

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : A : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

ITA No.3665/Del/2017
Assessment Year: 1996-97

DCIT,
Circle-3(2),
New Delhi.

Vs Asian Consolidated Industries Ltd.,
96th Mile Stone,
Delhi Jaipur Highway,
Village Bawal, Distt. Rewari,
Haryana.

PAN: AAACA5887A

(Appellant)

(Respondent)

Assessee by	:	Shri Ved Jain, Advocate & Shri Ashish Goel, CA
Revenue by	:	Dr. V.K. Chadha, Sr. DR
Date of Hearing	:	16.12.2019
Date of Pronouncement	:	25.02.2020

ORDER

PER R.K. PANDA, AM:

This appeal filed by the Revenue is directed against the order dated 20th
March, 2017 of the CIT(A)-1, New Delhi, relating to A.Y. 1996-97.

1.1. Ground of appeal No.1 by the Revenue reads as under:-

ö1. The Id.CIT(A) has erred on facts and in law in reducing the estimated gross profit of the assessee company from 10.73% to 8.75% in the absence of production of supporting details/books of accounts by the assessee company.ö

2. Facts of the case, in brief, are that the assessee is a company engaged in the business of manufacturing of flexible packaging laminates, open top sanitary cans and general line metal cans. It filed her return of income on 30.11.1996 declaring total income at Rs.1,44,21,917/-. The case was selected for scrutiny and due to non-compliance to statutory notices issued by the AO, the assessment was completed by invoking the provisions of section 144 and determining the income at Rs.5,20,74,960/-. The assessee moved an application before the PCIT u/s 264 who set aside the assessment order back to the file of the AO for making the assessment *denovo* after giving reasonable opportunity of being heard to the assessee.

2.1 During the course of assessment proceedings, the AO noted that despite opportunities granted, the assessee was not able to produce the books of account and other relevant documents to support the various claim made in the return and accompanied financial accounts. He noted that in this case, a liquidation petition was filed by M/s Gujrat State Financial Services Ltd. and an order was passed by Honøble Punjab & Haryana High Court for winding up of the company and a liquidator was appointed with effect from 07.01.1999. Consequent to the above, order, it was explained by the assessee, that the control and management of the company vested with the official liquidator appointed and all the records/works of the company were taken over by the liquidator. The Honøble Punjab & Haryana High Court, vide order dated 12.05.2014 ordered the company to be revived. The copy of the revival order of Honøble High Court was filed by the assessee. It was

submitted by the assessee that all the books of account, vouchers and other documents which were lying at the factory premises situated at 96th Mile, Delhi-Jaipur Highway, Village Bawal, Distt. Rewari, Haryana which also happens to be its registered office, were taken over by the Official Liquidator as the company had gone into liquidation with effect from 07.01.1999 and the premises were to be under the seal of Official Liquidator. It was submitted that by order dated 12th May, 2014, the Honøble Punjab & Haryana High Court had ordered for revival of the company and the ex management of the assessee company as handed over the possession of the premises on 10th June, 2014 on as is where is and whatever there isø basis. It was claimed that on taking over of the possession, the assessee company was not handed over any books of account and other documents by the office of the Official Liquidator. In order to substantiate that the books of account and vouchers were lying at the factory premises, the assessee company filed copies of minutes prepared by the Official Liquidator on 5th April, 2000 and 6th April, 2000 while allowing inspection of the records by the assessee company.

3. However, the AO was not satisfied with the arguments advanced by the assessee. He noted that for the impugned assessment year, the assessee has shown sales at Rs.55,07,99,869/- against which cost of material consumed/purchases has been shown at Rs.49,10,80,731/- and manufacturing expenses at Rs.1,34,93,629/-, thereby showing a GP of Rs.4,62,25,509/- which comes to 8.39%. He noted that in the immediately preceding year, the GP was shown at 13.08%. Since the assessee

failed to produce the books of account for verification, the AO estimated the GP at 10.73% being the average GP shown in the immediately preceding year and current year at arrived at the GP of Rs.5,91,00,825/-. He accordingly made addition of Rs.1,28,88,715/- being the difference between the GP arrived at by him and the GP shown by the assessee.

4. In appeal, the Id.CIT(A) restricted such GP percentage to 8.75% as against 10.73% adopted by the AO by observing as under:-

õ I have considered the submission of the appellant and observation of the AO made in the assessment order on the issue. It is seen that the appellant company was engaged in the business of manufacturing of Flexible Packaging Laminates, Open Top Sanitary Cans, General line Metal Containers and trading activity. By virtue of the orders of Honøble Punjab & Haryana High Court at Chandigarh dated 06.01.1994 and 28.07.1995, the companies M/s Asian Closures Ltd. and M/s Trans Asia Packaging Ltd. were amalgamated with the appellant company w.e.f. 20.03.1992 and 01.04.1992 respectively. The Assessing Officer has rejected the books of accounts of the appellant u/s 145(3) of the I.T. Act on the ground that appellant has failed to produce books of accounts, bills and vouchers to support the audited financial statements and in the past also certain discrepancies were found in the books of appellant, therefore, Assessing Officer estimated gross profit @10.73% i.e. average of GP shown in 1995-96 and GP shown in the current year and added Rs. 1,28,88,715/-. As discussed above, the appellant had gone into liquidation w.e.f. 07.01.1999 and its works/factory premises were taken over by the official liquidator along with books of accounts and records. The appellant has filed statement of affairs as on 07.01.1999, which was to be filed statutorily under the provisions of section 454 of the Companies Act 1956 and had taken inspection of the records on 05.04.2000 and 06.04.2000 as per the minutes prepared by the official liquidator. The minutes prepared by the official liquidator are the testimony of the fact that books of accounts and records of the appellant company were lying in possession of the official liquidator. It is also seen that on revival of the company, such records were not handed over to the appellant and possession was given on õas is where is and whatever there is basis". This fact is supported by the letter of the official liquidator vide its letter No. ACIL/CA No.334 of 2012/5121 dated 03.03.2016 responded to the appellant company as follows:-

I am to refer to your letter dated 06.02.2016 on the subject cited above and to state that the winding up order dated 07.01.1999 passed in C.P.No.8 of 1998 has been recalled by the Honøble High Court of Punjab & Haryana at Chandigarh vide order dated 12.05.2014 and the possession of the factory unit cum Regd. Office of the Company has been already handed over to you on 10.06.2014 öas is where is and whatever there isö basis on your entire satisfaction. Further, I am to inform you that inventory of Books & Accounts/records of M/s Asian Consolidated Industries Ltd. prepared only relevant record which is identified by Sh. Vijay Chawdhary duly authorized by Sh. Ajit Sinha, one of the Ex-director of the company for the purpose of preparing Statement of Affairs on 06.04.2000 by the team of Official Liquidator and the same records were lying at the Regd. Office of the Company. Further, this office has received a letter dated 09.01.2010 from the M/s Introspective Detectives Pvt. Ltd. Security Agency panel of this office regarding break of fire in the office of the company and this office has been deputed a team of officials of this office at site on 12.01.2010 to inspect the premises and lodge F.I.R. As per minutes prepared at the site on 12.10.2010 by the team of officials of this office that all records lying in Almirah has been burnt but furniture/records lying at first floor is not burnt and a DDR No. 30 was registered in the Police Station Kasola Distt. Rewari.

Further this office has no records of the company and this office has already possession of the factory unit handed over to you on 10.06.2014 on your entire satisfaction.ö

In view of the above events, it cannot be held that appellant has not produced books of accounts deliberately. The events suggests that the books of accounts were in the possession of the Official Liquidator and the same were not received by the appellant when the possession of the company was taken over by the present management from the Office Liquidator, therefore, the observation of the AO that appellant has failed to produce books of accounts are contrary to the facts available on record. It cannot be attributed that appellant company had not produced books of accounts but it was its constraints that it was not able to produce its books of accounts due to facts and circumstances discussed above.

It is seen that appellant company was engaged in the business of manufacturing of Flexible Packaging Laminates, Open Top Sanitary Cans and General Line Metal Cans. Due to change in the technology and the revolution in the material used for making cans, the demand was shifted from the tin containers to the plastic and poly pack containers/packing materials and this led to the decline in the turnover of the appellant company as can be seen from the following statements:

1995- 96	75,42,24,184
1996- 97	55,07,99,869
1997- 98	31,33,33,866
1998- 99	10,63,09,501
1999-00	26,68,329

The above statement suggests that due to change in the technology and use of plastic material / poly plastic / can, the turnover as well as margin of the appellant company started declining and because of these facts, the company ran into financial troubles in 1997 and subsequently, gone into liquidation. Therefore, the Assessing Officer was not justified in estimating gross profit @ 10.73% taking the average of earlier years gross profit and current years gross profit. Looking to the fact that appellant company has gone into the financial stress, past history of the appellant and declining of the turnover due to change of technology, it cannot be expected that appellant company will earn same margin as it had earned in earlier years, therefore, it would be reasonable to take the gross profit of the appellant company @ 8.75% of the turnover. As a result, the total gross profit of the appellant company comes to Rs.4,81,94,988/- as against Rs.4,62,12,109/- declared by the appellant. As a result, the addition of Rs. 19,82,879/- on account of fall in gross profit is sustained. Hence, grounds of appeal no. 3, 4, 5 and 6 are partly allowed.ö

5. Aggrieved with such order of the CIT(A), the Revenue is in appeal before the Tribunal.

6. The ld. DR strongly opposed the order of the CIT(A) and submitted that there is no basis for arriving at the GP rate of 8.75% as adopted by the CIT(A).

7. The ld. Counsel for the assessee, on the other hand, heavily relied on the order of the CIT(A).

8. We have considered the rival arguments made by both the sides and perused the orders of the authorities below. We find the AO, in the instant case, made the estimation on the basis of the average of the preceding year GP and the current year GP. It is the submission of the ld. Counsel for the assessee that estimation of

profit cannot be made merely on the ground that the assessee has earned low gross profit as compared to earlier years. So far as non-production of books of account are concerned, it is an admitted fact that such records were not handed over to the assessee by the Official Liquidator and the possession was given to the assessee on as is where is and whatever there is basis. The letter of the Official Liquidator addressed to the assessee company has been reproduced by the CIT(A) in the body of the appeal order and nothing has been produced before us to controvert the same. Since the books of account were in the possession of the Official Liquidator and the same were not received by the assessee at the time of handing over of the possession, therefore, the allegation of the AO that the assessee failed to produce the books of account are contrary to the facts as the assessee cannot be expected to do an impossible task. Further, had the profit percentage of the assessee been higher, then, the assessee company would not have gone into financial trouble. The observation of the Id.CIT(A) that due to change in the technology and use of plastic material/poly plastic/can the turnover as well as the margin of the assessee company started declining and the company ran into financial trouble in 1997 and, subsequently, gone into liquidation also could not be controverted by the Id. DR. In view of the above discussion and in view of the detailed reasoning given by the CIT(A) while reducing the GP rate to 8.75% as against 10.73% taken by the AO, we do not find any infirmity in the same. Accordingly, the order of the CIT(A) on this issue is upheld and the ground raised by the Revenue is dismissed.

9. Ground No.2 raised by the Revenue reads as under:-

õ2. The Id.CIT(A) has erred on facts and in law in deleting the addition of Rs.1,76,015/- on account of Gross Profit ratio @ 10.35% made by the Assessing Officer in view of amalgamation of M/s Asian Closures Ltd. into the assessee company in the absence of production of supporting details/books of accounts.ö

10. Facts of the case, in brief, are that the AO, during the course of assessment proceedings, noted that the company M/s Asian Closures Ltd. has been amalgamated into Asian Consolidated Industries Limited w.e.f. 20th March 1992 as per order of the Honøble High Court dated 06.01.1994. However, at the time of filing of the return, the order of the Honøble High Court was not available and the assessee filed the return separately has also included the income/loss of Asian Closure Limited while computing the income of the assessee company. He noted that on a turnover of Rs.2,66,69,544/-, the assessee has shown GP rate of 9.69% as against GP rate of 11.01% on a turnover of Rs.15,01,75,664/- in the immediately preceding assessment year. Since the books of account and other details were not produced to substantiate the purchases and sales, the AO adopted the GP rate of 10.35% being the average GP of the preceding as well as the current year and made addition of Rs.1,76,015/- to the total income of the assessee being the difference in the gross profit.

10.1 In appeal, the Id.CIT(A) deleted the addition by observing as under:-

õ In the Asian Closure Company's case also, the same facts are applicable. There was also change in the technology and due to that there was substantial fall in sales during the year as compared to the earlier years. In the immediate preceding year, the total sales declared by the said entity were Rs.15,01,75,664/- whereas in the year under consideration, the sales have been

shown at Rs.2,66,69,544/- which itself shows that the sales of the appellant company were declining and it affected the margins of the appellant company. The appellant has submitted the Audited Balance Sheet of the company and same has been certified by the Auditors. AO has not pointed out any defects in the books results of the appellant company, therefore, the gross profit declared by the said company @ 9.69% has to be accepted by the AO. Accordingly, the addition of Rs. 1,76,015/- made by the AO by taking the GP @ 10.35% is deleted.ö

11. Aggrieved with such order of the CIT(A), the Revenue is in appeal before the Tribunal.

12. After hearing both the sides, we do not find any infirmity in the order of the CIT(A). He has given a finding that due to change in technology and due to substantial fall in sales during the year as compared to preceding years, the turnover and GP rate has gone down. Nothing contrary was brought to our notice to controvert the above finding given by the CIT(A). In view of the above and in view of the detailed reasoning given by the Id. CIT(A) on this issue, the ground raised by the Revenue is dismissed.

13. Ground No.3 reads as under:-

ö3. The Id.CIT(A) has erred on facts and in law in allowing deduction u/s 80HH amounting to Rs.56,49,212/- and deduction u/s 80I amounting to Rs.70,61,553/- when the assessee company has not furnished evidence to justify the claims and also in the absence of production of supporting details/books of accounts.ö

14. Facts of the case, in brief are that the AO, during the course of assessment proceedings, noted that the assessee has claimed deduction u/s 80HH and 80I at Rs.56,49,212/- and Rs.70,61,553/- respectively. Although report in Form No.10CCB under Rule 10BBB and Form No.10CB under Rule 18B were filed

along with the return of income, however, in absence of furnishing of any evidence to justify these claims and the basis on which the profit has been derived from the industrial undertaking for his verification, the AO disallowed the claim made by the assessee.

14.1 In appeal, the Id.CIT(A) allowed the claim by observing as under:-

I have considered the submission of the appellant and observation of the AO made in the assessment order on the issue. It is seen that during the year appellant company has shown sales and other income of Rs.56,61,46,160/-. Out of this, the other income is Rs.1,53,46,291/- and Rs.6,80,89,063/- were manufacturing sales. For effecting manufacturing sales, the appellant has shown purchases of Rs.3,75,62,640/- and has shown opening stock of Rs.7,71,57,904/-. The appellant has also shown closing stock of raw material, work in progress, finished goods, consumable stock of Rs.9,55,74,780/-. It has incurred manufacturing expenses of Rs. 1,34,93,629/- and has shown manufacturing profit of Rs.2,81,80,967/- taking the proportionate expenses of Rs.72,68,703/- incurred which are to be debited below the line. These details were filed before the AO, however, he has not given any finding on this issue. The Auditor of the appellant who has audited the accounts of the appellant company for the year ending 31.03.1996 has issued certificate in form 10CCB and form 10CB as provided under Rule 18BBB and Rule 18B of the Income Tax Rules, 1962 certifying that the appellant company is entitled to claim deduction u/s 80HH and 80I of the I.T. Act. As discussed above, the appellant has filed substantial evidence which prove that manufacturing activity of appellant company were situated in backward area and for that the appellant has filed the notification issued by the Central Government. The appellant has also filed document stating that earlier this area was part of Mahendragarh District which was subsequently merged with Rewari District. The manufacturing activity of the appellant company is situated at Village Chirhara, Village Code 062687 which is part of Bawal Tehsil of Rewari District. The appellant has also filed letter issued by Department of Industries, Govt, of India for granting industrial license to the appellant for manufacturing of the cans which is part of the submission made by the appellant. The appellant has also been allowed certain Sales Tax exemption by Haryana Govt, for setting up industry in backward area. The evidences furnished by the appellant establishes that appellant company's unit was situated in backward area and it has manufactured the Flexible Packaging Laminates, Open Top Sanitary Cans and General Line Metal Cans. The appellant has also filed the certificates from the Chartered Accountant as required in Form 10CCB and Form 10C as provided under Rule 18BBB and Rule 18B of I.T. Rules, 1962. Appellant has also established that it has employed more than 10 employees

during the year and has retrenched 79 employees during the year out of 131 employees and permission granted for retrenchment of the workers by the specified authority is also placed on record. All these evidences established that appellant was engaged in the manufacturing activity during the year and has affected sales of the manufactured items to the tune of Rs.6,80,89,063/- during the year. It is seen that Assessing Officer has not brought any material on record which can prove that appellant was not engaged in manufacturing activity during the year, therefore, it is held that appellant is entitled for deduction u/s 80HH and 80I of the I.T. Act. Assessing Officer is therefore, directed to allow deduction u/s 80HH and 80I from the profit earned and working of the same filed before him by the appellant from the manufacturing activities and sales effected of such items. Accordingly, this ground of appeal of the appellant is allowed.ö

15. Aggrieved with such order of the CIT(A), the Revenue is in appeal before the Tribunal.

16. The ld. DR strongly opposed the order passed by the CIT(A) in allowing the claim u/s 80HH and 80I. He submitted that the finding given by the CIT(A) that the AO has not brought any material on record which can prove that the assessee was not engaged in manufacturing activity during the year is incorrect and, therefore, the assessee should not have been allowed the benefit of deduction u/s 80HH and 80I. Further, the observation of the CIT(A) that the AO has not given any finding on this issue on the basis of various details filed is also wrong. He accordingly submitted that the order of the CIT(A) be reversed and that of the AO be restored on this issue.

17. The ld. Counsel for the assessee, on the other hand, strongly supported the order of the CIT(A). He submitted that the allegation made by the AO that the assessee did not produce separate manufacturing account and other details is totally

incorrect as the assessee has submitted all the relevant details of opening stock, sales, purchases, closing stock, direct expenses and other eligible expenditure to justify the claim of expenditure. The Id.CIT(A), after going through issue has allowed the claim. Referring to the decision of the Tribunal in assessee's own case for A.Y. 1991-92, vide ITA No.4873/Del/1998, order dated 5th October, 1998, he submitted that under identical circumstances, the Tribunal has allowed the claim of deduction u/s 80HH and 80IB, therefore, the order of the CIT(A) on this issue be upheld and the ground raised by the Revenue should be dismissed.

18. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the decision of the Tribunal in assessee's own case for A.Y. 1991-92. We find, the AO, in the instant case, rejected the claim of deduction u/s 80HH and 80I on the ground that the assessee did not furnish any evidence to justify these claims and the basis on which the same has been worked out. According to him, the profit derived from industrial undertaking is not verifiable in the absence of books of account and whether any manufacturing activity took place during the year and to what extent is not ascertained in the books of account and other connected records. It is also his allegation that no separate manufacturing and trading account has been prepared and the assessee has not given the basis as to how he has arrived at the profit derived from the industrial undertaking for working out deduction. We find, the Id.CIT(A) allowed

the claim of deduction u/s 80HH and 80I the reasons of which has already been reproduced in the preceding paragraphs. We do not find any infirmity in the order of the CIT(A). From the various details furnished by the assessee in the paper book, which were filed before the AO and the CIT(A), we find substantial details were filed before the lower authorities to prove that manufacturing activity of the assessee company were situated in the backward area and, for that, the assessee has filed the Notification filed by the Central Government. He has also filed documents substantiating Sales-tax exemption of Haryana Government for setting up industry in backward area. The manufacturing of flexible packaging laminates, open top sanitary cans and general line metal cans is also not in dispute. The certificate from the auditor was also furnished before the AO. The assessee has substantiated that it has employed more than ten employees during the year and has retrenched 79 employees out of 131 employees and permission granted for retrenchment of the workers by the competent authority. Thus, in our opinion, the assessee has substantiated with evidence regarding the manufacturing activity undertaken by him in the backward area and fulfillment of all conditions for claim of deduction u/s 80HH and 80I. Further, in the order for A.Y. 1991-92, the Tribunal had given the observation that the assessee company is entitled to deduction u/s 80HH and 80I. However, it was not claimed because it was a case of loss. In this view of the matter and in view of the detailed reasoning given by the CIT(A) on this issue, we find no infirmity in his order on this issue. Accordingly the same is upheld and the ground raised by the Revenue is dismissed.

19. Ground of appeal No.4, being general in nature, is dismissed.
20. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 25.02.2020.

Sd/-

(K.NARASIMHA CHARY)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated:25th February, 2020.

dk

Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi