

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH 'B', JAIPUR

श्री विजय पाल रॉव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 352/JP/2019  
निर्धारण वर्ष/Assessment Years : 2014-15.

M/s. United Plywood, 125, Ghee Mandi, Madar Gate, Ajmer.	बनाम Vs.	The Principal CIT, Ajmer.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AABFU 6227 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)

राजस्व की ओर से / Revenue by : Shri B.K. Gupta (CIT)

सुनवाई की तारीख / Date of Hearing : 07.08.2019

घोषणा की तारीख / Date of Pronouncement : 08/08/2019.

आदेश / ORDER

PER VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the revision order passed by Id. PCIT dated 27.02.2019 passed under section 263 of the IT Act for the assessment year 2014-15. The assessee has raised the following grounds of appeal :-

1. Under the facts and circumstances of the case, order passed by the Id. PCIT u/s 263 is illegal & bad in law and the same be quashed.
2. The Id. PCIT has erred on facts and in law in holding that reduction of Rs. 11,04,944/- on account of VAT u/s 145A in computing the business income is not allowable as same is not actually paid or incurred by the assessee ignoring the provision of section 145A according to which the VAT included in opening

stock and purchases to the extent of Rs. 29,82,461/- was added to business profit in different years and VAT amounting to Rs. 15,65,203/- (including Rs. 11,04,944/-) has been reduced from business income till AY 2014-15 to give effect to section 145A and thus, no prejudice is caused to the revenue on such adjustment made as per law.

- 2.1. The Id. PCIT has erred on facts and in law in holding that AO has failed to enquire into the audit statement as to the valuation of closing stock arrived on estimated basis and thus the order passed by AO is erroneous and prejudicial to the interest of revenue ignoring that assessee has followed the same method of valuation of closing stock.
3. The appellant craves to alter, amend and modify any ground of appeal.
5. Necessary cost be awarded to the assessee."

2. The assessment was completed under section 143(3) on 28.12.2016 at the total income of Rs. 7,50,750/- as against the returned income at Rs. 5,32,410/-. Subsequently on examination of record, the Id. PCIT noted that the assessee has reduced the value of closing stock by a sum of Rs. 11,04,944/- as an effect of section 145A of the Act, however, the assessee has not maintained any stock record for the year under consideration. Therefore, the Id. PCIT has observed that the closing stock as on 31<sup>st</sup> March, 2014 was not ascertainable and hence the deduction of Rs. 11,04,944/- claimed by the assessee is not allowable as effects of section 145A on account of VAT computed on valuation of closing stock. The Id. PCIT accordingly issued a show cause notice under section 263 on 18.09.2018 on this issue and asked the assessee to show cause as to why the order passed by the AO dated 28.12.2016 should not be considered as erroneous in so far as it is prejudicial to the interest of the revenue. The assessee filed reply to the show cause notice

and submitted that the assessee has computed the impact of section 145A correctly and the closing stock has been valued after giving the effect of section 145A on account of VAT paid or payable as on 31<sup>st</sup> March, 2014. The Id. PCIT was not impressed with the reply and explanation of the assessee and held that the assessee has shown negative VAT amount of Rs. 11,04,944/- which is not actually paid or incurred by the assessee, therefore, no adjustment is required to be made by the assessee under section 145A of the Act. Consequently, the Id. CIT has held that the order of the AO is erroneous in so far as it is prejudicial to the interest of the revenue and the same was set aside to the file of AO for making afresh after carrying out enquiry in the manner as discussed in the impugned order.

3. Before us, the Id. A/R of the assessee has submitted that the impact of Section 145A has been considered by the assessee on the basis of audit report which is evident from Annexure D to the Tax audit Report. In this annexure the impact of Section 145A on the profit has been computed and accordingly, the profit has been reduced to the extent of Rs.11,04,944/-. The Ld. PCIT has stated that the assessee is not maintaining stock register and the effect of VAT has been taken on estimated basis. It is explained that the nature of the business is such that assessee does not maintain stock register. However, at the year end the same is determined by the assessee and is considered in the books. The assessee is following this method from past many years and the impact of is given accordingly. In AY 2013-14, there is addition to the income u/s 145A by Rs.8,55,867/- as is evident from Annexure C to the audit report. Thus, the assessee has correctly computed the impact of Section 145A on the profit. This has also been considered by the AO during the assessment proceedings as is evident from the replies filed. Thus, it can

be noted that the AO after considering the impact of Section 145A allowed the claim. Thus, when AO has allowed the claim of VAT u/s 145A after examining all the facts and conducting proper enquiry, it cannot be said that he has not made proper enquiry in allowing the claim. Therefore, the order passed by AO by no stretch of imagination can be considered as erroneous for want of proper enquiry. The Id. A/R further submitted that it may be noted that assessee has been following the consistent method of giving the impact of section 145A in the computation of total income. As a result of the same there is addition to the income in some year and deduction in some year. The impact of section 145A in the computation of total income from the last 7 years is as under:-

Asstt. Year	Impact of section 145A considered in return of income	
	Addition to Income	Deduction to income
2007-08	5,55,070	
2008-09	1,25,227	
2009-10	5,87,391	
2010-11	5,21,397	
2011-12		4,60,259
2012-13	3,37,509	
2013-14	8,55,867	
2014-15		11,04,944
<b>Total</b>	<b>29,82,461</b>	<b>15,65,203</b>

Thus, it can be noted that over these years assessee has made addition to the total income u/s 145A for Rs.29,82,461/- whereas he has claimed deduction of Rs.15,65,203/- only. In all earlier years the working of the assessee has been accepted and therefore, the adjustment made in the computation of total income for the year under consideration cannot be held to be erroneous. This adjustment is

made as per the provisions of the Act, Guidance Note issued by ICAI u/s 44AB of IT Act, 1961 and duly verified and certified by the tax auditor. Hence, the observation made by Ld. PCIT about non maintenance of stock record is irrelevant. In fact the Ld. PCIT has not appreciated the mandate of section 145A in holding that adjustment made by the assessee is erroneous. The Id. A/R has also referred to the statement of computation of impact of section 145A which was filed before the AO and submitted that the assessee has computed the amount of Rs. 11,04,944/- after giving the effect of VAT paid/payable on opening stock, purchases and sales and consequently the profit stand decreased by Rs. 11,04,944/- due to the net payment on the purchases and sales during the year under consideration as well as the opening stock as on 1<sup>st</sup> April, 2013. He has referred to the summary of VAT input and VAT output and submitted that the average of VAT comes to 3.44% by considering all the components i.e. the purchases made within the State, purchases made outside the State attracting CST at 2% and purchases high sea sales. The Id. A/R has filed the details of purchases and details of sales which are attracting different rates of VAT and CST and also explained the details of sales returned, discount on purchases etc. The said computation shown in the details now filed are matching with the details of the statement computing impact of section 145A on the profit as Annexures C and D to the audited financial statements. Thus the Id. A/R has pointed out that all the relevant details were filed before the AO in response to the notice under section 142(1) wherein the AO has raised a specific query about the impact of section 145A. He has also referred the reply of the assessee dated 30.11.2016 filed in response to the notice issued by the AO and submitted that the assessee has given the working of impact of section 145A on the profit and after

considering the said reply and details, the AO was satisfied with the said impact on the net profit due to the said amount of Rs. 11,04,944/-. Thus the Id. A/R has contended that once the AO was satisfied with the reply and the details filed by the assessee, the Id. PCIT was not justified in invoking the provisions of section 263 of the Act on this issue.

4. On the other hand, the Id. D/R has submitted that it is not clear from the details and from the record whether the assessee is a trader or doing any manufacturing activity. The assessee had also not filed details before the AO to show the various rates of VAT and CST on the particular purchases and sales. Therefore, the AO has accepted the claim without conducting verification and enquiry. This case falls in the category of lack of enquiry on the part of the AO which has rendered the order of the AO as erroneous in so far as prejudicial to the interest of the revenue. He has referred to the Explanation to section 263 of the Act and submitted that if the AO has not conducted a proper enquiry then the order of the AO is erroneous in so far as it is prejudicial to the interest of the revenue. The Id. PCIT has considered all the facts as well as the reply filed by the assessee and found that when the assessee is not maintaining the stock register then the calculation of the assessee showing negative amount of VAT at Rs. 11,04,944/- cannot be verified. Thus the claim allowed by the AO without verification of the relevant facts renders the order of the AO erroneous. He has supported the impugned revision order of the Id. PCIT.

5. We have considered the rival submissions as well as the relevant material on record. So far as the order passed by the AO without conducting due enquiry, the same would be erroneous for want of enquiry and, therefore, there is no quarrel on

this point that the lack of enquiry on the part of the AO would render the order passed by the AO as erroneous in so far as it is prejudicial to the interest of the revenue. However, in the case in hand, the AO has issued the notice raising the query regarding the valuation of closing stock and opening stock by giving effect of section 145A of the Act on account of VAT. The assessee in its reply dated 30.11.2016 furnished the details of working of impact of section 145A due to higher payment of VAT and more impact in the opening stock as on 1<sup>st</sup> April, 2013 in comparison to the closing stock as on 31<sup>st</sup> March, 2014. We further note that the assessee also produced the statement of impact of section 145A on the profit as Annexures C & D to the financial statements wherein the summary of VAT input and VAT output for the assessment years 2013-14 and 2014-15 were given along with the calculation of VAT on closing stock. Thus by considering all these facts, we are satisfied that it is not a case of complete lack of enquiry by the AO. However, the AO has accepted the claim of the assessee without going into the deep details of the computation of VAT impact and valuation of closing stock. Therefore, the correctness of these details were not undertaken for verification by the AO but once the assessee has filed these details in response to the notice which were accepted by the AO, then the case will not fall in the category of lack of enquiry. The Id. PCIT while assuming the jurisdiction under section 263 has proceeded on the assumption that the reduction of profit by a sum of Rs. 11,04,944/- on account of effect of section 145A is not allowable. During the proceedings under section 263, the Id. PCIT has given the emphasis only on the point that the assessee is not maintaining stock register. However, the details filed by the assessee before the AO were not examined by the Id. PCIT. Therefore, the Id. PCIT has not pointed out the defects in

the computation and calculation made by the assessee as per Annexures C & D to the financial statements. Thus the impugned order passed by the Id. PCIT is based only on the assumption and presumption without going into the factual aspects of correctness of the various details produced by the assessee. The Id. A/R has produced further bifurcation of purchases attracting the CST & VAT at different rates and has computed the average VAT on total purchases @ 3.22%, the details as produced by the Id. A/R are as under :-

<b>Particulars</b>	<b>Amount in Rs.</b>
2% CST Purchase	14,91,96,892
Purchase E-1 Transit Sales	5,61,84,628
14% VAT purchases	5,84,72,396
5% VAT purchases	6,33,312
Purchases High Sea Sales	3,69,312
	26,48,56,541
Less : Discounts/Claims	94,34,610
Net purchases	25,54,21,931

VAT paid on purchases : 82,17,801.07

Average VAT rate on total purchases : 3.22%

In view of these facts and circumstances, we find that when the assessee is only a trader in the Plywood and not a manufacturer, then maintaining a stock register is not mandatory and even not possible to show all details of daily purchase and sale. Once the assessee has given the details of opening stock which is not in dispute, purchase, sales and then computing the closing stock after giving effect to section 145A not a matter of dispute though the correctness of such computation and details furnished by the assessee is required to be verified. Accordingly, we modify the impugned order passed by the Id. PCIT under section 263 and direct the AO to

verify the correctness of the computation and details filed by the assessee and then decide the issue afresh after giving an opportunity of hearing to the assessee.

6. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 08/08/2019.

Sd/-

(विक्रम सिंह यादव)  
(Vikram Singh Yadav)  
लेखा सदस्य / Accountant Member

Sd/-

( विजय पाल राँव )  
(VIJAY PAL RAO)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 08/08/2019.

das/

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

1. अपीलार्थी / The Appellant-M/s. United Plywood, Ajmer.
2. प्रत्यर्थी / The Respondent-The Pr. CIT, Ajmer.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File {ITA No. 352/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar