

**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH, JABALPUR**

BEFORE SHRI SANJAY ARORA, HON'BLE ACCOUNTANT MEMBER &
SHRI MANOMOHAN DAS, HON'BLE JUDICIAL MEMBER

I.T.A. Nos. 181 & 182/JAB/2018
(Asst. Years: 2004-05 & 2005-06)

Sagar Tobacco Industries Pvt. Ltd., 178, Keshavganj, Sagar (MP). [PAN : AADCS 2512 F]	vs.	ACIT, Circle-1(1), Jabalpur.
(Appellant)		(Respondent)

Appellant by : Shri Abhijeet Shrivastava, Advocate
Respondent by : Shri Ravi Mehrotra, Sr. DR

Date of hearing : 08/09/2022
Date of pronouncement : 21/09/2022

ORDER

Per Bench:

This is a set of two Appeals by the Assessee for two consecutive years, being Assessment Years (AYs.) 2004-05 & 2005-06, against the separate orders of even date, i.e., 20/06/2018, by the Commissioner of Income Tax (Appeals)-1, Jabalpur ('CIT(A)', for short), partly allowing the assessee's appeals contesting its assessments under section 143(3) read with section 254 of the Income Tax Act, 1961 ('the Act' hereinafter) for the relevant years vide separate orders dated 26/12/2011.

2.1 This is the second round before the Tribunal. In the first round, the Tribunal, vide its common order dated 27/12/2010 (PB pgs.8-25), while confirming the assessment as made, i.e., estimating the turnover as well as the gross profit of the assessee's bidi manufacturing business upon rejection of book results, set aside the matter to the file of the Assessing Officer (AO) inasmuch as he had, as claimed

before it, not allowed the assessee proper opportunity to justify its book results with reference to the earlier years, as well as the comparable case cited by him.

The relevant part of the Tribunal's order reads as under:-

“6. We have carefully considered the issue. In our considered opinion, the Assessing Officer has brought out contradictions in the statement of the Director, explanation filed at the time of assessment proceedings and the audited books of accounts and the audit report filed by the assessee. The nature of business is also such that it would not be possible to maintain complete day to day records. Besides the procedure followed by the assessee was explained by the Director and the Accountant of the assessee before the Assessing Officer and no satisfactory explanation was given as to why the procedure was not followed and evidenced from the books of accounts, how the stock of Tendu Patta remained unused for the entire period and the Tendu Patta was shown as supplied by Satedaar rather than directly purchased by the assessee. The other defects pointed out by the Assessing Officer cannot be considered only the doubts and surmises by the Assessing Officer as has been erroneously held by the learned CIT(A). The Assessing Officer has also referred to the past records of the assessee while estimating the turnover and adopting the gross profit @25%. However, in view of the claim of the assessee that the assessee was not allowed proper opportunity to justify book results as compared to its result for earlier years and the book results of the similar case cited by the Assessing Officer, we consider it fair and reasonable to restore the issue to the file of the Assessing Officer with the directions that he should confront the assessee with the trading results in earlier years and also give an opportunity to the assessee to distinguish its case from the case of another Bidi manufacturer, namely, M/s. Girdharilal Kanchhedilal Kathal, of Gadarwara, and decide the issue afresh after giving proper opportunity to the assessee in view of the foregoing discussion. This ground of appeal is, therefore, allowed for statistical purposes.” (pgs. 9-10 of the Order)

2.2 The assessee in set aside proceedings merely reiterated its case, i.e., as per the earlier proceedings, without bringing any fresh facts or material on record.

The AO, accordingly, confirmed the assessment as made, observing as under:

AY: 2004-05

‘In its written reply dated 08/11/2011, the assessee simply reiterated the facts which were already submitted by it during the course of original assessment proceedings and categorically rebutted by the then AO. With regard to distinguish its case from the case of another Bidi manufactures namely M/s. Girdharilal Kanchhedilal Kathal of Gadarwara, the assessee simply stated that Gadarwara

situated at for place from the Sagar. Apart from this, no specific reasons have been given by the assessee that how its case is different from the case of M/s. Girdharilal Kanchhedilal Kathal, Gadarwara. Since no new/fresh facts have been brought on record by the assessee, I totally agree with the views and findings given by the then AO in the original assessment order. Accordingly, on the basis of the detailed reasoning given by the AO in the original assessment order, the books of accounts of the assessee company are hereby rejected applying provisions of section 145 of the IT Act, 1961. Therefore, I estimate the turnover of the company at Rs. 2,00,00,000/- on which a gross profit @ 25% is found to be reasonable, which results into an addition of Rs. 32,52,117/- to the trading result of the company.’
(pg. 8 of the assessment order)

AY: 2005-06

“In its written reply dated 08/11/2011, the assessee simply provisions of section 145 of the IT Act, 1961. Thus, as done by the then AO earlier, I also determine the Gross Profit of the company @ 25% of the total turnover of Rs. 1,23,53,840/- as against G.P. 12.94% shown. Accordingly, an addition of Rs. 14,90,403/- [30,88,460 – 15,98,056] is made to the trading result of the company.’
(pg. 5 of the assessment order)

2.3 The Id. CIT(A), in appeal by the assessee, while confirming the AO’s order in principle, adopted the formula of average of three years and, at the same time, scaled down the estimation of turnover (for AY 2004-05) to Rs. 160 lacs, i.e., from Rs. 200 lacs by the AO.

2.4 Aggrieved, the assessee is in second appeal for both the years.

3. We have heard the parties, and perused the material on record.

3.1 The only issue that survives the Tribunal’s order in the first round, which has attained finality on it’s acceptance by either side, is the estimation of the assessee’s trading results after allowing proper opportunity of being heard to the assessee, whose past results reflect a higher profit, with that for years prior to AY 2002-03 being even higher, and decline for the current year/s being not satisfactorily explained (refer paras 2.1 & 2.2 above). No improvement in it’s case having been made by the assessee in the second round, the AO proceeded to estimate the same on the basis of the material on record. While the AO, in view thereof, as well as the comparable case, estimated the gross profit at 25%, i.e., as

earlier, the Id. CIT(A) adopted an average of three years. No reason for scaling down the turnover for AY 2004-05, as indeed the profit estimate; the same having found the approval by the Tribunal in the first round, besides being not based on any material on record, has been furnished by the Id. CIT(A), whose order, *sans* any finding in the matter, thus becomes arbitrary. Be that as it may, the Revenue is not in appeal, perhaps on account of s. 268A of the Act.

3.2 The position that emerges is as under:

(Amt. in Rs. lacs)

Asst. Yr.			AO		CIT(A)	
	Sales	GP (%)	Sales	GP (%)	Sales	GP (%)
2002-03	177.68	23.17				
2003-04	147.89	20.00				
2004-05	132.60	13.18	200.00	25	160	18.78
2005-06	123.54	12.94	123.54	25	123.54	15.37

No infirmity in the impugned order/s, i.e., to the prejudice of the assessee, was pointed during hearing, for us to consider allowing any further relief to the assessee. Further, even as we find the past profit average formula as not unreasonable, we cannot accede to the working of the formula adopted by the Id. CIT(A) inasmuch as the three-year formula includes the year under reference as the third year. *How could that be?* That is, the profit for the year to be estimated, in view of non-acceptance of book results as not reliable, being included in the past average-profit formula, with reference to which therefore the said profit is being estimated. The very fact of the profit being estimated implies the same as not reliable and, therefore, is to be discarded. Upon this being observed by the Bench during hearing, Shri Shrivastava, the Id. counsel for the assessee, would submit that the assessee has since closed its business, and the very fact of steep decline in the profit for the years under reference, i.e., with reference to the immediately preceding two years, would suggest a change in the underlying facts and circumstances. Even if the assessee has not been able to substantiate the said

decline, the same cannot be wholly ignored, and some allowance for the same be allowed under the circumstances.

3.3 We, therefore, allowing some credence to the assertions made by Sh. Srivastava before us, modify the estimation of the gross profit for the two years, i.e., AYs. 2004-05 & 2005-06, at 19% & 18.75% respectively, i.e., from 18.78% and 15.37% respectively by the Id. CIT(A). It is to be noted that the decline in the disclosed result for the latest year (AY 2005-06), with reference to that for the immediately preceding year (AY 2004-05), is marginal, i.e., 0.24%. The Id. CIT(A) has failed to take note of this. The steep decline in the profit for AY 2005-06 with reference to that for AY 2004-05, as estimated per the average formula as applied by the Id. CIT(A), i.e., 3.41% [18.78 – 15.37], as against a nominal decline of 0.24% per the disclosed results, exhibits, if any was required, the inherent flaw therein, as observed hereinbefore. This faulty working is also reflected in the estimation for AY 2005-06 following the formula adopted by him being at 20.65%, i.e., on adoption of the gross profit rate of 18.78%, i.e., as determined per the profit formula itself for AY 2004-05. The incoherent results; the profit estimate for AY 2005-06 exceeding that for AY 2004-05 or, alternatively, lower by 3.4%, we may though add, is not due to anything wrong with the average formula *per se*, with which we agree in principle, but due to its faulty application. This also explains our interference in the matter. The Apex Court explained in *Kapurchand Shrimal v. CIT* [1981] 131 ITR 451 (SC) that an appellate authority has the jurisdiction as well as the duty to correct all errors in the proceedings under appeal and to issue, if necessary, appropriate directions to the authority against whose decision the appeal is preferred to dispose of the whole or any part of the matter afresh, unless forbidden from doing so by the statute. That the limit on the jurisdiction of the Tribunal is governed by the word 'thereon' occurring in s.254(1) is well-settled, and toward which reference may be made to decisions by the Apex Court, as in *Hukumchand Mills Ltd. v. CIT* [1967] 63 ITR 232 (SC); *CIT v.*

Mahalakshmi Textile Mills Ltd. [1967] 66 ITR 710 (SC). That a respondent, though not in appeal, could be allowed relief, i.e., *qua* the subject matter of appeal, is well-settled. Refer *CIT v. P.B. Corporation* [2204] 266 ITR 548, 551-552 (Guj), rendered even without reference to r.27 of the Income Tax (Appellate Tribunal) Rules, 1963, which, or r.11, do not exhaust the powers of the Tribunal (*Hukumchand Mills Ltd. (supra)*). The Apex Court, dilating on the jurisdiction of the Tribunal in *CIT v. Walchand & Co. (P.) Ltd.* [1967] 65 ITR 381 (SC), held that *the Tribunal is to deal with and determine questions which arise out of the subject-matter of the appeal in the light of the evidence, and consistently with the justice of the case.* Finally, no case for any further reduction in the turnover for AY 2004-05 stands made out before us, so that we decline interference on that count.

3.4 We decide accordingly.

5. In the result, the assessee's appeals are allowed on the aforesaid terms.

Order Pronounced in open Court on September 21, 2022

Sd/-
(Manomohan Das)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Dated: 21/09/2022

vr/-

Copy to:

1. The Appellant: Sagar Tobacco Industries Pvt. Ltd., 178, Keshavganj, Sagar (MP).
2. The Respondent: ACIT, Circle-1(1), Jabalpur.
3. The Principal: CIT-1, Jabalpur (MP)
4. The CIT(Appeals)-1, Jabalpur.
5. The Sr. DR, ITAT, Jabalpur.
6. Guard File.

By Order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Jabalpur