However, the Assessing Officer rejected the trading results since the assessee could not produce books of accounts, bills, vouchers, stock register etc. The assessee's purchase returns totaling Rs.1,26,18,099/- include the following:-

Goshies Apparels P. Ltd.	1,15,52,825/-
Berkley Retails Ltd.	7,93,615/-
Royal Trading Co.	2,71,659/-
Total Purchase Return	1,26,18,099/-

10. These have not been questioned by the Assessing Officer. Therefore I see no logic, even after rejection of books, to estimate G.P. on purchases which were returned to M/s Reebok's associates. To do that, it is necessary to reject the entire exercise of closure of business and the termination agreement between the two parties.

11. During appellate proceedings the assessee has stated that whatever stock was remaining had been sold out to hawkers at a throw away price of Rs. 5,55,291/- against the purchase price of Rs. 44,87,679/-. This explanation of the assessee cannot be believed. Any stock of a brand like Reebok is always favored by customers. A discount of 30-40% can be understood but sale of stock of Rs. 44,87,679/- @ 1/8th of its purchase price is beyond the realm of imagination. Reebok is a company which has a very high brand value in India and whether the company is going through a financial crisis hardly concerns the common consumer. Sale of such stock to hawkers is something that cannot be believed. In the interest of justice the assessee sale of remaining stock is estimated at the same G.P. as average of two earlier years of 10%. It is worthwhile to note that the G.P. for the A.Y. 2011-12 has been shown @ 21% by the assessee herself. Due to loss in subsequent year, the average G.P. comes to 10%. Therefore an addition of Rs.4,98,631/- on account of G.P. on sale of remainder stock is directed to be added to the income of the assessee.'

(*) [the correct date is '30.11.2012']

As clear from the reading of the assessment and the appellate order, the Revenue has not accepted the claimed loss in view of its' non-substantiation. The assessee having not produced any documentary evidence toward the same, the Assessing Officer (AO) did not accept even the claim with regard to purchase return (for Rs.

126.18 lacs), and assessed the income on the disposal of stock by applying a GP rate of 10% on the total stock, costing Rs. 171.06 lacs, i.e., as being carried in the assessee's accounts, or at Rs. 19,00,642/- (Rs.171.06 lacs x 1/9) (refer paras 3.1, 3.2 and 3.3 of the assessment order). The Id. CIT(A) restricted the same, and only correctly so, to the stock with the assessee, i.e., the balance left after that returned to the principal, or Rs. 44,87,679/- (Rs.171.06 lacs - Rs. 126.18 lacs). We say so as the purchase return of Rs. 126.18 lacs, being already booked in the assessee's accounts, implying a credit to the trading account to that extent, *the claim for expenditure qua stock-in-hand by the assessee, as apparent from the trading account itself, is limited to Rs. 44.88 lacs*. As such, even if, as the AO states, and which we have no reason to doubt, the assessee did not furnish any supporting documents with regard to the purchase return before him, there is no claim (for expenditure) by the assessee to that extent, for it to be disallowed or not accepted. It is in fact this that is the basis of our stating, at the beginning of this order, while delineating the issue arising, the assessee to have claimed a loss of Rs.39.33 lacs (i.e., Rs. 44.88 lacs – Rs.5.55 lacs) through the trading account (refer para 2 of this order). The AO's stand to this extent is, therefore, misplaced, and rightly reversed by the Id. CIT(A), who has in principle accepted the AO's stand, i.e., of the assessee being unable to establish the correctness and completeness of its' accounts in respect of the loss on sale of stock, i.e., as available with it and, thus, the correctness of its' disclosed trading results.

3.2 As regards the invocation of section 145(3), upheld by the Id. CIT(A), i.e., *qua* the stock not returned by the assessee to its' principal, and in respect of which it therefore makes a claim (for loss) through its trading account for the year, the same is to be understood in its proper perspective. The issue arising, and the case of the Revenue rests, on the sustainability (or otherwise) of the assessee's claim in

respect of the loss stated as incurred and, accordingly, claimed on the sale of the said stock, i.e., in the facts and circumstances of the case. It is not necessary for the Revenue for effecting or sustaining the said disallowance to reject the assessee's trading account/results, which it though does in view of the unreliability of the accounting figures as to stock as well as the absence of any reliable evidence as to sale; the cash sale bill/s being only a self generated document. The burden to prove its' return, and the claims preferred thereby, it may be appreciated, is on the assessee (*CIT v. Calcutta Agency Ltd.* [1951] 19 ITR 191 (SC); *CIT v. R. Venkataswamy Naidu* [1956] 29 ITR 529 (SC)). Where, therefore, the loss as claimed is not reasonably proved, a disallowance in its respect shall ensue irrespective of whether substantial doubts have been raised *qua* the reliability of the assessee's accounts in general. In fact, no such doubts have indeed been raised. The 'rejection' of accounts is thus primarily in relation to the stock sales; there being no purchases for the year, as well as the value of the stock (after that returned to its' principal, for which credit stands allowed to it through its' allies) with it. *Both these elements, as we shall presently see, remain unproved.* The only 'trading' operations carried out during the year being the disposal, by way of sale, of the leftover stock, is what has prompted the Revenue to, disregarding the declared 'trading' results, estimate the same. It is in this context that the invocation of section 145(3) is to be understood in the instant case. That is, it is equally valid for the Revenue to disallow the loss claimed by the assessee, stating it as unproved, and estimating some profit instead. Rather, if the profit component, estimated therefore by the Revenue, were to be removed, the only adjustment to the assessee's income *qua* the sold stock that remains is the allowance (or otherwise) of the loss claimed in its respect, which could be effected even *de hors* section 145(3). The only difference, technically speaking, between the two, thus, is the estimation of the 'profit' on such sale along with, i.e., simultaneous with the

disallowance of 'loss', and which may require invocation of section 145(3). Now, while the latter could survive independent of the former, the 'former' subsumes the 'latter' in-as-much as the profit signifies absence of loss. The two are in fact interrelated as a loss arises only on account of the inability to recoup the cost price of the relevant goods, to whatever extent, implicit wherein is inability to fetch the selling price, which is marked, as is usually the case, over the cost price.

In other words, the only significance of the invocation of section 145(3) is a simultaneous estimation of profit. In fact, it is a moot point, and stands to reason that if a claim of 'cost' could be doubted or regarded as unproved for being unsubstantiated without necessarily rejecting the accounts, why could not, similarly, the claim of 'sale'. The answer, to a point, may also lie in the nature of the counter evidence available with the Revenue. Not accepting a claim, be it a debit (expenditure) or credit (income), could be due to the unreliability or indefiniteness of the material furnished in substantiation, as also the positive evidences led by the Revenue in rebuttal. While the former could result in a 'passive' disallowance, which again could be total or partial, so that some estimation is intrinsic to the exercise, the latter would enable the AO, whose powers in the matter of assessment are plenary, to estimate a figure, of course, based on the facts and circumstances of the case as well as the material on record. Whether the claim/s is reasonably proved on the basis of the evidences led, or not, a question of fact, is a different matter, concerning the merits of the claim/s. What is being sought to be brought forth, plainly, is that the matter is, rather than technical, factual, and boils down to, on one hand, the 'proving' of the assessee's claims by her, and the 'disproving' of the assessee's claims' by the Revenue, on the other. To, however, answer the question as to the applicability of section 145(3), we, for the reasons afore-stated, as well as that may find elaboration in the subsequent part of this order, see no infirmity therein *qua* the assessee's trading

results, which only stand disturbed by the Revenue. Rather, we observe, apart from absence of stock reconciliation/details, also un-reconciled balances with trade parties, impinging on the correctness and completeness of the assessee's accounts.

3.3 We shall now deal with the matter on a factual plane. The assessee is not maintaining any stock records. What, then, one may ask, is the basis for determination of the figure of the closing stock as at the year-end and, thus, the profit for a particular year? None is stated. Stock records, an integral part of the books of account, only would lend credence to and confirm the veracity of the quantity and composition of the stock as at the year-end and, thus, also its' valuation. Absence thereof, is, in fact, most surprising in the present case as the accounting software used by the franchisees are usually that employed by, or in any case, in agreement with that deployed by, the principals, who therefore have information on stock status of any franchisee on a real-time basis. In fact, no reconciliation between the stock figures, i.e., as available with the assessee as per its' accounts, and that as per the books of the principal, could be arrived at even on the stock-taking for the purpose of stock return. While the assessee's accounts state the said figure to be at Rs. 44.88 lacs, that as per the principal, it is Rs. 27,32,978/-. This is noted by the AO at para 3.4 of his order, and cited as among the reasons for the stock figure as per the assessee's books being not reliable. The said finding has not been rebutted or otherwise explained at any stage. Why, we have already stated the stock figure as per the assessee's accounts as not verifiable in the absence of the stock records, admittedly not maintained by the assessee. *How could, then, the loss on disposal of said stock, stated to fetch a mere Rs. 5.55 lacs, reflecting thus trading loss of Rs. 39.33 lacs, be verified?* Why, the sale amount of Rs. 5.55 lacs, stated to be in cash to street hawkers, is itself not verifiable. The assessee justifies the same before us on the basis of it being a distress sale; the assessee being

required to vacate the rented premises used as showroom/s. Besides, without doubt, the stock was damaged, or else the company would itself accept it back, so that the very fact that it did not is proof enough that the said stock, i.e., as not returned to the company, was not saleable. No proper bills/receipts could be expected to be issued to/received from the Thariwalas (street vendors), to whom the goods were sold. As regards the claim of distress sale, we are unable to understand the basis thereof. There are no purchases, for both the showrooms, during the year. As some purchase orders, due to the lead time for supply, are in pipeline at any given point of time, the very fact of absence of any purchase, at least since April 01, 2012, implies that no purchase/supply orders were issued/made since prior thereto. That is, the assessee had ceased its' purchases, conveying understandably this fact to its' principal. That is, the decision to close business; the assessee also citing financial problems being faced by the principal, had been taken prior to the beginning of the year, and the negotiations for closure, i.e., the terms thereof, etc., on. The adjustment of the purchase return from the opening stock is also presumably on account of this, i.e., is supportive. The franchise agreement/arrangement ceases w.e.f. November 30, 2012, the termination date. The assessee, thus, had adequate time to dispose the goods. Even if some time of the current year is regarded as consumed in identifying the stock which RIC would not accept, still the assessee had sufficient time for the purpose, particularly considering that negotiations were on and the assessee knew about the return-ability of the stock, which would again, presumably, only be in terms of the agreement. Why, the sale of stock by the assessee begins as early as on April 03, 2012 (PB pgs. 8, 25), continuing up to 29/9/2012 in different accounts (sale 5%, 5.5%, 12.5% & 13%) (PB pgs. 8 - 42). That is, the sale continues for six months, selling most of it by 31/8/2012 (for stock on which date it stands supposedly compensated by the principal), and the assessee had exhausted its' *entire* stock

well before the termination date, by which date it was to hand over the possession of the showroom. The claim of distress sale, which we observe as absent before the Revenue authorities, is only a bogey.

The assessee's next argument is that the goods being damaged, were not saleable and, accordingly, sold at throw-away prices, which we observe to be at about 10% of the sale price, reckoning the same at 25% over cost (so as to yield a GP rate of 20%). The issue, therefore, is if the same stood damaged to an extent to be classified or regarded as 'dead stock'. The various reasons for the 'damage' – used as a generic term, of stock, as explained during assessment proceedings by the assessee, are as under: (refer assessee's letter dated 21/3/2016 to the AO, at PB pgs. 4-6)

- '(a) Items put on racks as samples loose their original look.
- (b) Goods damaged because of seepage of any kind which is normal in running business.
- (c) Goods damaged because of dampness.
- (d) Certain pieces, e.g. shoe's one piece is displayed which loses its originality the other piece doesn't match with shoe displayed.
- (e) Goods not cleared even after repeated reduction sales are called old fashioned and old model which are not salable.
- (f) Many other factors such as goods damaged while packing or unpacking.
- (g) Color fading because of time gap.
- (h) Various other unforeseen factors which is normal creations of a business.'

To put succinctly, these are:

- (i) damage on account of dampness, colour fading, etc.;
- (ii) stock getting out of fashion;
- (iii) loss of originality of the product, which is for several reasons, as on account of display, etc.

All these factors, which are a normal incident of the trade, would surely result in loss of value, but would not, without doubt, render the relevant goods valueless, or nearly so, as the assessee claims. The assessee has, further, not led any material *qua* the extent of the damage to its' goods at any stage, even as the same would indeed have been documented, only whereupon the said stock, duly identified, stands determined, and the value of which, as per the books of RIC, is at Rs. 27.33 lacs. Why? *How does, further, the assessee justify the balance?* We find none. Though stated in the Memorandum of Understanding (MoU) (PB pgs. 43-47) to be the value of stock at wholesale price, i.e., the assessee's cost price, for the goods at the assessee's Store 1, we observe no explanation by the assessee at any stage, including before us, with reference to the stocks lying at its' two different stores. The assessee is maintaining consolidated accounts for both the stores, and the entire stock figures as furnished, viz. opening stock, returned, and that sold, are with reference to its' entire stock. Mere suggestion of the balance stock lying at the other, second store, would imply the opening stock, purchase return and sales, to also include stock of Store 2, rendering the segregation of stock as of no consequence. In fact, such a segregation could only be possible on the basis of separate accounts, or in the very least separate stock registers, i.e., where the account of the two units are consolidated for presentation purposes. As aforesaid, there is no whisper of store-wise (stock) accounting, nor any reference thereto or mention of the said segregation in the assessee explanation/s and, consequently, any finding or even reference thereto in the orders by the Revenue authorities. We have already noted that the said difference of Rs. 17.55 lacs (Rs. 44.88 lacs – Rs. 27.33 lacs), emphasized by the AO, remains unexplained, and at any stage. Coming to the extent of damage, the stated infirmities do not suggest a serious damage so as to qualify it as a dead stock, as contended. That the extent of the damage stands duly factored or taken into account between the parties in settling

their accounts, is, further, borne out by a conjoint reading of clauses (6) and (7) of the MoU dated 17/01/2013 (PB pgs. 43 – 47), which read as under:

‘(6) RIC has determined the stock lying with the Franchisee at Store I as on August 31,2012 from the data in its LOGIC software and ascertained the whole sale price of such stock to be Rs.27,32,978/- (Rupees Twenty Seven Lakh Thirty Two Thousand Nine Hundred and Seventy Eight only).

(7) In arriving at the aforesaid full and final settlement amount of Rs. 12,64,159/- (Rupees Twelve Lakh Sixty Four Thousand One Hundred and Fifty Nine only), RIC has allowed an amount equivalent to 40% of the whole sale price of such stock, i.e., an amount of Rs. 10,93,191/- (Rupees Ten Lakh Ninety Three Thousand One Hundred and Ninety One only), to the Franchisee towards stock liquidation support.’

(emphasis, by underlining, ours)

Clearly, therefore, the stock with the assessee has been assessed to yield only 60% of the wholesale (cost) price, for the principal (RIC) to have in fact compensated the assessee for the anticipated loss of the balance 40% thereof. This compensation, duly accounted for by the assessee, though, would not alter our algorithm or the ‘loss’ under consideration (Rs. 39.33 lacs), as the same is being reckoned on gross loss basis, i.e., the difference between the cost of the unreturned goods lying with the assessee, i.e., as claimed, and their value as realized on sale, again, as claimed, both of which remain unchanged at Rs. 44.88 lacs and Rs. 5.55 lacs respectively. The aforesaid assessment, duly accepted by and between the parties, i.e., in settling their accounts on the closure of business relationship or termination of the franchise agreement, can only be regarded as a fair assessment of such loss and, thus, a proper basis for ascertaining the same for tax purposes. A discount of 40% on cost, it may be noted, works to over 50% on sale price, considering a mark-up that yields the normative GP rate of 20%. This assessment, it may be further noted, is in broad agreement with that by the Id. CIT(A), who states of a discount of 30%-40% as understandable (at para 11 of his order, reproduced supra), though inexplicably, and in contradiction to his own assessment, allows no loss, but assesses a profit of Rs. 4.99 lacs. There is in fact no

evidence with the Revenue which suggests or indicates the assessee to have realized the stock – to any extent, over cost price. Further, no doubt the MoU states the compensation to be out of stock with the assessee as on 31.08.2012. It is, however, apparent that the same only refers to the stock left with the assessee after return back, for which credit stands allowed to it by the principal in full, i.e., at cost. Rather, if not so, the assessee, on the contrary, stands to gain by being compensated for this stock, already sold by it and, thus, no longer with it as on 31.08.2012, which apparently is the relevant date for compensation. As it appears, the assessee has not reported the cash sales (up to 31.08.2012) to its' principal. Here it may also be relevant to state that the loss, arise as it does in respect of the assessee's opening stock, so that it has in fact arisen earlier to the current year, on account of factors that are normal incidences of the retail trade, i.e., represents business loss of the preceding years, accounted for in the current year. Though, therefore, strictly speaking, not allowable for the current year, we yet consider it admissible as the said loss is in fact recoverable under the franchise agreement from the principal upon determination, as indeed compensated for by it. The observation by the Id. CIT(A) that the brand 'Reebok' carries a high premium in the market and, therefore, could not possibly be disposed through street hawkers, also merits acceptance, particularly when juxtaposed with the fact that no serious defects in stock have been pointed out, and coupled with the complete absence of any credible material to show that the said stock had indeed been sold, as claimed, to Thariwalas.

3.4 The next question before us, would therefore be the extent of the loss that can be regarded as proved, or reasonably so, by the assessee, i.e., in the facts and circumstances of its' case and, consequently, the balance for which therefore a disallowance becomes therefore sustainable, it being by now clear that the same

could not fetch its cost price, much less its sale price, so that there is no question of any profit on its sale. The assessee's accounts reflecting stock-in-trade at cost, at which it is allowed credit for by its' principal on return, Rs. 44.88 lacs represents the value of the stock left with it at cost. The difference of Rs. 17.55 lacs; the principal determining the same at Rs. 27.33 lacs, remains unexplained. The realizable value of the stock is at 60%, i.e., Rs. 16.398 lacs, as against Rs. 5.553 lacs by the assessee, whose claim, thus, can be said to be proved to the extent of Rs. 10.932 lacs (Rs.27.33 lacs - Rs. 16.398 lacs), i.e., out of the total loss of Rs. 39.33 lacs claimed by the her. The assessee, accordingly, instead of being assessed at a profit of Rs. 4.99 lacs, as by the Revenue, would stand to be allowed a loss of Rs. 10.932 lacs and, accordingly, gets a relief for Rs. 15.922 lacs (i.e., Rs. 4.99 lacs + Rs.10.932 lacs). Here it may also be relevant to mention, and even as observed by the Bench during hearing, that a proper adjustment to the assessee's returned income in this respect would warrant an add back (disallowance) of the loss claimed, followed by reduction of the loss assessed (or a further add back of the profit sustained), and which also explains the aforesaid figure of Rs.15.922 lacs. We refer to the 'profit sustained' even as we have accepted the assessee's claim for loss, to whatever extent, only for completeness of the stated algorithm. An assessment at a profit of Rs. 50, for example, as against the claimed loss of Rs. 100, would warrant an addition for Rs. 150 to an assessee's returned income. We state so as we observe that this has not been followed in computing the assessee's income, resulting in a mismatch between the income as assessed and its' computation; the Revenue failing to make disallowance for the loss not accepted by it, implicit in the rejection of accounts and assessment at a profit @ 10%. The ld. counsel for the assessee, Sh. Kalra, would, upon this being observed by the Bench during hearing, object, stating that the same can only be the subject matter of the Revenue's appeal. We are afraid, we could not disagree more. The question

