

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC' NEW DELHI**

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

**I.T.A .No.-357/Del/2017
(ASSESSMENT YEAR-2012-13)**

Vishnu Aggarwal H.No. 1669, Sector-55, Faridabad. PAN No. AGAPA1634N (APPELLANT)	vs	ITO Ward 11(4) Faridabad. (RESPONDENT)
Appellant by		Shri K.C. Singhal, CA
Respondent by		Shri S.L. Anuragi, Sr. DR

ORDER

This appeal filed by the Assessee is directed against the order dated 10.11.2016 of the Ld. CIT(Appeals), Faridabad relevant to assessment year 2012-13 on the following grounds of appeal: -

1. *“That the Ld. Commissioner of Income Tax (Appeals), Faridabad, has erred in law as well as on facts and in circumstances of the case in upholding the addition of Rs. 23,30,490/- made by the Assessing Officer by rejecting books of accounts and by presuming Gross Profit Rate at 4% against declared by the assessee at 0.77% without appreciating facts of the case.*
2. *That the Ld.CIT(Appeals), Faridabad, has erred in law as well as on facts and in circumstances of the case in upholding GP addition without considering the verdicts of various courts relied by the assessee during the course of appellate proceedings.*
3. *That the ld. CIT(Appeals), Faridabad, has erred in law as well as on facts and in circumstances of the case in upholding GP addition without appreciating material available on record.*
4. *That the Ld. CIT(Appeals), Faridabad, has erred in law as well as on facts and in circumstances of the case in partly*

deleted addition u/s 2(22)(e) without appreciating the facts that amount received by the assessee was on account of business transaction.

5. *The appellant craves leave to add, amend or vary from the aforesaid grounds of appeal at or before the time of hearing.”*

2. The ground no.1 to 3 were only pressed which are interconnected. However, the ground no. 4 was not pressed, hence, the ground no. 4 is dismissed as not pressed.

3. The brief facts of the case are that assessee filed return for the assessment year 2012-13 on 27.9.2012 declaring income of Rs. 11,40,490/-. The return of the assessee was processed u/s. 143(1) of the Income Tax Act, 1961 (in short “Act”). Subsequently, the case of the assessee was selected under scrutiny and statutory notices were issued and served upon the assessee. The assessee derives income from salary, being Director in M/s Singhal Metalloys Pvt. Ltd.. Income from house property Rs. 1,26,000/- from premises given to his company and income from business Rs. 2,34,276/- from his proprietary firm M/s Shree Hari Metal, as trading in Metal scrap. The AO completed the assessment on 27.3.2015 at an income of Rs. 47,00,030/- by making the addition of Rs. 23,30,390/- on account of GP variation by rejecting the books of accounts and trading results u/s. 145(3) of the Act vide order dated 07.4.2015 passed u/s. 144/145(3) of the Act. Against the assessment order, assessee

appealed before the Ld. CIT(A), who vide his impugned order dated 10.11.2016 has partly allowed the appeal of the assessee. Aggrieved with the impugned order, assessee is in appeal before the Tribunal.

4. Ld. Counsel for the assessee has submitted that Ld. CIT(A) has wrongly upheld the addition of Rs. 23,30,490/- made by the Assessing Officer by rejecting books of accounts and by presuming Gross Profit Rate at 4% against declared by the assessee at 0.77% without appreciating facts of the case. It was further submitted that the Ld. First Appellate Authority has erred in upholding GP addition without considering the verdicts of various courts relied by the assessee during the course of appellate proceedings. It was further submitted that Ld. CIT(A) also wrongly upheld GP addition without appreciating material available on record. He further submitted that the AO is not justified in observing that purchases were not found genuine. He further submitted that the maintenance of day to day stock register is not the legal requirement as held by the Hon'ble Delhi High Court in the case of CIT vs. Jacksons House 198 Taxmann 385. Finally it was submitted that section 145(3) of the Act cannot be invoked on the mere ground GP rate is low as compared to earlier year and in this regard he relied upon the decision of the Hon'ble Punjab and Haryana High Court in the case of

Surinder Kumar Charanjit Kumar 282 ITR 78. In view of the above, he requested that the appeal of the assessee may be allowed.

5. On the other hand, Ld. DR relied upon the orders of the Ld. CIT(A) on the issue in dispute and stated that the GP rate declared by the assessee was much lower than declared in the preceding year. He further submitted that the appellant neither maintained stock register nor declared any quantitative details of goods and no books of account with purchase and sale bills were produced for verification. It was further submitted that M/s Sai Metal from whom purchases were made was not found as per Inspector's Report and the purchases from Haryana Metal Traders and Sai Metals were not found to be genuine. In view of above, he requested to dismiss the ground no. 1 to 3 raised by the assessee.

6. I have heard both the parties and perused the records. I find that the assessee was engaged in business of wholesale trading in Aluminium scrap and Aluminium ingots. He declared gross profit @ 0.77 % as against 4.19% in the preceding year. The Books of a/c were duly audited and there was no adverse remark regarding books maintained by him. It is noted that all purchases & sales were supported by vouchers. Copies of the same were furnished before the AO along with letter dated 17.02.2015 and no quantitative details of

stock were maintained on day to day basis. However, such details were furnished before AO vide letter dated 23.2.2015. It is also noted that closing stock was valued on the basis of FIFO method at cost. It is also noted that AO has observed that the GP rate declared by the appellant was much lower than declared in the preceding year. As per AO, the assessee neither maintained stock register nor declared any quantitative details of goods and no books of accounts with purchase & sale bills were produced for verification. AO also noted that M/s Sai Metal from whom purchases were made was not found as per inspector's report and according to him the purchases from Haryana Metal Traders & Sai Metals were not found to be genuine. However, the fact of the case are that the books of a/c are duly audited raises a presumption to the correctness of such books unless proved otherwise. I note that maintenance of day to day stock register is not the legal requirement as held by the Hon'ble Delhi HC in CIT-v-Jacksons House 198 Taxman 385; Maruti Udyog Ltd-v-CIT 253 Taxman 60(Del) as well as of Guj HC in Jaytick Intermediates (P) Ltd 242 Taxman 319. However, quantitative details along with invoices were furnished before the AO vide letter dated 17.02.2015. Hence, no adverse inference could be drawn by AO. It is found that that the closing stock was quantified & valued at cost as per FIFO

method which is recognised method. The details with vouchers were also filed before AO vide letter dated 17.02.2015. In my view that the AO is also not justified in observing that purchases were not found genuine. After perusing the para no. 2.5 of the assessment order, I find that the purchases were made by two parties namely M/s Haryana Metal Traders & Sai Metals. The enquiry notice sent to Haryana Metal Traders was served and admitted by the AO himself. Further both the parties were registered with Excise & Taxation Department which is proved by the invoices itself. It is also noted that payments were also made through banks.

6.1 Also it is settled law that section 145(3) cannot be invoked on the mere ground that GP rate is low as compared to earlier year, as held in the decision of Hon'ble P&H High Court in Surinder Kumar Charanjit Kumar 282 ITR 78 PH, wherein it has been held that *“a low GP rate may not per se lead to an inference that accounts are false, but coupled with other relevant circumstances, it does afford a sufficient ground for rejection of the accounts and estimation of profits.”*

6.2 Keeping in view of the facts and circumstances of the case and respectfully following the precedents, the addition in dispute made

by the AO and confirmed by the Ld. CIT(A) is hereby deleted and accordingly the ground no. 1 to 3 are allowed.

7. In the result, the Appeal of the Assessee is partly allowed.

Order pronounced on 26-04-2019.

Sd/-

(H.S. SIDHU)
JUDICIAL MEMBER

Dt. 26-4-2019

SR BHATNAGAR

Copy forwarded to: -

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

AR, ITAT Delhi Benches