

आयकर अपीलीय अधिकरण "जी" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI**

श्री डि. करुणाकर राव, लेखा सदस्य एवं

श्री अमित शुक्ला, न्यायिक सदस्य के समक्ष ।

**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
AND SHRI AMIT SHUKLA, JUDICIAL MEMBER**

ITA No. : 672/Mum/2011

(Assessment year :2007-08)

M/s NRB Bearing Ltd, "Dhanur", 15, Sir P M Road, Fort, Mumbai -400 001 स्थयी लेखा सं.:PAN: AAACN 3479 P	Vs	Addl. Commissioner of Income Tax -2(2), Mumbai -400 020
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
Appellant by	:	Shri Vijay Mehta
Respondent by	:	Shri Rakesh Kumar Agarwal

ITA No. : 1982/Mum/2011

(Assessment year :2007-08)

Addl. Commissioner of Income Tax -2(2), Mumbai -400 020	Vs	M/s NRB Bearing Ltd, "Dhanur", 15, Sir P M Road, Fort, Mumbai -400 001
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
Appellant by	:	Shri Rakesh Kumar Agarwal
Respondent by	:	Shri Vijay Mehta

सुनवाई की तारीख /Date of Hearing : 21-07-2015

घोषणा की तारीख /Date of Pronouncement : 30-10-2015

**आदेश
ORDER**

अमित शुक्ला, न्या. स.:

PER AMIT SHUKLA, JM:

The aforesaid cross appeals by the assessee and the revenue has been filed against impugned order dated 10.12.2010 passed by CIT(A)-5, Mumbai, for the quantum of assessment passed u/s 143(3) for the assessment year 2007-08.

2. We will first take-up appeal in ITA 672/Mum/2011 vide which following grounds have been raised. Ground no. 1 to 8 :

- “1. *The learned CIT (A) has erred in law and on facts in partially upholding the order passed by the Assessing Officer u/s. 143(3) of the Income-tax Act, 1961.*
2. *The learned CIT (A) has erred in law and on facts in confirming the addition of a sum of Rs. 53,48,000/- made by the Assessing Officer as 'income from house property' by estimating the annual letting value of property.*
3. *The learned CIT (A) has erred in law and on facts in sustaining the disallowance of overseas commission of Z 3,12,752/- made by the Assessing Officer u/s. 40(a)(ia) of the Act.*
4. *The learned CIT (A) has erred in law and on facts in concurring with the disallowance of Rs. 5,51,333/- made by the Assessing Officer u/s. 40(a)(ia) of the Act for want of details. The learned CIT (A) ought to have directed the Assessing Officer to verify and allow the claim if relevant details were produced before him in the proceedings to be conducted to give effect to the appellate order.*
5. *The learned CIT (A) has erred in law and on facts in agreeing with the disallowance of a sum of Rs 8,78,599/- made by the Assessing Officer by treating repair expenditure as capital in nature for want of details. The learned CIT (A) ought to have directed the Assessing Officer to verify and allow the claim if relevant details were produced before him in the proceedings to be conducted to give effect to the appellate order.*
6. *The learned CIT (A) has erred in law and on facts in upholding the disallowance of expenditure of Rs. 1,63,048/- incurred on repairs to boundary wall by considering it as amount spent on 'construction of boundary wall'.*
7. *The learned CIT (A) has erred in law and on facts in invoking the provisions of S. 145A of the Act and in directing the Assessing Officer to work out addition on account of estimation of profit.*
8. *The learned CIT (A) has erred in law and on facts in approving the additions of Rs. 48,064/- and Rs. 1,41,776/- made by the Assessing Officer for belated payment of ESIC and PF respectively. The learned CIT (A) ought to have deleted the additions as there was no delay in payment of ESIC contributions were concerned; and the PF dues were paid within the grace period”.*

3. At the outset Ld. Counsel, Shri Vijay Mehta, submitted that ground no. 4 & 7 are not pressed. Accordingly, these grounds are treated as dismissed as not pressed. Ground no. 1 and 10 are general, therefore, no adjudication is required.

4. So far as issue relating to addition of Rs. 53,48,000/- on account of estimation of annual letting value while computing the income from house property as raised in ground no. 2, the relevant facts on the impugned issue are that, the assessee had disclosed income of Rs. 40,39,219/- under the head "Income from house Property". The AO from the details furnished by the assessee, noted that assessee owns following buildings; (i) Dhanpur, 15, Sir P M Road, Fort, Mumbai; and (ii) Shangri-la, 27A, Carmichael Road, Mumbai. In the first building, there were mostly old tenants on whom standard rent were applicable and accordingly, AO held that there is no requirement of determining the ALV at market value. In respect of one new tenant also in the said building was also accepted by the AO. Regarding second building, AO observed that, out of 14 flats, 12 of them were statutory tenants existing before the assessee became the landlord, therefore, market rate cannot be estimated beyond the standard rent. However, AO noted that on following flats, the tenants were new and as per the leave and license agreement provisions of standard rent are not applicable :-

Detail of the Property	Area(Sq.ft)	Deposit if Any (Rs.)	Name of the tenant	Monthly Rent Recd. (Rs)	Dt. from which Prop is rented to Current tenant :
1 st Floor no.4	3527.305	3.5 crore	Johnson & Johnson	20,000	01.01.2002 to Nov, 2006
1 st Floor Flat No.4	3527.305	15 lakh	Futura Polyester	5,00,000	16.01.2007
2 nd Floor, Flat No. 5	3587.458	2 crores	Centurion Bank	1,00,000	01.07.2004

The AO in view of such information, issued show cause notice to the assessee that, why in respect of similar properties rented to the Centurion Bank and Johnson & Johnson, the rent received was Rs. 20,000/- and Rs. 1 Lakh per month, while the property earlier occupied by Johnson & Johnson was given to Futura Polyester Ltd., @ Rs. 5 lakh per month. This shows that the market rate of the rent was much higher than the rent received. Further, the assessee had received deposits of Rs. 3.50 crores and Rs. 2 crores and if such deposits were not there, then these property would have fetched much higher rent. In response, assessee submitted a reply vide letter dated 15.12.2009, where the assessee had submitted the copies of agreement in respect of all the three companies and stated as under :-

“We are enclosing copies of agreement with M/s Johnson & Johnson, Centurion Bank and Futura Polyester Ltd, for premises rented to them at Shangrila (Residential Bldg.). Before the Centurion Bank, the said property was rented to Organon (India) Limited at monthly rent of Rs. 25,000/- and Rs. 2.5 Crore Security Deposit, the copy of agreement is enclosed. With regard to considering the market value for Flat No. 4 & 5, we would like to inform you that we have received a deposit of Rs. 5.50 Crores from two tenants. However, these deposits were credited in overdraft Account and thus, reducing the burden of interest cost. If, these deposits had not been received by us, the interest cost would have gone more by approx. Rs. 70-75 lakhs, which would have been admissible expenditure”.

5. Ld. AO, after discussing various decisions and facts of the case, enhanced the ALV at Rs. 76,40,000/- and thereby made the addition of Rs. 53,48,000/-. He has estimated the market value of the rent of these flats at Rs. 4,50,000/- per month which was on the basis of comparison with the higher rent received from another tenant i.e. Futura Polyester Ltd, which was paying rent of Rs. 5 lakhs per month. The relevant observation and the finding of the AO reads as under :-

“It has been held in large number of cases by various courts that, for determination of fair rent, the prevailing rent in the neighborhood can be a very important criteria. In this case, the rent fetched by Flat No. 4 when it was rented to Futura Polyester Ltd in January, 2007 is Rs. 5 lakh per month with a deposit of Rs. 15 lakh. If the

deposit was not taken by the assessee, the property would have fetched even a slightly higher rent than Rs. 5 lakh per month as the tenant would have saved interest corresponding to the deposit. The same flat was given to Johnson & Johnson at a monthly rent of only Rs. 20,000/- per month from 01.01.2002. Though, the flat was given to Johnson & Johnson at an earlier date and, therefore the market rate has to be slightly lower than the market rate at which flat was rented to future Polyester Ltd. However, the deposit of Rs. 3.5 crores was taken. The interest free deposit of Rs. 3.5 crore show that the flat would have fetched a much higher rent and the rent received is accordingly much less than the rent which it could have fetched by the same flat, rented to a subsequent tenant, I estimate the market value of rent of flat No. 4 at Rs. 4,50,000/- p.m.

Flat No. 5 with a slightly larger area (3587.45 sq. ft.) on 2nd Floor has been rented to Centurion Bank for rent of Rs. 1 lakh per month with a deposit of Rs. 2 crore. The market value of this flat is also estimated at Rs. 4,50,000/- per month. Considering the rent retched by flat rented to Futura Polyester and other factors.

Thus, the ALV of Flat No. 5, at 4.5 lakh per month comes to Rs. 54 lakh as compared to Rs. 12 lakh declared by the assessee while the proportionate ALV of Flat No.5 for the period up to November, 2006 (for 8 month) comes to Rs. 36 lakh as compared to Rs. 1,60,000/- declared by assessee. Accordingly, for these two properties, the total ALV is enhanced by Rs. 76,40,000/- it may not be out of place to mention here that as per assessee's own submission, they have saved interest of Rs. 70-75 lakhs by using interest free deposits in the business clearly indicating that economic potential of the properties is certainly more than the rent received by assessee to the extent and thus, it indicates towards reasonableness of estimate of market value of rent of these two properties.

The income from house property has been computed at Rs.19,63,555/- in view of enhancement of ALV by Rs. 76,40,000/-, after allowing deduction @ 30% u/s 24 of the Income Tax Act. The addition to the income from house property declared by assessee would be Rs. 53,48,000/-".

6. The Ld. CIT(A) too confirmed the action of the AO in enhancing the ALV of the two flats by adopting the monthly rent @ Rs. 4,50,000/-.

7. Before us, the Ld. Counsel submitted that now the issue, whether annual rent value can be determined after applying the Municipal valuation rate or not has been decided by the Hon'ble High Court in the case of CIT vs Tip Top Typography [2012] 368 ITR 330 (Bom). Here in this case also, the assessee's contention

has been that the annual letting value shown by the assessee was as per the actual rent received, which was far more than municipal valuation rate, therefore actual rent received should be accepted.

8. On the other hand, Ld. DR strongly relied upon the order of the CIT(A) & AO and submitted that, when there was a direct comparable case in the same building, then it is implicit that assessee was require to determine the ALV of the flat, as per comparable case therefore, the estimate made by the AO is very fair. In any case, the matter can be sent back to the AO to decide the issue in light of the decision of Hon'ble Bombay High Court in the case of Tip Top Typography.

9. After considering the rival submissions and on perusal of the impugned orders we find that the AO as well as CIT(A) have drawn adverse inference for enhancing the ALV, mainly on the ground that, firstly, the assessee has taken interest free deposit from the tenants and if such deposits would not have been taken, then the rental value would have been more; and secondly, the market rate at which the flat was rented to M/s Futura Polyester Ltd was much higher than the rent received from assessee from its other tenants i.e. Centurion Bank and Johnson & Johnson. Now the jurisdictional High Court has discussed similar kind of cases in detail in case of Tip Top Typography and have laid down very detailed proposition on the determination of ALV. The Hon'ble High Court have accepted the contention of the assessee that, municipal valuation rate for determining the ALV is also an accepted method of valuation, which on the facts and circumstances of the case can be applied. They have even discussed whether, any adverse effect has to be drawn in the cases where interest free deposits have been accepted. Thus, in wake of the said judgment of Hon'ble Bombay High Court we are of the opinion that the matter should be restored back to the file of the AO to determine the ALV as per the guidelines proposed and laid down by the jurisdictional High

Court and after giving due opportunity to the assessee to explain its case. Accordingly, ground no. 2 is treated as partly allowed for statistical purposes.

10. In ground no. 3, the assessee has raised the disallowance of overseas commission of Rs. 3,12,752/- made by the AO u/s 40(a)(ia).

11. The assessee made provision of commission of Rs. 3,12,752/- which was account of payment of overseas commission. The disallowance u/s 40(a)(ia) has been made by the AO on the ground that, assessee has not been able to bring anything on record that the said amount is not taxable in the hands of the recipient. Before us, the Ld. Counsel submitted that, with regard to the payment of Rs. 1,34,12,878/-, the Ld. CIT(A) has remanded back the matter to the AO with a direction to verify the claims and allow the corresponding expenses. However, with regard to the amount of provision for commission, no proper finding has been given either by the AO or by the Ld. CIT(A), therefore, matter should be restored back to the file of the AO.

12. On the other hand, Ld. DR relied upon the finding of the CIT(A).

13. After considering the relevant finding given in the impugned orders, we find that the AO has not given any specific finding *qua* the said provision of payment of overseas commission in the assessment order, nor the CIT(A) has given any finding as to how the amount is exigible to tax in the hands of the recipient. Therefore, in the interest of justice, we feel that this matter should be restored back to the file of the AO to examine the chargeability of tax in the hands of the recipient on the payment of commission and then decide, whether the TDS is to be deducted or not. The AO will provide proper opportunity of hearing to the assessee while

deciding this issue. Accordingly, ground no. 3 is treated as allowed for statistical purposes.

14. In ground no. 5 & 6, the assessee has challenged the disallowance of Rs. 8,78,599/- made by the AO for treating current repair as a 'capital expenditure'.

15. The AO noted that, the assessee has debited Rs. 1.94 crores for repairs of machineries and Rs. 1.42 crores on account of building repairs. On the perusal of the details and bills furnished by the assessee, AO noted that some of these expenditures are in the nature of capital expenditure. After detailed discussions and analysis of the nature of expenditure, he treated the expenditures aggregating to Rs. 42,74,626/- claimed as 'current repairs' to be as capital expenditure and allowed depreciation @ 10%.

16. The Ld. CIT(A) noted the following expenditure which was treated as capital expenditure by the AO :-

Sr. No.	Description	Amount
1	Computer peripherals	1,90,350
2	Rosemount	1,97,058
3	30.09.2006	2,13,000
4	Miscellaneous expenses	2,40,191
5	Renovation expenses	8,88,908
6	Asphalting expenses	11,85,815
7	Replacement of paver blocks	2,83,361
8	Tiling in water tank	3,01,151
9	Construction of boundary wall	1,63,018
10	Restoration of water proofing	5,81,711
	Total	42,74,626

and noted that expenditure aggregating to Rs.8,78,599/- cannot be held to be in the 'current repairs', as it was mainly for demolition of old wall and construction of new boundary wall.

17. Before us, the Ld. Counsel submitted that entire expenditure should be treated as revenue expenditure being current repairs. In support assessee had furnished all the relevant details and bills and none of these expenditures have gone to create any capital asset of enduring nature. All the expenditure incurred was purely

for repairs as per the details and submission made before the CIT(A) as incorporated in para 5.2 of the appellate order. The expenditure which has been confirmed by the CIT(A) is on account of construction of a boundary wall however the construction cost of boundary wall was only Rs. 1,63,048/- and that also cannot be held to be capital expenditure but only repairs, because old wall was to be replaced.

18. On the other hand, Ld. DR strongly relied upon the order of the CIT(A).

19. After considering the relevant submissions and on perusal of the impugned order, we find that no specific finding with regard to the expenditure aggregating to Rs. 8,78,595/- has been given by the CIT(A) when the cost of construction of boundary wall itself was only Rs. 1,63,048/-, which was the basis for the disallowance by the Ld. CIT(A). Hence, in the interest of justice, we feel that this matter should also be restored back to the file of the AO to decide the issue afresh after calling for the details and examine the nature of the expenditure aggregating Rs. 8,78,595/-. If such expenditure are purely for repairs without creating any capital asset of enduring nature, then such expenditure should be allowed as revenue expenditure. Accordingly, ground no. 5 & 6 are treated as allowed for statistical purposes.

20. In ground no. 8, the assessee has challenged that Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs. 48,068/- and Rs. 1,41,776/- on account of delayed payment of ESIC and PF respectively.

21. Before us, Ld. Counsel pointed out that all the payments were made within the grace period and therefore, same have to be allowed. This, he submitted that is evident from the perusal of the Para 11.2 of the assessment order, wherein the following details of payments and the dates have been noted by the AO :-

a. ESIC

Rs. 4,996/- on 18.05.2006 relating to Aurangabad

Rs. 14,187/- on 18.05.2006 relating to Waluj

Rs. 15,091/- on 18.08.2006 relating to Waluj

Rs. 13,790/- on 18.10.2006 relating to Waluj

Rs. 48,064/-

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b. Contribution of Employees towards PF

Rs. 1,41,716 on 18.02.2006 relating to Waluj

Further the AO has also not disputed that these payments were made within the grace period extended under the respective acts. Once that is so, then no such disallowance can be made.

22. After hearing both the parties, we find that it is an undisputed fact that all these payments have been made within the grace period prescribed under the respective acts and in any case, all the payments have been made much before the due date of the filing of the return of u/s 139(1) and accordingly, such payment are allowable u/s 43B. Thus, ground no. 8 is treated as allowed.

23. In the result, appeal of the assessee is partly allowed for statistical purposes.

24. Now, we will take-up Revenue's appeal in ITA No. 1982/Mum/2011 vide which following grounds have been raised :-

"The order of the CIT(A) is opposed to law and facts of the case:

1. *On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in allowing R&D expenditure of Rs. 71.98 lakhs without appreciating that :-*

(i) *The Department of Scientific & Industrial Research (DSIR) did not accept the claim of the assessee and approval was granted w.e.f. 03.02.2007 only although assessee*

had applied for the approval from the beginning of the year.

- (ii) The activity prior to 03.02.2007 was not approved by DSIR hence only proportionate allowance was eligible.*
- (iii) The assessee failed to furnish copy of Form No. 3CL as required under rule 6(7A) of the I.T. Rule thereby contravened the conditions laid down under sub section 3 of section 35 of the I.T. Act.*

2(i) On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in holding that provisions of section 145(3) is not attracted in the case of the assessee without appreciating that information in respect of excess / shortage in stock in physical verification of the goods, the scrap generated were not recorded in the books.

2(ii) On the facts and in the circumstances of the case and in law, the ld. CIT(A) failed to appreciate that the books of accounts of the assessee were incorrect, incomplete and not in consonance with the accounting standard as notified under sub section 2 of section 145 of the I.T. Act”.

25. Brief facts *qua* the issue raised in ground no. 1 is that, the assessee had incurred an expenditure of Rs. 86,89,000/- which was claimed as deduction u/s 35AB(2AB). The Auditors had made a remark in the Audit Report that assessee has certified that the impugned claim has been incurred on the Scientific Research for which it has made an application for in-house approval in R & D Unit to the Department of Scientific and Industrial Research (DSIR) and has also completed all the necessary formalities. However, the formal approval for the same is pending. The claim of deduction was made on the ground that approval may be granted very shortly. The AO required the assessee to submit the copy of certificate from DSIR, if any issue and also the quantification of the expenditure and the basis of calculation of Rs. 86.84 lakhs. In response, the assessee submitted the entire details and also the approval certificate from DSIR which was given only from 03.02.2007 to 31.03.2009. Accordingly, the AO held that, deduction will be available only for the period post approval date, that is 03.02.2007 to 31.03.2007 and not for the prior period.

Thus, he disallowed the claim for the expenditure incurred prior to 03.02.2007.

26. Before the Ld. CIT(A), assessee submitted that it has incurred the expenditure on in-house facility which is admittedly approved u/s 35(2AB). The said section nowhere provides any cutoff date and hence the expenditure incurred throughout the year is eligible or qualifies for weighted deduction. In support of the said proposition, the reliance was placed on the decision of the Hon'ble Gujarat High Court in the case of CIT vs Claris Lifesciences Ltd, reported in 326 ITR 251. Further, the said proposition is also supported by a decision of Madras High Court in the case of CIT vs Wheels India Ltd. [2010-TIOL-773]. The Ld. CIT(A), after following the aforesaid decisions of the High Courts and also analyzing the relevant provision of section 35(2AB) decided the issue in favour of the assessee.

27. The Ld. DR, submitted that, once it has been brought on record that the approval has been granted from a particular date and for particular period by the prescribed authority, then prior to the said date the claim of deduction cannot be allowed. Thus, he strongly relied upon the order of the AO.

28. On the other hand, Ld. Counsel relied upon the decision of the CIT(A) and also the decision of ITAT in the case of Claris Lifesciences which has been confirmed by the Hon'ble Gujarat High Court.

29. We have heard rival contentions and perused the relevant finding given in the impugned orders. It is an undisputed fact that the expenditure incurred by the assessee was otherwise eligible for deduction u/s 35(2AB) except for the fact that approval from the Prescribed Authority had given from 3rd February, 2007 to 31st March 2009. From the perusal of the section 35(2AB)(i), it is evident that the expenditure on Scientific Research on In-house R&D facilities is allowable as deduction if it has been approved by

the Prescribed Authority. Thus, if the entire expenditure incurred by the assessee on development of facility has been approved then the said expenditure to be allowed for the purpose of weighted deduction. The approval here in this case was granted during the previous year relevant to the assessment year, thus the assessee was entitled to claim weighted deduction in respect of the entire expenditure incurred under section 35AB of the Act. Nowhere it has been provided under the section that R&D facility is to be approved from a particular date and then only it would be allowable from that date only. This proposition finds support from the decisions of Hon'ble Gujarat High Court in the case of CIT vs Claris Lifesciences Ltd. and in case of CIT v M/s Wheels India Ltd (*supra*), wherein it has specifically held as under :-

"... The legislative intent of the section was to encourage the development of the facility by providing deduction of weighted expenditure. Since the development facility was to be promoted, the intention of the Legislature was clear that the entire expenditure incurred by the assessee on development of facility. If approved, had to be allowed for the purpose of weighted deduction. The approval being granted during the previous year relevant to the assessment year, the assessee was entitled to claim weighted deduction in respect of the entire expenditure incurred under section 35AB of the Act".

Moreover, it is also clear from Form 3CM, which does not give any cut off date for the approval. Accordingly, respectfully following the same, we uphold the order of the CIT(A) on this score. Accordingly, ground no. 1 as raised by the revenue is treated as dismissed.

30. Brief facts *qua* issue raised in ground no. 2 by the revenue is that, during the course of the assessment proceedings, the AO had reasons for doubting the correctness and completeness of the books of accounts mainly on the ground that, firstly, auditors have omitted to give relevant figures of inventories, whether they are exclusive of CENVAT/VAT credits and further assessee was required to furnish the figures of CENVAT/VAT attributable to

stock as certified by the auditors, in response to which no such details were provided; secondly, in the quantitative details enclosed with Form 3CD report, the Auditors have given a comment that stocks are valued after adjustment of excess/shortage of physical account and write off of obsolete and slow moving items; and lastly, for scrap generation or sales, no regular records have been maintained.

31. The assessee in response gave its explanation, however, after rejecting the assessee's reply, the AO as per the discussion contained from pages 24 to 37 of the assessment order, rejected the books of accounts and increase the gross profit of the assessee by 1% and thereby made an addition of Rs. 303.11 lakhs.

