

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "E" BENCH: NEW DELHI**

(THROUGH VIDEO CONFERENCING)

**BEFORE SHRI R.K.PANDA, ACCOUNTANT MEMBER
AND
SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA No.7376/Del/2017
Assessment Year : 2013-14**

Sh. Narender Kumar Anand, A-454, Shastri Nagar, Delhi-11052	vs	ITO, Ward-35(3), New Delhi
PAN-AHOPA9287G		
APPELLANT		RESPONDENT

Appellant by	Sh. Devinder Pal. Adv.
Respondent by	Sh. Gaurav Pundir, Sr. DR
Date of Hearing	28.09.2021
Date of Pronouncement	01.10.2021

ORDER

PER SANJAY GARG, JM :

The present appeal has been preferred by the assessee against the order dated 18.09.2017 of the Ld. Commissioner of Income Tax (Appeals)-12, New Delhi, (hereinafter referred to 'CIT(A)') for the Assessment Year 2013-14. The assessee has raised following grounds of appeal:-

1. *That in the facts and on the circumstances of the case the impugned order as passed by the Ld. CIT (A) dated 18.09.2017 is bad and against the law as the same is based on surmises, suspicion and conjunctures.*
2. *That the Ld. CIT (A) while upholding the arbitrary addition made by the Ld. AO, Ward 35(3) to the tune of Rs. 1,44,13,587.00, completely ignored the admitted observations made in Para 8 of the Assessment Order dated 23.03.2016 wherein the Ld. AO himself admitted that "No comparative GP rate of such trading in Tobacco is available in any other case" therefore sustaining additions on such admitted observations is against the facts and circumstances of the case and is bad in law.*
3. *That the Ld. CIT (A) appeal while upholding the addition of Rs. 1,44,13,587.00 in the hands of the Appellant/Assessee, the Ld. CIT (A) completely ignored from its consideration the comparative chart of margins in the same trade placed on record and further did not take into account the settled principles of law that whenever an estimate is to be made it should be arrived at after judicious application of mind which should be legitimate, just and cogent in terms of material available on record and the facts and circumstances of the case.*

2. Brief facts of the case are that the assessee is an individual and is engaged in trading in Tobacco under the name & style M/s Himalayan Enterprises. The assessee during the year declared net taxable income of Rs.6,27,480/-. The case was selected for scrutiny for the reasons of low net profit/loss shown

from large gross receipts. During the assessment proceedings, the Assessing Officer observed that the assessee has shown an opening stock at NIL and made purchases of Rs.80,30,04,497/- during the years. As per balance sheet, the assessee made sales amounting to Rs.77,01,13,308/- leaving a closing stock of Rs.3,38,79,868/-. The total expenses were seen at bare-minimum prominent and totaled at Rs.3,57,159/- prominent among them being salary amounting to Rs.1,80,000/- and rent amounting to Rs.60,000/-. The peculiar thing noted was that the assessee claimed almost nominal expenses for making such huge sales and purchases. Despite all these, still the gross profit was still very low at Rs.9,88,679/- i.e. 0.13% of the purchases. Since, the profits shown by the assessee were appeared to be meager as compared to the turnover of the assessee, the Assessing Officer, therefore, issued questionnaire to the assessee asking the assessee to provide details in this respect. He further required the assessee to provide address of the sundry debtors and the creditors. After getting the addresses of the sundry debtors and creditors, the Assessing Officer issued notice to them u/s 133(6) of the Income Tax Act,

1961 (hereinafter referred to 'the Act'). However, despite repeated notice and reminders to various parties no confirmation was received regarding the transactions in question. All the addresses provided by the assessee in respect of sundry debtors and creditors were received back with adverse postal comments of 'nonexistence' 'not found' etc. Even the confirmation received from two sundry creditors was also find defective/incomplete by the Assessing Officer. The Assessing Officer thereafter, asked the assessee to produce the parties so as to authenticate the sales/purchases and sundry debtor/creditors, but nobody appeared on behalf of these parties. The assessee, however, had shown his inability/control over the respective parties to produce them before the Assessing Officer. The Assessing Officer has drawn a chart in the assessment order in respect of parties whom the notices were issued and status of their responses, which for the sake of ready reference is reproduced as under:-

<i>Sl. No.</i>	<i>Name of the Party</i>	<i>Notice issued on Date</i>	<i>Status of Response</i>
1	<i>A.K. International</i>	<i>18.11.2015</i>	<i>Return back with adverse postal comments "No such firm".</i>
2	<i>Adinath Enterprises</i>	<i>18.11.2015</i>	<i>Return back with adverse postal comments "No such firm".</i>

3	<i>Adish Trading Co.</i>	18.11.2015	<i>Return back with adverse postal comments "No such person".</i>
4	<i>Aggarwal Enterprises</i>	18.11.2015	<i>Return back with adverse postal comments "Left without address".</i>
5	<i>Aryan Sales Corporation</i>	18.11.2015	<i>Return back with adverse postal comments "No such person".</i>
6	<i>B.P.N. Trading Co.</i>	18.11.2015	<i>Return back with adverse postal comments Incomplete Address..</i>
7	<i>Eastern Trading Co.</i>	18.11.2015	<i>Reminder sent. Received back with adverse postal comments "No such firm".</i>
8	<i>Kumar Sales</i>	18.11.2015	<i>Return back with adverse postal comments "Left without address".</i>
9	<i>Maa Durga Enterprises</i>	18.11.2015	<i>Return back with adverse postal comments "Incomplete address".</i>
10	<i>Naveen International</i>	18.11.2015	<i>Return back with adverse postal comments "Incomplete Address".</i>
11	<i>Paras Sales Corporation</i>	18.11.2015	<i>Return back with adverse postal comments "Incomplete Address".</i>
12	<i>Satyam Enterprises</i>	18.11.2015	<i>Reminder sent on 24.02.2016. Received back with adverse postal comments "No such person".</i>
13	<i>Shiva International</i>	18.11.2015	<i>Reminder sent. Received back with adverse postal comments "No such firm".</i>
14	<i>Techno Sales Corporation</i>	18.11.2015	<i>Return back with adverse postal comments "Incomplete Address".</i>
15	<i>Vishal Enterprises</i>	18.11.2015	<i>Return back with adverse postal comments "Incomplete Address".</i>
16	<i>Yojna Sales (India)</i>	18.11.2015	<i>Return back with adverse postal comments "Left"</i>
17	<i>Nihal Chand Diwan chand</i>	18.11.2015	<i>Return back with adverse postal comments "Incomplete Address".</i>
18	<i>Shree Balaji Enterprises</i>	18.11.2015	<i>Return back with adverse postal comments "Incomplete Address".</i>
19	<i>Shri Ram Enterprises</i>	18.11.2015	<i>Return back with adverse postal comments "Left"</i>
20	<i>Vandana International Export (Jaipur)</i>	18.11.2015	<i>Received on 30.11.2015, Reply received but the firm does not know to Mr. Narinder Kumar Anand or Himalayan Enterprises</i>

3. The Assessing Officer also noted that the one of the party Vandana International Export (Jaipur) vide its reply dated 27.11.2015 categorically denied any kind of financial or trade transaction with the assessee. The Assessing Officer, therefore, observed that it was evident that the assessee's sales/sundry debtors were not confirmed by the respective parties. He observed that notices were issued to large number of parties to verify the sales/purchases and sundry debtors/creditors, however, all the notices remained uncomplished with or were received back with adverse postal comment which was highly improbable. In the case of the assessee, none of the sundry debtors had confirmed their transactions and even one party categorically denied any financial/trade link with the assessee. The Assessing Officer considering all the material facts on record rejected the books of accounts of the assessee and assessed the gross profits of the assessee at 2% of gross sales.

4. Being aggrieved by the aforesaid order of the Assessing Officer, the assessee preferred appeal before the Ld. CIT(A).

5. Before the Ld. CIT(A), it was pleaded that the assessee had maintained audited books of account and various statutory taxes were paid on the purchases/sales and that books of accounts of the assessee have been wrongly rejected by the Assessing Officer. It was also pleaded that estimation of the gross profit @ 2% of the sales was on higher side. That there was no comparative data available to the Assessing Officer to assess the gross receipts @ 2%. However, the Ld. CIT(A) did not get convinced with the submissions of the assessee and dismissed the appeal of the assessee, observing as under:-

6.3.1 The Appellant has taken four grounds of appeal related to the addition of Rs. 1,54,02,266/- against computation of gross profits @ 2% of the sales by the Assessing Officer. The Assessee is engaged in the business of trading of tobacco under the name & style M/s Himalayan Enterprises situated in Burali, Chandigarh,. The Assessing Officer observed that the gross profit declared by the Assessee was @ 0.13% of total purchases. In the assessment order, the Assessing Officer has noted that the notices issued by him to the sundry creditors / sundry debtors remained unanswered. The parties did not confirm the accounts. The notices in respect of sundry debtors were received back with adverse postal comments. Only two parties sent the replies which were incomplete / defective. The Assessing Officer asked the Assessee to produce the parties to prove the sales / purchases. Nobody appeared from the parties. One sundry debtor M/s Vandana International Exports, Jaipur denied to have done any business with the Assessee. Two sundry creditors namely M/s Kay Pan Fragrance Private Limited and M/s Kay Pan Masala Private Limited sent incomplete

confirmation. The Assessing Officer asked the Assessee to show cause why books of account be not rejected as per provisions of section 145(3) of the I.T. Act. According to the Assessing Officer GP @ 0.13% was very low. despite the fact that no significant expenses were incurred. On page 4 & 5 of the assessment order, the Assessing Officer has prepared the list of the parties which did not reply the notices sent by him with the remarks on the compliance. The Assessing Officer has highlighted the reply from M/s Vandana International Exports that they did not even know Mr. Narender Kumar Anand Prop. M/s Himalayan Enterprises and had not entered into any financial or trade transactions. The Assessing Officer further commented that the purchases are made mainly from two parties and sales have been shown to non-existing and fictitious parties. Notices in 100% cases remained uncomplied with. The Assessee. did not reply to the show cause, notice issued by the Assessing Officer with regard to invoking the provisions u/s 145(3) of the I.T. Act. Accordingly, the Assessing Officer rejected the book results u/s 145(3) and applied GP rate of 2% on the gross sales. The Assessing Officer further observed on the perusal of sale / purchase bill submitted, by the Assessee that the products are sold @ Rs.1.50 to Rs.2.50 per packet, above the purchase price. The Assessing Officer concluded that the gross profit is in the range of 2 to 3 percent on the products. Exact matching of sale / purchases is not possible as no detailed description of the product was available. The sales declared by the Assessee were Rs.77,01,13,308/- on applying GP rate of 2%, the gross profit has been worked out at Rs.1,54,02,266/-. Thus, the Assessing Officer has made the addition of Rs.1,44,13,587/-.

6.3.2 In the written arguments, the Ld. AR for the Appellant has stated that mere non confirmation or partial confirmation of the statement of account by the sundry debtors / creditors cannot be sole ground of rejection of books. If the purchases are found genuine, by the Assessing Officer, the sales cannot be doubted. In para 2 of the written submission . dated 15.09.2017, the Appellant has given the margin details at the level of company, distributor, wholesaler, salesman and panwari. But the figures supplied by the Ld. ARs have not been supported by the relevant facts and documents. The Ld.

ARs have given the example of M/s Kothari Products Limited - manufacturer of gutkha, tobacco and pan-parag to show that their margin is 2.39%. Similarly, the margin in the case of M/s Tirupati Fragrances Private Limited relating to F.Y. 2012-13 was 3.6.5%. It is argued that these two- companies spend a lot on advertisement. If tobacco (packed) price is Rs.2/ per pouch then cost of* consumption is Rs.1.91 and the profit is 0.046 Paise per pack i.e. 2.3%. It is further submitted that the position of further companies in this trade is same. It is argued that the above margins are for the manufacturer. The Assessing Officer is not entitled to make a pure guess with reference to any evidence or material. There must be something more than mere suspicion to support an assessment order u/s 143(3). Since the Assessee is the first stage person in the marketing sale and has to take care of chunk of profit in supply chain, therefore, the GP earned by him is in consonance and agreement with his trade practices and beyond doubt.

6.3.3 I have gone through the relevant facts of the case and submission of the Appellant. The Assessing Officer has admitted that purchases are from two parties namely M/s Kay Pan Fragrances Private Limited and M/s Kay Pan Masala Private Limited. The confirmations from these two parties, though incomplete, were received. But the major problem was with respect to the confirmation from the sundry debtors in respect of which it is stated by the Assessing Officer that none of these parties confirmed the transactions with the Assessee. The letters sent to them were received back either for the reason that the addresses were incomplete or the party had left the premise or the person is not traceable. One party M/s Vandana International Exports completely denied any transaction with the Appellant. This goes to show that the sales are not verifiable in respect of the Assessee. I not convinced with the argument of the Ld. AR that the Assessing Officer could alternatively issue summons to the parties for inquiry. If the parties are not existing on the given addresses or the addresses are incomplete or they did not comply with the notices for any other reason, how they will comply with other notices. Even no spot verification is possible on the given facts. Even the Assessee could not produce, the debtors before the Assessing Officer for

verification. Then the question arises what mechanism could the Assessing Officer apply for the verification of the sales made by the Assessee. On these facts. I am quite satisfied that the provisions of section 145(3) are attracted in this case because the Assessing Officer has proved that the accounts of the Assessee cannot be accepted as correct or complete. The Ld. ARs for the Appellant have demonstrated the net profit rate of 2.39% and 3.65% in the case of M/s Kothari Products Limited and M/s Tirupati Fragrances Limited pertaining to F.Y. 2012-13 relevant for A.Y. 2013-14 respectively. Obviously, these companies are manufacturers and the margins earned by them cannot be compared with that of a whole seller of the products. But even the Assessee has not given any comparison of the gross profit rates earned by other whole sellers in the business of the trading of tobacco. Then I find that the Assessing Officer was quite justified in taking the GP rate of 2% on the gross sales declared, by the Assessee. It is also to be remarked here itself that the only party which replied the notice of the Assessing Officer denied any transaction, with the Assessee. On these facts and in the circumstances, it is held that the sales figures declared by the Assessee are not reliable at all. In the absence of rebuttal by the Ld. ARs for the Appellant by giving comparative cases showing the profit in the range shown by the Assessee, I do not have any basis to interfere with the order of the Assessing Officer. Though the comparison of the manufacturers with the Assessee may not be so good for the reason that two activities are different, the profits shown by him show some indication in this line of business. Generally, the profit margin in this line of business is higher than one shown by the manufacturer. Based on the above facts and figures, I uphold the decision of the Assessing Officer and confirm the consequential addition of Rs. 1,44,13,587/-. All the grounds are decided accordingly.

(confirmed : Rs.1,44,13,587/-)

7. In the result, the appeal is dismissed.”
6. Being aggrieved by the aforesaid order of the Ld. CIT(A), the assessee is in appeal before us.

7. We have heard the rival contention and gone through the record. It is to be noted that in this case, the assessee has shown very less profit as against huge turnover. Notices were sent to the parties to verify the purchases/sales. Notices were also issued to the sundry debtors and creditors. None of the sundry debtors confirmed the transactions. Even, most of the notices were received with report of the postal authority “no such firm”. Even one of the party namely Vandana International Export (Jaipur) has categorically denied any kind of financial or trade transaction with the assessee. Under such circumstances, in our view, the action of the Assessing Officer in rejecting the books of accounts was justified. Further, though there was no comparative data available regarding the gross profit in respect of wholesalers in Tobacco products, however, the Assessing Officer had observed that in case of manufacturers namely Ms/ Kothari Products Limited, its margin was 2.39%. In case of M/s Tirupati Fragrances Limited pertaining to Financial Year 2012-13, its margin was 3.69%. However, the assessee did not provide any comparative data in respect of wholesaler of the Tobacco products. Considering the profit rate of the

manufacturers, the Assessing Officer estimated the gross profit rate of 2% on the gross sales declared. The Ld. CIT(A) has also elaborately discussed and justified the action of the Assessing Officer for which we do not find any reason to interfere with. At this stage, the Ld. Counsel for the assessee has submitted that the assessee may be given the deduction of the statutory taxes paid /CST. We do not find any justification in this respect as while estimating the gross profits, all the expenditures including the taxes paid have been taken into consideration. There is no merit in the appeal of the assessee and the same is accordingly dismissed.

8. In the result, the appeal of the assessee is dismissed.

Order was pronounced in the Open Court on 01/10/2021.

Sd/-

(R.K.PANDA)
ACCOUNTANT MEMBER

Sd/-

(SANJAY GARG)
JUDICIAL MEMBER

Shekhar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)