

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

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.9487/Del./2019
(ASSESSMENT YEAR : 2014-15)**

ACIT, Circle 60 (1),
New Delhi.

vs.

Deepak Mittal,
C/o M/s. RRA TaxIndia,
D-28, South Extension Part 1,
New Delhi – 110 048.

(PAN : AISPM6139J)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri R.S. Singhvi, CA

Shri Satyajeet Goel, CA

REVENUE BY : Shri T. James Singson, CIT DR

Date of Hearing : 16.01.2023

Date of Order : 02 .02.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the Revenue is directed against the order of Id. CIT (Appeals)-37, New Delhi dated 30.09.2019 pertaining to the Assessment Year 2014-15.

2. The grounds of appeal taken by the Revenue read as under :-

“1. On the facts and circumstances of the case, the Ld. CLT(A) has erred in deleting the addition of Rs 10,28,43,490/- made by the AO on account of on account of rejection of the books of account u/s 145(3) of the and gross profit was calculated @ 8% of total turnover for the year under consideration”

2. The CIT(A) not agree with the approach of the AO for the rejection of books of account u/s 145(3) of the Act and addition of gross profit @ 8% of the total and has given relief to the assessee by deletion of the addition for amounting Rs. 10,28,43,490/-. The impugned order of the CIT(A) is not acceptable AO was justified in assessing the income u/s 143(3) of the Act vide order dated 30.12.2016 by making addition in Income of the assessee for the year under consideration.

3. On perusal of the submitted books of account, it has been found that there are a lot of differences in this regard the AR stated that he would reconcile the differences The AR or the assessee neither produced any reconciliation for differences nor provided any bills/vouchers for the justification of his claim. As per para 6 of the assessment order the AO issued show cause on 26.12.2016 "why gross profit @ 8% of the sale be not calculated as the books of the assessee is not complete and incorrect."

4. The income of the assessee for the AY: 2013-14 was enhanced by the CIT(A) by Rs.7,12,15,150/- on account of the unexplained cash credits in the cash book which had been allegedly posted to M/s Hanuman Traders and not explained the peak thereof comes at same amount as on both January 2013. In this case the Income Tax Department filed its first appeal u/s 260 of the Act before the High Court vide 968/2018 dated 01.08.2018."

3. The assessee is an individual and is engaged in the business of trading/ distribution of ITC products under the name and style of D.K. Enterprises. The AO noted that during the course of assessment proceedings to verify the correctness of the income/expenditure, details were called for and examined. He noted that assessee was asked to produce cash book and party-wise details of purchase and sales. Assessee submitted copy of cash book for two months viz. November 2013 and March 2014 which were examined on test check basis. Further on another hearing, AO asked the assessee to produce purchase and sales register. The assessee produced the purchase register of M/s. ITC Limited. AO also asked to produce if there are other parties from whom

purchases were made. Assessee responded that it is only from ITC. AO noted that assessee provided a sales register for the month of September 2013. Thereafter, AO noted that assessee was asked to produce sales register for AY 2013-14 but no submissions were made and assessee's counsel kept taking adjournments. Thereafter, on 13.12.2016, assessee's counsel submitted the copy of sales, purchase register and cash register. On examination, all these documents i.e. purchase register, sales register and cash book, AO observed that they were very much different from the cash book and purchase register presented earlier on test check basis. AO was of the opinion that there were two different versions of the cash book and sales register provided and there was a mismatch. AO noted that assessee agreed to reconcile the same in the next hearing. However, subsequently assessee did not provide any reconciliation. AO pointed out several discrepancies in the cash book and registers etc.. Based on these differences pointed out, AO asked the assessee to show-cause as to why books of account should not be rejected under section 145 (3) of the Income-tax Act, 1961 (for short 'the Act'). Assessee's response was reproduced by the AO as under :-

"In para 2 of the above letter your goodself has stated that assessee was asked to present the P& L A/c, books of account and other documents for verification. However, vide submissions dated 19.08.2016, counsel of the assessee provided the copy of cash book for two months i.e., November, 2013 and March, 2014, and vide submissions dated 01.11.2016 he provided copy of sales register or the month of September, 2013.

In reply to the above it is submitted that assessee is maintaining his regular books of accounts, which were duly produced by the AR of the assessee before your honor as and when asked for. However, as per information of the assessee, your goodself specifically asked to submit copy of cash book for the month of November, 2013 and March 2014, which were duly provided as has been confirmed in your above referred to letter. Copy of the sale register was also submitted as per your directions. However, assessee is again producing complete books of accounts, with bills and vouchers for your Honor's kind verification.

As per knowledge of the assessee there is no difference in sales/purchases recorded, which are duly audited. Assessee is ready to mismatch if any your goodself as noticed which shall be explained by our local counsel as to the knowledge of the assessee there should not be any mismatch. It is again reiterated that since the books of accounts are duly audited and are supported with bills and vouchers, the same; may kindly be accepted."

4. However, AO was not satisfied. He repeated that assessee was not reconciling the mismatch in the figures of day-wise cash sales in the two different versions of cash book provided. He noted that assessee agreed to reconcile but did not reconcile actually. He noted that last year in assessment proceedings, assessee himself offered gross profit @ 8% of the sales to be taxed, therefore, AO proposed to tax @ 8% as gross profit on the sales. Assessee submitted that every year is a different year and in the last year, it had offered gross profit at 8% only on the sales of M/s. Hanuman Traders and not on all the sales. AO was not satisfied. He rejected the books of account and adopted 8% of the sales figures as gross profit. Accordingly, net profit arrived at was Rs.10,28,43,490/-.

5. Against this order, assessee appealed before the Id. CIT (A). Before the Id. CIT (A), assessee contested the rejection of books of account. Further, it was submitted that assessee was a large scale

distributor of ITC products and complete quantitative record in respect of purchase, sales and stock was maintained and there was no infirmity in the trading results. It was submitted that after verification of books of account, VAT return and other details, AO himself considered the sales as per audited profit & loss account. As such, there was no dispute with reference to correctness of sales. As regards the estimation of gross profit, assessee's counsel submitted that gross profit of the assessee with respect to ITC products was in conformity with past history and even in subsequent assessment years, there was no dispute with regard to sales or GP rate on ITC products sales. Ld. CIT (A) referred to chart of the assessee for the preceding years gross profits. Ld. CIT (A) gave a finding that in the year under consideration, assessee only traded in ITC products and there was no sale of any other product or party. He observed that it is not even the case of the AO that purchases and sales and corresponding trading results were not verifiable from books of account or there was any admission of gross profit @ 8%. He noted that while adopting gross profit rate of 8%, the AO was carried away by estimation of GP rate in AY 2013-14 in respect of unrecorded sales of unbranded products relating to M/s. Hanuman Traders in the year under reference. Therefore, basis of adoption of 8% gross profit rate to ITC products was not proper. Further Ld. CIT (A) observed that AO was not able to bring out any

instance where margin of profit was 8%. Ld. CIT (A) gave a finding that he has examined the sales recorded in the books of account and VAT return submitted. He agreed that some discrepancies were pointed out by the AO only with regard to certain entries in cash book for the month of November 2013 and sales register for the month of September 2013. However, ld. CIT (A) observed that it is difficult to understand as to how few mismatches or discrepancy in monthly cash book or sales register running in isolation could lead to rejection of complete books of account when the AO was not able to point out any shortcoming in the final annual figures which were duly audited. Moreover, he held that AO has not doubted the sales register. That AO could have made further enquiries from other parties but no such information was obtained. Ld. CIT (A) put emphasis on AO's acceptance of sales figures from the audited books of account, ld. CIT (A) held that it will be incorrect to hold that books of account are liable to be rejected. Further, he held that provisions of section 144 could be invoked in a case where the AO was not satisfied about the correctness or completeness of the accounts of the assessee or where the method of accounting provided in sub-section (1) or accounting standard as notified in sub-section (2) of section 145 has not been regularly followed by the assessee. He further referred to ITAT order for AY 2013-14 where 8% gross profit was offered only in

respect of sale of unrecorded goods and even in that year, gross profit @ 0.87% on sale of ITC products was accepted by the AO also. Further, Id. CIT (A) observed that AO has not brought any comparative instance to show that exclusive dealer in ITC products fetches gross profit rate to the extent of 8% keeping in mind the historical turnover and GP rate data in assessee's case. Ld. CIT (A) did not find any reason to accept gross profit rate of 8%. Accordingly, he directed that the gross profit rate adopted @ 8% by the AO is deleted.

6. Against this order, Revenue is in appeal before us. We have heard both the parties and perused the records.

7. Ld. DR for the Revenue referred to AO's order and submitted mismatches have been pointed out in the books of account which the assessee has not been able to reconcile.

8. On the other hand, Id. Counsel for the assessee submitted that only some differences in daily sales register and in the cash book on few occasion was found. That books are duly audited backed by VAT returns. That AO himself accepted the sales figure that no sales outside ITC products were found, hence he submitted that Id. CIT (A)'s order deserves to be upheld.

9. We have carefully considered the submissions and perused the records. We find that for AY 2013-14, in assessee's own case, ITAT vide

order dated 23.03.2018 has accepted 8% GP rate offered on unrecorded sale of M/s. Hanuman Traders. It is undisputed that during the current year, nothing has been found that assessee has made any sales to M/s. Hanuman Traders or any other party other than ITC. There was no whisper anywhere in the finding of AO that any sales outside the ITC products have been done. The 8% adoption of gross profit was in the previous year with regard to unrecorded sales of M/s. Hanuman Traders. The same cannot be applied for the current year as AO has not been able to point out any sales instance other than ITC. A chart has been produced before the Id. CIT (A) which reflects the percentage of profit of ITC products, the same may be referred here as under:-

Particulars	AY 2011-12	AY 2012-13	AY 2013-14	AY 2014-15	AY 2015-16	AY 2016-17
Sales relating to ITC products	58,99,60,980	68,84,82,674	111,76,84,388	136,25,33,894	151,20,31,722	138,63,60,308
Gross profit	40,24,819	60,69,832	97,84,294	85,03,858	99,02,335	114,97,795
Percentage of sales	0.68%	0.88%	0.87%	0.62%	0.65%	0.83%
Mode of assessment	143(1) (gross profit accepted)	143(3) (gross profit accepted)	143(3) (gross profit accepted)	143(3) (under appeal)	143(1) (gross profit accepted)	143(3) (gross profit accepted)

10. We find that it is established that sales are only to ITC products and GP rate of ITC has not seen much fluctuation. In these circumstances, even if the AO wants to reject the books of account, he cannot adopt any imaginary rate of profit. The profit adopted has to be from the existing line of business or assessee's past reference. Before us, the assessee's past reference as above of reflected gross profit rate shows

that current year GP declared was in consonance with assessee's trend of GP. Hence, no infirmity can be attributed to the well reasoned order of Id. CIT (A). Accordingly, we uphold the same.

11. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on this 2nd day of February, 2023.

**Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 2nd day of February, 2023
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-37, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**