32. Before the Ld. CIT(A), the assessee made very elaborate submissions which has been dealt with and scrutinized by CIT(A) from pages 16 to 17 of the appellate order. The Ld. CIT(A) after considering the observations and objections of the AO and submission of the assessee, recorded a detailed finding that assessee's books of accounts are liable to be accepted and cannot be rejected. The relevant observation and finding of the CIT(A) in this regard reads as under :-

"I have considered the assessment order and the submissions of the Appellant. Looking into the reasons forwarded by the Assessing Officer, the Appellant's offence, the governing principles of section 145, principles of accounting and the specific facts of the Appellant's case, I do not agree with the Assessing Officer that the deficiencies and inadequacies pointed out by him call for rejection of the books of account. To this end, in the first place, on the Assessing Officer's observation on the exclusive method of CENVAT and VAT followed by the Appellant. I find that there were valid and practical reasons for not being able to correlate every item of the stock with the corresponding CENVAT and VAT credit available. As I note, the Appellant's products are numerous and accordingly, item to item correlation was not really feasible. Under the circumstances, when the details of opening and closing stock, quantity, value rate were otherwise available and which were subjected to checks and audit by various authorities, the inability to correlate alone cannot affect the correctness and completeness of the accounts. Further, apart from pointing out procedural flaw, no specific fault on the details submitted has been brought to notice by the Assessing

Officer. Besides, as pointed out by the Appellant, item wise non-maintenance cannot be a defect in the books because the Appellant followed the exclusive method of accounting with regard to CANVAT and VAT credit. As I see, whereas this may attract provisions of section 145A, on its own, it will not attract rejection of books. The Assessing Officer's observation on the Auditors not providing adjustment figures is also misplaced in that the Appellant was maintaining exclusive method of accounting with regard to CENVAT and VAT and as claimed by the Appellant, the payment of the Excise and VAT have been continuously made. There is no specific adverse finding on this by the Assessing Officer. Further, similar method of accounting followed for the AY 2005-06 and 2006-07 has been accepted in scrutiny assessment. In similar vein, I do not find the extent of inadequacies on stock as brought to notice by the Assessing Officer substantial enough to call for rejection of the books. As I note, the basic flaw pointed out by the Assessing Officer is omission of the information on shortage/excess. This is, however, only partially correct as the figures are otherwise available in the Cost Audit Report, which have been given on physical verification. As mentioned by the Appellant, they are also reflected in the stock statement. The Assessing Officer has not brought anything specifically adverse on these details. Further, the net difference on this count being only Rs. 80,000/-, Rs. 76,000/- and Rs. 13,000/-, in absence of anything specific, rejection of books of account on account of this marginal difference would be highly disproportionate and against the principle of materiality, which is a key component of accounting principles. Besides regarding the scrap, I find that the Appellant is recording it upon sale and not upon generation of scrap. In this backdrop, I note that the Appellant was only following a different method of accounting of scrap, which in itself, without detection of anything specific, cannot make the accounts incorrect and incomplete so as to attract provisions of section 145. In this respect, the decision of the Hon'ble ITAT, Mumbai in the case of Protescap India Pvt Ltd vs Add. CIT in ITA No. 6385/Mum/2009 relied upon by the Appellant bears mention. This decision would indicate that accounting of scrap value on its realization has judicial sanction and accordingly, it cannot be taken as an inadequacy, which can call for rejection of books of account. The comparison of Appellant's profit with SKF and FAG also cannot attract rejection of the books. In the first place, the profit shown by the Appellant is better than that shown by SKF. Further, the Appellant's profile, status and volume of business is not comparable with that of FAG and accordingly, the comparison is incompatible. Although the Assessing Officer has brought out his own issues on this comparison, the fact remains that when seen against the totality of accounts such comparison thus, does not render the correctness and completeness of the books faulty. Books of account cannot be rejected on the basis of difference in perspective. Besides, the GP rate shown by the Appellant being 32.20% from the present year are higher than the earlier years.

