

**Income Tax Appellate Tribunal  
Delhi Bench "G": New Delhi  
Before Shri M. Balaganesh, Accountant Member  
and  
Shri Anubhav Sharma, Judicial Member**

ITA No. 1277/Del/2012

(Assessment Year: 2008-09)

Shri Sumer Chand Verma (HUF), 2608/3, 1 <sup>st</sup> Floor, Bank Street, Beadonpura, Karol Bagh, New Delhi (Appellant) <b>PAN: AAIHS3982D</b>	Vs. ACIT, Central Circle-23, New Delhi  (Respondent)
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Assessee by :	Dr. Rakesh Gupta, Adv Shri Somil Agarwal, Adv
Revenue by:	Shri Anuj Garg, Sr. DR
Date of Hearing	03/10/2023
Date of pronouncement	05/10/2023

O R D E R

**PER M. BALAGANESH, A. M.:**

1. The appeal in ITA No.1277/Del/2012 for AY 2008-09, arises out of the order of the Commissioner of Income Tax (Appeals)-XXXIII, New Delhi [hereinafter referred to as 'ld. CIT(A)', in short] in Appeal No. 350/10-11/343 dated 12.01.2012 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 30.12.2010 by the Assessing Officer, ACIT, Central Circle-23, New Delhi (hereinafter referred to as 'ld. AO').

2. The assessee has raised the following grounds of appeal :-

*"1) On the facts and in the circumstances of the case and in law, the Ld. CIT (A) was incorrect and unjustified in*

*(a) dismissing the appeal of the assessee.*

*(b) Sustaining the addition of Rs. 1,48,86,109/- only on account of low gross profit rate as compared to earlier years.*

*(c) Sustaining the addition of Rs. 1,48,86,109/- in the trading account on the ground of low gross profit rate, profit not earned at the normal rate and there was a drastic plunge in GP rate.*

*(d) Holding that the AO has correctly rejected the books of account even without finding any defect or discrepancy in the books of accounts.*

*(e) Holding that there can be an addition, on estimation of GP rate, in case there was a fall in gross profit rate.*

*f1) Dismissing the appeal of the assessee without considering the judgements cited before the CIT (A) during assessment proceedings including the judgement of the Hon'ble Supreme Court of India in the case of A Raman & Co. reported in 67 ITR 11.*

*2. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) was incorrect and unjustified in making an addition in the trading account for low gross profit only for rejecting the book results which does not amount to rejecting the books of account.*

*3. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) was incorrect and unjustified in treating that books of accounts have been rejected u/s 145A, whereas no defect or discrepancy in the books have been found and it is only the repetition of the word section 145A.*

*4. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) was incorrect and unjustified in dismissing the payment of interest of Rs. 88,685/-."*

3. The ground Nos. 1 to 3 raised by the assessee are challenging the addition of Rs. 1,48,86,109/- made on account of gross profit addition on estimated basis. Ground No. 4 is challenging the disallowance of payment of interest in the sum of Rs. 88,685/-.

4. We have heard the rival submissions and perused the materials available on record. The return of income for AY 2008-09 was filed by the assessee on 30.09.2009 declared total income of Rs. 17,56,350/- . The case was selected for scrutiny by issuance of notice u/s 143(2) of the Act on 03.08.2009. The Id AO at pages 1 and 2 observed that the assessee's authorized representative and Accounts Manager had

appeared on few occasions and filed part details that were called for in the notice u/s 142(1) of the Act. Thereafter, there was continuous non-compliance from the side the assessee despite sufficient opportunities being given to the assessee. The Id AO observed that the assessee in the return filed had reported gross profit of 9.79% in the immediately preceding year whereas he had reported only 3.60% during the year under consideration. Since there was continuous non- cooperation from the side of the assessee in furnishing the requisite details that were called for, the Id AO proceeded to reject the book results declared by the assessee and estimated the gross profit of the assessee @9.79% of the sales shown in the books of accounts. Accordingly, he proceeded to make addition on account of low gross profit in the sum of Rs. 1,48,86,109/-. This action of the Id AO was upheld by the Id CIT(A).

5. The Id AO observed that the assessee had debited a sum of Rs. 38,39,287/- towards interest paid in the profit and loss account. On perusal of the details filed by the assessee, the total interest debited included Rs. 88,685/- being interest paid to M/s. Hillridge Investment Ltd in respect of loan received from them amounting to Rs. 65 lakhs. The loan received from this party in AY 2007-08 was treated as unexplained cash credit by the Id AO in the scrutiny assessment proceedings for AY 2007-08. Accordingly, the interest paid on the said loan was disallowed by the Id AO during the year under consideration amounting to Rs. 88,685/-. This action was upheld by the Id CIT(A).

6. The Id AR placed on record a copy of the order passed by this Tribunal in assessee's own case in ITA No. 1275 and 1276/Del/2012 for AY 2007-08 dated 07.02.2023, wherein, the addition made on account of loan received from M/s. Hill Ridge Investment Ltd was set aside to the file of the Id AO for de novo adjudication. Accordingly, we hold that ground No. 4 raised by the assessee is also required to

be set aside to the file of the Id AO to be decided based on the final outcome of giving effect order of the Id AO for AY 2007-08 pursuant to the Tribunal order.

7. With regard to rejection of book results by the Id AO, we hold that mere fall in the gross profit rate cannot be the reason for rejection of books of account u/s 145(3) of the Act. There may be various reasons for reduction in gross profit during the year under consideration. The Id AO also was handicapped from examining veracity of the book results shown by the assessee as there was continuous non-cooperation from the side the assessee. The Id AR before us stated that one last opportunity may be given to the assessee to produce the relevant documents before the Id AO to justify the book results declared by the assessee. The Id DR did not make serious objection for the same. Considering the totality of the facts and circumstances of the case, we deem it fit and appropriate to restore the issue raised in ground Nos. 1 to 3 of the assessee to the file of the Id AO for de novo adjudication in accordance with law. Accordingly, ground Nos. 1 to 3 raised by the assessee are allowed for statistical purposes.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 05/ 10 /2023.

-Sd/-  
**(Anubhav Sharma)**  
**JUDICIAL MEMBER**

-Sd/-  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 05/10 /2023  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent

3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi