

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRIPAWAN SINGH, JM & DR. A.L.SAINI, AM
आयकरअपीलसं./ITA Nos.3163/AHD/2016
(निर्धारणवर्ष / Assessment Year: 2013-14)
(Virtual Court Hearing)

M/s Hanuman Cultivation Pvt. Ltd., 396, Kamat Industrial Estate, Veer Savarkar Marg, Prabhyadevi, Mumbai-400025	Vs.	The Income Tax Officer, Ward-Silvassa
स्थायीलेखासं./जी आइ आरसं./PAN/GIR No.: AACCH 0995 A		
(Assessee)		(Respondent)

आयकरअपीलसं./ITA Nos.3164/AHD/2016 and 3011/AHD/2016
(निर्धारणवर्ष / Assessment Year: 2012-13)

M/s Bajrang Farming Pvt. Ltd, 396, Kamat Industrial Estate, Veer Savarkar Marg, Prabhadevi, Mumbai-400025	Vs.	The Income Tax Officer, Ward-Silvassa
The Income Tax Officer, Ward-Silvassa		M/s Bajrang Farming Pvt. Ltd. 102, Silver Park, Plot No. 5, S.No.6, Vanmali Park, Khanvel Road, Silvassa
स्थायीलेखासं./जी आइ आरसं./PAN/GIR No.: AADCB 5530 A		
(Assessee)		(Respondent)

आयकरअपीलसं./ITA Nos.3165/AHD/2016 and 3013/AHD/2016
(निर्धारणवर्ष / Assessment Year: 2013-14)

M/s Uday Plantation Pvt. Ltd, 396, Kamat Industrial Estate, Veer Savarkar Marg, Prabhadevi, Mumbai-400025	Vs.	The Income Tax Officer, Ward-Silvassa
The Income Tax Officer, Ward-Silvassa		M/s Uday Plantation Pvt. Ltd. 105, Everest Industrial Estate Near 66 KVA Power Sub Station, Aml, Silvassa
स्थायीलेखासं./जी आइ आरसं./PAN/GIR No.: AABCU 0192 M		
(Assessee)		(Respondent)

आयकरअपीलसं./ITA Nos.3166/AHD/2016
(निर्धारणवर्ष / Assessment Year: 2013-14)

M/s Intellectual Trades Pvt. Ltd., 396, Kamat Industrial Estate, Veer Savarkar Marg, Prabhyadevi, Mumbai-400025	Vs.	The Income Tax Officer, Ward-Silvassa
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स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AACCI 2998 E		
(Assessee)		(Respondent)

आयकरअपीलसं./ITA Nos.3167/AHD/2016
(निर्धारणवर्ष / Assessment Year: 2013-14)

M/s Athwart Trading Pvt. Ltd., 396, Kamat Industrial Estate, Veer Savarkar Marg, Prabhadevi, Mumbai-400025	Vs.	The Income Tax Officer, Ward-Silvassa
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAICA4562E		
(Assessee)		(Respondent)

आयकरअपीलसं./ITA Nos.3168-3169/AHD/2016 and 3010/AHD/2016
(निर्धारणवर्ष / Assessment Years: 2012-13 & 2013-14)

M/s Eloquent Traders Pvt. Ltd, 396, Kamat Industrial Estate, Veer Savarkar Marg, Prabhadevi, Mumbai-400025	Vs.	The Income Tax Officer, Ward-Silvassa
The Income Tax Officer, Ward-Silvassa		M/s Eloquent Traders Pvt. Ltd. Chamunda Darshan Building, Near Yogi Hospital, Kilvani Naka Silvassa
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AACCE3730C		
(Assessee)		(Respondent)

आयकरअपीलसं./ITA Nos.3170-3171/AHD/2016
(निर्धारणवर्ष / Assessment Years: 2012-13 & 2013-14)

M/s Eremurus Trading Co. Pvt. Ltd., 396, Kamat Industrial Estate, Veer Savarkar Marg, Prabhadevi, Mumbai-400025	Vs.	The Income Tax Officer, Ward-Silvassa
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AACCE3859 J		
(Assessee)		(Respondent)

**आयकरअपीलसं./ITA Nos.3172, 3004/AHD/2016 and ITANo.3173,
3002/AHD/2016
(निर्धारणवर्ष / Assessment Years: 2012-13 & 2013-14)**

M/s Glean Trading Pvt. Ltd, 396, Kamat Industrial Estate, Veer Savarkar Marg, Prabhadevi, Mumbai-400025	Vs.	The Income Tax Officer, Ward-Silvassa
The Income Tax Officer, Ward-Silvassa		M/s Glean Trading Pvt. Ltd. Vraj Darshan, Opp. Panchayat Bhawan, Masat Road, Samarvani, Silvassa
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AADCG 7658 Q		
(Assessee)		(Respondent)

Assessee by :Shri Priyavrat Gupta - CA
Revenue by : Shri Sreenivas T Bidari, CIT-DR &
Ms. AnupamaSingla – Sr.DR

सुनवाईकीतारीख/ **Date of Hearing** : 06/09/2021
घोषणाकीतारीख/**Date of Pronouncement**: 25/10/2021

आदेश / ORDER

PER BENCH:

Captioned are the sixteen appeals filed by different assessees and Revenue, pertaining to Assessment Years (A.Y.) 2012-13 and 2013-14,are directed against the separate orders passed by the Learned Commissioner of Income Tax (Appeals)-Valsad [*Id.CIT(A) for short*], which in turn arise out of separate assessment orders passed by the Assessing Officer under section 143(3)/144 of the Income Tax Act, 1961 (herein after referred to as “the Act”).

2.Out of these sixteen appeals, eleven appeals pertain to different assessees, and five appeals pertain to Revenue (Departmental Appeals). In all eleven appeals of different assessees, a common and identical issue has been raised which is that learned CIT(Appeals) erred in upholding the addition of 1% of gross profit, against the gross profit declared by assessee in books of accounts, say 0.07%.In all five appeals of Revenue (Departmental Appeals), a common and identical issue has been raised which is that learned CIT(Appeals) erred in reducing the gross profit from 3% (gross profit, addition made by AO) to 1% of gross profit.

Therefore, in nutshell the issue before us is that learned assessing officer made addition @ 3% of gross profit, on appeal, Id CIT(A) has reduced to 1%, therefore, the Revenue is in appeal before us and prayed the Bench that addition made by the assessing officer @ 3% of gross profit, should be sustained. The different assesseees are in appeal before us and prayed the Bench that addition sustained by Id CIT(appeals) @ 1% of gross profit should be reduced further to the extent of gross profit declared in books of accounts of assesseees. Gross profit declared by different assesseees in their books of accounts vary between the range of 0.01% to 0.07%.

3. From the above, it is vivid that since, the issues involved in all the appeals are common and identical; therefore, these appeals have been heard together and are being disposed of by this consolidated order. For the sake of convenience, the grounds as well as the facts narrated in ITA No.3172/AHD/2016, for assessment Year 2012-13 in the case of M/s Glean Trading Pvt. Ltd., have been taken into consideration for deciding the above appeals *en masse*.

4. At the outset, Id Counsel for the assessee informs the Bench that additional grounds raised by the assesseees are not pressed, therefore, we dismiss them as not pressed.

5. Grounds of appeal raised by the assessee in lead case in ITA No.3172/AHD/2016, for the A.Y. 2012-13, are as follows:

"1. The Learned Commissioner of Income Tax (Appeals)-Valsad ["CIT(A)"] on the facts of the case and in law, erred in upholding the addition of 1% of gross profit in assessee's total income.

The assessee respectfully submits that its gross profit of 0.012%, as shown by the audited financial statement, is correct and the addition confirmed by the CIT(A) should be deleted."

6. The assessee has also raised additional following grounds:

"Additional Ground:

Ground.3: "That assessment order was passed without affording proper opportunity of hearing to the Assessee and hence the additions made therein are illegal, bad in law and without jurisdiction"

Ground 4: "That, without prejudice, the Assessee was prevented by sufficient cause from producing details and evidences during the assessment as well as appellate proceedings"

Note: These additional grounds were not pressed by the assessee.

7. The relevant material facts, as culled out from the material on record, are as follows. The Assessee-company filed its return of income on 20.09.2012 through electronic filing system, declaring total income at Rs.11,065/-. Thereafter a notice u/s 143(2) of the Act was issued on 07.08.2013, duly served upon the assessee through the postal authority on 17.09.2013. The assessee furnished the copy of audit report, audited profit and loss account with the copy of audited balance-sheet but the assessee did not furnish books of accounts, purchase invoices, sales invoices, expenses details etc. A notice under section 142(1) of the Act dated 11.09.2014 was issued alongwith the questionnaire. In response to the notices issued u/s 143(2) r.w.s. 142(1) of the Act, Shri Amritlal Tiwari an employee of the assessee-company has furnished the details. The Assessing Officer observed that assessee-company is engaged in the business of trading of textile goods and investment. Perusal of the audited accounts, it was noticed by the AO that during the year, the assessee has declared gross profit at Rs.2,87,164/- on the total turnover of Rs.2,39,05,01,881/- which comes to 0.012% as against at Rs.1,79,779/- on the total turnover of Rs.3,20,67,120/- which comes to 0.561% shown in the immediately preceding year. Since the assessee repeatedly failed to produce the books of account as well as to furnish the details called for. Since no details in respect of payments made towards purchases and payments received towards sales were filed by assessee, therefore vide letter dated 20.02.2015 of AO, the assessee was asked to show cause as to why audited book result should not be rejected as per the provisions of section 145(3) of the Act and as to why the gross profit @ 3% on total sales of Rs.2,39,05,01,881/- which comes to the amount at Rs.7,17,15,056/- should not be estimated and difference amount of gross profit be added back to the total income of the assessee-company for the year under consideration.

8. In response to the notice of the assessee, the assessee has neither furnished any of the mandatory documents in support of the genuineness of the business carried out nor furnished any reply. The assessee has not furnished even electricity bills, it proves that, it is a surprise things that, the statutory provisions of section 44AA of the Act, by which every assessee have to maintain books of account, which has been violated, however, the books of account audited as per the provisions of section 44AB of the Act, despite of this, the books of accounts were not submitted before the assessing officer. **The assessing officer, while going through details submitted by the sellers parties and details available on record it was noticed that assessee-company had made all transactions of purchases and sales to its group/associate concerns only. It is surprising to note that during the year under consideration, there was no bank account opened by the assessee. Whatever purchases made by the assessee-company are shown as creditors so also sales.**

9. During the assessment stage, sufficient opportunities were granted to the assessee to produced books of accounts, however, assessee failed to produce the books of account for verification and also failed to furnish the submissions as called for by the AO. Though the Accountant of the assessee attended before the AO but he used to say one or another excuses before the assessing officer. **It is pertinent to mention here that the assessee's accountant has furnished the copy of audit report, however he could not produce the books of account before the assessing officer for verification in spite of sufficient opportunities granted.** The assessing officer noticed that during the year under consideration, the assessee-company has shown gross profit ratio at 0.012%, which is on very lower side considering the nature of business carried out by the assessee-company i.e. trading of fabrics. The assessing officer was of the opinion that normally, in the line of textile trading, the gross profit ratio ranges from 2% to 5%.

Since the assessee failed to furnish its books of account and details called for, the completeness and correctness of the books of account the low gross profit ratio,

the books of the assessee cannot be relied upon and consequently the book result is also not true and correct. It is not difficult to imagine or visualize the reasons for which the assessee has deliberately refrained from producing of books of account till the very last stage of the assessment proceedings. The reason being that the books of account were not good enough to pass the test of verification of the Assessing Officer. It needs to be appreciated that verification of the books of account is a primary and fundamental tool for finalizing the assessment. If the assessee chooses to deny the Assessing Officer the opportunity to do so by willful non-production of the books of accounts, there is no way the books results could be accepted. Hence the Assessing Officer was left with no other alternate but to reject the books of account u/s 145(3) of the Act and the assessment is proceeded with to the best judgment of the undersigned as provided u/s 144 of the Act. Therefore, the gross profit of the assessee was estimated by assessing officer @ 3% against the gross profit shown by the assessee at 0.012%. The gross profit shown by the assessee is Rs.2,87,164/- whereas the estimated gross profit works out to Rs.7,17,15,056/- and the difference amount of Rs.7,14,27,892/- (Rs.71715056 – Rs.287164) was added back to the total income of the assessee.

10. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before Id. CIT(A) who has partly allowed the appeal of assessee. Aggrieved, the assessee, is in appeal before us.

11. Learned Counsel submitted before the Bench that the facts of the assessee are similar to the cases of M/s Hari Om Agro Product Pvt. Ltd., where the CIT(A) has upheld the estimation of gross profit at 0.5% against 3% estimated by the Assessing Officer. The sum and substance of the arguments advanced by the Learned Counsel is that the gross profit declared in audited profit and loss account should be considered for disallowance. Therefore, Id Counsel prays the Bench that addition sustained by Id CIT(A) should be deleted and gross profit rate mentioned in the books of accounts may be sustained.

12. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

13. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. At the outset, we would like to mention that there is a typographical error in assessment order in quoting section 143(3) instead of section 144 of the Act. We note that in substance, the assessing officer has passed the order under section 144 of the Act after rejecting assessee's books of accounts, however, assessing officer, by mistake has mentioned section 143(3) instead of section 144, on the face of the order, which should be ignored being a typographical error. We have gone through the assessment order and noted that during the assessment proceedings the assessee did not furnish books of accounts before the assessing officer for his verification. Although, the assessee has submitted audit report. The audit report is made with help of books of accounts. It means there is books of accounts with the assessee but he did not wish to furnish before the Assessing Officer for his verification. Why the assessee chooses not to submit books of accounts before the assessing officer, the possible reason could be that these books of accounts may be defective and contain errors, which the assessee wants to hide by not submitting these books of accounts before the assessing officer for his verification? We note that in scrutiny assessment under section 143(3) of the Act, the Assessing Officer has to examine books of accounts. We note that assessee also did not submit purchase invoices, sales invoices, expenses bills and vouchers before the Assessing Officer, therefore, assessing officer has rightly rejected the books of accounts of the assessee. The estimation of gross profit was made by the Assessing Officer and completed the assessment by adopting 3% gross profit on the total turnover during the year. We note that assessee submitted during the appellate stage that the facts of the assessee's case are similar to the cases of M/s Hari Om Agro Product Pvt. Ltd., where the CIT(A) has upheld the estimation of

gross profit at 0.5% against 3% estimated by the Assessing Officer. Similarly in the case of M/s Jalaram Cultivation Pvt Ltd., the CIT(A) has estimated the gross profit at 1% against the gross profit of 3% estimated by the Assessing Officer. From the record, it emerges that the assessing officer has rejected the books of account and estimated the gross profit of the assessee company at 3% on total turnover of Rs.239,05,01,881/- which comes to Rs.7,17,15,056/- whereas the assessee has declared gross profit of Rs.2,87,164/-. Therefore, the difference between the two of Rs.7,14,27,892/- was added to the income.

14. The Learned CIT(A) noted that assessee is a private Ltd. Company and its books are duly audited under the provisions of the Companies Act 1956. The required tax reports were filed with the assessing officer along with annual accounts which were submitted to other statutory authorities also like Company Law Department and others. The very nature of business carried on by the assessee company is trading of Textile Fabrics and the gross profit ratio depends upon the demand and supply conditions prevailing in the market. During the year, the gross profit adopted by the assessing officer at 3% and the transactions are mostly with the group associates. In fact the whole controversy revolves around the estimation of gross profit at 3% of turnover. The assessee contested that the book result of 0.012% gross profit is in tune with the line of business activities. **The Id CIT(A) examined the profit and loss account of the assessee and noted that total expenditure other than purchases mentioned in the profit and loss account, is a negligible amount of Rs.2,71,150/- for business turnover of Rs.2,39,05,01,881/-. The breakup of these expenses also shows that no expenses were recorded towards transportation. It simply implies that the transactions of purchase and sales are made through book entry. Needless to say that no physical transfer of goods has taken place in view of the fact that there was no transportation expenses recorded.**

15. Therefore, considering these facts, Id CIT(A) observed that action of estimating of gross profit by the Assessing Officer was appropriate and hence was upheld by Id CIT(A). But at the same time the fact of fairness and

justification in the scale of estimation of gross profit cannot be obliterated. It stirs one's consciousness and call for the fair estimation of the gross profit. The Ld CIT(A) noticed that entire transactions were made through book entries and without any physical transfer of goods. The assessing officer has not disputed about the veracity of the transactions. Therefore, Id CIT(A) was of the view that 1% to 2% on profits may be estimated depending upon the market situation in such cases. The Id CIT(A) also noted that all transactions in assessee's case are with the associated concerns and no physical transfer of goods took place. In addition, expenses recorded are abnormally on the lower side and the turnover shown is large. Under these circumstances the profit cannot be estimated at a normal market rate. In fact, it calls for appropriate rate. The Id CIT (A) held that it is not relevant at this juncture as to what prompted the assessee to resort to book adjustment mechanism to show high purchase and sales but the essence is the recorded transactions must suffer the rigors of tax liability. After considering all the facts and circumstances of the case, the Id CIT(A) held that a fair and justifiable gross profit rate should be adopted and which should be 1% of the total turnover which will meet the ends of justice. Therefore, Id CIT(A) sustained the addition at the rate of 1% of the total turnover.

16. It is well settled that in a best judgment assessment there is always a certain degree of guesswork. No doubt the authorities concerned should try to make an honest and fair estimate of the income even in a best judgment assessment and should not act totally arbitrarily. Department must act judiciously, while passing the order under section 144 of the Act and must be guided by judicial consideration and by rule of justice, equity and good conscience. And also that there must be honest and fair estimate of the proper figure of assessment, for which consideration of local knowledge and repute, besides the previous returns an assessment of the assessee concerned, and all other matters must be taken into account for fair and proper estimate which of course, would fall in the category of guesswork, but a honest guesswork.

In the assessee's case under consideration, we note that assessee did not submit books of accounts. On examination of the profit and loss account of the assessee, the Id CIT(A) noted that total expenditure other than purchases mentioned in the profit and loss account, is a negligible amount of Rs.2,71,150/- for business turnover of Rs.2,39,05,01,881/-. Therefore, books of accounts of the assessee cannot be believed. The breakup of these expenses also shows that no expenses were recorded towards transportation. With negligible amount of transportation cost, how the assessee has achieved turnover of Rs.2,39,05,01,881/-? Therefore, it simply implies that the transactions of purchase and sales are made through book entry. Needless to say, that no physical transfer of goods has taken place in view of the fact that there was no transportation expenses recorded. Hence, we are of the view that Gross Profit rate at 1% sustained by Id CIT(A) is quite reasonable.

17. We have already noted that estimate should be an honest estimate, though arbitrariness cannot be avoided in such an estimate. At this juncture, we would like to quote golden words of Hon'ble justice H. R. Khanna from the decision of CIT Vs. Simon Carves Ltd. (1976) 105 ITR 212 (SC) where applying the legal maxim of **ex majorie cautela** (out of abundant precaution) he said that:

"the taxing authorities exercise quasi-judicial powers and in doing so they must act in a fair and not in a partisan manner. Although, it is a part of the duty to ensure that no tax which is legitimately due from an assessee should remain unrecovered, they must also at the same time act in a manner that might indicate scales are weighed against the assessee. We are wholly unable to subscribe to the view that unless those authorities exercise the power in a manner most beneficial to the revenue and subsequently most adverse to the assessee they should be deemed not have exercised it in a proper and judicial manner."

We note that there is gross failure on the part of the assessee, as the assessee has deliberately refrained from producing the books of account till the very last stage of the assessment proceedings. The reason being that the books of account were not good enough to pass the test of verification of the Assessing Officer. It needs

to be appreciated that verification of the books of account is a primary and fundamental tool for finalizing the assessment under section 143(3) of the Act. Therefore, in the light of the judgment of the Hon`ble Apex Court in the case of CIT Vs. Simon Carves Ltd (supra), and taking into account the assessee`s facts, as narrated above, we are of the view that estimation made by Id CIT(A) is based on sound reasoning. That being so, we decline to interfere with the order of Id. CIT(A) in sustaining the additions at the rate of 1% of gross profit. His order on these additions are, therefore, upheld and the grounds of appeal of the assessees, as well as Revenue are dismissed.

18. We have adjudicated the Assessee`s case by taking the lead case in ITA No.3172/AHD/2016, for the A.Y. 2012-13. Our observations made in ITA No.3172/AHD/2016, for the A.Y. 2012-13, shall apply *mutatis mutandis* to the aforesaid other appeals of Assesseees and as well as Revenue.

19. In the result, all the eleven different assesseees appeals are dismissed as well as Revenue`s cross-appeals are also dismissed. A copy of the instant6 common order be placed in the respective case file(s)

Order is pronounced in the open court on 25/10/2021 by placing the result on the Notice Board as per Rule 34(5) of the Income Tax (Appellate Tribunal) Rule 1963.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सुरत/Surat/दिनांक/ Date: 25/10/2021
DKP Outsourcing Sr.P.S.

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

//True Copy//

By Order

Assistant Registrar/Sr. PS/PS