

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

Before Ms. Sushma Chowla, Vice President

Dr. B. R. R. Kumar, Accountant Member

ITA No. 1244/Del/2015 : Asstt. Year : 2010-11

ITO Ward 22(2) New Delhi.	Vs	Samwon Precision Mould Mfg. India Pvt. Ltd., 1/24, Ground Floor, Asaf Ali Road, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAHCS8926K		

ITA No. 1594/Del/2015 : Asstt. Year : 2010-11

Samwon Precision Mould Mfg. India Pvt. Ltd., B 47-49, Sector- 80, Phase-II, NOIDA.	Vs	ITO Ward 7(2) New Delhi.
(APPELLANT)		(RESPONDENT)
PAN No. AAHCS8926K		

**Assessee by : Shri Salil Kapoor, Adv.
Revenue by : Shri Saras Kumar, Sr. DR**

Date of Hearing: 07.01.2020	Date of Pronouncement: 30.04.2020
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The appeals filed by the revenue and the assessee are directed against the orders of Id. CIT (A)-8, New Delhi dated 09.12.2014.

2. Following grounds have been raised by the Revenue:

"1. The Ld. CIT(A) has erred in law and on the facts in directing the AO to consider the gross profit declared in the FY 2007-08 and apply that rate for the FY 2009-10 and compute the net profit accordingly as against 3% net profit estimated by the AO on gross sales."

3. Following grounds have been raised by the assessee:

"1. That the assessment order passed u/s 143(3) and the additions/disallowances made are illegal, bad in law and without jurisdiction.

2. That in view of the facts and circumstances of the case, the CIT(A) has erred in law and on facts in upholding the action of the Assessing Officer in rejecting the books of accounts without pointing out any error in the regular books of account maintained by the appellant. In any case, the books have been illegally and wrongly rejected and the said rejections of books of account cannot be justified by any material on record.

3. Without prejudice to the other grounds, the CIT(Appeals) has erred in law and on facts in ordering the Assessing Officer to apply the Gross Profit rate of the FY 2007-08 to the current year based on the fact that was the only year before the current one when the assessee company was profitable. In all the other previous years, the assessee incurred losses.

4. The assessee has been in business since 2004-05 and the only year before the current one when the assessee was profitable was 2007-08. The application of the Gross Profit rate of 2007-08 is illegal, bad in law and arbitrary as the identification of one particular year which is profitable for estimation of Gross Profit is not based on any material on record and is purely based on surmises and conjectures.

5. Without prejudice to the other grounds of appeal, the Assessing Officer for the FY 2007-08 had arbitrarily calculated net profit @ 3% of net sales. By ordering application of the Gross Profit rate of the year 2007-08 to the current year, the CIT(Appeals) has authenticated the books of the assessee for the year 2007-08 which were rejected by his predecessor.

6. The CIT(A) has erred in law and on facts in upholding the addition made by the Assessing Officer

of Rs. 1,53,71,941/- as income on account of foreign Exchange fluctuation and treating the same as "Income from other sources". The AO has failed to appreciate that majority of the gain on account of Foreign Exchange Fluctuation is on capital account and is not liable to be taxed. Also, the AO has failed to appreciate that the income from foreign exchange fluctuation is a normal business income of the assessee and is to be treated as a part of business income and not income from other sources.

7. The CIT(A) and the AO have failed to appreciate that they are bound to assess the correct income under the provisions of the Income Tax Act, 1961 and should not have included the income on account of Foreign Exchange Fluctuation merely on the ground that the assessee has shown it as taxable income.

8. Based on the assessment order for the AY 2008-09 which added to income the unsecured loans amounting to Rs. 7,35,30,351/- treating this amount as paid, foreign exchange gain of Rs. 1,06,93,319/- on this amount should be excluded from the income for the current year.

9. The CIT(A) has erred in law and on facts in upholding the addition made by the AO of Rs. 39,67,917/- as income from repair of moulds separate from the estimation of net profit @ 3% of gross sales and treating the same as "Income from other sources". The AO has failed to appreciate that the income from repair of moulds is a normal business income of the assessee and is to be treated as a part of business income and not income from other sources.

10. The CIT(A) has erred in law and on facts in upholding the addition made by the AO of Rs. 4,244/- as miscellaneous income separate from the estimation of net profit @3% of gross sales and treating the same as "Income from other sources". The AO has failed to appreciate that the miscellaneous income is incidental to business

income of the assessee and is to be treated as a part of business income and not income from other sources.

11. The AO has erred in law and on facts in wrongly computing the book profit u/s 115JB as 95,04,246/- instead of the correctly computed book loss as per Form 29B of Rs. 1,87,17,057/-.

12. That the explanations given, evidence produced and material placed and made available on record have not been properly considered and judicially interpreted and the same do not justify the additions made.

13. That the additions made are based on mere surmises and conjunctures and the same cannot be justified by any material on record and against the principle of natural justice.

14. That interest u/s 234B of the Income Tax Act, 1961 has been wrongly and illegally charged."

4. The assessee company engaged in the business of manufacturing of plastic mould components. During the year, the Assessing Officer has estimated 3% profit on the gross sales of Rs.74.04 crores amounting to Rs.2.2 crores. The estimation of the profits has been resorted by the Assessing Officer owing to the discrepancy in the excise records and the books of accounts. During the assessment proceedings, the assessee has submitted that the excise duty payable account has been increased which led to increase in the gross sales and the reconciliation has been filed.

5. The Id. CIT (A) has gone through the entire record and found a minor difference of Rs.594/- only after reconciliation of sales tax returns, excise records and books of accounts. The

manufacturing receipts are Rs.72.26 crores while the trading receipts are Rs.1.78 crores. After going through the records, the Id. CIT (A) directed that the profit declared for the assessment year 2009-10 may be taken as a yardstick for determining the profits of the current year instead of 3% determined by the AO u/s 144 of the Income Tax Act, 1961.

6. The revenue as well as the assessee is in appeal against such direction of the Id. CIT (A).

7. We have perused the reconciliation and examined the facts on record. We find after the reconciliations, there is only difference of Rs.594/- which would not entitle the revenue to assess u/s 144. Similarly, the Id. CIT (A) having accepted the accounts of the assessee and at the same time directing to consider the earlier year GP as the GP of the instant year cannot be held to be valid in the absence of any cogent reason to come to such conclusion especially in the absence of any material which was brought out regarding the defects in the books of accounts. In such facts and circumstances, the Gross Profit shown by the assessee needs to be accepted. As the result the appeal of the revenue is dismissed and the ground nos. 1 to 5 of the assessee's appeal are allowed.

8. The ground nos. 6 to 8 of the assessee's appeal deals with the issue of foreign exchange fluctuation and other income. The assessee has shown the foreign exchange gains, income from repairs of moulds of Rs.1.93 crores as 'other income' in the P&L account. The Assessing Officer treated this income as income from other sources. The Id. CIT (A) confirmed the addition holding as under:

"The objection of the appellant is that while calculating the net profit, appellant has also included these income as a part of gross turnover. However, I find that this facts is not correct. Ld. AO has taken only manufacturing sales as turnover. He has calculated net profit and added other source income separately. However, while calculating the taxable income. Ld. AO should first calculate the GP and then calculate the net profit and accordingly consider the income shown in Schedule II as other source income. The addition made by the AO is hereby confirmed."

9. By going through the order of the Id. CIT (A), we find that the Id. CIT (A) has not adjudicated on the core issue of taxability of foreign exchange, hence the issue is hereby remanded back to the file of the Id. CIT (A) to adjudicate the issue afresh.

10. Ground Nos. 9 relates to treatment of the revenue received from 'repairs of moulds' under the head 'income from other sources' instead of business income. The assessee is in the business of manufacturing of moulds and repair of moulds supplied. The assessee has shown the receipts pertaining to repair of moulds as other income in the P&L account maintained in connection with the business affairs of manufacturing of moulds. The Assessing Officer treated this receipt separately under the head of taxation 'income from other sources'. It was argued by the Id. AR that such income forms part of regular business income and the Assessing Officer has wrongly treated under the other head of income. We have gone through the details. The business receipts of the assessee either from manufacturing of the moulds or from repairing of the moulds constitute the income taxable under the head 'business or

profession'. Just because, the P&L account depicts it as other income, it need not be taken as 'income of other sources' for taxation purposes. The action of the Assessing Officer is based on incorrect understanding of the facts of the case. Hence, the addition made is directed to be deleted. The appeal of the assessee on this ground is allowed.

11. Ground No. 10 deals with addition of Rs.4,244/- being the miscellaneous income declared by the assessee taxed under the head 'income from other sources'. On going through the record, we find that this income does not meet the requirements of Section 56(1) and 56(2) of the Income Tax Act, 1961 and have to be rightly treated under the head 'profits & gains of business or profession'. The ratio given at para no. 10 above while dealing with the ground no. 9 is also applicable to this issue. Hence, the addition made is directed to be deleted. The appeal of the assessee on this ground is allowed.

12. The assessee has raised additional ground relating to not allowing the set off of unabsorbed depreciation brought forward from earlier years. This ground has been admitted in accordance with the judgment of Hon'ble Supreme Court in the case of NTPC 229 ITR 383 being a legal issue in nature. At the same time, since the records regarding the brought forward depreciation, are not available and also keeping in view the fact that the revenue has not got an opportunity to adjudicate on the issue and also keeping in view the ground no. 11 raised by the assessee is intricately associated with the additional grounds, the matter is being referred to the file of the

Assessing Officer for examination and take a action in accordance with the provisions of the Income Tax Act.

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13. The solitary ground raised by the revenue stands adjudicated while dealing the ground nos. 1 to 5 of the assessee, hence it is hereby held that the same ratio applies to this ground.

14. In the result, the appeal of the assessee is allowed and the appeal of the revenue is dismissed.

Order Pronounced in the Open Court on 30/04/2020.

Sd/-

(Sushma Chowla)
Vice President

Dated: 30/04/2020

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR