

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER**

ITA No. 2881/Del/2018
Assessment Year: 2014-15

SHIV NANDAN PRASAD & SONS, VS. ITO, WARD-3(5)
C/O R.K. GARG, HAPUR, U.P.
T-314, GANGA PLAZA,
BEGUM BRIDGE ROAD,
MEERUT
(PAN: ABXFS3672G)

(APPELLANT)

(RESPONDENT)

Assessee by : SH. NITIN GARG, ADV.
Department by : SH. SL ANURAGI, SR. DR.

ORDER

This appeal has been filed by the Assessee against the order dated 29.1.2018 of the Ld. CIT(A), Muzaffrnagar, UP relating to assessment year 2014-15. The assessee has raised the following grounds.

- i) That under the facts and circumstances of the case, the Ld. CIT(A) was not justified in confirming the invocation of provisions u/s. 145 and thereby rejecting the books of accounts. Confirmation of application u/s. 145 and

rejection of the books of accounts is arbitrary, unjust, uncalled for and in any case illegal.

- ii) That under the facts and circumstances of the case, the Ld. CIT(A) has erred to estimate the GP at 8% as against 6.20% disclosed by the assessee and thereby confirming the addition of Rs. 5,43,746/-. The estimation of GP at 8% and thereby confirming the addition of Rs. 5,43,746/- is therefore, arbitrary, unjust, uncalled for, illegal and in any case highly excessive.

2. Briefly facts in this case are that assessee has challenged rejection of books of account under section 145(3) of the Act by the AO as well as Ld. CIT(A) and estimated the gross profit at 8% as against 6.20% disclosed by the assessee and thereby making the addition of Rs. 9,67,201/-. Against the addition, the assessee carried the matter before the Ld. CIT(A), who has confirmed the addition by partly allowing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

3. Ld. counsel for the assessee has stated that the issue in dispute is squarely covered by the ITAT, Delhi Benches decision dated 16.01.2019 passed in ITA No. 1924/Del/2018 assessee's own case for the assessment year 2013-14. Hence, he requested to respectfully follow the aforesaid decision and accordingly allow the appeal of the assessee. In this behalf, he filed the Tribunal's order dated 16.1.2019 in assessee's own case.

4. On the contrary, Ld. DR relied upon the orders of the authorities below.

5. I have heard both the parties and perused the records, especially the orders of the revenue authorities as well as arguments advanced by both the parties and the copy of the decision of the Tribunal dated 16.1.2019 passed in assessee's own case for the AY 2013-14. For the sake of convenience, I am reproducing herewith the relevant finding of the Tribunal's order dated 16.1.2019 as under:-

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below

in the light of the facts and circumstances of the case.

5. *Undisputedly, the assessee has failed to furnish the stock register containing qualitywise detail of the timber purchase and sold by him. It is the case of the assessee that he has prepared timber chart, available at pages 28 to 41 of the paper book, containing quality wise detail of the timber. However, the Ld. AR for the assessee fairly conceded at Bar that quality wise register has not been maintained by the assessee.*
6. *When the assessee has been purchasing and selling timber of different qualities, the books of account cannot be said to be completed without qualitative details entered into the stock register. So, in these circumstances, we are of the considered view that AO/CIT(A) has rightly rejected the books of account.*
7. *Then Ld. AR for the assessee proceeded to argue that the Gross Profit (GP) rate of 8% estimated by the Ld. CIT(A) is on higher side. during the course of arguments, the Ld. AR for the assessee as well as Ld. DR for the revenue stated at Bar that fair and reasonable GP rate may be estimated by the Bench keeping in view the facts and circumstances of the case.*

8. *The Ld. CIT(A) estimated the GP rate @8% by comparing GP rate of assessee with M/s Shiv Nandan Prasad Jai Prakash, Hapr, who has shown GP rate of 7.776% for AY 2010-11. However, we are of the considered view that in any case, two business set up working under different circumstances cannot be compared in order to estimate the GP rate. So, keeping in view the historical background of the assessee's business who has shown GP rate of 6.32%, the fair and reasonable GP rate is estimated at 7%. So, AO is directed to recomputed the income of the assessee by adopting gross profit at 7% of the disclosed turnover by allowing interest to the partners of Rs. 6,63,235/- as claimed in the return of income by the assessee. So, the appeal filed by the assessee is partly allowed."*

5.1 After perusing the aforesaid finding of the Tribunal, I am of the considered view that similarly in the present case the assessee has not furnished the details of closing stock in terms of quantity and valuation during the assessment proceedings as required by the AO alongwith documentary evidence, hence, AO /Ld. CIT(A) has rightly rejected the books of accounts u/s. 145(3), which does not need any interference on my part,

hence, respectfully following the Tribunal's finding on this issue, the ground no. 1 is rejected.

5.2 As far as GP rate @ 8% as against the 6.20% disclosed by the assessee is concerned, after perusing the aforesaid finding of the Tribunal in assessee's own case, I direct the AO to recomputed the income of the assessee by adopting gross profit @7% instead of @8% and give consequential benefit, if any.

6. In the result, the Appeal filed by the Assessee stands partly allowed.

Order pronounced on 11/03/2019.

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Dated:11/03/2019

SR BHATNAGAR

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT TRUE COPY

By Order,

ASSISTANT REGISTRAR