

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

I.T.A. No. 2821/DEL/2016 (A.Y 2021-13)

DCIT Circle-1 Ghaziabad (APPELLANT)	Vs.	Gayatri Seva Sansthan 155, G. T. Road, Panchwati, Ghaziabad PAN No. AAATG1960H (RESPONDENT)
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Assessee by :	Shri Rohit Jain, Adv
Department by:	Md. Gayasuddin Ansari, Sr. D. R.;

Date of Hearing	21.07.2022
Date of Pronouncement	26.07.2022

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the assessee for assessment year 2012-13 against the order of the Id. Commissioner of Income Tax (Appeals), Aligarh, dated 10/02/2016

2. Brief facts of the case are that, the assessee has filed return of income declaring income of Rs. 9,60,849/-. The assessment order came to be passed against the assessee by rejecting the books of accounts of the assessee and assessed the income of the assessee complying the net profit rate at 8% to the

gross turnover by making addition of Rs. 1,95,89,082/-, further made addition u/s 68 of the Act for unsecured loan of Rs. 23,49,417/- and also interest from M/s Baldev Motros Ltd. of Rs. 2,19,38,499/-, computed the total taxable income at Rs. 2,19,38,499/-.

3. Aggrieved by the same, the assessee has preferred the Appeal before the CIT(A). The Ld.CIT(A), vide order dated 10/02/2016 partly allowed the appeal by deleting the addition of Rs. 1,86,74,96/- on account of estimation of net profit @8% after rejecting the books of the assessee u/s 145 (3) of the Act.

4. Aggrieved by the order of CIT(A), the Revenue has preferred the present Appeal on the following grounds:-

“1. The Ld. CIT(A) has erred in law as well as on facts in holding that therejection of books was not only without any basis but also without confronting the same to the appellant ignoring the fact the assessee was duly confronted by the defects in the stock register and excessive expenses claimed by it which the accountant himself admitted.

2. The Ld. CIT(A) has erred in law as well as on facts in deleting addition of Rs. 1,86,74,960/- on account of estimation of net profit @ 8% after rejecting the books of accounts of the assessee U/s 145(3) of the i. T. Act, 1961.

3. The appellant craves leave to modify/amend or add any one or more ground of appeal.

4. Therefore, the order of Ld. CIT(A) may be set aside and that of the AO be restored.”

5. The Ld. DR has vehemently submitted that once the books of accounts have been rejected the Assessing Officer is well within the jurisdiction to estimate net profit @ 8% u/s 145(3) of the IT Act. Further, the Ld. DR has relied on the assessment order and justified the same.

6. Per contra, the Ld. Counsel for the assessee submitted that, there is no basis for the Assessing Officer to arrive and estimate the net profit at 8% after rejecting the books of accounts u/s 145(3) of the I.T Act. The approach of the Ld. A.O is contrary to the law and the same is based and guess work. Further submitted that, the Ld.CIT(A) has passed well reasoned order which requires no interference.

7. We have heard the parties, perused the material on record and gave our thoughtful consideration. The Ld. A.O has invoked Section 145(3) and rejected the books mainly due to quantitative and value wise figure of closing stock have not been reconciled and due to unjustified inflated expenses.

8. While dealing with the said issue in the Appellate proceedings, the Ld.CIT(A) found that the Ld. A.O. has committed an error in rejecting the books of accounts of the Assessee and thoroughly analyzed facts and came to the conclusion asunder:

“ (i) Reconciliation of Closing stock: The Appellant has explained that the A.O has drawn adverse inference only in respect of items of finished goods and no observations whatsoever have been made in respect of raw material etc. This contention of the appellant seems correct. Therefore, the correctness of the valuation of closing stock of finished goods is being analysed further.

As per the profit and loss account, the total stock of finished

goods has been declared at Rs. 63,41,550/- which consists of the following:-

	<i>Quantitative</i>	<i>Rate</i>	<i>Value</i>
<i>Valuation of finished goods at works:</i>	68.000		32.15
			2186378.2
<i>As per pending dispatch advice list:-</i>	192.420		
			4155175

The value of the finished goods lying at the works has been taken @ 32.15 per KG and this value has been arrived at by reducing the last week average sale price of Rs. 36.75 by gross profit rate of 12.50%. From the invoices copies of which are available on record, it appears that the value of the average sale price of Rs. 36.75 is quite reasonable and no adverse view can be taken in respect of the valuation of finished goods lying at works. The finished goods as per pending dispatch advice list have been separately valued as per detailed list which has been perused and analysed by me. It has been explained that these goods are consignment goods dispatched to various consignment agents and the valuation has been done on the basis of the price at which these goods have been dispatched to the respective consignment agents. Copies of the dispatch advice have been submitted which support the valuation given in the valuation chart. Thus, the valuation of the finished goods as per dispatch list comes to Rs. 4155175/- which is verifiable from the primary records.

Thus, the figure of valuation of stock of finished goods is fully reconciled. Accordingly, no adverse view can be taken for valuation

of stock of finished goods.

Unjustified inflated expenses: The A.O has observed that between 05/03/2012 to 31/03/2012, Rs. 6,00,000/- were booked in wages account which were more than double the normal monthly expenditure and the same is not correlated with the sale of manufacturing figures of the month.

In this regard, the appellant has explained that the increase in the wages is mainly due to increase in wages rates during the relevant months. The AO has rejected the appellant's reply mainly on the ground that the circular for increase of wages which has been relied by the appellant has been issued by Uttarakhand Government whereas the manufacturing unit is located in Uttar Pradesh.

In my opinion, the observations made by the AO are not very relevant as the issue of wage increase is dependent on many factors including the agreement between the union and the management. If the employer decided to pay higher wages to increase the productivity or to avoid unrest, the assessing authority cannot question such decision. The AO has not brought any material on record which would show that the claimed wages have not been paid, or such expenses are bogus. Under these circumstances, no adverse view can be taken in respect of the expenses relating to wages.

The second observation of the AO is with regard to the payment of

higher than the market rate on purchases the related party M/s Deep Chand Arya Industries. The appellant has explained that the quality of the oil supplied by M/s Deep Chand Arya Industries was superior and hence the rate paid to them cannot be compared with others. In my opinion, this is not a very significant issue. The purchase price of palm oil would depend on so many factors including prevailing market conditions and contractual obligations. A marginal difference between rates of prices paid to various parties cannot - be considered to be of much importance. In any case, the explanation given by the appellant has not been completely refuted by the AO and there is no categorical finding that the price paid to M/s Deep Chand Arya is collusive. Unless otherwise is established, the apparent has to be taken as real. In any case, a businessman is free to deal with various parties in a manner which is the most suitable for his business. In the given circumstances, no adverse view can be taken in respect of this matter.

9. By making above said analysis the Ld.CIT(A) has rightly held that, there was no ground for rejecting the books of accounts of the assessee. Once the books are accepted as correct there would be no reason to estimate the profit. Further, when the declared profit of the assessee was just Rs. 9,14,122/-, the method adopted by the A.O in applying 8% NPA and estimating the net profit at Rs. 1,95,89,082/- which is more than 20 times than the declared profit is erroneous. Therefore, in our opinion, the Ld.CIT(A) is right in deleting the addition of Rs. 1,86,74,960/- and we do not find any error or legal infirmity in the approach of the CIT (A), which requires no interference.

10. Therefore, we do not find any merit in the grounds of Appeal of the Revenue, accordingly, we dismiss the Grounds of Appeal of the Revenue.

11. In the result, the Appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 26th July, 2022

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER

Dated : 26/07/2022

R.N

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI.