

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI

Before Shri Pawan Singh(JUDICIAL MEMBER)

AND

Shri G Manjunatha (ACCOUNTANT MEMBER)

ITA Nos 6472 & 6473/Mum/2016
(Assessment years : 2012-13 & 2011-12)

The ACIT-22(1), Mumbai	vs	M/s John Galt International A-1, Maya Building, Plot No.533, 17 th Road, Khar (W), Mumbai 400 052 PAN : AACFJ7761M
APPELLANT		RESPONDEDNT

Appellant by	Shri Rajeev Gubgotra
Respondent by	Shri Rajeev Khandelwal

Date of hearing	04-04-2019
Date of pronouncement	12-04-2019

ORDER

Per G Manjunatha, AM :

These two appeals filed by the revenue are directed against the order of the CIT(A)-34, Mumbai dated 19-08-2016 for the assessment year 2011-12 and 2012-13. Since facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are disposed of by this consolidated order.

2. The revenue has raised common grounds of appeal for both assessment years. For the sake of brevity, grounds of appeal raised for the assessment year 2012-13 are reproduced below:-

“1) On the facts circumstances of the case and in-law, the learned CIT(Appeal) erred in holding that the Assessing officer wrongly rejected the books of account and further in deleting the addition of Rs. 66,63,9207- for A.Y. 2012-13 where the auditor himself has pointed the discrepancies in Tax audit report for which no explanation/reasoning was given.”

3. The brief facts of the case are that the assessee is a partnership firm which is engaged in the business of fabrication and manufacturing of engineering goods like cranes, girders and machinery. The assessee has filed its return of income for AY 2012-13 on 29-09-2012 declaring total income of Rs.1,37,80,350. The case was selected for scrutiny and notices u/s 143(2) and 142(1) alongwith questionnaire were issued. In response to notices, authorised representative of the assessee appeared from time to time and filed various details, as called for. During the course of assessment proceedings, the AO observed that there are discrepancy in the books of account, more particularly, in respect of purchases; therefore, issued a show cause notice and asked the assessee as to why the books of account shall not be rejected u/s 145(3) of the Income-tax Act, 1961 and profit shall be estimated on total turnover. In response to show cause notice, the assessee

has filed detailed reply and submitted that the discrepancies noticed in respect of purchases, more particularly, in respect of non availability of VAT and CST No. in number of purchases, the relevant information has been furnished to the AO. The assessee also clarified other purchases where the AO has issued notices u/s 133(6), but such notices were returned by the postal authorities. The AO, after considering relevant submissions of the assessee and also taking note of fact that the assessee is also beneficiary of accommodation entries provided by certain alleged hawala dealers, came to the conclusion that books of account of the assessee were not susceptible for verification and hence, rejected books u/s 145(3) and estimated income from business @15% on total turnover. Further, after considering gross profit already declared by the assessee, made addition of Rs.77,94,863.

4. Aggrieved by the assessment order, assessee preferred appeal before the CITA). Before the CIT(A), the assessee has filed elaborate written submissions on the issue which has been reproduced at para 3 on pages 2 to 11 of CIT(A)'s order. The sum and substance of arguments of the assessee before the Ld.CIT(A) are that merely for the reasons that certain discrepancies were noticed in books of account, which are explained during the course of assessment proceedings, books of account could not be rejected and profit from the business cannot be estimated without arriving at a conclusion as to

how book results declared by the assessee are not showing true and correct income from business.

5. The Ld.CIT(A), after considering relevant submissions of the assessee held that the assessee has clarified observations made by the AO with regard to the discrepancy noticed in respect of purchases during assessment proceedings. The Ld.CIT(A) further observed that it is an admitted fact that the AO has earlier asked for purchase details where the purchases are over and above Rs.50,000. However, the assessee has filed complete details for purchases, which contains list of 168 parties, in total. The assessee also filed further details in respect of purchases where notices issued u/s 133(6) were returned unanswered. When all these evidences have been placed before the AO to clarify observations made with regard to the books, there is no reason for the AO to reject books of account u/s 145(3) and estimate profit on total turnover. Accordingly, he deleted addition made by the AO towards estimation of gross profit. The relevant findings of the Ld.CIT(A) are as under:-

“6. During the assessment proceedings, the Assessing Officer has rejected the book results of the appellant and estimated the gross profit at Rs. 77,94,863/-. Various reasons for rejecting the books of accounts are that from the Profit & Loss Account, it is observed by the AO that purchases of material was shown at Rs. 15,35,73,1277-. Initially, details of 80 concerns wherein purchases exceeding Rs.50,000/- in each case submitted giving aggregate figure of Rs. 11,21,63,0597-. Thereafter complete list of purchases involving 168 concerns at Rs.15,35,73,1277- was submitted. According to the AO, the appellant failed to explain the discrepancy in number of purchase parties from 82 to 168. The AO has also observed that the appellant has not shown purchases and sales inclusive of all the tax, duty, actually paid or incurred to bring the goods to its place of location as per section 145A(ii). Moreover, it is

also noticed that in respect of certain parties no VAT7CST Number was mentioned on the bills. In respect of certain parties notices under section 133(6) were returned back and the appellant failed to furnish evidences or specific explanation in respect of the same. It is also observed that the Sales Tax Department of Maharashtra Govt. has informed about certain parties where the appellant had taken entries amounting to Rs.3,55,0127- during A.Y. 2011-2012 against the purchases shown in the books of accounts. Apart from the above, certain other discrepancies are noted by the AO with respect to figures of purchase made, sales consideration and opening and closing balances in the debtor A7c. With the above defects, the AO came to the conclusion that the books of accounts of the appellant are not reliable. After giving opportunity to the appellant, the books of accounts of the appellant were rejected and gross profit was adopted at 15% on the total turnover of Rs.21,16,38,242/-. Accordingly, difference of GP ratio, i.e. Rs. 77,94,863/- (Rs.3,17,45,7367- - Rs.2,39,50,87307-) was added to the total income of the appellant.

7. In this regard, I agree with the Ld. AR that there is no occasion for rejection of the books of accounts and estimation of the GP considering the prevailing facts and circumstances. As far as discrepancy in the purchase details filed by the appellant is concerned, while it cannot be denied that the list showing purchases above Rs.50,0007-contains 82 parties, whereas complete purchase list contains total 168 parties. It is further contended that the books of accounts maintained by the appellant were audited and no adverse remarks/observation was made by the Auditors. Moreover, the appellant was following exclusive method of accounting for duties and taxes and the same is being followed from year after year continuously. In this regard, it is further observed that the Ld.CIT(A) in the case of the appellant himself, on the identical issue, for A.Y. 2010-2011 has held that the exclusive method of accounting followed by the appellant for duty and taxes cannot be a reason for rejection of books of accounts. As far as non-mention of VAT no. on certain bills, it is submitted by the AR that VAT no. is not required till the turnover reaches the limit of Rs.10 lakhs. Moreover, VAT No. on the bills is to be mentioned by the supplier and not by the appellant. Hence, no fault can be attributed to the appellant. Regarding the observation of the AO that the appellant has failed to produce the purchase bills of six parties, it is stated by the AR that out of six parties, two parties have been separately identified as suspicious dealers by State Sales Tax Department, for which separate addition has already been made. Regarding the bills of M7s Fair Deal Tube Co., it is a regular supplier of the appellant and even in A.Y. 2010-2011 supplied goods worth Rs.1,07,815/-.Regarding purchases from three remaining parties, according to the AR, the amount comes to Rs.57,763/- [Rs. 17,137+ Rs. 36,968+ Rs. 3,658] only where the appellant could not produce the sample bills. Thus, total purchases from these three parties are negligible and does not justify rejection of the book result. Regarding, non service of notices u/s.133(6) on four parties, the AR stated that the new addresses are available at the web site of the State VAT department and all the ingredients of genuine transactions are available. Apart from the above, there is merit in the argument of the AR of that in earlier years, ratio of GPs were comparatively less as compared to the instant year, still the figures were accepted in the scrutiny proceedings of the respective years. Therefore, there is no reason for estimating GP during the year under consideration.

8. In the light of discussion made in the preceding paragraphs and after carefully considering the various lacunas highlighted by the AO while rejecting the books of accounts, I find that there is merit in the arguments put forth by

the AR who has effectively rebutted each deficiency mentioned in the assessment order, as discussed in the preceding paragraphs, that is well supported by documentary evidences. Hence, in my considered opinion, there is no justification either in the rejection of the books of accounts or estimation of GP. Therefore, addition of Rs.77,94,8C3/- on account of estimated Gross Profit ratio is deleted. Thus ground of appeal no. 3 is allowed.”

6. The Ld.DR submitted that the Ld.CIT(A) was erred in holding that the AO wrongly rejected books of account without appreciating the facts brought out by the AO in his assessment order about number of discrepancies in books including purchases where number of purchase bills did not have VAT / CST numbers. The Ld.DR further submitted that the AO has listed out various discrepancies including discrepancy in purchases, bills not produced and notices returned unanswered for which neither proper evidences were filed nor explained as to how purchases were made from the dealers without having proper VAT / CST numbers. The AO has brought out further facts in light of report of DGIT (Inv) where it was established that assessee is in the habit of obtaining accommodation bills for inflating purchases. The AO, considering all these lacunae, came to the conclusion that books of account were not verifiable and hence, rejected books of account u/s 145(3) and estimated profit. Therefore, the addition made by the AO should be sustained.

6. The Ld.AR for the assessee, on the other hand, strongly supporting the order of the Ld.CIT(A) submitted that the assessee has filed complete

documentation in respect of purchases where the AO had made observations with regard to non availability of VAT / CST numbers. The assessee also furnished copies of bills wherever, the AO observed that no bills were furnished in respect of purchases, where notices were returned, the assessee has filed new address of the parties alongwith confirmations. When all these evidences have been placed before the AO, the AO rejected explanation offered by the assessee and made addition by estimating the gross profit without assigning any reason as to how books of account of the assessee were not capable of deducing true and correct profit. The Ld.CIT(A), after considering facts, has deleted addition made by the AO and his order should be upheld.

7. We have heard both the parties, perused the material available on record and gone through the orders of authorities below. The AO had given various reasons for rejection of books of account u/s 145(3) of the Act. The first and foremost reason given by the AO is with regard to the difference in sales-tax turnover declared by the assessee. The AO also has given other reasons, including discrepancy in purchases in respect of non availability of VAT / CST and purchase bills. We find that the assessee has clarified observations made by the AO with regard to the difference in sales, as per which, the assessee was following regular method of accounting to account

sales turnover in its books of account, net of taxes. Though the accounting for purchases as well as sales needs to be made inclusive of taxes, as per the mandatory requirement of accounting standards, as prescribed u/s 145 of the Income-tax Act, 1961, but, once the assessee has clarified the discrepancy by filing necessary evidence, only for that reason the books of account cannot be rejected. Similarly, in respect of discrepancy noticed about purchases, the assessee has explained the reasons for each purchases, as per which the AO initially had asked for list of purchases wherever the purchase is above Rs.50,000. But the assessee has filed complete purchases including purchases less than Rs.50 lakhs. These discrepancies were explained with necessary evidences. Similarly, in respect of purchases where CST / VAT were not there, the assessee has filed complete details including VAT / CST numbers. As regards purchases, where notices u/s 133(6) were returned, the assessee has filed new addresses alongwith confirmations from the parties. From the above, it is abundantly clear that the assessee has explained discrepancies noticed by the AO in respect of purchases as well as sales which are the main reasons for rejection of books of account and estimation of gross profit. Once the assessee has explained the discrepancies noticed by the AO, then no reason for the AO to reject books of account u/s 145(3) and estimation of profit on total sales. The Ld.CIT(A), after considering relevant facts, has rightly

deleted addition made by the AO. We do not find any error or infirmity in the findings of Ld.CIT(A) and hence, we are inclined to uphold the order of the Ld.CIT(A) and dismiss appeal filed by the revenue.

ITA No. 6473/Mum/2016

8. The issue involved in this appeal is identical to the issue which we have already considered in ITA No.6472/Mum/2016. The reasons given by us in preceding paragraph shall mutatis mutandis apply to this appeal also. Therefore, for the detailed reasons given in preceding paragraphs, we dismiss appeal filed by the revenue.

9. In the result, both the appeals filed by the revenue are dismissed.

Order pronounced in the open court on 12-04-2019.

Sd/-

sd/-

(Pawan Singh)	(G Manjunatha)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 12th April, 2019

Pk/-

Copy to :

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

/True copy/

By order

Asstt. Registrar, ITAT, Mumbai