

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

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 196/Asr/2022**  
Assessment Year: 2019-20

The Dy. C.I.T.  
Central Circle,  
Amritsar

**(Appellant)**

**V.** Sh. Bhupinder Singh  
M/s Novelty Sweets,  
Lawrence Road, Amritsar  
[PAN: AAAHB 6242D]

**(Respondent)**

Appellant by Sh. Sh. T.S. Aurora, Adv. &  
Sh. Gunjeet Singh Syal, Adv.

Respondent by Sh. Nakul Agrawal, Sr. DR

Date of Hearing : 08.06.2023  
Date of Pronouncement : 07.07.2023

**ORDER**

**Per Dr. M. L. Meena, AM:**

This appeal has been filed by the Revenue against the order of the  
Ld. Commissioner of Income-Tax (Appeals)-5, Ludhiana dated 15.07.2022  
in respect of Assessment Year 2019-20.

2. In the present appeal Revenue has raised the following grounds:

- “1. *Whether in the facts and circumstances of the case, the Ld. CIT(A) has erred in law by deleting the addition of Rs. 1,60,93,257/- made by the AO as the AO has rightly estimated the assessed income at Rs. 2,62,13,097/?*
2. *Whether in the facts and circumstances of the case, the Ld. CIT(A) has erred in law by holding that the AO was not correct in his decision of rejecting the books of account u/s 145(3) whereas it was evident from records and statement of the assessee that he had indulged in unaccounted sales which the AO had mentioned in his assessment order?*
3. *Whether in the facts and circumstances of the case, the Ld. CIT(A) has erred in law by allowing the bogus losses to be set off with the amount of surrendered income when it is a clear cut fact that accounts of the assessee were not maintained properly?*
4. *Whether in the facts and circumstances of the case, the Ld. CIT(A) has erred in law by not appreciating that the assessee had incurred losses in the relevant year only whereas no loss was there in previous years.*
5. *The appellant craves leave to add, amend, modify, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal.”*

3. The five grounds of revenue are inter-linked to each other being pertains to deletion of addition of Rs. 1,60,93,257/- and therefore, the grounds are adjudicated together for sake of brevity.

4. During the assessment proceedings, the AO, was not satisfied with the Profit & Loss prepared by assessee and noted that it can't be accepted

as assessee has taken only recorded sale, unreliable Opening Stock, actual purchases, only unrecorded sales and actual closing stock. The AO mentioned that Profit & Loss account can't be prepared taking some recorded figures and some not recorded figures and assessee can't be allowed to set-off surrender amount out of created losses. Thus, in the opinion of the AO, business results shown by the assessee was liable to be rejected and accordingly, books of account of the assessee were rejected applying provisions of Section 145(3) of the I. T. Act. The AO proceeded to the estimate the net profit through three methods. As per the first method, if the unrecorded sales is also included in total sales and as the entire purchases/expenses are already debited in Profit & Loss, entire suppressed sale is profit of the assessee then Net Profit comes to Rs. 3,52,27,533.28. Vide Second method, if only recorded sales is included in total sales and surrendered profit on unrecorded sale is shown separately, then purchases/stock consumed for affecting undisclosed sales (production) should also be reduced from entire purchase. As the entire purchases/expenses are debited in Profit & Loss but part of finished product sold are recorded & part is not recorded, then Net Profit comes to Rs. 2,97,38,953.64. Vide Third Method by applying the NP rate of 3.8% on the sales of Rs. 3,69,21,441.42 profit comes to Rs. 14,03,014/- apart from

surrendered income of Rs. 2.5 crore, the total profit of assessee concern was calculated at Rs.2,64,03,014/- (Rs. 2,50,00,000 + Rs. 14,03,014) for F.Y. 2018-19 relevant to A.Y. 2019-20. As per the AO, the third method was found most appropriate and thus the total profit of the assessee for F.Y. 2018-19 relevant to A.Y 2019-20 was estimated at Rs. 2,64,03,014/- (including surrender amount of Rs.2,50,00,000/-.) and after allowing deduction of Rs. 1,89,917/- under Chapter VI-A, the total income of the assessee was assessed at Rs. 2,62,13,097/-.

5. The assessee being aggrieved with the Assessment Order, went in appeal before the Ld. CIT(A) who has granted relief to the assessee by observing as under:

“4. In the light of the above submissions and document filed by the AR during the course of appellate proceedings, the various grounds of appeal are adjudicated as below:

4.1 Grounds of Appeal Nos. 1 to 6 relate to addition of Rs. 1,61,02,121/- and assessing the income at Rs. 2,62,13,097/- as against returned income of Rs. 1,01,19,840/-. The AO has mentioned that the assessee filed return on 31.10.2019 declaring total income of Rs. 1,01,19,840/-. The case was taken for compulsory scrutiny and statutory notice under section 143(2) was issued, in response to which the assessee filed reply and the AR furnished Books of account along with Bills & vouchers which were verified on test check basis. It is further mentioned that during the year assessee was running a sweets shop and restaurant in the name of M/s Novelty Sweets where a survey u/s 133A was carried out on 05.02.2019 and statement of Sh. Jatinder Singh (Karta Bhupinder Singh HUF) was recorded on 06.02.2019. The AO has mentioned that as per Profit & Loss account as on 03.02.2021, assessee showed sales of Rs.2,60,29,553/- and same was confronted recording of statement at the time of survey proceedings. As per the AO during survey proceedings, some paper slips

were also found showing huge sales on various dates which were not recorded In books of account and the assessee failed to explain the same. The AO further mentioned that during the survey proceedings sale of Rs. 1,57,768/- was also found during the day and the same was confronted while recording of statement during survey proceedings that sales found on sale slips for various dates does not commensurate with the total sales shown in the books of accounts of the assessee till 03.02.2019 at Rs. 2,60,29,553/-. As per the AO, the assessee had accepted the fact of making unrecorded/unaccounted sales and voluntarily offered income of Rs.2.5 Crores In addition to the normal income. The AO observed that offering of Rs.2.5 crore as additional income on account of sales itself clarify that all expenses against sale of Rs.2.5 Crores have already been claimed and the assessee admitted in his reply that additional income of Rs.2.5 Crores was offered over & above normal income. It was also observed that the assessee had shown total sale of Rs.3,69,21,441/- in his profit & Loss account for the Financial Year 2018-19 and evidently not added undisclosed sales of Rs.2.5 Crores in Gross sales of the year whereas all expenses on Gross sales, including suppress sale of Rs.2.5 Crores have been taken into consideration. As per the AO, the assessee has taken entire sales in Profit & Loss account and additional profit of Rs.2.5 Crores admitted during survey should have been shown separately. It is further mentioned that in the business of sweet, profit will be proportionate to the results of previous years and there will not be much chances of deviation and there can only be less profit when sales are low but that is not there in this case. The AO then redrew the profit by including suppressed sale of Rs.2.5 Crores as under:-

OS	1,27,22,500.00	By Sale	5,19,21,441.42
To Purchase	2,76,76,094.73	By CS	15,68,052.00
To Wages	10,52,220.00		
To Gross Profit	2,02,14,758.69	By Gross Profit	2,02,14,758.69
To Expenses	1,01,87,181.05	By Misc. income	1,99,937.56
		By Round Off	18.08
Net Profit	3,52,27,553.28	By income offered	2,50,00,000.00
	<b>4,54,14,714.36</b>		<b>4,54,14,714.33</b>

The AO concluded that the assessee should have shown Net Profit of Rs.3,52,27,533,28 from business during the relevant financial year in order to show admitted profit of Rs.2.5 crores over and above the normal income as accepted during survey proceedings as well as during assessment proceedings. It is also mentioned that it was never observed during survey proceedings that there was loss in business during the relevant year. It was also mentioned that if

any expense/purchase for suppressed sale of Rs.2.5 crores were excluded, then assessee was requested to furnish complete details along with Bills & vouchers. As per the AO, the assessee has suppressed sales every year and books of accounts are not reliable and the assessee has never shown losses from Business. Accordingly, the assessee was given an opportunity to furnish reason for incurring losses during the year and asked to produce books of accounts along with bills/vouchers for verifications. The reply submitted by the assessee is reproduced in the assessment order where the assessee stated that during the year under reference, the assessee was suffering losses, which is evident from the fact that during survey proceedings stock taking was done by the Authorized Officer and the Closing Stock was valued at Rs. 25,09,016/- by the survey party and P&L account as on 03.02.2021 was drawn by the survey party from the books of accounts of the assessee which was confronted to the assessee while recording the statement during the survey proceedings taking the closing stock at Rs. 1,28,22,500/- with gross loss of Rs. 11,49,460/- and net loss of Rs. 20,29,295/-. It was further mentioned by the assessee that vide letter dated 26.08.2021, a recast Trading and P&L account as on 03.02.2021 was placed on record wherein, closing stock was taken at Rs. 25,09,016/- (as valued by the survey party) and on perusal, it could be seen that as on 03.02.2019 there was a net loss of Rs. 1,23,42,779. Thus, as per the assessee, during the year under consideration the assessee suffered loss which was verified by the survey party also on 03.02.2019.

It was further mentioned that the additional income of Rs.2.5 Crore was offered over & above normal results for the A.Y. 2019-20 on account of suppression of sales and during the year under reference the assessee was incurring cash losses, therefore, after taking into consideration additional income of Rs.2.5 crores, the assessee has earned net profit of Rs.1,02,27,533/- and if additional income of Rs.2.5 crores is not taken into account, then the assessee had incurred net loss of Rs.1,47,72,467/-. It was also submitted that the income was offered by the assessee under the head "business income" for the reason that the assessee has no other income other than income from business of trading and manufacturing of sweets. The assessee further submitted that additional income of Rs.2.5 crores represents profit element on suppressed sales which was rightly credited to the P&L account and offering Rs.2.5 crores as additional income on account of said sales itself clarify Rs.2.5 crores is net of all expenses. As per the assessee, in the proposed working done by the AO in notice dated 15.09.2021, the amount of Rs. 2.5 crores was added twice to the income of the assessee, firstly sales have been increased by Rs. 2.5 crores and secondly, Rs.2.5 crores have been credited separately in the P&L account and argued that

this proposition, admittedly results in double addition since the assessee has already credited Rs.2.5 crores in the P&L account. It was further argued that in a case of suppressed sales, only Profit element was to be added otherwise it will tantamount to double addition and contended that in the income tax jurisprudence only net income is to be taxed. As per the assessee double addition of Rs. 2.5 crores was purely based on misconception of both the facts & law. The assessee argued that in respect of suppressed sales, only profit element has to be assessed. The above reply of the assessee was considered and as per the AO, the books of account were submitted for verification but stock register was not maintained, thus opening stock, closing stock and material consumed cannot be ascertained. Further, as per the AO, during the survey proceedings, proof of suppressed sales were found and that total sales of Rs. 2,50,00,000/- have been suppressed by the assessee apart from sales recorded in Books of account, whereas corresponding purchases in respect of recorded and unrecorded sales were entered in Books of account. It is also mentioned that no unaccounted purchases were found during the survey, accordingly, assessee has surrendered entire suppressed sale of Rs.2,50,00,000/- as assessee has taken actual closing stock, actual purchases then actual sales, to arrive at correct G.P. rate and incorporated all the purchases and expenses. As per the AO, the recorded sale of Rs.3,69,21,441/- and unrecorded sale of Rs.2,50,00,000/- has been made out of goods manufactured out of total purchases of Rs.2,76,76,094.73 and opening stock of Rs.1,27,22,500/- less closing stock of Rs. 15,68,062/- and if suppressed sale of Rs.2,50,00,000/- was not incorporated in total sales and profit on the same has been shown separately, then stock/purchases utilized corresponding to unrecorded sales is also to be deducted from purchases to arrive at actual profit on sale of recorded sale. By adopting the GP rate of 29.25%, the AO arrived at net profit of Rs. 2,97,38,953/-. The AO then proceeded to reject the books of accounts by mentioning that if surrender amount is removed from the Profit & Loss account, assessee has shown Net loss of Rs.1,47,72,467/-. As per the AO, the assessee has shown consistent GP and NP rates over the three years and mentioned that it is evident that assessee has been suppressing sale in earlier years; thus, opening stock also cannot be relied. Assessee has failed to furnish any reason for loss during the relevant financial year and in earlier years, G.P was shown on estimate basis for several years and actual stock taking was never done as per discussion with the AR. The AO re-casted the trading account for the period 04.02.2019 to 31.03.2019 and arrived at Gross profit of Rs. 61,02,712/- giving a GP rate of 56.02% and mentioned actual GP rate is 54%. Considering all the facts, as per the AO, it is found that assessee is not maintaining stock register, so neither actual manufacturing out of purchase of raw material can be ascertained nor

closing stock can be relied and the AR has accepted that earlier stock taking was never done, so opening stock also can't be relied. Thus, as per the AO, Profit & Loss prepared by assessee can't be accepted as assessee has taken only recorded sale, unreliable Opening Stock, actual purchases, only unrecorded sales and actual closing stock. The AO mentioned that Profit & Loss account can't be prepared taking some recorded figures and some not recorded figures and assessee can't be allowed to set-off surrender amount out of created losses. Thus, in the opinion of the AO, business results shown by the assessee was liable to be rejected and considering these facts, books of account of the assessee were rejected as per provisions of Section 145(3) of the I. T. Act and the AO proceeded to the estimate the net profit through three method. As per the first method, if the unrecorded sales is also included in total sales and as the entire purchases/expenses are already debited in Profit & Loss, entire suppressed sale is profit of the assessee then Net Profit comes to Rs. 3,52,27,533.28. Vide Second method, if only recorded sales is included in total sales and surrendered profit on unrecorded sale is shown separately, then purchases/stock consumed for affecting undisclosed sales (production) should also be reduced from entire purchase. As the entire purchases/expenses are debited in Profit & Loss but part of finished product sold are recorded & part is not recorded, then Net Profit comes to Rs. 2,97,38,953.64. Vide Third Method by applying the NP rate of 3.8% on the sales of Rs. 3,69,21,441.42 profit comes to Rs. 14,03,014/- apart from surrendered income of Rs. 2.5 crore, the total profit of assessee concern was calculated at Rs.2,64,03,014/- (Rs. 2,50,00,000 + Rs. 14,03,014) for F.Y. 2018-19 relevant to A.Y. 2019-20. As per the AO, the third method was found most appropriate and thus the total profit of the assessee for F.Y. 2018-19 relevant to A.Y 2019-20 was estimated at Rs. 2,64,03,014/- (including surrender amount of Rs.2,50,00,000/-.) and after allowing deduction of Rs. 1,89,917/- under Chapter VI-A, the total income of the assessee was assessed at Rs. 2,62,13,097/-.

The facts of the case, basis of assessing the total income of the assessee by the AO and the arguments of the AR during the course of appellate proceedings have been considered. The AR has submitted that during the year the assessee suffered loss which is evident from the fact that the physical stock found was valued at Rs. 25,09,016/- by the survey party and on this basis, a 'provisional profit & loss account' was drawn where there was gross profit of Rs.11,49,640/- and net loss of Rs.20,29,295/- (by taking the closing stock at Rs.1,28,22,500/- on 03.02.2019 which is same as the opening stock as on 01.04.2018 which as per the AR, should have been actual taken at Rs.25,09,016/- as counted by the survey party on 03.02.2019). The AR further submitted that however the

assessee through letter dated 26.08.2021 placed on record re-casted trading and profit & loss account, where the closing stock as on 03.02.2019 was taken at Rs. 25,09,016/- (as valued by the survey party) and the net loss as on 03.02.2019 was arrived at Rs. 1,24,08,775/-. It is also submitted by the AR that no unrecorded purchase or expenses were found and the assessee offered additional income of Rs. 2.5 crore over and above the normal income which was rightly credited to the profit & loss account at the time of filing the return, however the AO while rejecting the books of accounts made observations in para 3.3 of the assessment order that the assessee cannot be allowed to set-off the surrendered income against the loss and the business result shown by the assessee are liable to be rejected. The AR referred to the provision of Section 145(3) and mentioned that it empowers the AO to reject the books of accounts, if the AO is not satisfied about the correctness or completeness of the accounts or where the method of accounting provided u/s 145(1) or accounting standard as notified u/s 145(2) have not been followed by the assessee. The AR argued that from perusal of para 3.3 of the assessment order, it can be seen that there is no iota of allegation that the accounts of the assessee are not correct or complete or the method of accounting had not been regularly followed by the assessee or the income has not been computed in accordance with the notified standards. As per the AR, the only grievance of the AO is that profit & loss account cannot be prepared by taking some recorded and some unrecorded figures and the assessee cannot be allowed to set-off surrendered income with business loss, however the fact that the assessee suffered loss was verified by the survey party and this has been admitted by the AO at para 3.2 of the assessment order. As per the AR, the observation of the AO that the surrendered income cannot be set-off against the business loss is not as per law because the new Section 79A was inserted by Finance Act, 2022 w.e.f. Assessment Year 2022-23 which provides that the total income including the undisclosed income cannot be set-off against the losses and unabsorbed depreciation and referred to the Memorandum explaining the provisions of Finance Bill, 2022 and mentioned that the main reason to bring new Section 79A in the statute book was that there was currently no provision in the Act to disallow such business loss with the surrendered income and the new section is applicable from assessment year 2022-23 onward and not for the year under consideration and accordingly, for assessment year 2019-20 under consideration, the business loss could be set off against the surrendered income. The AR finally contended that the provision of Section 145(3) is not applicable in this case and business loss can be set-off with the amount surrendered during survey. The AR was asked to file the trading account/profit & loss account prepared at the time of survey upto 03.02.2019 and the re-casted account submitted by the as under:

16

Sh. Bhupinder Singh, Lawrence Road, Amritsar.  
Appeal No. 10829/IT/CIT(A)-5/Ldh/2018-19  
Assessment Year 2019-20, u/s 143(3)

assessee upto 03.02.2019 and the final trading account/profit & loss account for the year ending 31.03.2019. The same are reproduced below:

**Trading Account taken by the survey party as on 03.02.2019**

NOVELTY SWEETS  
Novelty Chowk,  
Amritsar  
Profit & Loss A/c  
1-Apr-2018 to 3-Feb-2019

Particulars	1-Apr-2018 to 3-Feb-2019	Particulars	1-Apr-2018 to 3-Feb-2019
Opening Stock	1,28,22,500.00	Sales Accounts	2,87,48,720.00
<b>OPENING STOCK</b>	<b>1,28,22,500.00</b>	SALE B2B INTRASTATE	15,30,882.18
Purchase Accounts	2,46,18,077.25	SALES B2C -INTERSTATE	2,18,700.00
PURCHASE-GST INTERSTATE	21,28,237.50	SALES B2C - INTRASTATE	2,42,79,971.31
PURCHASE GST- INTRASTATE	1,91,53,932.72	Closing Stock	1,28,22,500.00
PURCHASE GST - URD	44,080.00	<b>OPENING STOCK</b>	<b>1,28,22,500.00</b>
PURCHASE TAX FREE	32,91,827.03		
Direct Expenses	2,62,016.00		
WAGES A/C	2,62,016.00		
Gross Profit/c/o	11,49,460.24		
	<b>3,88,62,053.49</b>		
Indirect Expenses	32,04,427.38	Gross Profit b/f	11,49,460.24
ADVERTISEMENT A/C	6,048.00	Indirect Incomes	25,671.80
BANK CHARGES	10,722.90	Misc Income	1,470.00
Bank Charges GST	2,358.00	REBATE & DISCOUNT	24,171.86
BANK COMMISSION (CREDIT CARD)	1,733.74	ROUNDING OFF	29.74
BUILDING EXPS	71,823.00	Net Loss	20,29,295.54
CARTAGE CHARGES	8,700.00		
CHARITY & DONATION	60,972.00		
Commission (Cratey, etc) Place of Origin	8,072.70		
COMMISSION ON ZOMATO	1,44,456.28		
Commission (Swiggy)	33,123.08		
COMPUTER EXPS	200.00		
CONVENIENCE FEE	12,250.67		
Electricity Exp	23,68,190.00		
EPF A/C	35,661.00		
E.S.I	14,987.00		
ESI A/C PAYABLE	5,043.00		
FESTIVAL EXPS.	82,000.00		
INSURANCE EXP	(-)-8,691.00		
INTEREST ON LATE TDS DEPOSIT	2,268.00		
MISC. EXPS	4,978.00		
MOBILE TELEPHONE INTERNET & POSTAGE EXPS	13,147.00		
PACKING & FORWARDING CHARGES	7,100.00		
PROFESSIONAL CHARGES	16,854.00		
REPAIR & MAINT. EXPS	17,350.00		
SALARY EXPS.	2,82,447.00		
SHIPPING CHARGES	4,661.01		
STATIONERY & PRINTING EXPS	4,884.00		
TDS (SWIGGY)	1,102.00		
<b>Total</b>	<b>32,04,427.38</b>	<b>Total</b>	<b>32,04,427.38</b>



On perusal of the above, it is seen that the closing stock as on 03.02.2019 was taken at the value of Rs. 1,28,22,500/- which is same as the opening stock as on 01.04.2018 and the gross profit was arrived at Rs. 11,49,460/- and the net loss is Rs. 20,29,295/-.

17

Sh. Bhupinder Singh, Lawrence Road, Amritsar.  
Appeal No. 10829/IT/CIT(A)-5/Ldh/2018-19  
Assessment Year 2019-20, u/s 143(3)

Re-casted Trading Account as on 03.02.2019 submitted by the assessee by taking the value of closing stock as physically counted by the survey party

26

Re-casting of Profit & Loss A/c 01-Apr-2018 to 03-Feb-19 (As on date of Survey)			
Particulars	Amount	Particulars	Amount
Opening Stock	12072500.00	SALES ACCOUNTS	24021641.40
STOCK		SALES #B - INTRASTATE	1330682.18
Purchase Accounts	24618877.23	SALES #NO - INTERSTATE	318700.00
PURCHASE-GST INTERSTATE	2138217.00	SALES #NO - INTRASTATE	24371971.21
PURCHASE-GST-INTRASTATE	19183932.72		
PURCHASE-GST-URD	44080.00		
PURCHASE TAX FREE	2281827.03	Closing Stock	2509016.00
Direct Expenses	282016.00	STOCK	2509016.00
WAGES A/C		(Actual as per physical check)	
	282016.00	Gross Loss C/o	9164023.78
	37702583.23		37702583.23
Gross Loss b/f	9164023.78	Indirect Income	25671.00
Indirect Expenses	3204427.38	Misc Income	1470.00
ADVERTISMENT A/C	6048.00	REBATE & DISCOUNT	34171.00
BANK CHARGES	10722.00	ROUNDING OFF	2574
Bank Charge GST	2358.00		
BANK COMMISSION (CREDIT CARD)	1733.74		
BUILDING EXPS	71823.00		
CHARTAGE CHARGES	8700.00		
CHARITY & DONATION	80972.00		
COMMISSION (CREDIT CARD) Place of Origin	8072.79		
COMMISSION ON EXPORT	14444.98		
Commission (Swiss)	23123.08		
COMPUTER EXPS	200.00		
CONVENIENCE FEE	12230.87		
Electricity Exp	2568100.00		
EPF A/C	25841.00		
E & J	14987.00		
E & J PAYABLE	8042.00		
FESTIVAL EXPS.	82000.00		
INSURANCE EXP	40911.00		
INTEREST ON LATE TDS DEPOSIT	2218.00		
MISC. EXPS	4976.00		
MOBILE TELEPHONE INTERNET & PC	23170.00		
PACKING & FORWARDING CHARGES	31600.00		
PROFESSIONAL CHARGES	78541.00		
REPAIRS & MAINT. EXPS	17350.00		
SALARY EXPS.	282447.00		
SHIPPING CHARGES	4681.01		
STATIONERY & PRINTING EXPS	4884.00		
TDS (SHRGG)	1102.00		
Total	12348481.14		12348481.14



For NOVELTY SWEETS  
Prop. Bhupinder Singh HUP  
(Jatinder Singh)  
Karta



On perusal of the above, it is seen that by taking the closing stock on 03.02.2019 at Rs. 25,09,016/- (as counted and valued by the survey party), the gross loss was Rs. 91,64,023/- and the net loss was Rs. 1,23,42,779/-.

Sh. Bhupinder Singh, Lawrence Road, Amritsar.  
Appeal No. 10829/IT/CIT(A)-5/Ldh/2018-19  
Assessment Year 2019-20, u/s 143(3)

**Trading and Profit & Loss Account for the period 01.04.2018 to 31.03.2019**

IQBAL SINGH GULATI & CO.  
CHARTERED ACCOUNTANTS

Novelty Sweets  
Lawrence Road Amritsar

STATEMENT OF ACCOUNTS FOR THE YEAR ENDED 31/03/2019

Particulars	Amount	Particulars	Amount
To Opening Stock	12723500.00	By Sale	3,69,21,441.42
To Purchase	2,76,76,094.73	By Closing Stock	15,68,092.00
To Coal & Gas	18,23,930.00		
To Wages	10,82,320.00		
To Gross Profit	-47,85,241.31		
	<b>3,84,89,503.42</b>		<b>3,84,89,503.42</b>
To Advertisement	6,048.00	By Gross Profit	-47,85,241.31
To Audit Fees	21,000.00	By Misc Income	1,99,937.66
To Bank Charges	17,450.88	By Round off	18.08
To Bank Commission Credit Card	1,620.80	By Income offered	25000000.00
To Building Repair Exps	71,823.00		
To CAM Charges	3,91,507.00		
To Cartage Charges	8,700.00		
To Commission (Cartivilla)	11,466.14		
To Commission (Swiggy)	1,21,298.78		
To Commission (Zomato)	3,58,095.96		
To Computer Exps	15,200.00		
To Convenience Fee	32,291.55		
To Depreciation	4,55,661.00		
To Donation	73,210.00		
To E.S.I	42,447.00		
To Electricity Exps	28,65,280.00		
To EPF	1,41,861.00		
To Festival Exps	82,000.00		
To Generator Expenses	5,36,246.00		
To Govt Fee & Charges	4,320.00		
To House Keeping	61,361.00		
To Insurance Exps	5,932.00		
To Interest on Late TDS	2,266.00		
To Interest Paid	21,73,300.00		
To Misc Exps	9,049.00		
To Packing Expenses	18,87,232.00		
To Professional Charges	64,654.00		
To Property Tax	8,650.00		
To Rebate & Discount	62,044.19		
To Repair & Maint	17,350.00		
To Salary	4,69,535.00		
To Service Charges	593.22		
To Shipping Charges	6,440.67		
To Staff Welfare	65,799.00		
To Stationery & Printing Exps	4,864.08		
To Telephone Exps	17,665.00		
To Uniform	21,682.00		
To Net Profit	1,02,27,633.28		
	<b>2,04,14,714.33</b>		<b>2,04,14,714.33</b>



FOR IQBAL SINGH GULATI & CO.  
CHARTERED ACCOUNTANTS  
IQBAL SINGH GULATI  
PROPRIETOR  
M. NO. 083895  
UDIN NO. 19083895AAAA8W7767

On perusal of the above, it is seen that the surrendered income of Rs. 2.5 crore has been separately added to the profit & loss account on the income side.

It is also relevant to mention here that as against the above, the AO has redrawn the trading and profit & loss account in the assessment order as under:

To OS	1,27,22,500.00	By Sale	5,19,21,441.42
To Purchase	2,76,76,094.73	By CS	15,68,052.00
To Wages	10,52,220.00		
To Gross Profit	2,02,14,758.69	By Gross Profit	2,02,14,758.69
To Expenses	1,01,87,181.05	By Misc. income	1,99,937.56
		By Round Off	18.08
To Net Profit	3,52,27,553.28	By income offered	2,50,00,000.00
	<b>4,54,14,714.36</b>		<b>4,54,14,714.33</b>

From the above, the argument of the AR that the sum of Rs. 2.50 crore has been added by the AO twice to the income of the assessee (firstly through increasing the sales by Rs. 2.5 crore and secondly, by crediting Rs. 2.5 crore separately in the profit & loss account) has merits and the above calculation has resulted in double addition of Rs. 2.5 crore to the income of the assessee to arrive at the net profit of Rs. 3,52,27,533/-. Hence the profit calculated by the AO through this method is not found sustainable. The second method adopted by the AO gave a GP ratio of 56.02% which is very unrealistic and hence deserves to be rejected. The third method adopted by the AO by taking the GP at approximately 29% and applying the net profit rate of 3.8% and then separately adding the surrendered income of Rs. 2.5 crore is also not found correct because, during the survey, the assessee was found to have suffered net loss of Rs. 22,29,295/- when the value of closing stock was taken at Rs. 1,28,22,500/- equal to the value as on 01.04.2018 and net loss of Rs. 1,23,42,779/- when the value of closing stock was taken at Rs. 25,09,016/- which was the value arrived by the survey party. Thus, as per the accounts of the assessee on the date of survey, it suffered a huge loss which was mainly on account of suppression of sales/non-recording of sales and by declaring additional income of Rs. 2.5 crore on account of this suppressed sales, the assessee declared a net profit of Rs. 1,02,27,533/-. Thus whatever defects were noticed during the course of survey proceedings regarding non recording of sales have been covered by the surrender of Rs. 2.5 crore made by the assessee at the time of survey proceedings and this amount has duly been accounted for by crediting it separately in the P & L Account as income of the assessee for the year under consideration. As whole amount of surrendered income has been credited as such, the assessee has not taken any benefit of corresponding purchases separately against this suppressed Rs. 2.5 Crore which was the basis for making the surrender during the survey. It is a fact mentioned by the AO in the assessment order that the representative of the assessee furnished the books of accounts along with the bills & vouchers which were verified on test check basis. It is also mentioned by the AO in the assessment order that no unaccounted purchases were found during the course of survey. There is thus merit in the argument of the AR that without pinpointing any specific defects in the books of accounts of the assessee, the AO could not reject the same u/s 145(3) of the Income Tax Act, 1951. The fact that the AO has estimated three different figures of net profit by adopting different methods itself shows that the approach adopted by the AO gives

different estimation of the income of the assessee and in such a situation none of the three can be said to be reliable. Further regarding the set-off of business loss with the surrendered amount, the AR has referred to provision of section 79A inserted by Finance Act, 2022 which is applicable from A.Y. 2022-23 but the case in hand pertains to A.Y. 2019-20 which is not covered by the new provisions barring the set-off of business loss with the surrendered income. Hence, the argument of the AR that the assessee was entitled for set-off of its business loss with the surrendered income is found acceptable. Therefore to conclude, the contentions of the AR that provision of section 145(3) are not applicable in this case and that during the year under reference the business loss can be set-off with the amount of surrendered income during the course of survey, are found acceptable. Under the facts and circumstances of the case, the addition made by the AO by estimating the business income and total income at Rs. 2,54,03,014/- and Rs. 2,62,13,097/- respectively, as against the returned income of Rs. 1,01,19,840/- after rejecting the books of account, is not found sustainable and hence deleted.”

6. The Ld. DR for the department submitted that the Ld. CIT(A) has erred in law and on facts by deleting the addition of Rs. 1,60,93,257/- made by the AO as the AO has rightly estimated the assessed income at Rs. 2,62,13,097/-; that the CIT(A) was not justified in holding that the AO was not correct in his decision of rejecting the books of account u/s 145(3) whereas it was evident from records and statement of the assessee; that he had indulged in unaccounted sales which the AO had mentioned in his assessment order; that the Ld. CIT(A) has allowed the bogus losses to be set off with the amount of surrendered income when it is a clear cut fact that accounts of the assessee were not maintained properly and that the Ld. CIT(A) has erred in law by not appreciating that the assessee had

incurred losses in the relevant year only whereas no loss was there in previous years.

7. Per Contra, the Ld. Counsel for the assessee has supported the impugned order by reiterating its contentions raised before the Ld. CIT(A). The AR submitted that from perusal of para 3.3 of the assessment order, it can be seen that there is no iota of allegation that the accounts of the assessee are not correct or complete or the method of accounting had not been regularly followed by the assessee or the income has not been computed in accordance with the notified standards. There is no basis for rejection of the audited books of account of the assessee u/s 145(3) of the Act. As per the AR, the only grievance of the AO is that profit & loss account cannot be prepared by taking some recoded and some unrecorded figures and the assessee cannot be allow to set-off surrendered income with business loss. However, the fact was that the assessee suffered loss was verified by the survey party per se and this has been admitted by the AO at para 3.2 of the assessment order. As per the AR, the observation of the AO that the surrendered income cannot be set-off against the business loss is not as per law because the new Section 79A was inserted by Finance Act, 2022 w.e.f. Assessment Year 2022-23 which provides that the total income including the undisclosed income cannot be set-off against the

losses and unabsorbed depreciation and referred to the Memorandum explaining the provisions of Finance Bill, 2022 and mentioned that the main reason to bring new Section 79A in the statute book was that there was currently no provision in the Act to disallow such business loss with the surrendered income and therefore, the new section would be applicable from assessment year 2022-23 onward and not for the year under consideration and accordingly, for assessment year 2019-20 under consideration, the business loss could be set off against the surrendered income. The AR finally contended that the provision of Section 145(3) is not applicable in this case and business loss can be set-off with the amount surrendered during survey. The AR further argued that he has filed the trading account/profit & loss account prepared at the time of survey upto 03.02.2019 and the re-casted account before the authorities below as reproduced in the impugned order, Page No. 15 and 16. He contended that the Ld. CIT (A) has been justified in deleting the addition made by the AO by estimating total income at Rs. 2,62,13,097/- as against the returned income of Rs. 1,01,19,840/-. He pleaded, that the impugned order may be sustained.

8. We have heard the rival contentions, perused the material on record, impugned order, written submission and case law cited before us. It is

undisputed fact on record that the books of accounts along with the bills & vouchers produced before the AO were verified on test check basis and the AO has mentioned in the assessment order that no unaccounted purchases were found during the course of survey. There is thus merit in the observation of the Ld. CIT(A) and the argument of the AR that without pinpointing any specific defects in the books of accounts of the assessee, the AO can not reject the same u/s 145(3) of the Income Tax Act, 1951. In our view, the approach of the AO in estimating three different figures of net profit by adopting different methods per se defective that is giving different estimation of the income of the assessee would not be held reliable. Thus, the ground of applying provisions of section 145(3) of the Act is rejected.

9. The Ld. CIT(A) has discussed that the third method finally adopted by the AO by taking the GP at approximately 29% and applying the net profit rate of 3.8%, and then separately adding the surrendered income of Rs. 2.5 crore is not a correct method because, during the survey, the assessee was found to have suffered net loss of Rs. 22,29,295/- as per Trading account of the assessee taken by the survey party when the value of closing stock was taken at Rs. 1,28,22,500/- equal to the value as on 01.04.2018 and that the net loss of Rs. 1,23,42,779/- when the value of closing stock was taken at Rs. 25,09,016/- which was the value arrived by

the survey party. Thus, as per the accounts of the assessee on the date of survey, it suffered a huge loss which was mainly on account of suppression of sales/non-recording of sales and by declaring additional income of Rs. 2.5 crore on account of this suppressed sales, the assessee declared a net profit of Rs. 1,02,27,533/-. In our view, the CIT(A) was justified in observing that whatever defects were noticed during the course of survey proceedings regarding non-recording of sales have been covered by the surrender of Rs. 2.5 crore made by the assessee at the time of survey proceedings and this amount has duly been accounted for by crediting it separately in the P & L Account as income of the assessee for the year under consideration. As whole amount of surrendered income has been credited as such, the assessee has not taken any benefit of corresponding purchases separately against this suppressed sales of Rs. 2.5 Crore which was the basis for making the surrender during the survey.

10. As regards to the set-off of business loss with the surrendered amount, the Ld. CIT(A) has discussed that the provisions of section 79A inserted by Finance Act, 2022 which is applicable from A.Y. 2022-23 but the case in hand pertains to A.Y. 2019-20 which is not covered by the new provisions in order to debar the set-off of business loss with the surrendered income. In our view, the CIT(A) was justified in appreciating

the contention of the Appellant assessee that the assessee was entitled for set-off of its business loss with the surrendered income and accordingly, this ground of revenue is rejected.

11. Considering the facts and circumstances of the case, we find no infirmity or perversity in the impugned order passed by the Ld. CIT (A). Accordingly, the impugned order is sustained.

12. In the result, the appeal filed by the revenue is dismissed.

*Order pronounced in the open court on 07.07.2023*

**Sd/-  
(Anikesh Banerjee)  
Judicial Member**

**Sd/-  
(Dr. M. L. Meena)  
Accountant Member**

*\*GP/Sr./P.S.\**

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy  
By Order