

IN THE INCOME TAX APPELLATE TRIBUNAL "DB", BENCH AMRITSAR

BEFORE SHRI N.K. CHOUDHRY, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.207/ASR/2019

(निर्धारणवर्ष / Assessment Year: 2015-16)

M/s.Rebel & Rebel (India) Basti Peer Dad Road, Jalandhar, Punjab-144 002.	Vs.	Income Tax Officer, Ward-1(3), Jalandhar.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAEFR 2603 J		
(Appellant)	..	(Respondent)

Appellant by : Sh. Sudhir Sehgal, Adv.

Respondent by : Smt. Prabhjot Kaur, CIT(DR).

सुनवाईकीतारीख/ Date of Hearing : 28/11/2019

घोषणाकीतारीख/Date of Pronouncement : 30/12/2019

आदेश / O R D E R

Per Dr. A.L. Saini:

The captioned appeal filed by the assessee, pertaining to assessment year 2015-16, is directed against the order passed by the Commissioner of Income Tax (Appeals)-1, Jalandhar in appeal no. CIT(A)-1/JAL/10229/17-18, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (in short the 'Act') dated 26.12.2017.

2. Grounds of appeal raised by the assessee are as follows:

"1. That the Ld.CIT(A) has erred in confirming the addition of gross profit of Rs. 29,58,903/- (i.e. 24.70%) of Rs. 1,19,79,364/- of unrecorded export sales) out of addition of gross profit of Rs. 52,07,3871- @ 24.70% on unaccounted export sales of Rs. 2,10,82,538/- made by the Assessing Officer as per para 5.2 of his order.

2. That the Ld.CIT(A) has erred in confirming the addition u/s 69 of the Income Tax Act amounting to Rs. 90,20,461/- on account of so called unaccounted purchase out of addition of Rs. 1,19,79,364/- made by the Assessing Officer.

3. That the Ld.CIT(A) has erred in confirming the order of the Assessing Officer in rejecting the books of accounts u/s 145(3) and completing the assessment in the manner provided u/s 144 by not considering that the assessee maintained proper books of accounts, which were duly audited by the Chartered Accountant and no specific defect/deficiency was found in it during the course of hearing.

4. That the Ld. CIT(A) has erred in directing the AO to include the Export Turnover of Rs. 91,25,535/- in the turnover of FY 2013-2014 relevant to A.Y 2014-2015 as per the provision of section 251 r.w.s 150 of the Act whereas, the appellant has already shown the said turnover in its books of account for the F.Y 2015-2016 relevant to A.Y 2016-2017.

5. That the addition in the aforesaid paras has been confirmed by the Ld. CIT(A) against the facts and circumstances of the case and detailed submissions filed before the Assessing Officer and also during the course of hearing before the Ld. CIT(A) has not been considered properly.

6. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.”

3. At the outset itself, the Id. Counsel for the assessee submitted before us additional submissions/ evidences, which are reproduced below:

“1. This is the case of a partnership firm engaged in manufacturing of sanitary fittings and as per ground no 3 which deals with the rejection of books of accounts under section 145(3) is not pressed.

2. The other grounds of appeal relate to application of net profit rate on the sales omitted to be recorded in the books of accounts to the tune of Rs 1,19,79,364/- for which, the assessee had agreed before the assessing officer as per page no 6, of the order of A.O. The assessee offered, net profit rate of 5.35 to be applied on above sales, for which the addition was offered before the Assessing Officer on this account which worked out 6,40,894/- as per page no 3, read with page no 6, of the order of A.O.

3. We had submitted before the A.O. by way of written submissions, starting from para 7.1 Page no 5 to page 6 of the order, of AO, that cost of the goods exported had been debited to the trading account. Besides that, there had been opening stock of Rs 97,33,774/- that had not been considered by the AO and we rely on our submissions as per page 6 of the order of the Assessing Officer.

4. The Ld. CIT(appeal) had applied gross profit rate of 24.70% on the sales omitted to be recorded in the books to the tune of Rs 1,19,79,364/- and determined gross profit of Rs 29,58,903/- and balance amount of Rs 90,20,461/-, has separately been considered as investment in purchases and, thus, total sales not disclosed in the books have been added as profit as per para 5.2 of the order of CIT(A), page no 10-11.

5. There is no other tangible material for making addition of investment in purchases as confirmed by the CIT(A) and as per the judgment of Gujrat high court and M.P. High

Court that total sales cannot be considered as profit and net profit rate is to be applied and thus, only addition to be sustained is the element of net profit @ 5.35% on sales of Rs. 11979364.00 which works out to Rs 6,40,895/- as all the purchases and manufacturing expenses relating to sales omitted to be recorded in the books, as per our submission at page no 6 of order of A.O. Actually, there was practice of booking the export sales was when payment was received from foreign buyers and i.e. such sales have been omitted. Theses submission will take care of ground no 1 and ground no 2.

6. As per ground no 4, we agree to the finding of CIT(A) in para 5.1 at page no 9, subject to the finding that the sales already booked in the F.Y. 2015-16 should be reduced since sales of 91,25,535/- have already been disclosed in F.Y. 2015-16 if such sales are to be considered in F.Y. 2013- 14.

7. Ground no 5 and 6 are general in nature and needs no comments.”

4. We have hard both the parties and perused the material available on record. At the outset itself, the ld. DR for the Revenue submitted that since the assessee has furnished before the Bench the additional evidences/submissions which have never been examined by the ld. CIT(A) during the appellate proceedings. The Ld. DR pointed out that the assessee has taken the new plea/new evidence which is reproduced below:

“As per ground no 4, we agree to the finding of CIT(A) in para 5.1 at page no 9, subject to the finding that the sales already booked in the F.Y. 2015-16 should be reduced since sales of 91,25,535/- have already been disclosed in F.Y. 2015-16 if such sales are to be considered in F.Y. 2013- 14.”

Therefore, ld DR stated before the Bench that the new plea/new evidence has never been examined by ld CIT(A),therefore the matter should be remitted back to the file of the ld. CIT(A) to examine the new submissions/evidences. The ld Counsel fairly agreed with the proposition canvassed by ld DR for the Revenue. We note that one more opportunity should be given to the assessee to plead his case before the ld CIT(A). We find merit in the submissions of the ld. DR and we are of the view that these new written submissions/documents should be remitted back to the file of the ld. CIT(A) for his examination. We direct the ld. CIT(A) to examine the written submissions and the documents/evidences involved in the written submissions and adjudicate the issue in accordance with law. For statistical purposes, the appeal of the assessee is treated to be allowed.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Court on 30.12.2019

Sd/-
(N.K. CHOUDHRY)

न्यायिकसदस्य / JUDICIAL MEMBER

AmritsarAmritsar

दिनांक/ Date: 30/12/2019

(BCG, PS)

Sd/-
(A.L.SAINI)

लेखासदस्य / ACCOUNTANT MEMBER

Copy of the order forwarded to:

1. M/s. Rebel & Rebel (India), Basti Peer Daad road,Jalandhar,Punjab-144 002.
2. Income Tax Officer,Ward-1(3),Jalandhar.
3. C.I.T(A)-1, Jalandhar.
4. C.I.T.- concerned.
5. The Sr. DR, I.T.A.T., Amritsar.

True copy

By Order

Assistant Registrar
ITAT, Amritsar Bench