

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER  
(Hearing in Virtual Court)

**ITA Nos'.21/SRT/2017 & ITA No.571/SRT/2018**  
**For A.Y's: 2013-14 & 2014-15**

Global Syntex, 208, GIDC, Pandesara, Surat – 395003. Email: <a href="mailto:surat406@gmail.com">surat406@gmail.com</a> PAN: AACFG 9622 Q	Vs	The Deputy Commissioner of Income Tax, Circle-2(3), Surat.
Assessee / appellant		Revenue / respondent

**ITA No.191/SRT/2019**

**For A.Y. 2012-13**

The Deputy Commissioner of Income Tax, Circle-2(3), Surat.	Vs	Global Syntex, 208, GIDC, Pandesara, Surat – 395003. Email: <a href="mailto:surat406@gmail.com">surat406@gmail.com</a> PAN: AACFG 9622 Q
Assessee / appellant		Revenue / respondent

Assessee by	Shri Bharat Jhaveri – Advocate
Revenue by	Shri Deependra Kumar – Sr.DR
Date of hearing	26.10.2021
Date of pronouncement	01.11.2021

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. These three appeals out of which two appeals by assessee for the assessment years (A.Y.) 2013-14 and 2014-15 against the order of ld. CIT(A)-1, Surat and third appeal by Revenue against the order of Ld.CIT(A)-1, Surat dated 23.01.2019. Since the certain facts in all appeals are common, therefore for maintaining consistency of all appeals were clubbed, heard together and are

decided by consolidated order. In ITA No.21/SRT/2017, appeal for A.Y.

2013-14, the assessee has raised following grounds of appeal:

- “1. *That on facts and in law, the learned CIT (A) has grievously erred in confirming the rejection of books of accounts u/s.145 of the act.*
2. *That on facts and in law, the learned CIT(A) has grievously erred in confirming the addition of Rs.38,40,763/- made on account of low gross profit.*
3. *The appellant craves leave to add, alter, amend any ground of appeal.”*

2. Brief facts of the case are that the assessee is engaged in the business of dying and printing of job work basis. The assessee filed its return of income for the A.Y. 2013-14 on 28.09.2013 declaring Nil income after setting of business loss of Rs.4,39,921/- against the income from other sources and carry forwarded of business loss and unabsorbed depreciation of Rs.29,97,290/- and Rs.47,98,831/- respectively. The case was selected for scrutiny. During the assessment, the assessing officer (AO) noted that assessee has turnover of Rs.19,87,17,900/- and gross profit of Rs.1,66,47,052/-. The assessee worked out Gross Profit @ 8.38%. In earlier years, i.e. in A.Y. 2009-10, the assessee has shown Gross Profit @10.44%. In the said year, the gross profit declared by assessee was not accepted by the AO and estimated gross profit @13.69%, which were confirmed by the ld. CIT(A). The AO on the basis of aforesaid observation issued show cause notice as to why the same Gross Profit should not be adopted. The assessee

filed its reply dated 22.02.2016. In the reply, the assessee stated that during the current financial year, the turnover of assessee is increased to Rs. 19.87 crore comparative to turnover of 2012-13 at Rs.14.64 crore. During the year, the Gross Profit of the assessee is increased from Nil in AY 2012-13 to 8.38% in AY-2013-14. The assessee also stated that in the business of dying and printing depend upon dying and printing Master. If the name of Master in the business is well-know, the assessee get more work. Moreover, there is a tough competition in the business of assessee and margin is very less. There is increase in the cost of raw material during this financial year. The assessee also explained that they are maintaining day to day purchase register as well as job receipt register. It is not possible to maintain day to day stock register as there are hundreds of colour chemicals. The assessee is maintaining inventory of stock item at the end of accounting year. The reply of the assessee was not accepted by the AO. The AO held that assessee has given a general reply in response to show cause notice. The AO rejected the books of accounts and estimated the Gross Profit @10.31% by following the order of earlier years ,thereby the AO made addition on account of low Gross profit of Rs.38,40,763/-. On appeal before the Id.CIT(A), the action of AO was upheld. Further aggrieved, the assessee filed present appeal before this Tribunal.

3. We have heard the submission of learned authorised representative (ld.AR) of the assessee and the learned senior departmental representative (ld. Sr.DR) for the Revenue and have gone through the orders of authorities below. The ld.AR of the assessee submits that the AO made addition of on account of estimating Gross Profit by following the order of earlier years. In immediately preceding year, the assessee has shown Nil percentage of profit, however, during the year under consideration, the assessee has shown good profit margin i.e. Gross Profit @8.38%. The AO adopted Gross Profit @10.31% on the basis of decision in earlier years. During the year under consideration, the cost of raw material is increased. The AO has not pointed out specific defect in the books of accounts. The assessee is maintaining all necessary record. The ld.AR for the assessee submits that for the year under consideration the turnover of the assessee was more than Rs. 19 crore. It is a matter of fact that on increase of turnover, the incidental cost increase automatically, thereby possibility of reduction of Gross Profit. The assessee has shown sufficient and good margin profit and no addition in absence of identifying any specific defect in the books of the assessee, was warranted. The ld AR also filed his short written synopsis. In the written synopsis the ld AR for the assessee specifically mentioned that in AY 2011-12, the Tribunal while estimating GP @ 10.31% held that estimation is based on peculiar

facts and should not be taken as bench mark in subsequent years. The ld.AR for the assessee prayed for deleting the entire Gross Profit additions. To support all his submissions the ld AR for the assessee also relied on the following decisions;

- ❖ Dhakeshwari Cotton Mills Ltd Vs CIT ( 26 ITR 775 SC),
- ❖ Pandit Brothers Vs CIT (26 ITR 159 Punj),
- ❖ Jhandumal Tarachand Rice Mills Vs CIT ( 73 ITR 192).

4. On the other hand, the ld.Sr.DR for the Revenue supported the order of Lower Authorities. The ld.Sr.DR further submits that during the year under consideration the AO in the show cause notice specifically mentioned that no day to day stock were maintained. As no day to day stock was maintained, therefore, the books result as well as purchase and sales register are not appears to be correct. The AO randomly examined the purchase vouchers of Vish chemicals dated 08.09.2012 entered on inward number 2040, whereas purchase bill of said company dated 24.09.2011 was entered on inward number 1996. Therefore, books of accounts were not reliable or verifiable. The AO rejected the books of accounts after giving proper show cause notice. The AO reasonable estimated the Gross Profit @10.31% as per the order of Tribunal in earlier years.

5. We have considered the rival submission of both the parties and have gone through the authorities below. In our view, a very narrow controversy is involved in the present appeal. There is no doubt that assessee Gross Profit was estimated @10.31% in A.Y. 2010-11 to 2012-13. For the year under consideration, the assessee has declared Gross Profit @8.38%. The assessee claimed that in the immediately preceding year the Gross Profit percentage was Nil and the profit of assessee increase substantially and it should be accepted as it is. We find that the Gross Profit of the assessee has been consistently adjudged being estimated @10.31% in preceding years. It is a matter of fact that there cannot be any consistent Gross Profit for several years. And on perusal of comparative chart of gross profit, we find that business of assessee in terms of turnover has increased from Rs.14.64 crore in A.Y. 2012-13 to Rs.19.87 crore in the year under consideration. The assessee claimed that incidental cost and cost of raw material is increased. We find that the assessee raised the similar plea before the AO. However, the AO has not countered such fact. Considering the fact and circumstances of the case that turnover of the assessee is increased, the estimation of 10% Gross Profit will meet the possibility of Revenue leakage and would meet the end of justice, therefore, we direct the AO to estimate the Gross Profit @10%.

6. In the result, appeal for the A.Y. 2013-14 of the assessee is partly allowed.

**ITA No.571/SRT/2018 for A.Y.2014-15 (by Assessee) :**

7. The assessee has raised the following grounds of appeal:

*“1) On the facts and circumstances of the case as well as law on subject the learned Commissioner of Income-tax (Appeal) erred in dismissing the appeal before him without giving proper opportunity to appellant which is against the natural justice hence required to be set a side..”*

8. At the outset of hearing, the ld.AR of the assessee submits that the ld. CIT(A) passed the *ex-parte* order without discussing the merit of the case and without giving fair and adequate opportunity of hearing. The assessee sought adjournment and one occasion. Adjournment was allowed, however, no further date was communicated to the assessee. The ld.CIT(A), passed the order in *ex-parte* proceedings without discussing the merit of the case. The assessee has good case on merit and is likely to succeed if the assessee is given one more opportunity to contest the hearing before the ld.CIT(A). The ld.AR for the assessee undertook to be vigilant in attending the hearing before first appellate authority.
9. On the other hand, the Sr. DR for the Revenue submits that the assessee was given ample opportunity, but the assessee failed to comply with the notice issued by the ld. CIT(A). The ld. CIT(A) left with no option, except to proceed to decide the issue and in absence of any evidence or explanation affirm the action of AO. In alternative submission, the ld.Sr.DR for the

Revenue submits that in case the Hon'ble Tribunal is deem appropriate, the assessee be directed to be vigilant and not to default in attending the proceedings and to waste the time of public authorities/ld. CIT(A).

10. We have considered the rival submission of both the parties and have gone through the orders of Lower Authorities. The ld. CIT(A) confirmed the action of AO by taking view that there is non-compliance on the part of the assessee. Before, us the ld. AR for the assessee undertook to be vigilant and to appeal before the ld. CIT(A). We, instead of going into controversy, whether the assessee defaulted in attending the proceedings before the ld. CIT(A). We find that the order of the ld. CIT(A) is not in accordance with mandate of section 250(6) of the Income Tax Act. Section 250(6) of the Act mandates that the Ld. CIT(A) while deciding the appeal is required to pass order on various grounds of appeals, decision therein on and reasons for such decision. Therefore, considering the facts and circumstances of the case, the appeal of the assessee is restored back to the file of the ld. CIT(A) to decide all the grounds of appeal on merit in accordance with law. The assessee is directed to appear before the ld. CIT(A) as and when the date of hearing is fixed and to provide all necessary evidence and information without any further delay and not to seek the adjournment without any valid

reasons. Accordingly the ground of appeal by assessee is allowed for statistical purpose.

11. In the result, appeal for the A.Y. 2014-15 of the Assessee is allowed for statistical purpose.

**ITA No.191/SRT/2019 for A.Y. 2012-13 (by Revenue):**

12. The Revenue has raised the following grounds of appeal:

- “1. *Whether on facts and Circumstances of the case and in law the ld.CIT(A) has erred in deleting u/s.271(1)(c) of the Act of Rs.51,32,8556/- on addition of Rs.1,515,01,078/- made on account of GP fall.*
2. *Whether on the facts and Circumstances of the case and in law the ld.CIT(A) has failed to appreciate the fact that the assessee failed to furnish any cogent evidence in support of his claim of fall in GP and there is a reason to believe that the assessee has furnished inaccurate particulars of income and therefore the penalty levied is justified.*
3. *Whether On the facts and circumstances of the case and in law, the Ld.CIT(A), Surat ought to have upheld the order of the Assessing Officer. It is, therefore, prayed that the order of the Ld.CIT(A)-1, Surat may be set-aside and that of the Assessing Officer's order may be restored.”*

13. Brief facts of the case are that the AO while passing the assessment order under section 143(3) on 16.02.2015, rejected the books of accounts and made Gross Profit addition by estimating Gross Profit @10.31 % thereby making addition of Rs.1,51,01,078/-. The AO also made disallowance under section 36(va) r.w.s 2(24)(x) of the Act of Rs.2,55,909/-. On appeal before the ld. CIT(A), the additions were upheld. The AO levied penalty under section 271(1)(c) of the Act on the Gross Profit estimated addition only. The AO levied penalty @100% tax sought to be evaded. The AO levied penalty

of Rs.51,32,856/- in his order dated 29.03.2017 passed under section 271(1)(c).

14. On appeal before the ld. CIT(A), the penalty order was deleted. The ld. CIT(A) deleting the order by following the order of Appellate Authority in earlier years i.e. 2010-11 and 2011-12, wherein the penalty was levied on estimating similar Gross Profit additions, thus, aggrieved by the order of ld. CIT(A), the Revenue has filed present appeal before us.

15. We have heard the submissions of ld. Sr. DR for the Revenue and ld. AR for the assessee and have gone through the orders of authorities below. The ld. Sr. DR for the Revenue supported the order of AO and prayed to restore the order of AO.

16. On the other hand, the ld. AR of the assessee submits that ld. CIT(A) deleted the penalty by following order of Tribunal in A.Y. 2009-10, 2010-11 and 2011-12. The ld. AR further submits that it is settled legal position under the law that no penalty under section 271(1)(c) is leviable on estimated addition.

17. We have considered the rival contention of both the parties and perused the order of Lower Authorities. There is no dispute that AO while passing the assessment order under section 143(3) on 16.02.2015, made addition by rejecting books of accounts and thereby made addition on estimation basis

by estimating Gross Profit @10.31%. The AO levied penalty on the said estimated additions. We find that similar penalty were levied in earlier years i.e. 2009-10, 2010-11 and 2011-12. The same was deleted by the Id.CIT(A) and on further appeal before the Tribunal, the order of Id.CIT(A) was upheld in A.Y. 2010-11 in ITA No.2936/AHD/2016 dated 23.03.2018 and A.Y. 2009-10 in ITA No.3146/AHD/2015 dated 08.01.2018 and in A.Y. 2008-09 ITA No.1686/AHD/2015 dated 09.01.2018. Considering the fact that penalty was levied on estimated additions, it is settled position under the law that no penalty under section 271(1)(c) is leviable of such estimated additions, therefore, we uphold the order of Id.CIT(A) and in deleting the penalty. In the result, appeal of the Revenue is dismissed.

18.To sum up, appeal of the Assessee for A.Y. 2013-14 is partly allowed, appeal of the Assessee for A.Y. 2014-15 is allowed for statistical purpose and appeal of the Revenue for A.Y. 2012-13 is dismissed.

Order announced on 01, Nov, 2021 at the time of hearing in virtual court hearing.

Sd/-

**(Dr ARJUN LAL SAINI)**  
**ACCOUNTANT MEMBER**

Surat, Dated: 01/11/2021 / SGR\*

Copy to:

1. Appellant
2. Respondent
3. CIT(A)

Sd/-

**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

*ITA No's.21/SRT/2017, 571/SRT/2018 & 191/SRT/2019  
for A.Y. 2013-14, 2014-15 & 2012-13  
Global Syntex, Surat*

4. CIT
5. DR
6. Guard File

By order

/ / TRUE COPY / /

Sr. Pvt. Secretary, ITAT, Surat