

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.3636/Del/2017
Assessment Year: 2012-13

Asstt. Commissioner of income Tax, Circle – 26 (2) New Delhi	Vs	M/s. Vimoni India Pvt. Ltd. 3-D, Vandana Building, 11, Tolstoy Marg, New Delhi- 110001 PAN No.AAACV3859K
(APPELLANT)		(RESPONDENT)

Appellant by	Ms. Yamini Goutam, Sr DR
Respondent by	Sh. Ajay Wadhwa, Advocate Ms. Ragini Handa, CA

Date of hearing:	09/05/2023
Date of Pronouncement:	11/05/2023

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the revenue is preferred against the order of the order of the CIT(A)-13, New Delhi dated 31.01.2017 pertaining to A.Y. 2012-13.

2. The grievance of the revenue read as under :-

- "The Ld. CIT(A) has erred in rejecting the stand of AO of invoking Section 145(3) of the Act, rejecting the books of account of assessee, whereas in its report, the auditor has already raised question on correctness of books of accounts of the assessee."*
- "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.7,87,96,797- on account of estimation of profit, arrived by taking a net profit @1.2% taken from the average profit declared by the assessee in its*

earlier years of books of accounts."

3. *"The appellant craves for reserving the right to amend, modify, alter, add or forego any of the Ground(s) of Appeal at any time before or during the hearing of this appeal."*

3. Briefly stated the facts of the case are that the assessee filed its return of income electronically on 30.09.2012 declaring loss of Rs.11,14,79,230/-. The return was revised on 25.01.2014 at loss of Rs. 7,80,29,525/-. The assessee also reported book loss u/s. 115JB of the Act at Rs.9,07,08,455/-. The return was selected for scrutiny assessment and accordingly statutory notices were issued and served upon the assessee.

4. The assessee is engaged in the business of manufacturing of plastics goods, job works of lenses and manufacturing/ trading of metal caps. The assessee has manufacturing unit at Rajasthan, Himachal and Parwanoo.

5. On perusal of the statutory auditors report the AO formed a belief that the auditors have passed adverse comment in the manner the books of accounts have been maintained by the assessee and has also commented adversely as under :-

"(f) In our opinion and to the best of our information and according to the explanations given to us, the said financial statements give the information required by the Companies Act, 1956, in the manner so required and give a true, and fair view in conformity with the accounting principles generally accepted in India:

.....

Subject to the following :

- > *Non provisioning of the interest on term loan and on cash credit account (Refer note No.3(a)*
- > *Non provisioning of the Gratuity/ and leave encashment (Refer note No.30(b)*

- > *Non provisioning of TDS liability (Refer note No.31)*
- > *Non provisioning of debtors and creditors (Refer note No.31)*
- > *Non provisioning of bad debts (Refer note No.31)*
- > *Non provisioning of impairment loss (Refer note no.30(d))*

Note No.31 relates to unconfirmed balances of debtors and/or Creditors and the auditors have commented as under:

"Sundry Debtors amounting Rs.45,764,231 (P.Y Rs.70,215,355) are pending confirmation and reconciliation

Sundry debtors pertaining to Barotiwala (Baddi) unit amounting to Rs.28,960,415 (P.Y. Rs.51,734,063) outstanding since Oct 2011 and the Company has not made any provision for Doubtful Debts.

In case of some debtors amounting Rs.90 lacs has adjusted with credit balance of Debtors/creditors without taking confirmations from respective parties.

Sundry Creditors amounting Rs.9,402,366 (P.Y. Rs.18,176,016) are subject to confirmations and reconciliations."

6. Taking a leaf out of the adverse comments made by the auditors. The AO was convinced that the assessee is not maintaining proper records/ books of account and the accounts are not correct and complete. The AO also observed that the assessee did not produce the books of accounts and vouchers and confirmations from sundry debtors and creditors during the year under consideration.

7. The assessee was show caused to explain as to why books of account be not rejected u/s.145(3) of the Act and income determined in the manner provided in section 144 of the Act. The assessee filed a detailed reply but the same was dismissed by the AO who went on to estimate the net profit by adopting the NP ratio of A.Y. 2009-10 and assessed the total income at Rs.7,67,272/-.

8. Assessee strongly agitated the matter before the CIT(A). Before the CIT(A) the assessee gave reasons for the fall in the net profit ratio. It was argued that unit at Barotiwala was closed and the assets have been seized by the State Bank of India due to the inability of the assessee to repay the loan. It was explained that because of this seizure the auditors could not verify the fixed assets/ stocks. After considering the facts and the submission the CIT(A) was of the opinion that the AO has rejected the books of accounts solely based on the qualifications in the statutory audit report filed by the assessee. Referring to the decision of the Hon'ble Kerala High Court in the case of Vadayattu jewellery 104 STC 121 wherein it was held that the rejection of books of account are not justified in a case where the defects pointed out in the books of accounts were of general or technical nature. Drawing support from this decision the CIT(A) was not satisfied with the rejection of the books of accounts and estimation of income by the AO and accordingly directed the AO to delete the impugned disallowance.

9. Before us the DR supported the findings of the AO and read the operative part of the assessment order.

10. Per contra the Counsel for the assessee reiterated what has been stated before the lower authorities.

11. We have given a thoughtful consideration to the orders of the authorities below. Though the AO has given a categorical

finding that the assessee has not produced the books of accounts during the course of the scrutiny assessment proceedings. However, the reply dated 02.03.2015 placed at pages 157 and 158 of the paper book show that in its reply the assessee has mentioned “ books of accounts and vouchers are being produced before your Honour which may kindly be verified”.

12. Similarly vide reply dated 18.02.2015 which is at page 146 of the paper book the assessee at point 2 has mentioned “with regard to your query balance information as per query letter dated 02.01.2015 and 11.12.2013 have not been furnished. In this connection it is stated that no details are pending as per questionnaire dated 02.01.2015 and 11.12.2013”.

13. Further we find that exhibit-98 to 101 of the paper book are quantitative details of stock of each and every item dealt by the assessee.

14. In our considered opinion with these evidences on record it would be unjust on part of the AO to say that the assessee has not maintained proper books of account which were not produced during the assessment proceedings. Considering the facts of the case in totality we do not find any error or infirmity in the findings of the CIT(A), the appeal of the revenue is accordingly dismissed.

Order pronounced in the open court on 11.05.2023.

Sd/-
[ASTHA CHANDRA]
JUDICIAL MEMBER

Dated: .05.2023

Neha

Copy forwarded to:

1. Appellant
2. Respondent
3. CITi
4. CIT(A)
5. DR

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Asst. Registrar
ITAT, New Delhi