

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E', NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 2983/Del/2016
Assessment Year: 2012-13

M/s. Arihant Publications (India) Ltd., ADC Legal Services Pvt. Ltd., 59, Nehru Apartments, Outer Ring Road, Kalkaji, New Delhi	Vs.	ACIT, Circle-1, Meerut.
PAN :AAECA7236R		
(Applicant)		(Respondent)

Applicant by	Shri Deepak Kapoor, Adv.
Respondent by	Ms. Rakhi Vimal, Sr.DR

Date of hearing	23.01.2020
Date of pronouncement	30.01.2020

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 28.03.2016 passed by learned Commissioner of Income Tax (Appeals), Meerut [in short 'learned CIT(A)'] for assessment year 2012-13.

2. In the grounds raised assessee is mainly aggrieved by the additions of Rs.1,41,85,545/- which has been upheld by the learned CIT(A).

3. Facts in brief of the case are that the assessee was engaged in the business of publication of books. The assessee filed return

of income for the year under consideration on 29.09.2012, declaring total income of Rs.98,14,240/-. The case was selected for scrutiny assessment and notice under Section 143(2) of the Income-tax Act, 1961 (for short 'the Act') was issued and complied with. During the assessment proceeding, the Assessing Officer observed that no stock register was maintained by the assessee and details of opening and closing stock was also not found to be verifiable. It was explained by the assessee that the stock register could not be produced as there were so many varieties of books and the raw material used by the assessee company and stock was physically verified by the management. The Assessing Officer rejected the contention of the assessee and observed that in absence of stock register the quantitative and qualitative details of stock cannot be verified and the gross profit rate of 21.14% declared by the assessee was not accepted by the Assessing Officer. The assessee justified its gross profit rate of 21.14% declared by it by citing instances of other two publishers, i.e., M/s. Chitra Prakashan and Master Mind Publication, which had shown lower gross profit then the assessee. The same was not accepted by the Assessing Officer and he referred to the gross profit of M/s. Arvind Prakashan P. Ltd. for assessment year 2012-13 which is 27.22%. In view of facts and circumstances of the case, the learned AO applied a gross profit rate of 25% on the turnover of Rs. 76,26,63,673/- and worked out Gross Profit of Rs.19,06,65,918/-. As the assessee had already declared Gross Profit of Rs.16,12,27,100/-, the difference amount of Rs. 2,94,21,167/- was added to the income of the assessee by the Assessing Officer.

3.1 On further appeal, the learned CIT(A) after verifying the trading accounts and quantitative details submitted by the assessee to the bank wherein the assessee declared the gross profit rate of 23%. Accordingly, he applied the rate of 23% on the turnover of the assessee and sustained the additions of Rs.1,41,85,545/-.

4. Before us, the learned counsel for the assessee referred to the order of the Tribunal in the case of the assessee for assessment year 2010-11 and 2011-12. The learned counsel also referred to assessment order for assessment year 2017-18 wherein the Gross Profit rate of 21.89% was accepted. It was submitted that the valuation of the closing stock was consistently followed by the assessee since assessment year 2009-10. According to the assessee, when the Assessing Officer himself in subsequent years has accepted the valuation of the closing stock of the company as well as Gross Profit rate declared by the assessee, no addition should be sustained in the year under consideration.

5. On the other hand, learned DR relied on the order of the Assessing Officer and submitted that he was justified in making additions for non-maintenance of the stock register.

6. We have heard the rival submissions of the parties and perused the relevant material on record. We find that in this case the appeal filed by the Revenue against the impugned order has already been decided in ITA No.3756/Del/2016 (AY: 2012-13, dated 04.02.2019). The relevant finding of the Tribunal is reproduced as under:

“5. Undisputedly, audited books of account have not been disputed by the Assessing Officer who has proceeded to estimate the gross profit @ 25% on the sole ground that stock register has not been produced by the assessee. It is the case of the assessee that the fall in the GDP rate was due to increase in the turnover and competitive market. It is further case of the assessee that assessee does not maintain the stock records to show the quantitative details and the management carries out physical verification in a periodic intervals as well as at year end to work out the closing stock position.

