

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “A” BENCH**

**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER  
& SHRI WASEEM AHMED, ACCOUNTANT MEMBER)**

[Through Virtual Court]

**ITA. No: 1503 & 1620/Ahd/2018  
(Assessment Years: 2009-10)**

<b>DCIT, Anand Circle, Anand</b>		<b>M/s. Vallabh Pesticides Ltd., Anand Sojitra road, GIDC Estate Vithal Udyognagar, Anand- 388121</b>
<b>(Appellant)</b>		<b>PAN No. AAACV6423H (Respondent)</b>

**Appellant by : Shri S. S. Shukla, Sr. D.R.  
Respondent by : Shri Anil Brahmakshatriya, A.R.**

**(आदेश)/ORDER**

Date of hearing : 08-07-2021  
Date of Pronouncement : 17-09-2021

**PER MAHAVIR PRASAD, J.M.**

1. ITA No. 1503/Ahd/ & 1620/Ahd/2018 have been filed by the Revenue and Assessee are directed against the order of the Id. CIT(A) vide Appeal No. CIT(A). The revenue has taken following grounds of appeal:

1) *That in the facts and circumstances of the case and in law, the learned CIT(A) has erred in allowing relief to the assessee and in not confirming the additions made by the AO on these issues.*

2.1 *That in the facts and circumstances of the case, and in law, the Ld. C.I.T.(Appeals) erred in partly deleting the substantive addition and protective addition u/s 69A towards unexplained investments in bank accounts, without appreciating that the assessee had failed to controvert the findings of the AO, and failed to substantiate its claim.*

2.2 *That in the facts and circumstances of the case, and in law, the Ld. C.I.T.(Appeals) erred in admitting additional evidence in violation of Rule 46A, disregarding the objections of the AO, and deleting part of the additions made on the basis of the additional evidence admitted, without appreciating that the conditions required in Rule 46A(1) were not fulfilled.*

2.3 *That in the facts and circumstances of the case, and in law, the Ld. C.I.T.(Appeals) erred in admitting additional evidence in violation of Rule 46A and deleting part of the additions made on the basis of the additional evidence admitted, without appreciating the findings of the AO in the remand report.*

2.4 *That in the facts and circumstances of the case, and in law, the Ld. C.I.T.(Appeals) erred in partly deleting the addition towards unexplained investments in bank accounts, by accepting the assessee's claim that there were inter-bank transfer entries of Rs.1,40,80,302/-, without appreciating that the assessee had failed to controvert the findings of the AO, and failed to substantiate its claim with necessary evidence.*

2.5 *That in the facts and circumstances of the case, and in law, the Ld. C.I.T.(Appeals) erred in partly deleting the addition towards unexplained investments in bank accounts, by accepting the assessee's claim that the deposits represented its unaccounted sales, without appreciating that the assessee had failed to controvert the findings of the AO, and failed to substantiate its claim with necessary evidence.*

2.6 *That in the facts and circumstances of the case, and in law, the Ld. C.I.T.(Appeals) erred in partly deleting the addition towards unexplained investments in bank accounts, by accepting the assessee's claim that the deposits represented its unaccounted sales and then applying a G.P. rate on the unexplained deposits, without appreciating that the assessee had failed to controvert the findings of the AO, and failed to substantiate its claim with necessary evidence.*

2.7 *That in the facts and circumstances of the case, and in law, the Ld. C.I.T.(Appeals) erred in deleting the additions made on protective basis without appreciating the reasons given by the AO in the assessment order, and without appreciating that the additions were rightly made on protective basis and the substantive addition, had not attained finality.*

2.8 *That in the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the additions made by the Assessing Officer in a superficial manner, without conducting necessary inquiries and examination of facts, as explained by the Hon'ble High Court in Jansampark Advertising & Marketing (P) Ltd. 375 ITR 373 (Delhi), regarding the obligation of the CIT(A) to conduct proper inquiry.*

3. *The appellant craves leave to add, modify, amend or alter any grounds of appeal at the time of, or before, the hearing of appeal.*

***Relief claimed in appeal***

*It is prayed that the order of the CIT (Appeals) be set aside and that of the Assessing Officer be restored.*

2. Facts of the case are that assessee is in the business of manufacturing of Pesticides Goods and business premises of M/s. Vallabh Pesticides Ltd. was searched by the Directorate General of Central Excise Intelligence, Vadodara during December, 2013 and detected the evasion of Excise Duty.

3. On the basis of report of DGCEI, Investigation u/s. 131(1A) of the Act was carried out by the ITO (Investigation), Anand and on the basis of his report, case was reopened. From the documents and information forwarded by DGCEI, it was observed that assessee was having undisclosed twenty bank accounts for F.Y. 2008-09 and total credits/deposits in the said bank accounts made by the assessee was of Rs. 3,54,23,825/-. But said deposits were not reflected in the books of accounts and on the said reason Ld. A.O. issued notice to the assessee alleging that income of Rs. 3,54,23,825/- were deposited against which Ld. A.O. had provided list of 15 Bank Accounts with name of Bank and Account Numbers without providing amount of deposits in respective bank accounts. It is pertinent to mention here that out of 15 Bank accounts three (3) accounts are related to the assessee company while other accounts are in the name of either persons or Proprietary Concern.
4. Thereafter assessee requested to Ld. A.O. to treat the original ITR as ITR u/s 148 and to allow the inspection of the relevant records and provide certified copy of the Investigation Wing along with supporting documents which are allegedly considered against the assessee. But details of 3 bank account statements in the name of the company were given and it was revealed that out of Gross Deposits of Rs. 1,73,58,963/- in these 3 bank accounts Rs. 43,61,077/- inter-bank transactions or deposited cheques had been dishonoured or deposit of maturity proceeds of small term deposits credited by the Bank during the year which are not subject to tax being capital nature entries. The assessee written to ld. A.O. to treat the balance amount of Rs. 1,29,97,886/- as unaccounted sales receipts and assessee profit margin @ 7.18%. But Ld. A.O. did not agree and made addition of entire amount to deposit of Rs. 2,53,50,706/-.
5. Against the said order, assessee preferred first statutory appeal before the ld. CIT(A) who partly allowed the appeal with following observations:

*“We are of the considered opinion that profit rate of 12.5% will be reasonable G.P. ratio on the undisclosed sales of the assessee during the year under consideration. That would meet the ends of natural justice. By this method Gross Profit on undisclosed turnover of Rs.1,96,31,425/- would be Rs.24,53,928/- and this amount is added to the returned income of the assessee. Thus, Ground No.3 is partly allowed.*

*The Assessing Officer has also objected that appellant has not disclosed any amount which it might have used for purchases etc. if the proposition of unaccounted sales is accepted. I agree with him on this count that some initial investment would be required to achieve any accounted as well as unaccounted sales. As mentioned supra, the undisclosed turnover of the year has been considered at Rs.1,96,31,425/-. If this amount is divided into 12 months, average monthly sales would be Rs.16,36,000/-. The G.P. of 12.5% has been considered on this amount and, hence, initial month's purchase can be estimated at Rs.14,54,222/-. In view of A.O's observation, this amount is added to the income of the appellant. Thus, the appellant shall get relief of Rs.2,14,42,556/- out of substantive addition. The protective addition of Rs.97,86,202/- is also deleted as the same has been considered on substantive basis [except amount of Rs.29,65,000/- found credited in bank accounts of Eurotech Crop Science (Prop. Concern of Nimesh A. Patel) on which G.P. has been added in the hands of VPL].”*

6. We have gone through the relevant record and impugned orders. In this case, whole addition has been made on the basis of the report of Directorate General of Central Excise Intelligence which stated in its report that in 20 bank accounts of the assessee and credit amount of Rs. 3,54,23,825/- were deposited but on request of the assessee, ld. A.O. given details of the 14 bank accounts out of which 3 bank accounts are related to the company.

7. Assessee's contention was not accepted by the Ld. A.O. that assessee has to make investment for the purchasing of raw material/traded goods. It is well settled law that addition could made only to the extent of gross profit earned on the unaccounted/suppressed sale by the assessee not on the total sales or unaccounted suppressed sales.
8. During the hearing of the matter, Ld. A.R. submitted a chart containing G.P. ratio and N.P. ratio in A.Y. 2006-07 to 2009-10. In the earlier year, gross profit ratio of the disclosed turnover as per books of accounts is as under:

<i>Vallabh Pesticides Private Limited</i>					
<i>A.Y</i>	<i>Sales</i>	<i>Gross profit</i>	<i>Net Profit</i>	<i>GP Ratio</i>	<i>NP Ratio</i>
<i>A.Y.2006-07</i>	<i>70902499</i>	<i>11244365</i>	<i>197808</i>	<i>15.86</i>	<i>0.28</i>
<i>A.Y.2007-08</i>	<i>47080747</i>	<i>7033322</i>	<i>3030979</i>	<i>14.94</i>	<i>6.44</i>
<i>A.Y.2008-09</i>	<i>82886548</i>	<i>7665998</i>	<i>580416</i>	<i>9.25</i>	<i>0.70</i>
<i>A.Y.2009-10</i>	<i>111685575</i>	<i>11755589</i>	<i>697873</i>	<i>10.53</i>	<i>0.62</i>
<i>Average</i>	<i>312555369</i>	<i>37699274</i>	<i>4507076</i>	<i>12.06</i>	<i>1.44</i>

9. After going through the above said chart average of the preceding years gross profit ratio comes to 12.06% wherein Ld. CIT(A) has confirmed gross profit ratio 12.5% after detailed discussions. Since assessee did not submit the all bank details to the revenue.
10. Since Ld. CIT(A) has considered G.P. ratio and N.P. ratio of preceding years and thereafter taken the Gross Profit ratio @ 12.50%, we think same is reasonable and order of the Ld. CIT(A) does not require any kind of interference at our end.
11. In the result, appeal filed by the Revenue is dismissed.

**Now we come to ITA No. 1620/Ahd/2018 (Assessee's appeal)**

12. The assessee has filed appeal barred by 29 days in support of its contention, assessee has moved an application alongwith an affidavit. We are satisfied with the contention of the assessee and condone the delay of 29 days and proceed with the appeal and assessee has taken following grounds of appeal:

- 1. The impugned reassessment order passed u/s. 143(3) r.w.s. 147 by the Dy.CIT, Circle-Anand, Anand is against natural justice, bad in law & deserves to be cancelled.*
- 2. The learned CIT(A)-4, Vadodara has grossly erred in considering the G.P. @12.5% in place of 7.91% claimed by the appellant-company. The A.O. may please be directed to take G.P. rate @7.91% in place of 12.5% considered by the learned CIT(A)-4, Vadodara.*
- 3. The learned CIT(A) has grossly erred on confirming the impugned addition of Rs.39,08,150 (Addition & Rs.2,53,50,706/- relief granted Rs.2, 14,42,556/-). The A.O. may be directed to rework addition by applying G.P. @7.91% claimed by the appellant.*

13. Since the Ld. CIT(A) has passed detailed and reasoned order after taking into consideration all the facts and materials place on record therefore, we do not find any merit in the contention of the assessee for any further reduction in the profit ratio. Therefore appeal of the Assessee is dismissed. .

14. In the combined result, both the appeals filed by the Assessee and Revenue are dismissed.

Order pronounced in Open Court on 17- 09- 2021

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER** True Copy

Ahmedabad: Dated 17/09/2021

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

**Sd/-**  
**(MAHAVIR PRASAD)**  
**JUDICIAL MEMBER**

By ORDER

Deputy/Asstt.Registrar  
ITAT,Ahmedabad