

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)**

(THROUGH VIDEO CONFERENCE)

**SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.3021/Del./2016
(ASSESSMENT YEAR : 2011-12)**

M/s. Labo Tek,
1/6, Kirti House,
Kirti Nagar Indl. Area,
New Delhi – 110 015.

vs. ACIT, Circle 38 (1),
New Delhi.

(PAN : AABEL6009R)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Smt. Rano Jain, Advocate
Shri Venketesh M. Chourasia, Advocate
REVENUE BY : Shri Saras Kumar, Senior DR

Date of Hearing : 23.06.2020
Date of Order : 02.07.2020

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, M/s. Labo Tek (hereinafter referred to as the 'assessee') by filing the present appeal sought to set aside the impugned order dated 31.03.2016 passed by the Commissioner of Income - tax (Appeals)-20, New Delhi qua the assessment year 2011-12 on the grounds inter alia that :-

“1. On the facts and circumstances of the case, the order passed by the learned CIT(A) is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the AO's action of rejecting the books of accounts, despite the fact that the books are being properly maintained by the assessee as per the law.

3. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of an amount of Rs.41,70,135/- made by the ld. AO on account of low G.P. rate.

(ii) That the above said addition has been confirmed despite the fact the ld. AO had arbitrarily estimated the G.P. at the rate of 12.78% as against the actual G.P. rate of 11 % as per books of the assessee.

(iii) That the above said addition has been confirmed by rejecting the explanation and evidences submitted by the assessee in support of its contention.

4. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the disallowance of an amount of Rs.13,06,364/- made by the ld. AO on account of commission expenses incurred by the assessee.

(ii) That the said disallowance has been confirmed despite the fact that the assessee has established the genuineness of commission paid for the procurement of business.

(iii) That the disallowance has been made rejecting the contention of the assessee that the expenses have been incurred wholly and exclusively for the purposes of business.

5. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the disallowance of an amount of Rs.10,500/- made by the ld. AO on' account of fines and penalties.

(ii) That the said disallowance has been confirmed despite the fact that the same are not incurred for any offence prohibited under any law.

6. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of an amount of Rs.91,510/- made by the ld. AO on account of interest on FDR.

(ii) That the said addition has been confirmed by rejecting the fact that the difference in the figure of interest is due to the different method of accounting followed by the bank and the assessee.”

2. Briefly stated the facts necessary for adjudication of the issue at hand are : assessee firm is into the business of trading and installation of UPS and inverter systems. Assessee was called upon to explain the reason for the low net profit rate declared vis-à-vis other assessees into the similar trade. Finding the reasons given by the assessee not tenable and finding defects in the books of account, Assessing Officer (AO) proceeded to estimate the gross profit at 12.78% by rejecting the books of account under section 145 (3) of the Income-tax Act, 1961 (for short ‘the Act’), which comes to Rs.2,98,63,007/-, consequently made addition to the tune of Rs.41,70,135 being the difference in the declared gross profit by the assessee. AO further made addition of Rs.13,06,364/-, Rs.10,500/- and Rs.91,510/- on account of disallowance of commission, on account of fines & penalties and on account of interest on FDR respectively, and thereby assessed the total income at Rs.1,39,93,740/-.

3. Assessee carried the matter before the Id. CIT (A) by way of filing an appeal who has partly allowed the same. Feeling

aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Undisputedly, AO after rejecting the books of account u/s 145 (3) of the Act proceeded to estimate the gross profit of the assessee at 12.78% as against actual gross profit ratio of 11% claimed by the assessee in its books of account. During the earlier assessment years, the assessee has shown the gross profit ratio which has been accepted by the Revenue as under :-

<i>A.Y.</i>	<i>Total Turnover</i>	<i>Gross Profit</i>	<i>GP ratio</i>	<i>NP ratio</i>
<i>2007-08</i>	<i>6,27,54,111</i>	<i>76,33,128</i>	<i>12.40%</i>	
<i>2008-09</i>	<i>7,97,95,635</i>	<i>97,04,256</i>	<i>12.16%</i>	<i>1.17%</i>
<i>2009-10</i>	<i>9,23,59,949</i>	<i>1,18,02,909</i>	<i>12.78%</i>	<i>2.67%</i>
<i>2010-11</i>	<i>19,01,48,128</i>	<i>1,56,30,176</i>	<i>8.22%</i>	<i>1.79%</i>
<i>2011-12</i>	<i>23,36,69,850</i>	<i>2,56,92,872</i>	<i>11%</i>	<i>3.34%</i>

6. Ld. AR for the assessee contended that in the identical set of facts and circumstances of the case in AY 2010-11, the matter was carried to the Tribunal by the assessee and the Tribunal vide *order dated 13.08.2009 in ITA No.2109/Del/2015 for AY 2010-11* upheld the decision of the AO in rejecting the books of account but directed him to adopt the net profit ratio of 1.88% being the

average of AYs 2008-09, 2009-10 & 2010-11. This factual position has not been controverted by the Id. DR for the Revenue.

7. We have gone through the order dated 13.08.2009 (supra) passed by the coordinate Bench of the Tribunal which contains the identical facts wherein the AO had applied the GP rate of 12.78% after rejecting the books of account u/s 145 (3) of the Act and keeping in view the historical background of the assessee made addition of Rs.86,70,755/-. Coordinate Bench of the Tribunal decided the issue in controversy by returning following findings :-

“5. We have considered the rival arguments made by both the sides and perused the orders of the Assessing Officer and CIT(A). We have also considered the various decisions cited before us. It is an admitted fact that the assessee, in the instant case, has not maintained any stock register so as to give the details of date-wise purchase and sales of items traded and the closing stock balance position on a particular day. Similarly, notices u/s 133(6) were issued to various sundry creditors which were returned unserved on the ground that either they have left or the premises are locked or the addresses were insufficient. It is also an admitted fact that the commission paid to various parties remained unsubstantiated in absence of nature of services rendered by them. Similarly, the assessee also could not substantiate the advertisement expenses incurred by it and could not substantiate that no element of personal use is there in respect of the telephone expenses and the motor car running expenses. Under these circumstances and in view of the various infirmities pointed out by the Assessing Officer, we hold that the Id.CIT(A) was fully justified in upholding the action of the Assessing Officer in rejecting the book results and going for estimation of the profits.

6. Now, coming to the rate of profit to be adopted, we find the turnover of the assessee during the impugned year has gone up substantially. It has gone up to Rs.19.01 crore as against Rs.9.24 crore in the immediately preceding assessment year. When the turnover grows substantially, it is quite possible that the rate of GP and rate of NP will come down. A perusal of the results shown by the assessee for the impugned assessment year

as well as the immediately preceding assessment years shows that the net profit in the impugned assessment year has been shown at 1.79% whereas it was 2.67% during 2009-10 and 1.17% during assessment year 2008-09. Since the net profit ratio is fluctuating which was shown at 1.17% at 2008-09, 2.67% for assessment year 2009-10 and 1.79% for assessment year 2010-11, therefore, the profit declared at 1.79% during the impugned assessment year cannot be accepted. Considering the totality of the facts of the case and considering the fact that the books of account of the assessee are audited and the auditors have not pointed out any defects and the turnover of the assessee has gone up substantially during the year as against the immediately preceding assessment years, therefore, we deem it proper to adopt the net profit ratio of 1.88% which is the average of the current year as well as the two immediately preceding assessment years. The Assessing Officer is directed to recompute the addition to be made on the basis of the net profit ratio as against the GP ratio adopted by him and upheld by the CIT(A). Since we are going for net profit addition, the various other additions made by the Assessing Officer and sustained by the CIT(A), in our opinion, do not require any separate addition and the same are liable to be deleted. The grounds raised by the assessee are accordingly partly allowed.”

8. Undisputedly, during the year under assessment also, AO estimated gross profit ratio of 12.78% by following gross profit ratio earned by the assessee in 2009-10 after rejecting the books of account u/s 145 (3) of the Act. Ld. AR for the assessee contended that the issue at hand is covered for all intent and purpose having been decided by the Tribunal in AY 2010-11 in assessee's own case in ITA No.2109/Del/2015.

9. We have perused the order passed by the coordinate Bench of the Tribunal in assessee's own case for AY 2010-11 (supra) wherein the AO/CIT (A) have estimated/confirmed GP rate of 8.22% by rejecting the books of account u/s 145(3) of the Act and the Tribunal has directed to take average of the current year as well

as two immediately preceding assessment years to estimate the gross profit by upholding the rejection of books of account u/s 145 (3) of the Act.

10. We are of the considered view that earning of GP/NP ratio at any business house is not a mechanical process to be consistent in all the years as it depends upon numerous factors prevailing during the particular assessment year. When we examine net profit ratio earned by the assessee during the AYs 2007-08 to 2011-12 as depicted in table in preceding para no.5 of this order, it has never been consistent and is at variance.

11. Even during the year under assessment, assessee's turnover has gone up and has shown GP ratio of 11% as against 8.22% of AY 2010-11. In case, we follow the decision rendered by coordinate Bench of the Tribunal in assessee's own case for AY 2010-11 by taking average of current year and two consecutive years in order to estimate the net profit ratio, assessee's own results would have come down. So, keeping in view the entirety of facts and circumstances of the case, action of AO/CIT(A) rejecting the books of account u/s 145 (3) of the Act is upheld. We are of the further considered view that GP ratio is required to be estimated keeping in view the historical background from AYs 2007-08 to 2011-12. So, we deem it fit to adopt the net gross profit ratio for

the year under assessment by taking average of the current year as well as four preceding assessment years i.e. AYs 2007-08, 2008-09, 2009-10 & 2010-11 which comes to 11.31%. AO is to quantify the gross profit ratio accordingly and to recompute the addition to be made in this case.

12. At the same time, we are of the considered view that since the Bench has preferred to proceed with GP addition on the basis of average of the current year and four earlier assessment years, the remaining other additions made by AO/confirmed by the Id. CIT (A) of Rs.13,06,364/-, Rs.10,500/- and Rs.91,510/- on account of disallowance of commission, on account of fines & penalties and on account of interest on FDR respectively do not call for any separate addition, hence deleted. No other issue raised or argued. Consequently, the appeal filed by the assessee is allowed.

Order pronounced in open court on this 2nd day of July, 2020.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 2nd day of July, 2019
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-20, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
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