

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR
श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 535/JP/2018
निर्धारण वर्ष / Assessment Year: 2013-14

Manoj Kumar Johari, Prop. of The Art Palace, Zee Bhawan, Subhash Chowk, Ramgarh-Shekhawati, Sikar.	बनाम Vs.	A.C.I.T. Circle-Sikar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ADWPJ 8870 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Vikash Rajvanshi (CA)
राजस्व की ओर से / Revenue by: Shri A.S. Nehra (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 17/12/2020
उदघोषणा की तारीख / Date of Pronouncement : 12/03/2021

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal has been filed by the assessee against the order of the
ld. CIT(A)-3, Jaipur dated 16/02/2018 for the A.Y. 2013-14, wherein
following grounds have been taken:

- "1. *Ld. CIT(A) has erred in law and fact in estimating 12.86% GP rate on the basis of 5 year's average assessed GP rate and sustained GP addition of Rs. 20,43,900/- without considering actual GP and even not considering the actual average of last 5 year GP.*
2. *The appellant prays your honor to add, amend or alter all or any of the grounds of the appeal on or before the date of hearing."*

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.
3. The brief facts of the case are that the assessee is engaged in the business of manufacturing and export of wooden handicraft items. The assessee has filed return of income for the year under consideration on 01/01/2013 declaring total income of Rs. 92,91,120/-. The case of the assessee was selected for scrutiny and notices were issued to him which was duly served upon the assessee. The A.O. passed assessment order U/s 143(3) of the Income Tax Act, 1961 (in short, the Act) on 10/03/2015 determining total income of Rs. 1,93,58,940/- by making trading addition.
4. Aggrieved by the order of the A.O., the assessee carried the matter before the Id. CIT(A), who after considering all the details and material placed on record, given part relief to the assessee. Against the order of the Id. CIT(A), the assessee has preferred present appeal before the ITAT on the grounds mentioned above.
5. The assessee has raised sole effective ground of appeal which is against the order of the Id. CIT(A) in estimating G.P. rate @ 12.86% on the basis of five years average assessed gross profit rate and sustained GP addition of Rs. 20,43,900/-. The Id AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the Id.

CIT(A) and also relied on the written submissions filed before the Bench and the same is reproduced below:

- "1.1 *Ld. Ld. AO. wrongly sustained the rejection of Books of u/s 145(3) merely pointing out that assessee is not maintaining quantitative tally of finished goods and some observation of auditor regarding valuation of inventory, however those issues were no bearing on the GP of the assessee and assessee also provided opening and closing stock in term of value only and rejection of books of accounts not dealt giving cogent reasons.*
- 1.2 *It is also accepted fact & mentioned in the assessment order at Page no. 3 that as this is a case of exporter and more than 90% sales are in foreign market, stock tally of these goods is not much relevant. The purchases and sales are completely vouched and looking to the nature of the business, it is very difficult for the assessee to affect the sales without bills. Under such circumstances, the figures of raw materials, finished goods, polishing materials, and packing materials shown in regular books of accounts is acceptable.*
- 1.3 *The assessee has also replied show case notice in details towards query of Ld. AO which were considered by AO but not accepted. No cogent reason was given by AU while not accepting the assessee's genuine contentions and basic facts of wood purchase and export sales bills.*
- 1.4 *As the Assessing officer examines the accounts of an assessee, he has to consider the following questions: --*
- (1) *Whether the assessee has regularly employed a method of accounting?*

- (2) *Even if regular adoption of a method of accounting is there, whether the annual profits can properly be deducted from the method employed?*
- (3) *Whether the accounts are correctly maintained?*
- (4) *Whether the accounts maintained are complete in the sense that there is no significant omission therein?*

If the assessing officer's finding on all the four questions is in the affirmative, assessee's profits are to be 'computed on the basis of his accounts. In our case, the finding on question No. (1), (2), (3) and (4) is in the affirmative hence our books of accounts can't be rejected.

- 1.5 ***In the para 3.2 of page 4*** the AO wrongly stated that maintenance of quantitative tally is very easy and convenient. The fact is in this trade nobody in Rajasthan or probably in India is maintaining quality wise, size wise, quantitative records of raw material & WIP. Only stock of finished goods can be made. So AO is wrong to state that non maintenance of day to day stock by assessee is deliberate. The Ld. Assessing officer also referred the irrelevant case of Howrah Trading Co., Ltd vs The Commissioner Of Income(1968)67 ITR 582 (CAL)- which is not relevant with the assessee's case as assessee's matter is related to rejection of books of accounts u/s 145(3) whereas this case is referred to High Court with Question as " Whether in the facts and circumstances of this case, the Applicant (the assessee) was entitled to have this dividend income grossed up under section 16(2) and claim credit for tax deducted at source under section 18(5) of the Income-tax Act? " So facts of this case totally different and this case is irrelevant in the case of assessee.

- 1.6 **In the para 3.4 of the AO order at page no. 5** the Ld. AO has himself accepted in order however, it remains a fact that the assessee has successfully achieved a substantial turnover despite severe competition and adverse market condition which could not have been possible unless margins were lowered . so only on this ground even if the books are rejected on stock register issue , no GP addition can be made.
- 1.7 **In the para 3.5 of the AO order at page no. 6** the case laws mentioned by the AO are rather in the favour of the assessee as assessee has major exports all books of accounts are maintained all expenses were properly booked books are made consistently in the same way consistently closing stock of any year is opening stock of next year so there is no tax effect so increase in stock is a tax neutral exercise.
- 1.8 **Para 3.5 of page no. 6 of AO order is rebutted** because in this para AO is giving example of A.Y. 2007-08 & A.Y. 2008-09 where the G.P. of A.Y. 2005-06 17.20% was adopted in these years. It is factual correct that from AY 2005-06 to AY 2013-14 there is more than 8 years time difference where cost is increased more than sale price of individual item . It is pertinent to note that around 90% sales are in foreign market, stock tally of these goods is not much relevant. The purchases and sales are completely vouched and looking to the nature of the business, it is very difficult for the assessee to affect the sales without bills. Under such circumstances, the figures of raw materials, finished goods, polishing materials, packing materials shown in regular books of accounts may kindly be accepted.

In our own case decided by Hon'ble ITAT in AY 2012-13 vide .ITA no 495 & 487/JP/2016 pronounced on 27.7.2017 has already

*decided that average GP rate must be applied in place of highest GP rate where GP of 13.58% was accepted against declared OP of 13.19% vide **PB no. 90-103** . In this year last 5 year average GP is 12.15% is almost near to actual GP of 11.75%.So our genuine G.P. of 11.75% may please be accepted.*

1.9 Para 3.6,3.7 , 4 of page no. 7& 8 of AO order is rebutted

Ld. AO. referred Saraf Exports case which is not at public domain hence not acceptable without proper citations . The AR of assessee has submitted all proper replies regarding rejection of books of account and not accepted discrepancies and marked his attendance only on the note sheet. Hence rejection of books of accounts by wrongly considering with similar case of AY 2008-09 (Where GP of AY 2005-06 was considered) base on 8 years old GP rate is patently wrong and cannot be accepted by cannons of law.

1.10 *Your goodself Honorable ITAT as already decided in our own case in just previous year vide **Manoj Kumar Johari v ACIT ITA No. 495,487/JP/2016 AY 2012-13** "Regarding estimation of G.P. rate, wherein the books of accounts are rejected, a fair estimate is required to be made by the Assessing Officer. The principle of average taking into consideration last 5 years past history is clearly a robust and fair basis of estimation to determine the gross profits for the year under consideration. The Id. AR has submitted that average G.P rate of last 5 years comes to 12.29% as against declared G.P. rate of 13.19% in the year under consideration. On perusal of records, the track record of declared Gross profit by the assessee and gross profit as upheld either by AO or by higher appellate authorities is as under:-*

Assessment year	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
G.P% (as declared)	13.85	14.11	12.03	8.48	12.96	13.19
G.P. (as affirmed as applicable)	17.20	17.20	12.03	8.52	12.96	13.58

In light of above, the average G.P rate of last 5 years as finally affirmed comes to 13.58%.AO is accordingly directed to apply the G.P. rate of 13.58% as against G.P rate of 13.19% declared by the assessee. The respective grounds of appeal are accordingly disposed off "

So as per assessee declared average G.P rate of last 5 years comes to 12.15 % is calculation is as follows. This GP rate is near to actual GP of 11.75 % so this genuine GP rate must be accepted. We are enclosing copy of audited Trading and Profit & Loss account for relevant years vide PB No.106-112.

A Y	2008-09	2009-10	2010-	2011-12	2012-13	2013-
GP(As	11	03	8	96	19	75

1.11 *We are submitting copies of 10 purchase bills during the year 2004-05 (AY 2005-06),where average cost of wood /timber i.e. the main raw material of the assessee is Rs. 317.90 per CFT in which year GP was 17.20% and 10 purchase bills during the AY 2013-14 where average cost of wood /timber i.e. the main raw material of the assessee is Rs. 491.17 per CFT (This year GP is 11.75%) , This fact was also summarised as per the chart enclosed vide **PB No. 15-70** where all 20 cases are been tabulated and actual increase in cost is 54%, this fact was not properly dealt by AO. So 8 years old highest GP cannot be*

considered. Hence actual GP must be accepted or at least based on your honors earlier decision average of 5 years must be adopted.

1.12 We are submitting the actual fact of G.P. by way of copies of 16 export sales invoices during the year 2004-05 where individual item wise sale price of various items which are sold by the assessee made of wood/timber are given the total of those 16 items in terms of dollars comes to US\$ 1623. We are also providing copies of 16 export sales invoices during the year 2012-13, where individual item wise sale price of various items which are sold by the assessee made of wood /timber are given the total of those 16 items in terms of dollars comes to USS 2041.14. Hence, there is price increase of 418.14 which is 25.76% from the year 2004-05 vide P.B. 57 to 70.

1.13 Hence, in para 1.11 wooden cost per CFT is increased by 54% whereas and in para 1.12 individual item wise export sale price of various items which are sold by the assessee made of wood /timber per item was increased by only 25.76%. We have also submitted to Ld. AO that the power, electricity and fuel expenses which were Rs. 24.27 lacs in the year 2004-05 were increased to Rs. 37.98 lacs of 56.40%. The job work charges which were Rs. 159.20 lacs in the year 2004-05 was increased to Rs. 194.96 lacs in the year 2012-13 resulting 22.46% increase. Hence overall increase in purchase sale power fuel and job work submitted to AO. These are the main reasons of decrease of G.P. from 17.20% to 11.75% which is based on actual facts and figures. Hence declared GP must be accepted.

1.14 *Your goodself is also requested to see the concluding part of assessment order of same assessee u/s 143(3) of A.Y 2010-11*

vide PB no. 71-72 where the assessee declared GP at the rate of 8.48 % against the G.P of 12.03 % in the immediate preceding year A.Y 2011-12 and Ld AO made only lumpsum trading addition of Rs. 1.00,000/- and G.P. remained unchanged at 8.48% . So your honor is requested to accept the genuine G.P. of 11.75% against 12.86% accepted by CIT(A) .

There was also very stiff competition from various local exporters as many our type of manufacturers have been crop up during these years who were operating at very low margin to establish their market. Due to this reason Assessee's Gross Profit was dipped during the year under consideration.

- 1.15 *Honorable ITAT as already decided in the case of **Shri Mukesh Kumar Jain Vs ITO Tonk ITA No. 1023/JP/2011 and Shri Padam Chand Jain Vs ITO Tonk ITA No. 1024/JP/2011 (ITAT Online) enclosed vide PB No. 73-81** it was held that "As regards the addition made on account of lower yield in comparison to earlier years and applying gross profit rate which is higher than the rate declared by the assessee in the year under consideration, it is pertinent to note that the yield from a particular production / manufacturing activity cannot be expected at same rate as in earlier years or in subsequent years. There is always a possibility of some reasonable/ minor variation in the profit ratio of different years. In the case where the correct results of the activity of the assessee cannot be ascertained from the books of account due to certain defects then the only option left with the AO is to adopt the reasonable gross profit rate . In view of the facts and circumstances of the case, average gross profit rate for earlier years shall be taken as gross profit rate for the year under consideration instead of adopting the highest gross profit rate*

amongst earlier years. The AO is directed to take average of gross profit rate of earlier years which was accepted by the Revenue."

Hence on the basis of the above average GP rate should be taken considering the past history of the assessee. However, the GP rate of assessee is of 11.75% for A.Y. 2013-14 which is near to average rate of five years i.e. 12.15% and better of 3 year GP of 8.48% & our current year GP is higher, hence declared rate is correct and justified.

Jurisdictional Honorable Rajasthan High Court has decided in the case of Inani Marble Pvt. Ltd. (2009) 316 ITR 125 (Raj.) and Hon. Delhi High Court in case of Action Electricals (2002) 258 ITR 188 (Del) held that past history of the assessee would be one of the reliable guideline to make or not to make any addition. Hence considering the past history average GP of 5 years is 12.15% which is nearer to current year GP and better of 3 year GP of 8.48% which is less than current year declared GP rate of 11.75%.

1.16 LD AO has wrongly rejected books of accounts and applied old wrong GP just on the basis of remarks of auditor in his report and has not followed jurisdictional ITAT decision in case of Arpit Marbles Pvt. Ltd. VS DCIT (ITA No521,522&523/JP2004 Tax world Vol XXXIII Part 43-56). Ld. A.O. has erred in rejection of books of accounts without applying above-mentioned principal in our case, without considering the entire situation. **PB** no 104-105

1.17 The Ld. A.O. have arbitrarily applied OP rate of 17.20% applied by Ld. A.O. just on the basis of 8 year old G.P. ignoring own assessment of A.Y. 2010-11 and pointing out non maintenance of stock register. The fact is the assessee has made valuation of

closing stock by verifying the items physically. In the year end a note on details of inventory/closing stock had been prepared by the supervisors with the help of labours. They have been doing valuation of each and every article, products, furnished/semi furnished/ finished goods in packing/goods in process/goods lying in open grounds, stocked or at saw-mills, woods in paya, gattu, beams and planks, consumable stocks of all working sites of Ramgarh. The factory staff & labour count the goods and then the proprietor with the help of supervisors cross-examines it and properly value the Closing Stock. In the nature of such kind of artistic business, where each item has different quality, different shape, different look, different value different dimension, it is not possible to maintain stock register for each raw material . That's why the assessee has physically verified inventory and made valuation of inventory.

1.18 In-spite of above submission, the Ld A.O. has made an opinion on this mere ground that quantitative tally of traded / finished goods was not maintained, it is not possible to verify the trading results and apply the provisions of section 145. Section 145 of the Income Tax Act requires that the business income shall be normally, computed in accordance with the method of accounting regularly employed by the assessee, if the assessee has maintained accounts, the section leaves it to the assessing officer to compute the income, profits and gains in accordance the method of accounting regularly employed. Accounts regularly maintained in the course of business have to be taken as correct unless there are strong and sufficient reasons to indicate that they are unreliable. The department has to prove satisfactorily that account books are unreliable, incorrect or incomplete before it can reject accounts, which may be done by showing that important

purchase are omitted therefrom or proper particulars or the accounts do not include entries relating to a particular class of business. Rejection of accounts cannot be done lightheartedly. [St. Teresa's Oil Mills V/s State of Kerala, (1970) 76 ITR 365, 367-8 (Ker.)]

- 1.19 *The Ld. A.O. has rejected regularly maintained books of accounts for the year under consideration without considering explanations given on the basis of remarks founded in auditor's report. It is not justified to reject the gross profit declared by the assessee and apply own arbitrary rate of 17.20% G.P. for deriving profit of the year. Therefore, Gross profit rate applied by Ld. A.O. is wrong and unjustified, addition made should be deleted and the rate declared by the assessee is quite reasonable and genuine and should be accepted as such.*
- 1.20 *The Ld. A.O. wrongly rejected the books of accounts u/s 145(3) and arbitrarily applied GP rate of 17.20% without giving any basis of computation and not considering the earlier year order where **GP addition was already decided by Ld. AO and also decided in favour of same assessee in the Assessment Year 2010-2011 where Ld. AO vide order dated 30.12.2012 GP Rate of 8.48% was accepted as against 11.75% in the preceding year and lump sump addition of only of Rs. 1,00,000/- was made.** We are enclosing copy of relevant pages of the order passed by AO vide **PB no 71-72** here it was mentioned that GP rate of 8.48% is justifiable and only lump sump addition of Rs. 1,00,000/- was made. The extract of assessment order of AY 2010-11 is as follows:-*

Reason of low GP rate:

The reason of low G.P. rate is sudden increase in cost of raw material during the relevant period. The assessee offered low rates of its goods to the purchasers to compete with the existing exporters. Further to capture the market, the assessee had to work at more competitive rates. Furthermore, the assessee faced more competition in his business from other competitors during the relevant period. Here, it is pertinent to note that in the present case, orders from foreign buyers are received in advanced and sales price is determined and settled at that time. As requested in my earlier written reply, goods are then manufactured as per specifications of the importers. During this gap of time, some time, cost of raw material is increased and sometime rate of Indian currency is valued down. This result in low gross profit. During the relevant period, the cost of the assessee has also increased because of increase in transportation, cost of raw material, cost of power and increase in wages due to inflation. There is a tough competition in assessee's business and to achieve the sales, the target sale price of the exported goods was not increased by the assessee. Thus the gross profit of the assessee is slightly decreased which may kindly be accepted.

<i>It is presumed that cost of raw material & sale price during Asstt. Year 2005-06 were 100</i>	<i>Average % increase in cost price of raw material during AY 2013-14 as per chart</i>	<i>Average % increase in sale price of finished products during AY 2013-14 as per chart</i>
<i>100%</i>	<i>154.50%</i>	<i>125.75%</i>

Furthermore, we are enclosing herewith to comparative chart showing % increase in cost of raw material in comparison to Asstt. Year 2005-06 and also % increase in sale price of finished products in export market. As per chart % increase sale price and cost price is as under:-

Above figures clearly show that % increase in cost of raw material is much high in comparison to % increase in sale price of finished products and this ultimately resulted in low G.P. rate in comparison to G.P. for Assessment year 2005-06.

Most importantly In view of jurisdictional Rajasthan High Court decision in the case of 07 vs Gotan Lime Khaniz Udyog (256ITR 243) It was decided by honorable court by stating "We are convinced with the arguments made by Id. AR and the explanation given by the assessee and in the circumstances and the facts of the case when there is increase in cost of production and the same has been observed by the AO and is a matter of record in the assessment order itself, then we find no justification for making any trading addition even if the book result are rejected Therefore the additions sustained by the Id. CIT(A) are directed to be deleted." Thus, in view of above decision of the Hon'ble ITAT Tradition addition cannot be made even if the books of accounts are rejected.

The assessee is dealing in manufacturing of innumerable items of wooden hand crafted items which are distinct and separate in all respects and it is practically not possible to maintain day-to-day production record, i.e., stock register in respect of each and every item manufactured having distinct characters and specifications. The assessee maintained regular books of account, which are audited and purchases, sales and manufacturing expenses are fully vouched and verifiable. This is a case of exporter and more than 90% sales are in foreign market, stock tally of these goods is not much relevant. The purchases and sales are completely vouched and looking to the nature of the business, it is very difficult for the assessee to affect the sales without bills. Under such circumstances, the figures of raw

materials, finished goods, polishing materials, and packing materials shown in regular books of accounts may kindly be accepted. We are submitting some case laws which are highlighted here to further supports that AO cannot resort to provisions of the section 145(3) of the IT Act,1961, in case of non maintenance of stock register and other issues as already decided in many cases but G.P. addition can not be made, such as :

- A. *CIT Vs Gotan Lime Khaniz Udhyog (2002) 256 ITR 243 (Rajasthan High Court).*

*The assessee had maintained regular books of account, which are supported by regular bills and vouchers, and no defect or discrepancy had been observed by the learned assessing officer in the records so maintained. The sales are also export where payments are fully verifiable and through banking channels. Unless the regular books are found to be not acceptable, there would be no justification for any estimation. Even for any reasons, the books are technically rejected, the same would not justify any addition and in this regard reliance is placed on the decision **of Hon'ble Rajasthan High Court in the case of CIT v. Gotan Lime Khaniz Udhyog (2002) 256 ITR 243 (Raj)**. Enclosed **vide PB No.85-89***

- B. *Ram piyare Satish Kumar Vs. **ITO 59 TTJ 352 (Delhi)**: Where it was held that absence of day to day quantity wise stock records or the fact that gross profit rate declared for the years is lower as compared to the earlier years or compared to other dealers, by itself will not justify invoking the provisions of Sec. 145. Here in our case increase in the GP rate from 12.96% to 13.19% Ld AO wrongly applied the provisions of the section 145 and applied wrong old GP.*

- C. *Kailash Chand Gupta vs. DCIT, ITAT Jaipur Bench (ITA. no. 153/JP/2005) A.Y.2001-2002:*** Provisions of section 145 cannot be invoked in a case unless some material is brought on record by AO to disprove the correctness of the books of accounts and the profits declared.
- D. *ST. Terrsa Oil Mills Vs. State of Kerela 76 ITR 365 (Ker): ST. Terrsa Oil Mills Vs. State of Kerela 76 ITR 365 (Ker):*** Accounts regularly maintained in course of business have to be taken as correct unless there are strong and sufficient reasons to indicate that they are unreliable. The department has to prove satisfactory that the account books are unreliable, incorrect or incomplete before rejection of books of accounts.
- E. *Further as held in case of Ganesh Foundry Vs. ACIT -78 TTJ 736 (Jodhpur)*** where purchase and sales are fully vouched, mere non maintenance of stock register of purchases and consumption of raw material will not lead to invocation of Section 145(2) The AO should point out specific mistake or deficiency in the books of accounts. Without recording the finding that profit and gains can't be properly deduced, correctness of book result can't be challenged and AO can't resort to provisions of section 145(2).
- F. *The assessee has also relied upon the decision in the case of Hotel Hilton (P) Ltd. V. Asstt. CIT (2005) 97 TTJ (Jd) 969,*** in which it has been held that it would not be justified to make any addition in the declared trading results without pointing out specific mistakes and discrepancies. Therefore, the deletion of the trading addition by the learned Commissioner (Appeals) was perfectly justified. The learned Commissioner (Appeals) has considered the nature of business activity, market conditions,

quality of raw material used, and the fact that the assessing officer laid no material on record to suggest that there has been any suppression of income nor that the assessee carried any activity outside the books.

Hence in the light of above all cases, it is not justifiable to reject the books of accounts on the ground of non maintenance of day to day Closing Stock Register and no G.P. rate can be applied arbitrarily without any basis. There was also very stiff competition from various local exporters as many our type of manufacturers have been crop up during these years who were operating at very low margin to establish their market. Due to this reason our sales was dipped during the year under consideration.

In-spite of agreed with the above facts and submission, the learned assessing officer has made an opinion on this mere ground that itemwise stock register are not available with the assessee and it is not possible to verify the trading results and apply the provisions of section 145. Section 145 of the Income Tax Act requires that the business income shall be normally, computed in accordance with the method of accounting regularly employed by the assessee, if the assessee has maintained accounts, the section leaves it to the assessing officer to compute the income, profits and gains in accordance the method of accounting regularly employed.

Accounts regularly maintained in the Course of business have to be taken as correct unless there are strong and sufficient reasons to indicate that they are unreliable. The department has to prove satisfactorily that account books are unreliable, incorrect or incomplete before it can reject accounts, which may be done by showing that important purchase, or sales are omitted there from

*or proper particulars or the accounts do not include entries relating to a particular class of business. Rejection of accounts cannot be done light-heartedly. [St. Teresa's Oil Mills V/s State of Kerala, (1970) 76 ITR 365, 367-8 (Ker.)] but, the Ld AO has not mentioned any reason and even corrected sales/ purchases with supporting vouchers were already submitted to the LD AO and Vat department who is prime authority to verify purchase and sales has duly assessed the F.Y. 2012-13 and no mistake was found in the trading A/C. Ld AO also decided in favour of **same assessee in the Assessment Year 2010-2011 where Ld. AO vide order dated 30.12.2012 where GP Rate of 8.48% was accepted as against 11.75% in the preceding year by LD. AO and lump sump addition of only of Rs. 1,00,000/- was made.** In assessee's own case for AY 2014-15 where declared GP is 12.04% revised by Ld. AO u/s 143(3) is 12.34% by making Lumpsum addition of 7.50 lacks and appeal is also fixed on today vide appeal no. 552/JPR/2018 where assessee declared GP of 12.04% which is far closer as compare to AY 2013-14. Hence declared GP must be accepted.*

Hence, considering the above justifications of past history, average GP of last 5 Years and latest ITAT case decided by AO in assessee's own case and relying on various case laws, your Honor is kindly requested to allow solitary Ground no.-1 of the honest assessee for considering actual GP. Hence justice should be imparted in the favour of assessee."

6. On the other hand, the Id. DR has vehemently supported the orders of the revenue authorities.

7. We have considering the rival contentions of both the parties and have perused the material placed on record. We have also deliberated upon the decisions cited in the orders passed by the authorities below as well as cited before us and we have also gone through the orders passed by the revenue authorities. From perusal of the record, we observe that the Id. CIT(A) has dealt with the issue in para 4.3 of his order and the same is reproduced below:

"4.3 I have carefully considered the material before me. I find that Assessee deals in purchase/manufacture and sale of furniture handicraft items. Clause 28 of the form No. 3CD of the audit report requires quantitative; details of items traded and also of items manufactured. Shortage in the manufacturing process and percentage of yield in the manufacturing process are required to be given. Quantitative tally of traded items and finished products is also required to be given. However no such details are given. Auditor's remarks against these clauses is details not maintained. Vide notice u/s 142(1) dated 27/07/2015 alongwith detailed questionnaire, the assessee was asked to file complete details of opening stock & closing stock alongwith the valuation method adopted to arrive such opening and closing stock. However, the assessee could not file the required details during the course of assessment proceedings.

Vide para 20 of letter dated 13/11/2015, the assessee could only give value of opening and closing stock under broad heads like raw material, consumables items, semi finished goods,

finished goods, polish material, packing material.; It was further stated that as regards particulars of each type of goods in stock and number of units of each type with value thereof is concerned, it is not feasible looking to the nature of the trade. Assessee further submitted that looking to the nature of the; trade, it is not possible to maintain quantitative tally of raw materials, finished goods, polishing materials, packing materials etc. As this is a case of exporter and more than 90% sales are in foreign market, stock tally of these goods is not much relevant. The purchases and sales are completely vouched and looking to the nature of the business, it is very difficult for the assessee to affect the sales without bills. Under such circumstances, the figures of raw materials, finished goods, polishing materials, packing materials shown in regular books of accounts may kindly be accepted. During the course of assessment proceedings, it further transpired that stock register was not maintained, main raw material i.e. wood is purchased in cft (cubic feet) and finished goods are sold in units (i.e. nos.) and record of shortage is not maintained, physical record of raw material at different stages of production is also not maintained. Further on perusal of the form No. 3CB, the auditor has endorsed the following remarks:-

"On perusal of your audit report, it is seen that following observation have been made by your auditor:-

- (i) Valuation of inventory at cost which is not in accordance with accounting standard (AS-2) issued by the ICAI (impact on profit not ascertained)*
- (ii) Stock and consumption record have not been maintained.*

- (iii) *Regarding accounting foreign currency transaction which is not in accordance with accounting standard (AS-11) (impact on profit not ascertained)*
- (iv) *Regarding accounting certain income & expenses on yearly basis (impact on profit not ascertained)"*

Non maintenance of records of quantitative details renders the accounts of assessee incomplete. Preparation of the Inventory at the end of year but not keeping it on record and not producing such Inventory for scrutiny can only lead to the inference that accounts are not correct. Quantitative tally of items traded and manufactured by assessee is not only possible but also the requirement of proper accounting system. Today when books are maintained on computer and advanced software like tally are available and used, maintenance of quantitative details is very easy and convenient. Assessee's failure to provide the quantitative details is thus deliberate. Assessee is not maintaining day to day stock register. He has not maintained inventory of closing stock. Assessee deals in manufacture/trading of wooden furniture items. Purchases of wood are in volume i.e. cft / m cube measurement but sales are in nos. of various items. Adoption of different standards for receipts and production in stock, accounts can justify rejection of accounts:- If the stock received are shown in the books by one standard and goods produced from those stocks are shown by another standard it is quite clear that profits cannot be correctly deduced. In such cases the assessing officer would be justified in rejecting the method and in estimating the income- Howrah Trading Co (P) Ltd. V.CIT(1968)67 ITR 582(Cal). There is no record of yield, shortage. Such hooks of accounts and such system of accounting cannot be considered so sacrosanct that trading result cannot be disturbed when the circumstances

suggest otherwise. Assessee has done trading business with purchases of more than Rs. 9.62 crores but even in respect of such trading business quantitative details or inventory of stock is not produced.

The A/R of the appellant failed to file any evidence against the defect pointed out by the Assessing officer. Therefore I am the view that Assessing officer rightly apply the provision u/s 145(3) of the I.T. Act. Hence I upheld the action of the Assessing officer to rejected the books of account by applying the provision u/s 145(3) of the I.T. Act.

The next issue in the case is estimation of profit rate. The Assessing officer estimated Gross profit of Rs.3,17,99,865/- by applying the Gross profit rate @ 17.20% and made addition of Rs.1,00,67,820/-. The A/R of the appellant submitted that the AO is giving example of A.Y. 2007-08 & A.Y. 2008-09 where the G.P. of A.Y. 2005-06 17.20% was adopted in these years. It is factual correct that from AY 2005-06 to AY 2013-14 there is more than 8 years time difference where cost is increased more than sale price of individual item . It is pertinent to note that around 90% sales are in foreign market, stock tally of these goods is not much relevant.

The purchases and sales are completely vouched and looking to the nature of the business, it is very difficult for the assessee to affect the sales without bills. Under such circumstances, the figures of raw materials, finished goods, polishing materials, packing materials shown in regular books of accounts may kindly be accepted.

The A/R further argued that in our own case decided by Hon'ble ITAT in AY 2012-13 vide ITA no 495 & 487/JP/2016 pronounced on 27.7.2017 has already decided that average GP rate must be applied in place of highest GP rate where GP of 13.58% was accepted against declared GP of 13.19%. In this year last 5 year average GP is 12.15% is almost near to actual GP of 11.75%. So our genuine G.P. of 11.75% may please be accepted.

*The Hon'ble ITAT Jaipur Bench decided in the appellant own case for A.Y. 2012-13 that **Manoj Kumar Johari v ACIT ITA no. 495,487/JP/2016 AY 2012-13** "Regarding estimation of G.P. rate, wherein the books of accounts are rejected, a fair estimate is required to be made by the Assessing Officer. The principle of average taking into consideration last 5 years past history is clearly a robust and fair basis of estimation to determine the gross profits for the year under consideration."*

Therefore following the decision of the Hon'ble ITAT in the appellant own case and considering the above observation I adopt the average Gross profit rate of 5year which comes to 12.86% (17.2% + 12.03% + 8.52% + 12.96% + 13.58%). Hence I apply the Gross profit rate @12.86% instead the Assessing officer apply 17.02%. Thus the Gross profit comes to Rs.2,37,75,945/-. The appellant shown Gross profit of Rs.2,17,32,045/-. The addition comes of Rs.20,43,900/-. The Assessing officer made the addition of Rs.1,00,67,820/-. I confirm addition of Rs.20,43,900/- and balance amount of Rs.80,23,920/- is deleted. This ground is partly allowed.

8. Having considered the rival contentions and from perusal of the record, we observe that the assessee deals in purchase/manufacture

and sale of furniture handicraft items. Clause 28 of the form No. 3CD of the audit report requires quantitative details of items traded and also of items manufactured. Shortage in the manufacturing process and percentage of yield in the manufacturing process are required to be given. Quantitative tally of traded items and finished products is also required to be given. However no such details are given. Auditor's remarks against these clauses not maintained. Vide notice u/s 142(1) dated 27/07/2015 alongwith detailed questionnaire, the assessee was asked to file complete details of opening stock & closing stock alongwith the valuation method adopted to arrive such opening and closing stock. However, the assessee could not file the required details during the course of assessment proceedings. We observe that during the course of assessment proceedings, it transpired that stock register was not maintained, main raw material i.e. wood is purchased in cft (cubic feet) and finished goods are sold in units (i.e. nos.) and record of shortage is not maintained, physical record of raw material at different stages of production was also not maintained. "On perusal of your audit report, following observation have been made by your auditor:-

- (i) Valuation of inventory at cost which is not in accordance with accounting standard (AS-2) issued by the ICAI (impact on profit not ascertained)

- (ii) Stock and consumption record have not been maintained.
- (iii) Regarding accounting foreign currency transaction which is not in accordance with accounting standard (AS-11) (impact on profit not ascertained)
- (iv) Regarding accounting certain income & expenses on yearly basis (impact on profit not ascertained)"

Non maintenance of records of quantitative details renders the accounts of assessee incomplete. Preparation of the Inventory at the end of year but not keeping it on record and not producing such Inventory for scrutiny can only lead to the inference that accounts are not correct. Quantitative tally of items traded and manufactured by assessee is not only possible but also the requirement of proper accounting system. Today when books are maintained on computer and advanced software like tally are available and used, maintenance of quantitative details is very easy and convenient. Assessee's failure to provide the quantitative details is thus deliberate. Assessee is not maintaining day to day stock register. He has not maintained inventory of closing stock. Assessee deals in manufacture/trading of wooden furniture items. Purchases of wood are in volume i.e. cft/m cube measurement but sales are in numbers of various items. Adoption of different standards for receipts and production in stock, accounts can justify rejection of accounts. If the stock received are

shown in the books by one standard and goods produced from those stocks are shown by another standard it is quite clear that profits cannot be correctly deduced. In such cases the A.O. would be justified in rejecting the method and in estimating the income. The assessee failed to file any evidence against the defect pointed out by the A.O..

9. The Id. DR has drawn our attention towards the decision of the Coordinate bench of this Tribunal in assessee's own case for the A.Y. 2012-13 wherein the Coordinate Bench has held as under:

"9 We have heard the rival contentions and perused the material available on record. In view of the specific observations of the auditors in terms of inconsistency in maintaining the books of account and not following the well accepted accounting principles and the Coordinate Bench decision in assessee's own case for A.Y. 2008-09 wherein on similar basis the books of accounts were rejected, we see no reason to interfere with the order of the lower authority in terms of rejection of the books of accounts.

10. Regarding estimation of G.P. rate, wherein the books of accounts are rejected, a fair estimate is required to be made by the Assessing Officer. The principle of average taking into consideration last 5 years past history is clearly a robust and fair basis of estimation to determine the gross profits for the year under consideration. The Id. AR has submitted that average G.P rate of last 5 years comes to 12.29% as against declared G.P. rate of 13.19% in the year under consideration.

On perusal of records, the track record of declared Gross profit by the assessee and gross profit as upheld either by AO or by higher appellate authorities is as under:"

Assessment Year	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
G.P% (as declared)	13.85	14.11	12.03	8.48	12.96	13.19
G.P.% (as affirmed where applicable)	17.2	17.2	12.03	8.52	12.96	

In light of above, the average G.P rate of last 5 years as finally affirmed comes to 13.58%. The AO is accordingly directed to apply the G.P. rate of 13.58% as against G.P rate of 13.19% declared by the assessee. The respective grounds of appeal are accordingly disposed off."

The Id. CIT(A) has held that the Coordinate Bench of this Tribunal has decided in assessee's own case for the A.Y. 2013-13 and held that regarding estimation of G.P. rate, wherein the books of accounts are rejected, a fair estimate is required to be made by the Assessing Officer. The principle of average taking into consideration last 5 years past history is clearly a robust and fair basis of estimation to determine the gross profits for the year under consideration. By following the order of the Coordinate Bench, the Id. CIT(A) has adopt the average Gross profit rate of 5 year which comes to 12.86% (17.2% + 12.03% + 8.52% + 12.96% + 13.58%). Hence the Id. CIT(A) restricted the Gross profit rate @12.86% instead the Assessing officer applied 17.02%. Considering the totality of facts and circumstances and looking into the merits of the case,

we are of the view that the Id. CIT(A) has given his finding on the basis of five year average G.P. declared by the assessee as well as on the basis of following the decision of the Coordinate Bench passed in assessee's own case. The case laws relied upon the Id. AR are not applicable on the facts of the present case, therefore, we do not find any reason to interfere into or deviate from the findings so recorded by the Id. CIT(A) and we uphold the same qua the issue under consideration.

10. In the result, this appeal of the assessee is dismissed.

Order pronounced in the open court on 12th March, 2021.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 12/03/2021

*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Manoj Kumar Johari, Sikar.
2. प्रत्यर्थी / The Respondent- The A.C.I.T., Circle-Sikar.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 535/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar