

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted Through Virtual Court)

**Before: Smt. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 265/Rjt/2017
Assessment Year: 2013-14**

The Income Tax Officer, Ward-4, Morbi (Appellant)	Vs	M/s. Starco Ceramics Survey No. 178/1 P 1 & 2 Pipli-Jetapar Road, Morbi PAN:ABPFS0555E (Respondent)
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**Assessee Represented: Shri Kalpesh Parekh, A.R.
Revenue Represented: Shri B.D. Gupta, Sr.DR.**

Date of hearing : 17-05-2023
Date of pronouncement : 31-05-2023

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Revenue as against the Appellate order dated 15.05.2017 passed by the Commissioner of Income Tax (Appeals)-3, Rajkot arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2013-14.

2. The brief facts of the case is that the assessee is engaged in the manufacturing of ceramic glaze tiles. For the Assessment Year 2013-14, the assessee filed its Return of Income on 03-09-2013 showing income of Rs. 1,23,125/-. The return was taken up for scrutiny assessment. The Assessing Officer had information from Central Excise Department, Rajkot that there was search carried out by the Excise Department at the business premises of the assessee on 18-12-2012. Thereafter a show cause notice dated 26-06-2015 issued by Pr.Commissioner of Central Excise for clandestine removal of goods and suppression of sales works out to Rs. 3,75,73,113/-. Consequently, inevitable expenses namely Power, Fuel, Gas, etc. on the suppressed sales are already included in the total expenses claimed by the assessee. Therefore the gross profit before incurrance of such expenses have to be considered for working out profit on suppressed sales, which ought to be estimated at Rs. 54.73% and addition of Rs. 2,05,63,760/- why should not be added as the total income of the assessee.

3. The assessee replied that the SCN issued by Excise Department is in adjudication stage and therefore the working out of GP at 54.73% proposed by the A.O. is highly astronomical and unrealistic. If it is examined of similar industry, the GP is in the range of 10% to 13% and Net Profit is in the range of 0.50% to 1.50%. Therefore the assessee requested adopt the Net Profit in range of 0.75% to 1% which is a reasonable Net Profit liable to be taxed. The above explanation was not accepted and the Assessing Officer computed the Net Profit at 54.73% and added the same as

unaccounted sales made by the assessee to Rs. 2,05,63,760/- and thereby demanded tax thereon.

4. Aggrieved against the same, the assessee filed an appeal before Ld. Commissioner of Income Tax (Appeals) who estimated the profit at 1% on the total turnover of Rs. 9,50,45,441/- which works out to Rs. 9,15,454/- and thereby partly allowed the assessee appeal.

5. Aggrieved against the appellate order, the Revenue is in appeal before us. The solitary ground of appeal raised by the Revenue is that the Ld. CIT(A) erred in deleting the addition of Rs. 2,05,63,760/- made on account of estimation of profit from unaccounted sales made by the assessee from the clandestine removal of the goods.

6. The Ld. Sr. D.R. Shri B.D. Gupta appearing for the Revenue submitted before us copy of the adjudication order dated 26.03.2016 passed by Pr. Commissioner of Central Excise, Rajkot in the case of the assessee on the clandestine removal of the goods, wherein demanded Central Excise Duty of Rs. 82, 76,966/- and also levied penalty u/s. 11AC of the Central Excise Act, 1944. Further the Ld. Sr. D.R. submitted this order of the Pr. Commissioner, the assessee gone under Sabka Vishwas Scheme 2019 and wherein settled the issue by way of paying appropriate taxes. Thus the addition made by the Assessing Officer in the Income Tax proceedings is liable to be sustained and the Revenue appeal is to be allowed.

7. Per contra, the Ld. Counsel Shri Kalpesh Parekh appearing for the assessee submitted before us, the assessee regularly maintained books of accounts which are duly audited and the assessee reported the Net Profit @ 0.22% on the declared turnover of Rs. 5.74 crores. Whereas the Assessing Officer reworked out the G.P. rate at 54.73% on the unaccounted sales on the same set of books of accounts without rejecting the books. However the Ld. CIT(A) estimated the Gross Profit at 1% for the current year. The Ld. Counsel further submitted subsequent to the decision of the Ld. CIT(A) on identical situation of suppressed sales by way of clandestine removal of the goods during the course of search by Central Excise Department and completion of assessment proceedings by the Excise Authorities, the Hon'ble Gujarat High Court in the case of PCIT Vs. Vrundavan Ceramics (P.) Ltd. reported in 95 Taxmann.com 13 held as follows:

"11. ...The Assessing Officer merely cosmetically gave an opportunity to the assessee to meet with such allegations, virtually, shifting the burden of proving the evasion of duty that had taken place on the assessee. We have perused the entire order of assessment. There is no independent material brought on record by the Assessing Officer other than those which were already collected by the Excise department and which, as noted earlier, are yet to be verified.

.....

13. When we find that the Assessing Officer did not have the basis for making additions, the question of percentage of the sales at which stage additions should be made would become redundant.

14. In the result, question is decided against the Revenue. All Tax Appeals are dismissed."

7.1. The Ld. Counsel further submitted that the Hon'ble Jurisdictional High Court judgment is followed by the Co-ordinate Bench ITAT, Rajkot vide its decision dated 10.08.2018 in ITA No.

100/Rjt/2013 & others in the case of Ganga Glazed Tiles Pvt. Ltd. Vs. ACIT wherein deleted the addition made by the Assessing Officer estimating the Gross Profit at 25% and thereby allowed the assessee's appeal.

7.2. Ld. Counsel further submitted that Revenue's further appeal before Hon'ble Gujarat High Court were also dismissed on 25.06.2019 which is reported in [2020] 117 taxmann.com 107 (Guj.) and Revenue's SLP against the same before Hon'ble Supreme Court was also dismissed on 27-01-2020 reported in [2020] 117 taxmann.com 108 (SC). Thus the Ld. Counsel submitted all these decisions are subsequent to the appellate order dated 15.05.2017 passed by Ld. CIT(A), who has confirmed the addition at 1% GP. Thus invoking Rule 27 of the I.T.A.T. Rules and Ld. Counsel requested to delete the addition of Rs. 8,27,329/- determined by the Ld. CIT(A) and direct to consider the Co-ordinate Bench decisions in the case of Ganga Glazed Tiles Pvt. Ltd. which is confirmed by Hon'ble Supreme Court as well as the Vrundavan Ceramics (P.) Ltd. judgment in the context of Central Excise demand deleted by Jurisdictional High Court.

8. We have given our thoughtful consideration and perused the materials available on record including the Paper Book & case laws filed by rival parties. As stated by the Ld. D.R. in the Central Excise proceedings on the clandestine removal of the goods, the assessee settled the issue by availing Sabka Vishwas Scheme 2019 and paid the taxes on 12-11-2019. However as submitted by the Ld. Counsel for the assessee, Co-ordinate Bench of the Tribunal in the case of

Ganga Glazed Tiles Pvt. Ltd. wherein the addition made by the A.O. were deleted following the judgment in the case of Vrundavan Ceramics (P.) Ltd. Revenue's further appeal before the Hon'ble High Court were dismissed and SLP filed before Hon'ble Supreme Court was also dismissed, which were happened after the passing of the order dated 15.05.2017 by the Ld. CIT(A). Thus we are of the considered opinion, accepting the submissions made under Rule 27 of ITAT Rules and entertaining the judgments placed by the assessee, we deem it fit to set aside the matter back to the file of the Ld. A.O. to consider the above judgments placed by the assessee and determine the income in accordance with law.

9. With this above directions, the appeal filed by the Revenue is hereby allowed for statistical purposes.

Order pronounced in the open court on 31-05-2023

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 31/05/2023

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
राजकोट