is of giving effect to the income assessed, i.e., the income as determined in assessment (or, as further modified in appeal) – nothing less and nothing more, and has nothing to do with the Revenue’s non-existent appeal. The Revenue’s appeal, where so, could only be *qua* the acceptance of the purchase return by the Id. CIT(A), as against it as not by the AO, impacting the volume of the stock that could be regarded as available with the assessee, and has nothing to do with the computational flaw afore-referred. The mistake, which is in the nature of an arithmetical anomaly, could be rectified u/s. 154. How could we, however, be oblivious to or overlook a glaring mistake staring us in the face, and which therefore stands brought to the fore. In fact, we would be failing in our duty were we not to do so. Reference, *inter alia*, be made to the decision in *Kapurchand Shrimal v. CIT* [1981] 131 ITR 451 (SC), wherein it stands explained by the Apex Court that an appellate authority has the jurisdiction as well as the duty to correct all errors in the proceedings under appeal and to, if necessary, issue appropriate directions to the authority against whose decision the appeal is preferred in disposing the matter before it. Inasmuch as the same, however, would result in an ‘increase’ in income, it was considered proper by us to put this forth to the Id. counsel for the assessee who, while agreeing with the same, i.e., the computational algorithm, questions its legitimacy in the instant proceedings. This is unfortunate in view of it being a simple matter of an arithmetical mistake, as pointed out earlier. How could, one may ask, the assessee be allowed relief of Rs. 15.922 lacs, i.e., pursuant to our order, where no disallowance of loss has been made by the Revenue in the first place; the afore-said figure including the claim of loss at Rs. 10.932 lacs. We are conscious that the assessee’s Gd. 2; Gd. 1 being general in nature, warranting no adjudication, restricts itself to the addition *qua* the profit sustained, and which addition we have found as without basis. This, however, is of no moment. The assessment at a profit, firstly, itself implies absence of loss, so

that there is no question of the loss claimed having been accepted (by the Revenue), a part of which in fact stands allowed by us, i.e., in deciding the issue discerned as arising for adjudication. The Tribunal is even otherwise not confined to the ground/s raised before it, though is bound to, as we have, hear the parties in the matter (rule 11 of the Appellate Tribunal (Income-tax) Rules, 1963). We could further dwell on the scope of a tax appeal as well as the powers of the tribunal; the law on which is well-settled, but do not consider it necessary to do so in-as-much as we have not traveled outside the issue arising for adjudication, and what stands highlighted here is a simple arithmetical mistake in computation.

3.5 We decide accordingly, and the assessee gets part relief.

4. The next and the only other issue arising in the instant appeal is that raised per its Grounds 3 and 4, *qua* an addition for Rs. 3,74,007/-, being the difference in account with M/s. Goshies Apparels (P.) Ltd., one of the allies of RIC, through which, among others, the business was being transacted by it with the assessee. While the assessee's accounts reflect a debit balance of Rs. 66,97,987/- in the account of Goshies Apparels (P.) Ltd., that of the said creditor shows a balance of Rs. 63,23,980/- to the assessee's credit. Addition was made on account of the difference (of Rs. 3.74 lacs) being unexplained. We agree with the Id. counsel, Sh. Kalra, that no addition could be made in the instant case even if the said difference is, as is admittedly the case, unexplained. The reason is the lower credit allowed to the assessee by the said creditor. The assessee's accounts reflect a higher debit balance thereto, which only implies a corresponding credit (to, as we suppose, a nominal account) in the assessee's accounts to that extent. There is as such no unexplained credit in the assessee's accounts. No addition, accordingly, under the circumstances, is called for. We decide accordingly.

5. In the result, the assessee's appeal is partly allowed.

Order pronounced in the open court on January 02, 2019

Sd/-
(N. K. Choudhry)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Date: 02.01.2019

/GP/pkk/Sr. Ps.

Copy of the order forwarded to:

- (1) The Appellant: Avtar Kaur H.No. 22, Daulatpuri, Jalandhar
- (2) The Respondent: Asstt. Commissioner of Income Tax, Circle-II, Jalandhar
- (3) The CIT(Appeals)-1, Jalandhar
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

True Copy

By Order