In line with the foregoing, in essence, I find that the discrepancies noted by the Appellant are procedural and marginal and when seen against the facts stated above do not make the correctness and completeness of accounts questionable as i) they stand explained

and ii) the requisite information as discussed above, otherwise stand disclosed, wherever found omitted in other relevant statement. Cost Audit Report, Audit Report, by way of opening and closing stock, rate, weight, etc. As held by the Hon'ble Calcutta High Court in the case of Ashok Refectories Pvt Ltd 279 ITR 457, where the accounts are otherwise verifiable, rejection of books would not be justified. Further, the issues raised by the Assessing Officer on the exclusive method of accounting, recognition of scrap on sales are debatable issues and vulnerable to contrary opinions and accordingly, they cannot be held as instrumental in holding the accounts incorrect and incomplete. They also do not affect the materiality of the accounts either in relation to the profit or in relation to expenditure. What they warrant is scrutiny of the individual issues and not wholesale rejection of the books of account. This being so, the provisions of section 145 are not attracted. Accordingly, I do not find justification in the action of the Assessing Officer. However, I find that in terms of section 145A of the ITA, CENVAT & VAT are to be added to the closing stock. This has not been done by the Appellant. Section 145A is very clear on this point and accordingly, the Assessing Officer is directed to work out the addition based on particulars to the submitted by the Appellant. In terms of the foregoing discussion, the ground of appeal is partly allowed".

33. After considering rival submissions and finding given in impugned orders and material on record, we find that the AO has mainly rejected the books of accounts on three counts, as discussed above. So far as the AO's observation on the exclusive method of CENVAT & VAT and that the assessee should provide each and every item of stock corresponding to CENVAT & VAT in proof thereof, the assessee's contentions had been that the products manufactured by the assessee are very huge and numerous and accordingly, item to item correlation was not really feasible. Under such circumstance, when the details of opening stock, closing stock, quantity, value, rates are available, which are subjected to verification and cross check then it is suffice to hold that CIT(A) was correct in holding that there is no reason for rejecting the books of accounts. The entire reasoning of the CIT(A) appears to be factually and legally correct and accordingly, the same is affirmed. Regarding other issues also, we find that the Ld. CIT(A) has given a proper finding and reasoning. On the issue of accounting on scrap, it has been found that assessee has been recording the same at the time of sale and not at the time of

generation of scrap. The assessee was following a particular method of accounting of scrap, from last several years which cannot be rejected, unless such a method of accounting is not correct. Further, as pointed out by the Ld. Counsel, this method of accounting is followed and accepted by the department. Lastly, Ld. Counsel before us submitted that, right from AY 2001-02 to AY 2006-07, the assessments have been completed u/s 143(3), wherein the income has been assessed without rejection of books of accounts or estimation of gross profit on similar method of accounting and on similar facts. The Ld. AO has not pointed out any difference in this year. Thus, on these facts, we do not find any reason to deviate from the finding recorded by the Ld. CIT(A). Accordingly, ground no. 2 raised by the revenue is dismissed.

34. In the result, appeal of the department stands dismissed.

To sum-up:

Assessee's appeal is partly allowed for statistical purposes, whereas, Revenue's appeal stands dismissed.

Order pronounced in the open court on 30th October, 2015.

Sd/-

(डि. करुणाकर राव)

लेखा सदस्य

**(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER**

Sd/-

(अमित शुक्ला)

न्याईक सदस्य

**(AMIT SHUKLA)
JUDICIAL MEMBER**

Mumbai, Date: 30th October, 2015

प्रति/Copy to:-

- 1) अपीलार्थी /The Appellant.
 - 2) प्रत्यर्थी /The Respondent.
 - 3) The CIT(A) -5, Mumbai.
 - 4) The CIT -2, Mumbai.
 - 5) विभागीय प्रतिनिधि "जी", आयकर अपीलीय अधिकरण, मुंबई/
The D.R. "G" Bench, Mumbai.
 - 6) गार्ड फाईल \
- Copy to Guard File.

आदेशानुसार/By Order

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उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, मुंबई
Dy./Asstt. Registrar
I.T.A.T., Mumbai

*चव्हाण व.नि.स

*Chavan, Sr.PS