

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

**Before Sh. N. S. Saini, Accountant Member
And**

Sh. N. K. Choudhry, Judicial Member

ITA No. 201/Asr./2018 : Asstt. Year : 2013-14

Kashmir Steel Industries, SIDCO Industrial Complex, Bari Brahmana, Jammu	Vs	Asstt. Commissioner of Income Tax, Circle-1, Jammu
(APPELLANT)		(RESPONDENT)
PAN No. AABFK4948A		

**Assessee by : Sh. Vasu Gupta, CA &
Sh. R. K. Gupta, CA**

Revenue by : Sh. M. P. Singh, CIT DR

Date of Hearing : 21.02.2019

Date of Pronouncement : 22.03.2019

ORDER

Per N. S. Saini, Accountant Member:

This is an appeal filed by the assessee against the order of CIT(A)-5, Ludhiana.

2. The only issue involved in this appeal is that the CIT(A) erred in sustaining addition @ 0.5% of the trading results amounting to Rs.79,17,754/-.

3. The brief facts of the case are that the Assessing Officer observed that there was a fall in the gross profit shown by the assessee over the last year. In the preceding assessment year, the assessee has shown profit of 5.47% on a turnover of Rs.119.07 crores. During the year under appeal, the assessee has shown gross profit of 2.17% on turnover of Rs.158.35 crores. He observed that there was increase in expenses

claimed in the trading account over the last year, mainly power and steam coal.

4. The assessee explained the reason for lower gross profit in compare to the gross profit of the immediately preceding year was on account of selling of the products at cost price due to competition in the market. It was submitted that power tariff increased from Rs.2/- per unit to Rs.2.42 per unit and fixed charge was increased from Rs.1,47,945/- per month to Rs.1,78,943/-. The power bill was still increased by levy of electricity duty @ 22%. Further, the price of steam coal increased from Rs.7718 per MT to Rs.10958 per MT. It was further argued that there was increase in expenses including freight for Billets bought from SAIL in the current year and there was increase in conversion charges received from Rs.25.42 lacs in the last year to Rs.40.27 lacs in this year. It was also submitted that there was fall in receipts from SAIL at Rs.109.38 lacs.

5. The Assessing Officer was not satisfied with the submission of the assessee. He observed that the average rate of goods sold from during the year was Rs.31504.31 whereas in the immediately preceding year it was Rs.30136.73. Thus, there was increase in the average rate of goods sold during the year. He further observed that from the month wise consumption of raw material and production of finished goods, it is found that there is no correlation between the consumption of power and production of goods. Hence, he observed from the state of affairs, it is apparent that trading results of the assessee on the basis of accounts maintained by

him are not reliable and are rejected. He observed that the assessee was unable to account for the drastic fall in gross profit over the last year. Although some part was due to increase in rates of coal and electricity but large scale irregularities are also there in the accounts which shows that accounts have been manipulated to reflect lower profits. In order to cover up the discrepancy an addition @ 3% is made towards the trading results and made addition of Rs.4,75,06,525/- to the returned income of the assessee.

6. On appeal, the CIT(A) observes as under:

"It was also argued that excise duty has increased from 10% to 12% and as per AR, impact of excise duty on Gross Profit was 2.83% in the assessment year 2012-13 whereas in the year under consideration, its impact was 5.87%, leading to net decline in GP rate by 3.04%. The AR was asked to give the trading results both by including the excise duty and after excluding the excise duty paid for assessment year 2012-13 and 2013-14. The trading result with excise duty included, give GP rates of 5.47% & 2.17% for assessment years 2012-13 & 2013-14 respectively and the trading result after excluding the excise duty, gives a GP rates of 14.85% & 13.16% for A.Y. 2012-13 & A.Y. 2013-14 respectively. It is thus clear that even after excluding the impact of increase in excise duty, there was a fall in GP rate by 1.69% (14.85 - 13.16). The main reason for fall in this GP was the increase in Steam Coal Expenses which have gone up from Rs. 1,39,36,034/- during A.Y. 2012-13 to Rs. 4,57,02,931/- during A.Y. 2013-14. The ratio of Coal Expenses to the turnover for assessment year 2012-13 (total turnover Rs. 119,07,03,917/-) was 1.17% which has gone up to Rs. 2.88% during assessment year 2013-14 (total turnover Rs. 158,35,50,841/-). Thus, in percentage terms, the increase in Coal Expenses was 1.17% which is not fully explainable. To conclude, the AR has some explanation for

increase in power expenses and fall in GP due to increase in Excise rate but there is no sufficient explanation for increase in Coal expenses. As per AR, the net impact of increase in excise duty was fall of 2.83% in GP rate. The total fall in GP rate (from 5.47% of last year to 2.17% of the current year) was 3.3% and even if the effect of increase in excise duty is excluded there is still a fall of 0.5% (3.3% - 2.83% = 0.47%, rounded to 0.5%) in GP which remains unexplained. Hence, the addition on account of fall in GP to the extent of 0.5% is found sustainable and hence the addition of Rs. 79,17,754/- (Rs. 1,58,35,50,841 X 0.5%) is confirmed and the appellant gets the relief of the balance amount."

7. Being aggrieved against the said order of the CIT(A), the assessee is in appeal before us.

8. Before us, the AR of the assessee submitted that no addition can be made in the hands of the assessee on account of fall in gross profit rate from the immediately preceding year. For this, he relied on the decision of Hon'ble Jammu & Kashmir High Court in the case of International Forest Co. Vs CIT (1975) 101 ITR 721 where it was held as under:

"There mere fact that lesser out-turn of sawn timber has been shown by the assessee in the accounting year in question as compared to previous year could not be treated as a valid ground for rejecting its accounts and as indicative of any attempt on the part of the assessee to defraud the IT Department. The yield would vary from year to year to a large extent, depending on several factors and the yield obtained in one year would not furnish any guidance for estimating the yield for any subsequent year. In the absence of any omission, irregularity or other defect in the method of maintaining of accounts or positive evidence to show that the accounts did not disclose the whole income of the assessee, his books of accounts cannot be rejected. – B.F. Varghese Vs State of Kerala (1969) 72 ITR 726 (Ker) : TC1R.655

and Raghubar Mandal Harihar Mandal Vs State of Bihar (1957) 8 STC 770 (SC) relied on.

Even if the ITO considered the material placed before him by the assessee to be unreliable keeping in view the comparative statement of accounts of the previous years, he could not proceed to make an arbitrary addition and base his conclusion purely on guess-work. He ought to have related his estimate to some evidence or material on the record as it is now well-settled that if the profits shown by the assessee in his return are not accepted, it is for the taxing authorities to prove that the assessee made more profits."

9. He also relied on the decision of Hon'ble Delhi High Court in the case of CIT Vs Smt. Poonam Rani (2010) 326 ITR 223 wherein it has been held as under:

"The AO has not pointed out any particular defect or discrepancy in the account books maintained by the assessee. The CIT(A) was satisfied that the assessee had furnished complete details, including quantitative details in respect of purchase of raw material, manufacture of copper wire and sale of the finished products. In these circumstances, it cannot be appreciated as to how the accounts, maintained by the assessee, could have been said to be incomplete or inaccurate. In fact, the AO had no material before him to treat the accounts of the assessee as defective or incomplete.

As regards the marginal increase in the weight of the finished product, the explanation given by the assessee has been accepted not only by CIT(A) but also by the Tribunal. The AO had no material before him on the basis of which it could be said that the weight of the wire does not increase even marginally during the process of enameling. Therefore, he had no justification in law to reject the explanation given by the assessee in this regard.

The fall in GP ratio, in the absence of any cogent reasons, could not by itself, have been a ground to

hold that proper income of the assessee cannot be deduced from the accounts maintained by her and consequently, could not have been a ground to reject the accounts invoking s. 145(3). The fall in GP ratio could be for various reasons such as increase in the cost of raw material, decrease in the market price of finished product, increase in the cost of processing by the assessee etc. There is no finding that the actual cost of the raw material purchased by the assessee was less than what was declared in the account books. There is no finding that the actual cost of processing carried out by the assessee was less than what had been declared in her account books. No particular expenditure shown in the account books has been disallowed by the AO. There is no finding by the AO that the actual quantity of finished product produced by the assessee was more than what was shown in the accounts books. There is no finding that the assessee had made any such sale of the finished product which was not reflected in the accounts books. There is no finding by the AO that the finished product was sold by the assessee at a price higher than what was declared in the accounts books. In these circumstances, the CIT(A) and the Tribunal were justified in holding that the AO could not have increased the GP ratio merely because it was low as compared to the GP ratio of the preceding year.

No statutory provision under the income-tax regime requiring the assessee to maintain the daily stock register has been brought to notice. 'Hence, even if no such register was being maintained by the assessee as is contended by the counsel for the appellant, that by itself does not lead to inference that it was not possible to deduce the true income of the assessee from the accounts maintained by her, nor the accounts can be said to be defective or incomplete for this reason alone. If stock register is not maintained by the assessee that may put the AO on guard against the falsity of the return made by the assessee and persuade him to carefully scrutinize the account books of the assessee. But the absence of one register alone does not amount to

such a material as would lead to the conclusion that the account books were incomplete or inaccurate. Similarly, if the rate of GP declared by the assessee in a particular period is lower as compared to the GP declared by him in the preceding year, that may alert the AO and serve as a warning to him, to look into the accounts more carefully and to look for some material which could lead to the conclusion that the accounts maintained by the assessee were not correct. But, a low rate of GP, in the absence of any material pointing towards falsehood of the accounts books, cannot by itself be a ground to reject the account books under s. 145(3). In any case, the question whether fall in GP stood explained by the assessee or not was a question of fact. Both, Tribunal and CIT(A) having accepted the explanation given by the assessee and the finding of fact recorded by them having not been shown to be perverse in any manner, no substantial question of law arises for consideration in this case."

10. On the other hand, the Id. DR supported the orders of the lower authorities.

11. We have heard the rival submissions and perused the orders of the lower authorities and materials available on record. The assessee is engaged in the business of manufacturing bars, angles, flats etc. During the year under consideration, the assessee disclosed gross profit of Rs.3,44,07,223/- which works out to 2.17% of the turnover. The AO observed that in the preceding year, the gross profit disclosed by the assessee was 5.47% of the turnover. The AO was not satisfied with the explanation furnished by the assessee for decline in rate of gross profit. He, therefore, rejected the book result and estimated gross profit of the assessee @ 5.17% and thereby made a trading addition of Rs.4,75,06,525/-.

12. On appeal, the Commissioner of Income Tax (Appeals) was of the opinion that out of total decline of gross profit rate of 3.3%, 2.83% was on account of Excise Duty and according to him the decline of 0.5% is without any reason. He, therefore, restricted the trading addition to 0.5% of the turnover which worked out to Rs.79,17,754/-.

13. Against this order of the CIT(A), the assessee is in appeal before us and it was submitted by both the parties that the revenue has not filed any appeal against the said order of the CIT(A).

14. We find that it is an established position of law that the book result cannot be rejected only on the ground of decline in profit unless specific defect is found in the books which shows that the books of account was either incomplete or unreliable. In the instant case, the Id. Departmental Representative could not point out any finding which was recorded by the lower authorities to show that the books of account maintained by the assessee was either incomplete or unreliable or on the basis of which income could not be computed by the AO.

15. In our considered opinion, book result cannot be rejected lightly. There may be thousands of reasons for which profit of 2 years may not be same. In the above circumstances, in our considered opinion, rejection of book result was not justified. Consequently, the ad-hoc addition to the extent of Rs.79,17,754/- confirmed by the CIT(A) is unsustainable. We, therefore, delete the ad-hoc addition of Rs.79,17,754/- and allow this ground of appeal of the assessee.

16. In the result, the appeal of the assessee is allowed.
(Order Pronounced in the Open Court on 22/03/2019)

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

Sd/-
(N. S. Saini)
Accountant Member

Dated: 22/03/2019

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR