

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SMT. MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. Nos. 1437/Ahd/2014 & 2351/Ahd/2016
(निर्धारण वर्ष / Assessment Year : 2001-02)

M/s. Autobat Batteries Ltd. Autobat House, Nr. S. T. Stand, Nadiad	बनाम/ Vs.	Asst. Commissioner of Income Tax Kheda Circle, Nadiad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCA5922D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Manish J. Shah (in ITA No. 1437/Ahd/14) & Shri S. N. Divatia with Shri Mehul Talera (in ITA No. 2351/Ahd/2016), A.Rs.
प्रत्यर्थी की ओर से / Respondent by :	Shri L. P. Jain, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	28/01/2020
घोषणा की तारीख /Date of Pronouncement	29/01/2020

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned quantum and penalty appeals have been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-IV, Baroda ('CIT(A)' in short), dated 28.02.2014 arising in the assessment order dated 16.01.2004 and order of the Commissioner of Income Tax (Appeals)-2, Vadodara dated 05.07.2016 arising in the penalty order dated 27.03.2015 passed by the Assessing Officer (AO)

under s. 143(3) & 271(1)(c) of the Income Tax Act, 1961 (the Act) respectively; concerning A.Y. 2001-02.

2. The captioned appeal in ITA No. 1437/Ahd/2014 in relation to AY 2001-02 concerns appeal of the assessee against the quantum addition made by the Revenue authorities. The appeal of the assessee in ITA No. 2357/Ahd/2016 concerns consequential penalty under s.271(1)(c) of the Act on the quantum additions so made. Hence, both the appeals were heard together and disposed of by the common order.

3. We shall first take up quantum appeal of the assessee in ITA No. 1437/Ahd/2014 for adjudication of quantum dispute.

4. As per the grounds of appeal, the assessee has challenged the action of the CIT(A) in endorsing the estimation of Gross Profit (GP) @ 15% adopted by AO while calculating the value of stock.

5. In the instant case, the assessee filed the return of income declaring total income at Rs.4,61,960/-. The assessment was carried out under s.143(3) of the Act wherein certain additions to the extent of Rs.30,61,426/- under s.69 of the Act which represents discrepancy in stock. The AO adopted the GP rate for immediate preceding FY 1999-2000 (AY 2000-01) and applied 15% as estimated GP rate for the purpose of ascertainment of aforesaid amount of unaccounted investment. The CIT(A) in the first appeal referred to a tabulated statement at page no.6 of its order analyzing the gross profits for five financial years (from FY 1996-97 to 2000-01) and found the estimation adopted by the AO to be in sync with the GP declared by the assessee in the past. The CIT(A) accordingly declined to interfere with the order of the AO in this regard and dismissed the appeal of the assessee.

6. Further aggrieved, the assessee preferred appeal before the Tribunal. The learned counsel for the assessee pointed out that the instant case concerns only an estimated addition on account of

discrepancy in the stock which itself is challengeable in many ways. However, he insisted that the rate adopted for the purposes of estimation by the AO is excessive in the circumstances narrated before the CIT(A) and therefore reasonable relief, at least, should be granted for the purpose of quantum additions.

7. The learned DR, on the other hand, relied upon the order of the CIT(A) and submitted that the gross profit rate has been adopted on a factually sound basis in tune with the working available as tabulated by the CIT(A) for last five years. The learned DR accordingly submitted that no interference with the order of the CIT(A) is thus called for.

8. We have carefully considered the rival submissions and perused the appellate order as well as the order of the AO. The AO adopted the GP of the preceding FY for the purpose of estimation of undisclosed income. The CIT(A) has also related the GP rate with the last five financial years. The GP rate @15% appears to be in consonance with the last five financial years. Therefore, the basis of estimation cannot be faulted. We do not see any error in the order of the CIT(A) and thus decline to interfere with the estimated additions.

9. In the result, appeal of the assessee in ITA No. 1437/Ahd/2014 is dismissed.

10. We shall now turn to the penalty under s.271(1)(c) of the Act amounting to Rs.8,95,530/- flowing from the aforesaid quantum addition.

11. We see considerable merit in the plea raised on behalf of the assessee that penalty under s.271(1)(c) of the Act ought not to have been imposed on the assessee on such estimated additions in the light of the decision of the Hon'ble Gujarat High Court in the case of *CIT vs. Valimkbhai H. Patel 280 ITR 487 (Guj)*. While AO may be justified in making estimated disallowance in quantum proceedings, such disallowance/additions that too on estimated basis, could not

automatically fall within mischief of Section 271(1)(c) of the Act. We accordingly set aside the order of the CIT(A) and direct the AO to delete the penalty of Rs.8,95,530/- imposed under s.271(1)(c) of the Act on such estimated addition.

12. In the result, appeal of the assessee in ITA No. 2351/Ahd/2016 is allowed.

13. In the combined result, quantum appeal of the assessee in ITA No. 1437/Ahd/2014 is dismissed whereas penalty appeal in ITA No. 2351/Ahd/2016 is allowed.

This Order pronounced in Open Court on 29/01/2020

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad: Dated 29/01/2020

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।