6. Ld. CIT(A) after taking into account the fact that when assessee is admittedly in the business of publication and sale of books which are printed and sold in numbers and royalty is also paid to authors on a number of copies printed, it is not digestible that the assessee has not maintained stock records. In these circumstances, Id. CIT (A), by relying upon the decisions rendered by the Hon'ble Delhi High Court, Hon'ble Punjab and Haryana High Court, Hon'ble Kerala High Court and Hon'ble jurisdictional Allahabad High Court, reached the conclusion to estimate the GP rate by making comparison with other publications at 23% as against GP rate of 21.14% shown by the assessee and 25% estimated by the AO. So, in these circumstances, finding no illegality or perversity in the impugned order, present appeal filed by the revenue is hereby dismissed.”

6.1 We also note that in assessment year 2010-11 and 2011-12, the Tribunal in ITA No.5405/Del/2013 and 6640/Del/2014 has upheld the Gross Profit Rate of 23% in the year under consideration. The learned CIT(A) has applied the Gross Profit rate of 23% which was applied by the assessee while filing valuation of the stock before the Bank. The relevant finding of the learned CIT(A) is reproduced as under:

“I have carefully considered the grounds of addition and also the submissions made by the AR in appeal. The appellant has raised seven grounds in appeal but effective ground in appeal is addition of Rs 2,94,38,818/- on account of substitution of GP rate @25% in absence of production of stock records.

The appellant is in the business of publication of books, the appellant has not produced any stock details as to quantity of each book either before the A.O or during the appellate proceedings. The A.R has maintained that the appellant doesn't maintain stock records to show quantitative details and management carries out physical verification at periodic intervals as well as at year end to work out the closing stock position.

The appellant is in the business of publication and sale of books which are printed and sold in numbers. It is beyond imagination that where royalty is paid to author on number of copies printed, where sale of books is made in numbers than also publisher doesn't maintain stock records. Since stock records were not produced before A.O he was left with no option but to estimate G.P rate to arrive at the correct income.

The A.R has quoted number of cases in which G.P rate was estimated by rejection of books of accounts, the present case is not of rejection of books of accounts but a case where stock records were not produced and to arrive at correct stock figures GP rate was worked out @ 25% by making comparison with other publishers.

The AR has maintained during appeal proceedings also that stock records are not being maintained by the appellant. However, there is a grave contradiction in the statement made and material placed on record during the Appeal. In the paper book submitted during Appeal, proceedings on Pg no 49 to 69 and Marked Annexure -2 are the audited financial statements along with auditor's report under the Companies Act which has been filed. In the auditor's report it is mentioned that:

“(ii)The inventory has been physically verified at the year end. The computerized stock been kept by the Company and the same is being dealt with the Accounts. ”

It is clear from the records that the appellant has computerized stock records but has not produced the stock records either before A.O or in appellate proceedings. It was seen from the audited accounts that appellant is having cash credit limit from Punjab National Bank, Abu Lane, Meerut branch. Information was sought from them u/s 133(6) as to the stock statements submitted by them or any stock audit conducted on behalf of the bank. In response to the same bank has submitted vide there letter dated 21.03.2016 the stock position submitted by the appellant to the bank at the end of each month as well as stock audit report of M/s M. Pruthi & Co, Chartered Accountants. In the stock audit report also it has been certified by the stock auditor that stock tallies with the books and stock records are maintained properly. When it is an admitted fact that stock records are maintained than non production of same can be explained by appellant only.

In the stock statement submitted to bank appellant has itself shown GP rate of 23% in working out closing stock figures.

It will be in the interest of justice to accept the GP rate as disclosed by appellant itself in all its submissions to the bank of 23%. The A.O. is directed to apply GP rate of 23% and the gross profit will work out to Rs.17,54,12,645/- and will get relief of Rs.1,52,53,273/-.”

6.2 Before us, the learned counsel has submitted that no opportunity was provided by the learned CIT(A) for relying on the Gross Profit rate for valuation of the stock submitted to the bank. This argument of the learned counsel is not maintainable because this was the assessee's own valuation submitted to the bank and which was very much available to the assessee. It was not a valuation of a third party for which the assessee required confrontation before consideration of the same. In view of Gross Profit rate applied by the assessee for valuation of the stock in the year under consideration and in view of the Gross Profit rate of 23% upheld by the Tribunal in assessment years 2010-11 and 2011-12, we do not find any error in the order of the learned CIT(A) in sustaining the gross profit rate at 23% in the year under consideration also. Accordingly, we uphold the findings of the ld. CIT(A) on the issue in dispute. The grounds of the appeal of the assessee are accordingly dismissed.

7. In the result, the appeal of the assessee is dismissed.

Order is pronounced in the open court on 30th January, 2020.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 30th January, 2020.

RK/-

Copy forwarded to:

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