

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD - BENCH 'B'**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No.3340/Ahd/2014

With

CO No.20/Ahd/2015

निर्धारण वर्ष/Asstt. Year: 2010-2011

ACIT, B.K. Circle Palanpur.	Vs.	M/s.Aroma Hightech Ltd. C/o. Arihant Pumps P.Ltd. Deesa Highway Palanpur PAN : AABCA 2943 G.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Revenue by :	Shri Alok Singh, CIT-DR
Assessee by :	Shri S.N. Divetia, AR

सुनवाई की तारीख/Date of Hearing : 18/06/2019

घोषणा की तारीख/Date of Pronouncement: 19/06/2019

आदेश/ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER:

Revenue is in appeal before the Tribunal against order of the Id.CIT(A)-XX, Ahmedabad dated 9.9.2014 passed for the Asstt.Year 2010-11. On receipt of notice in Revenue's appeal, the assessee has filed CO bearing No.20/Ahd/2015.

2. At the time of hearing, Id.counsel for the assessee did not press CO, hence, CO filed by the assessee is dismissed.

3. Revenue in its appeal has taken four grounds of appeal. Out of that ground no.3 and 4 are general grounds of appeal, which do not call for recording any specific finding. In ground no.1, Revenue has pleaded that the Id.CIT(A) has erred in deleting the addition of Rs.2,98,78,393/- which was added by the AO on account of low GP shown by the assessee.

4. Brief facts of the case are that the assessee has filed its return of income on 15,19,2919 declaring total loss at Rs.4,93,03,952/-. The case of the assessee was selected for scrutiny assessment and notice under section 143(2) was issued and served upon the assessee. At the relevant time assessee was manufacturing and trading in submersible and other pumps. The Id.AO has observed that the assessee has achieved total sales at Rs.37,96,30,697/-. Consumption of raw-material was having value of Rs.32,88,66,469/-. This consumption in terms of ratio to sales comes to 0.866. The Id.AO has observed that ratio of consumption in comparison to sales in the immediately preceding year was 0.801. He observed that there is a slight increase in material consumption ratio by 1.3%. The Id.AO calculated the sales which ought to have been achieved by the assessee, if consumption of raw-material in terms of percentage being taken equivalent to the immediately preceding year. On the basis of this calculation, he worked out the estimated sales at Rs.41,01,09,077/- and compared it with sales shown by the assessee at Rs.37,96,30,697/-. The difference of Rs.3,04,78,393/- was treated as sales outside the books of accounts. On this exercise, the Id.AO has made an addition of Rs.3,04,78,393/-.

5. Dissatisfied with the addition, the assessee carried the matter in appeal before the Id.CIT(A). The Id.CIT(A) has re-appreciated the facts and deleted the addition by recording the following finding:

"3.3. I have considered the facts of the case and submission made by the appellant. The AO has made the addition of Rs.3,04,78,393/- by estimating the sales suppression. It has been observed that the appellant had the consumption of material of Rs.32,88,66,469/- as against the sales of Rs.37,96,30,697/- and the material consumption to sales ratio calculated at 0.866 in the year under consideration. While the material consumption to sale ratio was at 0.802.in the immediately preceding year. Thus the AO concluded that the material consumption to sale ratio was higher in the year under consideration and thus the appellant has made the sales out of books of accounts. Considering the material consumption ratio of the immediately preceding year at 0.102 and applying the same, the total sales for the year under consideration was worked out at Rs.41.01,09,077/- as against the sales of Rs.37,96,30,697/- and thereby the difference of sales at Rs.3,04,78,393/- was treated as sales outside the books of accounts. The AO concluded that the increase in material consumption ratio as compared to last year was significantly higher looking at the turnover of the assessee. The AO did not consider the appellant's contention that there was fall in the sales of submersible pumps by 6.1% which was their main revenue yielding product and because of that reason there was fall in G.P. So AO concluded that if the sales is reduced by 6.1% then how the material consumption ratio could not have been increased by 8.031%.

3.4. On the other side the appellant contended that the books of accounts of the appellant company were subjected to statutory as well as tax audit and the same have not been rejected by the A.O. invoking the provisions of Section 145(3) of I.T. Act by specifying the defects therein. It Was also contended that the AO has not found out any independent evidence or information to prove such an allegation that the appellant has made the sales outside the books of accounts. It was also pleaded that the appellant vide its reply dtd.19.3.2013 has given the detailed explanation and reasons for fall in G.P. marginally and increase in the consumption of raw material ratio which has been completely ignored by the A.O. It has also been argued that before the A.O. that the appellant had become a sick unit facing acute shortage of funds and its loan accounts with consortium of bankers also became NPA and the bankers have filed recovery suit in DRT and they have also signed the debt of the company in favour of asset reconstruction company namely ARSEC India Ltd. So in such situation when the company itself was struggling hard for its survival the marginal fall in G.P. or marginal increase in raw material consumption was natural and of which reasons have been fully explained to the A.O. By ignoring the same the A.O.

has applied mathematical formula and passed the order in wrong and unlawful belief that the trading result should be the same over the years and there was no scope for any variation which could happen due to various reasons beyond the control. It was also submitted that even the working of the material consumption ratio made by the A.O. for both the years was highly vague/incorrect as the AO has completely ignored the fact that raw material consumption also include the consumption made for work-in-progress and finished goods closing stock. The AO totally assumed that whatever consumption was shown was for sales only and he has ignored the increase/decrease in the closing stock of semi-finished and finished-goods while arriving at the material consumption ratio. So the working itself was completely wrong. He has worked out the material consumption ratio for the year under consideration at 0.848 for the year under consideration as against the same ratio in the immediately preceding year at 0.835. Thus, there was the slight increase in the material consumption ratio by 1.3% (0.848 - 0.835) in the year under consideration of which detailed working is as under:-

	FY 2009-10	FY 2008-2009
Sales [A]	379630697	538085372
Material consumed [B]	328866469	431515961
Changes in Op. & Cl. Stock of Semi Finished & Finished Goods [C]	-6968084	17747909
Material Consumed for Sales [D] [B - C]	321898385	449263870
Material Consumption Over Sales Ratio [D / A]	0.84792506	0.83493046

Further the appellant has also given the working of G.P. to sales which is also as under:-

Particular	F.Y. 2008-09	F.Y. 2009-10
Sales	538085372	379630697
Gross Profit	88786504	57732312
G.P% to sales	16.50	15.20%

Thus the G.P. in the year under consideration was 15.20% as against the 16.50% in the immediately preceding year. Thus, there was substantial fall i.e. 30% in the turnover in the year

under consideration as it was Rs.37.96 crores in the year under consideration as against the sales in the immediately preceding year at Rs.53.80 crores. The reasons for such falls on both the items have been submitted to the A.O. but the same have been ignored by the A.O. and addition was made without any base.

It has also been alleged that the same A.O. has taken different stand while assessing the income of the other group company namely M/s.Arihant Pumps Pvt. Ltd. on the similar facts wherein the addition has been made on estimation of the G.P. and not suppression of the sales. In view of the above, the appellant contended that the AO has not acted in a lawful and judicious manner by making such a big assessment. He has relied upon the decision of Hon'ble ITAT, Rajkot Bench in the case of ITO Vs. Girish M. Mehta (2008) 296 ITR (AT) 125 whereby it has been pointed out that pre- conditions for estimating business income of the assessee was that the books of accounts should have been found to be unreliable or otherwise not capable of proving the assessee's income. Without this first step the fact that gross profit is low cannot by itself be a ground for taking a view that it is open to the AO to make good the alleged deficiency in gross profit. Further he has relied upon the judgment of Hon'ble Delhi High Court in the case of GIT Vs. Paradise Holidays (2010) 325 ITR 13 whereby it has been held that if accounts which are regularly maintained in the course of business and are duly omitted free from any clarification by the auditors should normally be taken as correct unless there are adequate reasons to indicate that they are incorrect or unreliable. Thus onus is upon the revenue to show that either the books of accounts maintained by the assessee were incorrect or incomplete or that the method of accounting adopted by him was such that true profits of the assessee cannot be deduced therefrom. Further Hon'ble ITAT, Ahmedabad Bench in the case of Siddhi Enterprises Vs. Department of Income-tax in ITA No.1431/Ahd/2012 has held that it is a settled proposition of law that for rejection of books of accounts the AO is required to demonstrate specific defects in the books of accounts produced by the assessee and also how the books of accounts produced by the assessee is not giving clear picture of the profits earned from the business activity. In the absence of such finding the books of accounts could not be rejected and the addition cannot be sustained on the basis of such rejection of books of accounts.

3.5. In view of the aforesaid discussion, it is apparent that firstly the AO has not correctly worked out the material consumption ratio for both the assessment years by making a mistake that the same was worked out without giving effect to the opening and closing stock of semi finished goods and finished goods which has

not given the correct about the consumption ratio. However, after considering the same the appellant has worked out the material consumption ratio at 0.848 as against the 0.835 in the immediately preceding year. So there was an increase in the ratio in the year under consideration by 0.0130 i.e. 1.30%. Likewise in the G.P. rate there was fall of 1.30% with the fall in sales at 30% in the year under consideration. Moreover, because of the sick unit and due to shortage of funds the appellant had to make the purchases at higher rates to get the credit from the suppliers. Therefore, this has also resulted into the fall in the gross margin. The AO has not pointed out any similar instance saying the unaccounted purchases or uncompleted sales effected by the appellant. Even it has not pointed out any defects in the books of accounts and that is why the book results have been accepted and no rejection of books of accounts u/s.145 has been made. However, the appellant has not maintained the stock register for each of the items consumed and purchased and therefore possibilities of leakage of revenue cannot be ruled out more particularly due to the fall in G.P. rate. Therefore it would be reasonable to make a lumpsum disallowance of Rs.6,00,000/- as against the addition of the suppressed sales made by the A.O by rejecting the books of accounts as the consumption of raw-material and production of finished goods and WIP are not open for verification due to man maintenance of daily stock registers. Thus the addition to the extent of Rs.6,00,000/- is confirmed. Thus the appellant gets the part relief on this issue. Ground of appellant is partly allowed."

6. The Id.DR relied upon the order of the Id.AO, whereas the Id.counsel for the assessee relied upon order of the CIT(A) as well as submissions made before the Id.CIT(A) which have been reproduced by the Id.CIT(A) in para-3.2 of the impugned order.

7. We have duly considered rival submissions and gone through the record carefully. It is trite to say that the sales could be estimated if the books of accounts of the assessee are rejected. In this connection we would like to make reference to section 145(3) of the Income Tax Act, 1961, which reads as under:

"145. (1) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of sub-section (2), be computed in

accordance with either cash or mercantile system of accounting regularly employed by the assessee.

(2) The Central Government may notify in the Official Gazette from time to time [accounting standards] to be followed by any class of assesseees or in respect of any class of income.

(3) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) [or accounting standards as notified under sub-section (2), have not been regularly followed by the assessee], the Assessing Officer may make an assessment in the manner provided in section 144.]”

8. A bare reading of Section 145 would reveal that it provide the mechanism how to compute the income of the Assessee. According to sub-section 1, the income chargeable under the head profit and gains of business or profession or income from other source shall be computed in accordance with the method of accountancy employed by an Assessee regularly, subject to sub-section 2 of Section 145 of the Act. Sub-section 2 provides that the Central Government may notify in the official gazette from time to time, the Accounting Standard required to be followed by any class of Assessee in respect of any class of income. Thus, it indicates that income has to be computed in accordance with the method of accountancy followed by an Assessee i.e. cash or mercantile, such method has to be followed keeping in view the Accounting Standard notified by the Central Government from time to time. Sub clause 3 provides a situation, that is, if the Assessing Officer is unable to deduce the true income. On the basis of method of accountancy followed by an Assessee than he can reject the book result and the assessee’s income according to his estimation or according to his best judgment. The Assessing Officer in that case is required to point out the defects in the accounts of Assessee and required to seek explanation of the Assessee qua those defects. If the assessee failed to

explain the defects than on the basis of the book result, income cannot be determined and Assessing Officer would compute the income according to his estimation keeping in view the guiding factor for estimating such income.

9. In the light of the above, let us examine the facts of the present case. The assessee has pointed out that accounts of the assessee-company is subject to statutory as well as tax audit, and its books are duly audited and the AO has not rejected the books of accounts. The Id.AO has nowhere expressed his inability to deduce true income from the accounts. The assessee has also pleaded that it is a sick company, facing acute shortage of funds and its loan account with consortium of bankers also became NPA; banks have filed recovery suit and they have also assigned the debt of the company in favour of the Asset Reconstruction Company i.e. Asrec India Ltd. The AO has only compared certain figures of raw-material vis-à-vis output without comprehending other aspects for consumption of other material as well as achievement of sales. Some of the item may be lying in the closing stock or in semi-finished products. All sorts of such aspects have not been considered by the Id.AO while estimating unaccounted sales. On the other hand, the Id.CIT(A) has appreciated the facts in right perspective and no addition is called for on this issue. We uphold the order of the Id.CIT(A) on this issue, and ground of appeal of the Revenue is rejected.

8. In the next ground of appeal, grievance of the Revenue is that the Id.CIT(A) has erred in deleting the addition of Rs.23,76,828/-.

9. The above disallowance was made by the AO out power and fuel expenses of Rs.73,44,543/- simply on the ground that the assessee was not following proper method of accounting and claiming the expenses as per its benefits. This disallowance challenged by the

assessee before the Id.First Appellate Authority, who after considering the submissions by the assessee, which was reproduced in para 4.2 and 4.3 of the impugned order deleted the disallowance. Revenue is now contesting this deletion before the Tribunal.

10. Before us both the parties supported respective orders of the Revenue authorities.

11. With the assistance of the Id.representatives, we have gone through the record carefully. The Id.CIT(A) has reproduced submissions made by the assessee on this issue in the impugned order. These submissions and the finding of the Id.CIT(A) are worth to note. They read as under:

"4.2. During the course of appellate proceedings the appellant filed written submission dtd. 20.6.2014 as under:-

4.0 Disallowance of Power & Fuel Exp.of Rs.23,76,828/-

4.1 The next ground of appeal relates to the addition totaling to Rs.23,76,828/-by way of disallowance of Power & Fuel Exp. It is observed by AO that assessee is not following proper method of accounting and claiming expenses as per his benefit and he has made the addition by disallowing the Gas & other fuel exp.of Rs.23,76,828/- out of total Power & Fuel Exp.of Rs.73,44,543/-. But the AO has not specifically stated which type of benefit the assessee has enjoyed in its return of income. The appellant is unable to understand such a vague comment by a responsible AO. In our detailed submission dt. 19-03-2013 [EXHIBIT-1] , we have given the full details of the Power & Fuel Exp. and stated that in FY 2008-09, the appellant has spend total Rs.12015853/- towards Power & Fuel and Stores & Spares Exp. and in FY 2009-10, the said exp. was Rs.1,06,88,775/-. Thus, there was a reduction in overall exp. but the AO has not considered the fact in a positive manner and simply disallowed the actual amount spent on Gas & other fuel of Rs.23,76,828/- without any base or proof to show that the said expenses were not spent for the business of the appellant. The appellant strongly object the method in which the AO has completed the wrong assessment which is

far from the law and solely finalised on the wrong belief and estimation of AO.

In view of above facts of the case it is humbly preyed that the entire addition of Rs.23,76,828/-made by AO be deleted.

4.3. The appellant filed further written submission dtd. 27.06.2013 as under:-

2.0 Disallowance of Power & Fuel Exp.of Rs.23, 76,828/-

2.1 The next ground of appeal relates to the addition totaling to Rs.23,75,525/-by way of disallowance of Power & Fuel Exp. We have given the full details of the Power & Fuel Exp. and stated that in FY 2008-09, the appellant has spend total Rs. 1201 585 3/- towards Power & Fuel and Stores & Spares Exp. and in FY 2009-10, the said exp. was Rs.1,06,88,775/-. In F.Y.2008-09, out of total exp.Rs.12015853/-, the appellant company has transferred Rs.2994274/- in Other Consumable Stores (R.& D.) Exp. •which was capitalized and therefore exp. actually debited to P.&L.A/c was Rs.9021579/- [12015853-2994274]. Thus, there was a reduction in overall exp. but the AO has not considered the fact in a positive manner and simply disallowed the actual amount spent on Gas & other fuel of Rs.23,76,828/- without any base or proof to show that the said expenses were not spent for the business of the appellant. The appellant strongly object the method in which the AO has completed the wrong assessment which is far from the law and solely finalised on the wrong belief and estimation of AO. The details of the said exp.forF.Y.2009-10 & 2008-09 is enclosed in EXHIBIT-2.

In view of above facts of the case it is humbly preyed that the entire addition of Rs.23,76,828/- made by AO be deleted.

Decision

4.4. I have considered the facts of the case and submission made by the appellant. The AO has made the disallowance of Rs.23,76,828/- towards power, fuel store items debited along with the power and fuel expenses of Rs.73,44,543/-. It was observed by the A.O. that the assessee was not following proper method of accounting and claiming expenses for its benefits. It has been observed that in the preceding years stores and spares of Rs.29,94,274/- was transferred to CWIP - R & D expense. However, the AO has not given any reasons for making such a

huge disallowance without going into the reasons. Neither any bogus claims have been proved nor it was proved why those store items were to be transferred to CWIP R & D expenses and those were not the revenue expenditures. Merely some items in the preceding year were debited to the CWIP - R & D expenses do not indicate that the same nature of expenditures have been incurred in the year under consideration also. Since there was no question on the genuineness of the expenditures and hence there allowability cannot be doubted. When the appellant himself bonafidely transferred some stores and spares expenses to CWIP R & D in the preceding year than in the year under consideration with the same bonafides he has not transferred the same because those were not required to do so. It was the onus on the appellant to disprove the appellant's stand which he has not discharged. Further neither the AO has proved that the expenditures were not made for the purpose of business. In view of the aforesaid discussion, the disallowance made by the A.O. is found not justified and hence same is deleted. Thus, the ground of the appellant is partly allowed."

12. After perusal of the above submissions of the assessee and finding of the Id.CIT(A) we do not find any error in the order of the Id.CIT(A), because the AO has not referred to any material for estimating/construing the disallowance of the above expenditure.

13. In the result, the appeal of the Revenue and CO of the assessee, both are dismissed.

Order pronounced in the Court on 19th June, 2019 at Ahmedabad.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Ahmedabad; Dated 20/06/2019

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :