

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'A', KOLKATA
[BEFORE SHRI A.T. VARKEY, HON'BLE JUDICIAL MEMBER &
SHRI MANISH BORAD, HON'BLE ACCOUNTANT MEMBER]**

[Through Virtual Court]

**ITA Nos. 2595 to 2597/Kol/2019
Assessment Year: 2013-14, 2014-15 & 2015-16**

M/s. Sheo Shakti Coke Industries.....Appellant
115, College Street, White Tower,
R. No. G-11, Kolkata - 700 012.
[PAN: ABHFS 4971 JJ]

VS

ACIT, CIRCLE - 37, Kolkata.....Respondent
Kolkata - 700 001.

Appearances by:

Shri Bisweswar Ghosh, Advocate appearing on behalf of the Assessee.
Shri Manish Kanojia, CIT appearing on behalf of the Revenue.

Date of concluding the hearing : September 09, 2021
Date of pronouncing the order : September 14, 2021

ORDER

PER MANISH BORAD, AM:

The instant three appeals filed by the assessee against the separate orders commonly dated 24.09.2019 passed by the Ld. CIT(A)- 11, Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for A.Y. 2013-14, 2014-15 & 2015-16.

2. As the issue raised in all the three appeals are common and relates to the same assessee, we are adjudicating the common issue on the basis of the facts pertaining for A.Y.

2013-14. Our decision in the appeal for A.Y. 2013-14 shall apply *mutatis-mutandis* on the remaining two appeals also.

3. The grounds of appeal raised by the assessee for A.Y. 2013-14 reads as under:

“i. That the order of Ld. CIT(A) is against the law and facts of the case.

ii. That in the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in conditional allowing section 80IC taking 40% G.P. Rate.

iii. That in the facts and in the circumstances of the case and in law, the Ld. CIT(A) has wrongly restricted to G.P. percentage of 40% for allow ability u/s 80IC of the Income Tax Act though the appellant’s G.T. 57.01%. Appellant in regularly assessed u/s 143(3) of the Income Tax Act since A.Y. 2007-08 and full Gross Profit had been allowed for deduction u/s 80IC of the Act.

iv. That in the facts and circumstances of the case in in law, the Ld. CIT(A) has wrongly taken about G.P. and restricted to G.P. – 40% and wrongly stated that rest amount be taken for tax.

v. That the appellant craves leave for the permission to add, delete or amend the grounds of appeal before or at the time of bearing of appeal.”

4. Brief facts of the case as called out from the records are that the assessee is a partnership firm engaged in the business of running coke industries. The assessee is claiming deduction under section 80IC of the Act consistently. For the year under consideration, the assessee has claimed deduction u/s 80IC of the Act at Rs. 14,48,09,592/-. E-return of income filed on 30.09.2013. The case selected for scrutiny through CASS followed by serving of notices u/s 143(3) and 142(1) of the Act.

5. During the course of assessment proceedings, the Ld. AO examined various details received from the assessee. The Ld. AO noted various anomalies in the financial transactions specially the genuineness of sales and transportation cost and also the purchases from related parties could not be verified. Ld. AO came to a conclusion that the profits shown by the assessee firm are not genuine and are fabricated and transactions are colourable. Ld. AO, accordingly, denied the deduction u/s 80IC of the Act and along with the other minor additions assessed the income at Rs. 17,22,89,990/- in the following manner:

"Profit disclosed as per P & L a/c treated as income from undisclosed sources Rs. 14,48,09,592/-

(A) Add: As discussed above U/s. 43B

1. Central Excise duty payable	Rs. 50,01,653/-	
2. Sales tax payable	Rs. 1,29,59,303/-	
3. Service Tax payable	Rs. 75,26,766/-	
4. Entry tax payable as per Balance sheet as contingent liability	<u>Rs. 8,41,705/-</u>	<u>Rs. 2,63,29,427/-</u>
	Rs. 17,11,39,019/-	

(B) Interest on Service tax not allowable as penal interest Rs. 7,79,841/-
 Rs. 17,19,18,860/-

(C) Interest on Excise duty Rs. 3,60,991/-
 Rs. 17,22,79,851/-

(D) Undisclosed Bank Interest on FD Rs. 10,135/-
 Assessed Total Income Rs. 17,22,89,986/-
Assessed Total Income (R/O) Rs. 17,22,89,990/-"

6. Aggrieved the assessee before the Ld. CIT(A) and partly succeeded.

7. As regards the issue of deduction u/s 80IC of the Act, the Ld. CIT(A) held that since the assessee-firm is consistently claiming deduction u/s 80IC of the Act consistently since A.Y. 2007-08 and the case is scrutinised every year and even the predecessor CIT(A) as well as Hon'ble ITAT of Kolkata has held the assessee to be eligible for deduction u/s 80IC of the Act, in the instant year also, the assessee is eligible for deduction u/s 80IC of the Act. However, Ld. CIT(A) was not convinced with the profits shown during the year. He observed various discrepancies in the claim of sales, purchases, transportation expenses etc. The Ld. CIT(A) also rejected the books results u/s 145(3) of the Act and estimated gross profit @ 40% of the total turnover as against the gross profit rate disclosed by the assessee at 57.01% and directed to tax the difference amount as "Income from other sources".

8. Aggrieved the assessee is now in appeal before the Tribunal solely raising the issue that the Ld. CIT(A) erred in estimated the gross profit rate at 40%. Disregarding the fact that the assessee has been regularly assessed u/s 143(3) of the Act since A.Y. 2007-08 and gross profit disclosed has been accepted. The ld. counsel for the assessee also took us through the paper book running from 1 to 61 and also placed reliance on the decision of ITAT, Kolkata in the case of DCIT vs Goodcare Pharma Pvt. Ltd. ITA No. 2485 & 2486/Kol/2017 dated 05.04.2019.

9. Per contra, the ld. Departmental Representative submitted that the assessee has not raised any ground challenging the finding of the Ld. CIT(A) rejecting the books of account u/s 145(3) of the Act. Various discrepancies have been noticed in the financials of the assessee-firm. Books of accounts were not produced before the Ld. CIT(A) as well as the Assessing Officer. Documents to substantiate the genuineness of purchase, sales and transportation expenses were not filed. The Ld. CIT, DR heavily relied on the finding of the Ld. CIT(A).

10. We have heard rival contentions and also perused the record placed before us and carefully gone through the decision relied by the Ld. CIT(A). Though the assessee has raised five grounds of appeal, ground no. 1 and ground no. 5 are general in nature and the effective sole issue lies in ground no. 2, 3 and 4, that the Ld. CIT(A) erred in estimating the profits eligible for deduction u/s 80IC of the Act by applying a gross profit rate of 40% as against the gross profit 57.01% disclosed by the assessee and further erred in taxing the difference amount as "Income from other sources".

11. We observe that the assessee has been consistently claiming deduction u/s 80IC of the Act and its eligibility to claim deduction u/s 80IC of the Act is not in dispute before us. The dispute relates to the quantum of profit earned during the year. There were certain discrepancies noticed by

the Assessing Officer in the details of sales, purchases, transportation expenses and other items of income and expenditure. Before Ld. CIT(A) also, the assessee could not produce the books of accounts and other relevant material to justify the profits earned during the year.

12. We further find that the Ld. CIT(A) has elaborately dealt with various discrepancies noticed in the financials of the assessee-firm before rejecting the book results and estimating the gross profit rate at 40% observing as follows:

21. I have carefully considered the rival contentions and submissions. The issue that comes out starkly is that the appellant's sales have been made in cash for which there is no reliable evidence. Looking at the assessment order, I form an impression that the ld. AO has based his approach on presumptions and has got swayed away by his own approach, so much so, that he has ignored the evidences furnished by the appellant during the assessment proceedings. I find that he was incorrect in concluding that the appellant's business did not exist at all. He also erred in holding that there were no purchases or sales and that all that had been presented by the appellant was a mere hog wash to claim the exemption u/s 80IC of the Act. To this extent, the ld. AO's conclusions are found to be incorrect and are rejected.

22. On the other hand, I also find that the argument made by the ld. AR vis-à-vis the observations and the action of the ld. AO presents only a sketchy picture of the facts related to the appellant's business. It lacks the authenticity of incontrovertible facts and reliable data. When the ld. AR says that the increase in the GP% was because of a rise in sale price of finished products, he does not back it with any data at National level or with any data released by or related to a Government department or a Government undertaking. Coke is not a commodity the price of which can be erratically and arbitrarily determined by its producer. The prices will need to be kept at par with other players in the market in order to able to compete with them. What the ld. AR has tried to argue is based on

simple arithmetical calculations based on its own statistics of purchase and sales recorded in its books.

23. The ld. AR has also stated that one of the factors contributing to the high rate of GP% is Transport Subsidy that the appellant receives from the Government. In a tabular presentation, he has furnished the details of GP and NP% calculated with and without transport subsidy.

GP & NP percentage of With Transport Subsidy

A.Y	Sales	Transport Subsidy	Total Turnover	Gross Profit	Net Profit	GP%	NP%
07-08	77,81,891.00	-	77,81,891.00	23,52,745.00	23,36,681.00	30.22	30.03%
08-09	28,73,51,526.00	-	28,73,51,526.00	7,96,25,304.00	16,19,99,108.00	27.07	56.38%
09-10	30,67,34,647.65	-	30,67,34,647.65	13,49,56,925.65	13,21,62,967.00	44.00	43.09%
10-11	10,39,58,695.00	4,45,46,456.00	14,85,05,151.00	7,82,95,953.00	6,14,31,031.00	52.72	41.37%
11-12	24,84,97,517.00	19,16,67,632.00	35,01,65,149.00	18,22,59,130.00	14,12,46,633.00	52.05	40.34%
12-13	25,26,11,624.40	10,34,38,264.00	35,60,49,888.40	20,53,22,876.40	15,79,08,340.00	57.06	44.35%
13-14	23,59,39,128.00	10,83,88,271.00	34,43,27,399.00	19,35,62,916.00	14,48,09,591.00	56.21	42.06%
14-15	20,72,79,540.00	11,00,00,584.00	31,72,80,124.00	16,50,83,684.00	11,43,48,140.00	52.03%	36.04%
15-16	11,37,75,876.00	06,08,46,598.00	17,46,22,474.00	09,08,51,661.00	06,61,88,836.00	52.03%	37.90%

GP & NP Percentage of Without Transport Subsidy

A.Y	Sales	Transport Subsidy	Total Turnover	Gross Profit	Net Profit	GP%	NP%
07-08	77,81,891.00	-	77,81,891.00	23,52,745.00	23,36,681.00	30.22	30.03%

08-09	28,73,51,526.00	-	28,73,51,526.00	7,96,25,304.00	16,19,92,108.00	27.71	56.38%
09-10	30,67,34,647.65	-	30,67,34,647.65	13,49,56,925.65	13,21,62,967.00	44.00	43.09%
10-11	10,39,58,695.00	-	10,39,58,695.00	7,82,95,953.00	01,68,84,575.00	75.31	16.24%
11-12	24,84,97,517.00	-	24,84,97,517.00	18,22,59,130.00	03,95,79,001.00	73.34	15.93%
12-13	25,26,11,624.40	-	25,26,11,624.40	20,53,22,876.40	05,44,70,076.00	81.28	21.56%
13-14	23,59,39,128.00	-	23,59,39,128.00	19,35,62,916.00	03,64,21,320.00	82.04	15.44%
14-15	20,72,79,540.00	-	20,72,79,540.00	16,50,83,684.00	43,47,556.00	79.64%	02.10%
15-16	11,37,75,876.00	-	11,37,75,876.00	09,08,51,661.00	53,42,228.00	79.85%	04.70%

24. The appellant has stressed the fact that the reason for high GP and NP% in its case is that it receives transport subsidy. If the GP and NP% is taken without considering the transport subsidy, it comes to 82.04% and 15.44% in the AY 2013-14. The fact, however, is that the appellant has not yet received any transport subsidy from the government. It has claimed such subsidy and has made the required application but in none of the AYs has it physically received any relief in the form of subsidy. Therefore, the arguments related to high GP% being a product of transport subsidy does not help the appellant's case as of now.

24.1 The appellant has another sister concern with the name Kamrup Coke Industries. A comparison between GP and NP% without transport subsidy is made in the table below:

A.Y	Kamrup Coke Industries		Sheo Shakti Coke Industries	
	GP%	NP%	GP%	NP%
2010-11	59.56	2.81	75.31	16.24%
2011-12	34.91	2.78	73.34	15.93%
2012-13	41.14	4.56	81.28	21.56%
2013-14	46.83	38.39	82.04	15.44%
2014-15	76.15	0.20	79.64%	2.10%

25. During the years under comparison, Kamrup Coke Industries has also not received any transport subsidy. Therefore, a comparison is made without considering transport subsidy. As can be seen, there is no comparison between the GP and NP declared by the two concerns. While the average GP of Kamrup Coke Industries has hovered around 51.7% that of the appellant has remained around 15 to 20%. There is no plausible explanation for this difference. These differences gain significance because the two sister concerns are located at the same address, the place of production, raw material used, the items of production are the same and so are the burning losses and yield percentage (at around 55%) in both, Kamrup Coke Industries and Sheo Shakti Coke Industries. The sales have been made in cash in both the concerns. The area where sales have been made also is the same, i.e. in Punjab, Haryana and Rajasthan. The management too is the same. Therefore, the GP and NP declared by the appellant do not appear to be reliable.

26. The actual existing market rates for sale of finished products are not available in the submissions of the ld. AR. There also is no clarification regarding the quality and content of moisture, carbon, ash, sulphur, volatile matter, particle size, etc. In the finished coke produced by the appellant. Without these, a proper examination and comparison of the prices stated by the appellant are not possible. Therefore, the above explanation does not generate confidence about its authenticity.

27. The issues gets further confounded by the fact that almost entire sales have been made by the appellant in cash. The details of the purchasers (to whom the appellant sold the finished products) are very sketchy sans any exact identification. There is no explanation of how was such huge cash received by the appellant. In the paragraph from the assessment order quoted above, the ld. AO has highlighted the defects in the appellant's claims, so far as cash sales are concerned (as discussed in para 13 above). During the appellate proceedings, the ld. AR also explained that the sales are made through brokers. It is the brokers who provide the names of the persons to whom such sales were made. The sales were made in cash and the cash was collected by the broker and handed over to the appellant. This was later deposited in the bank. This, however, fails to prove the authenticity of the sale transactions and also the identity of the

persons to whom such sales were made. There is no way to link the exact amount of cash earned through sales to a specific person and its deposit in the bank account. Since the identities of the purchasers, who appear to be discreet individuals from far off lands with obscure addresses, cannot be established, the authenticity of cash sales itself comes under cloud. Suffice it to say that the sale transactions through cash leave more to be desired in terms of evidence and reliability of facts.

27.1 The ld. AR has argued that the sales are genuine as the appellant has filed its sales tax return and the same has been accepted by the Sales Tax Authorities. In my view, filing a Sales Tax Return and its acceptance by the Sales Tax Authorities has no bearing on the issues involved in this case. The Sales Tax Authorities have not looked into the genuineness of the sales reported by the appellant. Under the Income Tax Act, the ld. AO has examined if the appellant's sales were genuine. The question here is, has the appellant really earned those receipts or has it inflated those figures in order to push in higher amounts as tax free income? The question here was from the stand point of the benefits u/s 80IC of the Act. The Sales Tax Authorities have not examined if the appellant has 'inflated' its sales. Therefore, the issue, question and facts here are different from what was there before the Sales Tax Authorities.

27.2 Therefore, in my view, even though the appellant has filed its Sales Tax Return disclosing exactly the same amount as its sales, the genuineness of those sales as have been borne out by the facts of this case in terms of the Income Tax Act are of a completely different dimension and are in a very different parlance. Hence this argument put forth by the ld. AR cannot be accepted as having any ramification on the facts of the case under consideration at the moment.

28. The issues related to expenses and cash sales discussed above lay bare the fact that the appellant's claims regarding high GP and NP does not hold good in view of the lacunae pointed out therein. An analysis of the GP and NP percentages, the production cost and the sales from the FY 2010-11 onwards to FY 2014-15 lead to the following observations:

PARTICULARS	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
SALES (+) TRANSPORT SUBSIDIES (+) INCREASE/DECREASE IN CLOSING STOCK	35,01,78,089	35,60,80,133	34,66,14,439	31,50,87,890	17,44,79,331
RAW MATERIAL	16,27,36,345	14,48,69,760	14,49,23,520	14,49,63,840	08,02,85,440
MANUFACTURING EXP	28,58,121	38,42,139	40,82,853	56,97,460	21,43,849
TOTAL EXPENSES	16,55,94,466	14,87,11,899	14,90,06,373	15,06,61,300	08,24,29,289
GROSS PROFIT	18,45,83,623	20,73,68,234	19,76,08,066	16,44,26,590	09,20,50,042
GP%	52.71%	58.23%	57.01%	52.18%	52.75%

28.1 The above figures are inclusive of transportation subsidies, as claimed by the Id. AR. These have taken only to fetch out and project a comparison between the manufacturing expenses vis-à-vis the raw material consumed

29. The above figures, when broken down and analysed individually and also in relation to other expenses, reveal that the expenses have been booked at lower percentages. For example, the figures for manufacturing expenses as percentage of Raw Material consumed is looked into as under:

FY 2010-11 1.75%

FY 2011-12 2.65%

FY 2012-13 2.81%

FY 2013-14 3.93%

FY 2014-15 2.67%

29.1 As can be seen from the above, the GP% is very high and the ratio between the consumption of raw material and manufacturing expenses is very poor. As break up Manufacturing Expenses reveals the following:

PARTICULARS	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
POWER & FUEL	6,46,411	7,17,629	7,42,818	7,74,634	5,59,593
WAGES	5,91,825	6,04,360	6,03,470	08,79,800	05,86,532

ELECTRICITY DUTY	06,089	05,838	05,212	04,746	03,250
SERVICE TAX ON RAW COAL TRANSPORTATION	15,35,127	22,83,280	23,40,781	36,30,514	07,08,424
FACROTY INSURANCE CHARGES	79,694	94,314	01,64,036	01,54,530	16,228
REPAIRS & MAINTENANCE CHARGES	98,975	20,609	01,260	-	16,580
	01,42,949	01,16,109	02,25,276	02,53,236	02,53,242

29.2 The figures for wages appear to be abysmally low. In order to verify it, the website for the department of labour, Government of Assam was referred. The website of Govt. of Assam gives the details of basic minimum daily wages for skilled, semi-skilled and unskilled workers as Rs. 227, Rs. 175 and Rs. 169 respectively. Since there is no detail of "number of workers employed by the appellant or the number of skilled, semi-skilled and unskilled workers, the average daily pay of the three categories of workers is taken at Rs. 190.

29.3 During the FY 2010-11 the total wages paid was Rs. Rs. 5,91,825. It was orally stated by the Id. AR that the factory works for 8 months in a year and during the monsoons, it remains closed. For an estimated calculation, therefore, we may take the number of days when the factory was operational as 30 days X 8 months = 240 days. Hence, the appellant has paid Rs. 2,466 per day towards labour charges. At an average rate of Rs. 190 per worker per day, the number of workers is calculated at 12 or 13 workers under the appellant's employment. In other words, with 12 or 13 workers, the appellant processed 1,03,478 MT of raw material to produce 56,913 MT of finished product of BH Coke.

29.4 During the FY 2011-12 the wages are Rs. 6,04,360 which work out to Rs. 2,518 per day which in turn means, at the average wage of Rs. 190 per worker per day, there were 13 workers used for processing 1,03,478 MT of raw material to produce 56,913 MT of finished products.

29.5 In FY 2012-13, the total wages paid were Rs. 6,03,470, meaning thereby, that there were 13 or 14 workers for processing 1,03,516 MT of raw material to produce 56,934 MT of finished products.

29.6 In FY 2013-14 the appellant has paid wages worth Rs. 8,79,800. This works out to Rs. 73,316 per month, which in turn works out to Rs. 2,443 per day. At an average daily pay of Rs. 190 per worker, the number of workers comes to 12 or 13 workers. From the 'details of production annexed with the audit report, the quantity of production of BH Coke is 56,950 MT for which raw coal at 1,03,545 MT was consumed. The appellant has stated that there was no addition to plant and machinery.

29.7 The wages during FY 2014-13 are Rs. 5,59,593. The average daily wages work out to Rs. 1,533 which, applying the average per person, per day wage of Rs. 190, works out to 8 workers for processing 791.25 MT of raw material for producing 31,547 MT of BH Coke.

29.8 A conclusion that can be drawn out of the above is that the appellant has employed only 8 to 12 or 13 workers to carry out the entire production by processing more than 1,00,000 MT of raw material in a scenario when the machinery is old (the Id. AR has stated that no new machinery was purchased). The average daily pay assumed above is the basic minimum that the appellant would be paying going by the standard of minimum wages determined by the Government of Assam. The actual pay would be more, which in turn would mean that even lesser number of workers were employed by the appellant. In my view, the number of workers estimated to be working for the appellant is very less and it does not provide the correct picture of expenses.

29.9 The above analysis is taken as a sample and it should not be taken to be the only discrepancy in the statement of expenses. The overall manufacturing expenses as percentage of raw material consumed is poorly low and this has also been indicated above.

29.10 Another discrepancy is noted, but it pertains to the AY 2014-15 and not to the AY under reference in this appeal. I find it necessary to be highlighted so that an overall picture of the

way the appellant's profits are declared, comes out clearly. The quantity of Raw Material consumed in FY 2014-15 is stated to be 791.25 MT but the production of BH Coke is 31,547 MT. During the FY 2013-14, raw material consumption was at 1,03,545 MT and the finished product was 56,950 MT. In other words, while the production was 55% of material consumed, it was 3,987% of raw material consumed in FY 2014-15, if the production schedule annexed to the audit report is anything to go by.

30. Further, the Burning losses recorded by the appellant are roughly around 45%. As stated earlier in this order, there is no detail about the quality of coal and its content. As such for a better appreciation of facts, certain very general aspects of conversion of coal into BH Coke need to be considered. The coal found in the mines in Assam are generally categorized as sub-bituminous coal which contains less carbon and more moisture. The contents of Coal are carbon, volatile contents and moisture. The moisture content varies among different grades of coal. In sub-bituminous type, it is 35-45%. In other grades/ types of coal it remains around 15 to 30%. Apart from this, it also has 10 to 15% ash, 20% to 30% of volatile material, sulphur etc. which are lost in burning. On an average, burning losses are generally around 55% to 60%. The appellant has shown burning losses at around 45% and a yield at around 55%. This appears to be either inflated or on the far end of the higher side. Looking at the quality of coal that is normally available in the North-East which has higher -contents of moisture and volatile material, in my view, the yield percentage should be around 45% and not 55%.

31. The issues related to expenses and cash sales discussed above lay bare the fact that the appellant's claims regarding high GP and NP does not hold good in view of the lacunae pointed out therein. The facts discussed above and in the earlier parts of this order reveal that, the details of sales are unreliable, the quantity of production is unreasonably high, the expenses recorded are very low. As a result, the GP% (inclusive of Transportation subsidy) is declared as high as 52 to 57% in different years. For all the facts and reasons discussed above, I am of the considered view that the books of accounts do not reveal the true and correct picture of the profits earned by the

appellant. The profits appear to be inflated to plough in more amounts as exempted income u/s 80IC. Therefore, the book results are rejected u/s 145(3) of the Act.

31.1 In order to estimate the income, certain facts need to be kept in mind. Contrary to the Id. AO's view that there was no purchase or sale in this case, or that there was no business at all, the evidences furnished by the Id. AR do establish that a business certainly was in existence. That, purchase and sales were also made, has been proved. What however remains unproved is the exact amount of sales and expenses. The explanations furnished by the Id. AR fails to authentically prove the case. Therefore, in the entire gamut of facts, considering that the yield percentage has been estimated at 45% and certain expenses have been 'underreported, in my considered view, the GP% should be taken at 40% and based on the resultant figure, the remaining part of the profit and loss should also be considered before calculating the net profit. The Id. AO is directed to compute the eligible net income for exemption u/s 80IC by taking the GP at 40% and taking into account the items in profit and loss account. The balance amount should be brought to tax as 'income from other sources'. These grounds of appeal are, therefore, partly allowed.

For estimating the GP at 40%, the burning losses is taken at 55% and the yield is estimated at 45%. The miniscule amount of expenses is also considered for estimation and so are the unsubstantiated cash sales. As an overall view of the financial transactions, in my view estimating the GP at 40% is reasonable. The claim of transport subsidy is held to be eligible for deduction u/s 80IC(10) in view of the decision of the Hon'ble Calcutta High Court in the case of ITO vs SKJ Coke Industries Ltd. and also on the decision of the Hon'ble Supreme Court in the case of Ponny Sugars Mills (Erode) Ltd. wherein it was held that transport charges and subsidy was includable in business profits eligible for deduction u/s 80IC of the Act. The Id. AO is directed to compute the allowable exemption u/s 80IC by taking the GP% as 40% of the sum of sales and transport subsidy. These grounds are partly allowed."

13. From the perusal of above finding of the Ld. CIT(A), we find that he has lucidly dealt with all the facts pertaining to

discrepancies noticed in the financials of the assessee-firm and has also referred to various charts depicting the profitability of the assessee-firm in preceding years vis-à-vis other related concerns of the same group and operating in the same field and even the same area. We find merit in the finding of Ld. CIT(A) rejecting the book results and invoking the provision of section 145(3) of the Act and this action of the Ld. CIT(A) has also not been challenged before us by the assessee by raising a specific ground.

14. Further the ld. counsel for the assessee miserably failed to controvert the finding of Ld. CIT(A) by placing any material in its support. The only argument made by ld. counsel for the assessee is that the assessee-firm is consistently being allowed to the deduction u/s 80IC of the Act but had not said anything about the correctness of profit earned during the year.

15. The case relied by the ld. counsel for the assessee in the case of *M/s. Goodcare Pharma Pvt. Ltd. (supra)* is also not be of any benefit to assessee since the fact are not similar and more specifically the issue of rejection of book results was not before the coordinate bench of Kolkata in the case of *M/s. Goodcare Pharma Pvt. Ltd. (supra)* and, therefore, it shall not be applicable on the instant issue raised before us.

16. We, therefore, under the given facts and circumstances of the case and detailed enquiry conducted by the Ld. CIT(A), which remained uncontroverted by the ld. counsel for the assessee find no reason to interfere in the finding of Ld. CIT(A) applying the gross profit rate of 40% on the turnover disclosed by the assessee as against the gross profit rate of 57.01% disclosed by the assessee and accordingly has rightly charged the difference of the profit that is 17.01% (57.01% less 40%) on the gross turnover for the year as "Income from other sources". Accordingly, ground no. 2, 3 & 4 raised by the assessee are dismissed. Appeal of the assessee for A.Y. 2013-14 is dismissed.

17. Now we take up ITA 2596/Kol/2019 and ITA 2597/Kol/2019 for A.Y. 2014-15 & 2015-16 where similar issue has been raised by the assessee challenging the finding of the Ld. CIT(A) applying gross profit rate of 40% as against the higher gross profit rate disclosed by the assessee thereby claiming deduction u/s 80IC of the Act. We find that the facts of the case for A.Y. 2014-15 & 2015-16 are similar to that for the A.Y. 2013-14 and so the issue raised before us in the instant two appeals had already been dealt by us in preceding paras while adjudicating in assessee's appeal in ITA 2595/Kol/2019 for A.Y. 2013-14 wherein we have confirmed the finding of the Ld. CIT(A) applying the gross profit rate of 40%. Thus our decision for A.Y. 2013-14 in assessee's case of ITA 2595/Kol/2019 shall apply *mutatis mutandis* on the assessee's remaining two appeals for A.Y.

2014-15 and 2015-16. We accordingly confirm the finding of the Ld. CIT(A) and dismiss the appeals raised by the assessee for A.Y. 2014-15 & 2015-16.

18. In the result, all the appeals of the assessee stand dismissed.

Order Pronounced in the Open Court on 14th September, 2021.

Sd/-
(A.T. VARKEY)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Dated: 14/09/2021
Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Sheo Shakti Coke Industries, 115, College Street, White Tower, R. No. G-11, Kolkata – 700 012.
2. ACIT, Circle – 37, Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. Private Secretary/DDO
ITAT Kolkata Benches, Kolkata