

**IN THE INCOME TAX APPELLATE TRIBUNAL
JAIPUR BENCHES "A" JAIPUR**

**BEFORE SH. SANDEP GOSAIN, JUDICIAL MEMBER
AND DR. M. L. MEENA, ACCOUNTANT MEMBER**

I.T.A. Nos. 33JPR/2024 & 714JPR/2023

Assessment Years: 2012-13 & 2014-15

Regal Transcore Laminations
Pvt. Ltd, Jaipur

[PAN: AABCR4297E]

(Appellant)

Vs.

Deputy Commissioner of Income
Tax Circle- 7, Jaipur

(Respondent)

Appellant by : Sh. Rohan Sogani, CA.

Respondent by : Sh. A.S. Nehra, Addl. CIT

I.T.A. Nos. 73JPR/2023

Assessment Years: 2012-13

Asst. Commissioner of Income
Tax Circle- 7, Jaipur

(Appellant)

Vs.

Regal Transcore Laminations Pvt.
Ltd, Jaipur

[PAN: AABCR4297E]

(Respondent)

Appellant by : Sh. A.S. Nehra, Addl. CIT

Respondent by : Sh. Rohan Sogani, CA.

Date of Hearing : 13.03.2024

Date of Pronouncement : 10.04.2024

ORDER

Per Dr. M. L. Meena, AM:

The captioned cross appeals have been filed by the assessee and department against the order of the Id. CIT(A) National Faceless Appeal Centre (NFAC), Delhi dated 30.11.2023 in respect of Assessment Years: 2012-13 and assessee against separate order dated 29.09.2023 in respect of the Assessment year 2014-15.

2. The Department has raised the following grounds in ITA No. 73JPR/2023 in respect of the Assessment Years: 2012-13:

1. *On the facts and circumstances of the case, the CIT(A) has erred in deleting trading addition of ₹24,29,373/- made by the AO by applying GP rate of 16.99% as against 15.99% applied by the AO though he has upheld rejection books of accounts under section 145(3).*
2. *On the facts and circumstances of the case, the CIT(A) has erred in deleting trading addition of ₹37,32,246/- made by the AO by applying GP rate of 5% in respect of trading with measures Udasee Stamping Pvt Ltd as against 0.9% applied by the AO though he has upheld rejection books of accounts under section 145(3).*
3. *On the facts and circumstances of the case, the CIT(A) has erred in deleting trading addition of ₹2,56,026/- made by the AO by applying GP rate of 6.2% in respect of trading with sister concerns as against 5.22 % applied by the AO though he has upheld rejection books of accounts under section 145(3).*
4. *On the facts and circumstances of the case, the CIT(A) has erred in deleting trading addition of ₹55,04.911/-being interest attributable to the goods sold to the sister concerns.*

5. *On the facts and circumstances of the case, the CIT(A) has erred in deleting trading addition of ₹63,60,825/-being claim of foreign exchange loss.*

6. *On the facts and circumstances of the case, the CIT(A) has erred in deleting trading addition of ₹38,46,258/- being b SAD refund.*

3. Briefly the facts of the case are that the appellant is a company and its return of income for assessment year 2012 -13 was filed on 27/09/2012 declaring total income at ₹19,53,520/-. The case of the appellant was selected for scrutiny under CASS and notice under section 143(2) of the act was issued to the appellant on 07/08/2013. Thereafter, other statutory notices were issued and assessment under section 143(3) of the act was completed on 30/03/2015 and thereby total income at Rs 2, 46, 80, 363/- was determined.

4. Being agreed with the assessment order, the assessee filed appeal before the National Faceless Appeal Center ["NFAC/CIT(A)"], who vide order dated 30.11.2023, deleted all additions made by the 'd. AO except one. Against the order passed by NFAC, department and have preferred cross appeal before us. We first take up the department appeal in I.T.A. Nos. 73JPR/2023 Assessment Years: 2012-13.

5. In ground no.1 to 6 revenue has objected to the deleting trading addition and multiple additions of varying quantity made by the AO on

multiple issue though the CIT(A) has upheld rejection books of accounts under section 145(3) of the Act.

5.1 The appellant company has been engaged in manufacturing activities. The AO being not satisfied, 1st made trading addition of Rs. 22,29,373, after rejecting the books of accounts of the assessee company and, thereafter, applied GP% of 16.99%, as against 15.99% declared by the assessee company, on turnover of manufactured goods. (AO Order Page 61). Similarly, the AO made various additions.

5.2 The Ld. DR stands by the impugned order and reiterated the text from page 61 of the Assessment order, However, he failed to rebut the facts and reason given by the Ld. CIT(A) in deleting the alleged GP% addition and likewise other additions. The DR also failed to file contrary judgement to the ITAT Coordinate Bench on the issues raised by the Department.

5.3 Per contra, the Ld. AR reiterated the submission made before the CIT(A). The Id. CIT(A)/NFAC, after considering the elaborate submissions made by the appellant (APB, Pgs. 64-95), and relevant part of the same submissions have been reproduced in his order from Page 8-19, deleted

the entire addition by stating that the GP rate of the assessee was better in comparison to the previous year's vide observation on Pages 24-25, and findings on Page 5.5 of the CIT(A) Order in a well reasons manner by relying on the ITAT, Jaipur Bench, in the case of Udasee Stamping Private Limited, ITA No. 12/JP/2017, wherein on identical set of facts, trading additions deleted by Id. CIT(A), were upheld by the Hon'ble ITAT. It is pertinent to mention that Udasee Stamping Private Limited is the sister concern of the assessee company. [Copy of ITAT Order is placed on record for reference]. Similarly, arguments made by the Ld. AR in rebuttal to all other issues raised by the department,

5.4 Having heard both the sides and perusal of the matter, impugned order and Coordinate Bench, it is undisputed facts that on identical set of facts, trading additions deleted by Id. CIT(A), were upheld by the Hon'ble ITAT in the case of Udasee Stamping Private Limited, ITA No. 12/JP/2017. which is the sister concern of the assessee company. Thus, the Ld. CIT(A) has followed the Jurisdictional coordinate bench Judgement as per judicial discipline on identical facts which remained unrebutted by the department. In view of that matter, there are no merits in the grounds of the department. The ground of appeal of the revenue would be liable to be rejected.

5.6 In the present case, on identical facts, following the Coordinate Bench decision, in the case of appellants sister concern M/s Udasee Stamping Private Limited (Supra), we hold that there are no infirmity or perversity in the order of the Id. CIT(A)/NFAC to the facts on record. Therefore, the addition deleted by the Id. CIT(A) are sustained.

33JPR/2024 Assessment Year 2012-13:

The appellant assessee has not pressed the 2 grounds taken with the memorandum of appeal and these grounds were dismissed as not pressed. However, the appellant has raised an additional ground which reads as under:

"...In the facts and circumstances of the case and in law, National Faceless Appeal Centre ("NFAC") has erred in giving directions to the Id. AO, on account of sale of CRGO, made to ws Udasee Stamping Pvt. Ltd., yet accepting tie proposition of the assessee company that the transactions with ws Udasee Stamping Pvt. Ltd. were "Tax Neutral" and that also there could not be any addition on the sales made to related party, in accordance with the provision of law. The action of NFAC is illegal, unjustified, arbitrary and against the facts of the case. Relief and please be granted by deleting the entire addition of Rs. 37,32,246, made to the income of the assessee company..."

6. The Ld. AR submitted that additional ground of appeal is purely legal in nature and that the factual position, as relevant for the Ground of Appeal is emerging out of the respective orders of the lower authorities. The Ld. AR referred to the Hon'ble Supreme Court Judgement in the case of National

Thermal Power Co. Ltd. [19981 229 ITR 383 (SC) wherein it is held that "...Under section 254, the Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, there is no reason why the assessee should be prevented from raising that question before the Tribunal for the first time, so long as the relevant facts are on record in respect of that item. Considering merits in the contention of the appellant, the additional ground of appeal is purely legal in nature, we admit the same for adjudication, accordingly.

6.1. The appellant challenged that The CIT(A)/NFAC has erred in giving directions to the Id. AO, on account of sale of CRGO, made to M/s Udasee Stamping Pvt. Ltd., yet accepting the proposition of the assessee company that the transactions with M/s Udasee Stamping Pvt. Ltd. were "Tax Neutral" and that also there could not be any addition on the sales

made to related party, in accordance with the provision of law. The action of NFAC is illegal, unjustified, arbitrary and against the facts of the case. Relief and please be granted by deleting the entire addition of Rs. 37,32,246, made to the income of the assessee company.

6.2. The AO made trading addition of Rs. 37,32,246, w.r.t sale of material as part of traded goods to M/S Udasee Stamping Pvt. Ltd. after rejecting the books of accounts of the assessee company and, thereafter, applied GP% of 5%, as against 0.94% declared by the assessee company, on turnover of traded goods of CRGO of Rs. 9,19,12,938. Thus, addition of Rs. 37,32,246/- was made [AO Order Page 71]. The Id. CIT(A) deleted the entire addition (Page 24-25, of the CIT(A) Order) by relying upon the decision of ITAT, Jaipur Bench, in the case of M/s Udasee Stamping Private Limited, ITA No. 12/JP/2017, wherein under identical set of facts, trading additions deleted by Id. CIT(A), were upheld by the Hon'ble ITAT. Udasee Stamping Private Limited, the sister concern of the assessee company.

6.3. It is undisputed fact on record that the Transactions with M/s Udasee Stamping Private Limited was a "TAX NEUTRAL" transaction as both the entities, i.e. the assessee company and Udasee Stamping Private Limited

paid tax, for the year under consideration, at the same rate as per unrebutted assessee reply [Page 15-16 of the order of CIT(A)/NFAC]. Further, the additions were made by the Id. AO on the transaction with the related party of the assessee, without following the due procedure as laid down under the Transfer Pricing Law. In this regard, the Ld. AR contended that the Domestic Transfer Pricing regulations through which additions, if at all, could have been made to the income of the company, were not enforce for the year under consideration as per unrebutted reply of the Assessee (the [CIT(A)/NFAC Pages 14-15]. Without prejudice to above, we have upheld the decision of the CIT(A) being passed as per judicial discipline in deleting the said addition. Under the facts and circumstances of the case and in law, CIT(A)/NFAC has no justification for giving directions to the Id. AO, on account of sale of CRGO, made to M/s Udasee Stamping Pvt. Ltd., yet accepting the proposition of the assessee company that the transactions with M/s Udasee Stamping Pvt. Ltd. were "Tax Neutral". Meaning thereby that there would not be any addition on the sales made to related party, in accordance with the provision of law.

6.7 In our view, the action of CIT(A)/NFAC is illegal, unjustified, arbitrary and against the facts of the case. Accordingly, the entire addition of Rs.

37,32,246, made to the income of the assessee company is deleted. Thus the additional ground of appeal of the assessee is allowed.

714JPR/2023 Assessment Year 2014-15:

The appellant has taken following grounds of appeal:

1. *In the facts and circumstances of the case and the Id. CIT(A)/National Faceless Appeal Center (NFAC) has erred in confirming the action of Id. AO in rejecting the books of accounts of the assessee company, by invoking the provisions of Section 145(3) of the Income Tax Act, 1961. The action of the Id. CIT(A)/NFAC in confirming the actions of Id. AO is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the entire assessment order passed by the Id. AO and confirmed by Id. CIT(A)/NFAC.*
2. *In the facts and circumstances of the case and in law, Id. CIT(A)/NFAC has erred in restricting the addition made by Id. AO to Rs. 18,44,224 to the income of the assessee company, without a cogent basis. The action of the Id. CIT(A)/NFAC in restricting the addition up to Rs. 18,44,224 is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the entire addition made by Id. AO which is also confirmed by Id. CIT(A)/NFAC.*
3. *In the facts and circumstances of the case and in law, Id. CIT(A)/NFAC has erred in confirming the addition made by Id. AO on account of employees contribution towards PF amounting to rupees 3,12,750/- to the income of the assessee company, on account of alleged delay in payment of the same. The action of the learned CIT appeal/NFAC in confirming addition is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the entire addition made by Id. AO which is also confirmed by Id. CIT(A)/NFAC.*

8. Facts of the case are that the Assessee company is engaged in the business of manufacturing of laminations and for the A.Y. 2014-15, it had declared income of Rs. 25,64,123 in its E-Return of Income filed on 16.11.2014. Assessment was completed u/s 143(3), vide order dated 19.12.2016 at an assessed income of Rs. 1,12,85,860, resulting into addition of Rs. 87,21,737. Aggrieved with the additions made in assessment, the assessee company preferred appeal before the National Faceless Appeal Center ("NFAC"), who vide order dated 30.11.2023, deleted addition made by the Id. AO, to the extent of Rs. 68,77,512 and sustained the balance additions to the extent of Rs. 18,44,224. Against the said additions sustained by the NFAC, present appeal has been preferred by the assessee company before us.

9. The ground number 1 and ground number 3 are not pressed by the Assessee Company and accordingly, both these grounds are dismissed as not pressed.

10. The Ld. AR submitted that in respect of manufacturing activities, even if books are rejected, the declared GP of 15.11% deserves to be upheld. In the immediately preceding year the G.P. of 15.80% was declared on a turnover of Rs. 2055.73 lacs. With the increase in turnover from Rs.

2055.73 lacs to Rs. 2662.87 lacs, the reduced G.P. is justified because for achieving higher turnover the margins are required to be sacrificed in the overall interest of the business, which is evident from the fact of G.P. in absolute terms increasing from Rs. 388.03 lacs in the last year to Rs. 402.29 lacs in the year under appeal. The Ld. AR Pleaded that addition of Rs. 18,44,224 sustained by the NFAC may please be deleted.

11. Having heard both the sides, it is admitted fact that the appellant there was marginal decline in fraction of percentage in the declared GP at 15.11% in comparison to the immediately preceding year the G.P. of 15.80%. However, the authorities below have ignored the increase in the volume of turnover Rs. 2662.87 lacs to the preceding year turnover of Rs. 2055.73 lacs which is about more than 25% increase over the turnover declared in the previous year. As per settled business principles and Accounting Standard, with the increase in turnover by 25 % from Rs. 2055.73 lacs to Rs. 2662.87 lacs, the reduction in GP in fraction of % is justified. Meaning thereby, that in order to achieve higher turnover the certain margins would be required to be sacrificed in the overall interest of the business, in absolute increasing in GP from Rs. 388.03 lacs in the last year to Rs. 402.29 lacs in the present year under appeal. Accordingly, we

hold that the decision of the Ld. CIT(A)/NFAC in restricting the addition up to Rs. 18,44,224 is illegal, arbitrary and against the facts of the case and the addition of Rs. 18,44,224 would be liable to be deleted.

12. In view of that matter, we accept the grievance of the assessee appellant as genuine and as such, the addition of Rs. 18,44,224/- is deleted.

13. In the result, the appeal filed by the assessee in I.T.A. Nos. 33/JPR/2024 and 714/JPR/2023 are allowed and that of revenue in ITA No. 73/JPR/2024 is dismissed.

Order pronounced in open court as on 10.04.2024

Sd/-
(Sandeep Gosain)
Judicial Member

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

DOC

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The Id. CIT
- (4) The Id. CIT(A)
- (5) The DR, I.T.A.T., Jaipur
- (6) Guard File

By Order,
Asstt. Registrar

| | | Date | Initial | |
|-----|--|----------|---------|----------|
| 1. | Draft dictated on | DOC | | Sr.PS/PS |
| 2. | Draft placed before author | | | Sr.PS/PS |
| 3. | Draft proposed & placed before the Second Member | 09.04.24 | | JM/AM |
| 4. | Draft discussed/approved by Second Member | | | JM/AM |
| 5. | Approved Draft comes to the Sr. P.S./P.S. | | | Sr.PS/PS |
| 6. | Kept for pronouncement on | | | Sr.PS/PS |
| 7. | File sent to the Bench Clerk | | | Sr.PS/PS |
| 8. | Date on which file goes to the Head Clerk | | | |
| 9. | Date on which file goes to the AR | | | |
| 10. | Date of dispatch of Order | | | |