

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ, 'बी', अहमदाबाद।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH, AHMEDABAD

BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER  
AND  
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

ITA No.3/Ahd/2024  
Assessment Year : 2017-18

Shree Radhekrishna Extrusions Pvt. Ltd. Plot No. C1 4509, Phase IV Behind Techno Ind Ltd. Vatva Ahmedabad 382 445 Gujarat PAN: AAICS 8566 N	Vs	The ACIT Circle-4(1)(1), Ahmedabad
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<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/(Respondent)</b>
Assessee by :		Shri Sanjay R. Shah, CA
Revenue by :		Shri Nitin Kulkarni, Sr.DR

सुनवाई की तारीख/Date of Hearing : 23/04/2024  
घोषणा की तारीख /Date of Pronouncement : 30/04/2024

**आदेश/ORDER**

**PER MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER:**

The appeal before us is filed by the assessee against the order dated 03/11/2023 passed by Ld. CIT(Appeals), National Faceless Appeal CentreNFSC), Delhi (hereinafter referred to as "Ld.CIT(A)") against the assessment order passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") by the Assistant Commissioner of Income Tax Circle-4(1)(1), Ahmedabad (hereinafter referred to as "AO") for Assessment Year (AY) 2017-18.

2. The assessee has raised following grounds of appeal:

1. *The Hon'ble Commissioner of Income-tax Appeals (NFAC) has erred in law and on facts of the case by upholding the disallowance to the extent of Rs. 15,85,650/- made by the learned Assessing Officer in respect of increase in material consumption for the year under consideration.*
2. *The Hon'ble Commissioner of Income-tax Appeals (NFAC) has erred in law and on facts of the case by upholding the disallowance made by the learned Assessing Officer under section 36(1)(va) of the Act amounting to Rs.70,817/-.*
3. *The Appellant reserves the right to add, alter, amend and/or withdraw any of the above Grounds of Appeal.*

**Facts of the Case:**

3. The assessee is a manufacturer of plastic products. The return of income was filed declaring total income at Rs.37,68,110/-. The case was selected for scrutiny and assessment proceedings were initiated. During the course of assessment proceedings, a show-cause notice was issued to the assessee requesting to provide justification with respect to increase in material consumption from Rs.3,61,34,412/- to Rs.5,90,22,452/-. In reply thereto, the assessee provided the explanation along with the documentary evidence.

3.1. The AO passed the assessment order making an addition on account of excess material consumption to the extent of 25% of rise in consumption of Rs. 1,36,51,497/- and added back Rs 34,12,874/- to the total income of the assessee. The AO also added Rs.70,817/- towards late payment of employee's contribution of PF/ESIC.

3.2. The assessee preferred an appeal against the order of the AO and order u/s.250 of the Act was passed by Ld. CIT(A) restricting the disallowance to

15% of recalculated cost of consumption of Rs.1,05,70,999/- to Rs. 15,85,650/-Ld.CIT(A) also confirmed the addition Rs.70,817/- on account of employee's contribution to PF and ESIC.

4. Aggrieved by the order of CIT(A), the assessee has filed an appeal before us.

**On Merits:**

5. Ground No.1:-Under this ground of appeal, the assessee stated that Ld.CIT(A) has erred in upholding the disallowance to the extent of Rs.15,85,650/- made by AO in respect of raw material consumption. From the submission/material available on records, arguments of the Ld. Counsel of the assessee and the facts recorded by AO and the Ld.CIT(A) in their orders, it can be seen that:

- i. Increase in material consumption compared to previous year was, mainly, due to the inclusion of Job work Charges under cost of raw material. In the previous year the same was not included in the cost of raw material. Thus, the effective increase in cost of raw material is 21.82% instead of 63.78% as claimed by the Assessing Officer.
- ii. The books of accounts of the assessee are duly audited under Companies Act, 2013 as well as Income Tax Act, 1961 and AO has not rejected the books of accounts.
- iii. The AO has not made any addition on account of any undisclosed/unaccounted production and merely on the basis of comparison of data with previous year's data despite of the fact that he himself has stated in his order that -

*“Though there is no denying of the fact that the G.P/ NP ratio of the present year cannot be compared with the earlier year as it depends upon various factor (s) namely the market condition, which in turn depend on demand and supply position, the rise and fall in market rates especially abrupt ones, and many other factors.”*

- iv. The Ld.CIT (A) has stated that the books of accounts were not produced for verification. However, the AO has not drawn any adverse inference from the books of accounts maintained by the assessee in his order.
- v. During the course of hearing, the Counsel for the assessee stated that the books of accounts were never called for including the quantitative details of raw material and other inventories.

5.1. The Counsel for the assessee placed reliance on the following relevant judicial pronouncement of the Co-ordinate Bench during the course of hearing:

In the case of DCIT Vs Paras Dyeing and Printing Mills Pvt. Ltd [2011] 44 SOT 12, it was decided that –

- a. mere fact that the percentage of loss or gross profit is high or low in a particular year, does not necessarily lead to inference that there has been suppression of facts.
- b. when the AO had not pointed out any specific discrepancies or defects in the books of accounts of assessee not had he brought out any material to establish purchases or expenses were inflated or receipts were suppressed, there was no justification in rejecting its books results invoking provisions of section 145.

5.2. On the other hand, the Ld. DR placed his reliance on the order of CIT pointing out the fact that there is corelated increase in sales as compared to increase in raw material consumption and the onus to give reason was on assessee.

6. We have heard the rival contentions of both the parties and perused the material available on record. Looking at the facts of the case, in our considered view, when the AO is resorting to any ad hoc disallowance on the basis of some estimation, he is rejecting the books of accounts without recording the specific reasons. Mere deviation in percentage of consumption of raw materials cannot be a ground for rejecting the books of account and entering in the realm and guesswork of estimation without inquiring into the genuineness of the purchases.

6.1. The Hon'ble Gujarat High Court in the case of CIT Vs. Dhiraj R. Rungta reported in 40 taxmann.com 284 held that once rejection of books of account is justified under section 145 of the Act, no other addition can be made referring the same set of books to the income of the assessee. In the present case, the AO used the same set of books of accounts to estimate the disallowance which is not justifiable. The Ld.CIT (A) also adopted the same method of AO accepting the books of accounts on one hand and making ad hoc addition on other hand but at lower percentage of disallowance.

6.2 When the books of accounts are regularly maintained and are duly audited without any adverse opinion or comments of an auditor, they are to be taken as correct unless there are adequate reasons to indicate that they are incorrect or unreliable. Thus, the onus is upon Revenue to show that

either the books of accounts maintained by assessee are incorrect or incomplete or that the method of accounting adopted by him was such that true profits of the assessee cannot be deduced therefrom. Neither AO nor Ld. CIT(A) has demonstrated specific defects in the books of accounts, therefore adopting method of estimation to make an addition due to increase I raw material consumption is not justifiable. Accordingly on the background of aforesaid discussion and precedent, we delete the addition made by Ld. CIT(A) restricting the disallowance to 15% only. This ground of the assessee is allowed.

7. Ground number 2 is not pressed for by the Ld.Counsel of the assessee and, hence, the same is dismissed as such.

8. Ground number 3 is general in nature, which needs no separate adjudication.

9. In the result, appeal of the assessee is partly allowed.

**Order pronounced in the Open Court on 30<sup>th</sup> April, 2024 at Ahmedabad.**

**Sd/-**  
**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(MAKARAND V. MAHADEOKAR)**  
**ACCOUNTANT MEMBER**

Ahmedabad, Dated 30/04/2024

*टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)- (NFAC), Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR, ITAT, Ahmedabad,
6. गार्ड फाइल /Guard file.

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad