

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "C": NEW DELHI  
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 5708/Del/2016  
(Assessment Year: 2010-11)**

GRP Auto, 19, Rajasthan Udyog Nagar, GT Karnal Road, Delhi (Appellant) <b>PAN:AAFFG6813L</b>	Vs. JCIT, Range-19, New Delhi  (Respondent)
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**ITA No. 5763/Del/2016  
(Assessment Year: 2010-11)**

ACIT, Circle-34(1), New Delhi  (Appellant) <b>PAN:AAFFG6813L</b>	Vs. GRP Auto, 19, Rajasthan Udyog Nagar, GT Karnal Road, Delhi (Respondent)
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Assessee by :	Shri R. K. Gaur, CA
Revenue by:	Shri Sandip Kumar Mishra, Sr. DR

Date of Hearing	05/03/2024
Date of pronouncement	14/05/2024

**ORDER**

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

1. The present appeal in ITA No.5708/Del/2016 filed by the assessee and ITA No. 5763/Del/2016 filed by the revenue for AY 2015-16, arise out of the order of the Commissioner of Income Tax (Appeals)-12, New Delhi [hereinafter referred to as 'ld. CIT(A)', in short] in Appeal No. 24/13-14 dated 08.07.2016 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 07.03.2013 by the Assessing Officer, JCIT, Range-19, New Delhi (hereinafter referred to as 'ld. AO').

2. As these are cross appeals therefore, they are taken up together and disposed of by this common order for the sake of convenience.

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

*"1. In the facts and circumstances of the case, the learned CIT (A) has erred in law while upholding arbitrary action of AO which is bad in law and against the tenets of natural justice.*

*2. Learned CIT(A) has miserably failed to substantiate plausible reasons and logical grounds in upholding the actions of AO for rejection of books of accounts under section 145(3) and applying the arbitrary GP rate on the basis of his personal whims, fancies, conjecture and surmises.*

*3. Learned CIT(A) has failed to appreciate the authenticity of Audited financial statements in confirming the actions of the AO for rejection of books of accounts partially to the extent of stock records not being essentially the part of the books of accounts without justifying the deficiency in maintenance of stock records and valuation thereof.*

*4. In the facts and circumstances of the case, the authorities below have erred in law by ignoring the counting and valuation of stock on the date of survey thereby applying ad hoc GP rate for the whole year as against pre survey and post survey periods.*

*5. The appellant craves to alter, amend, add or delete any grounds of appeal any time before or during the pendency of appeal."*

4. The revenue has raised the following grounds of appeal:-

*"1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the entire addition of Rs.53,08,650/-, even though accepting the findings of AO for disallowance u/s 40A(2), without appreciating the facts of the case properly.*

*2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in inferring that the addition of Rs.1,08,51,505/- on account of suppression of sales encompass in it the addition of Rs.53,08,650/- on extraordinary expenses, while ignoring the fact that former addition includes only trading expenses and did not cover non trading expenses.*

*3. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in holding that the AO cannot rely on the same trading results that he had rejected earlier, while ignoring the fact that AO has not rejected the books as a whole and after removing discrepancy by making addition Rs.1,08,51,505/-, has rightly made disallowance of Rs.53,08,650/- on account of unreasonable expenses.*

4. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in failing to appreciate that both the additions are not mutually inclusive since the first addition on account of suppression of sales affects only GP, while the second addition u/s 40A(2) covers both trading and non trading expenses and affects GP as well as NP."*

5. At the outset, we find that the tax effect on the dispute raised by the revenue before us falls less than the monetary limit prescribed for filing an appeal by the revenue before this Tribunal in view of the CBDT Circular No.17/2019 dated 08.08.2019. In view of this circular, the revenue's appeal is hereby dismissed as not maintainable.

**ITA No. 5708/Del/2016 for AY 2010-11**

6. Let us proceed to discuss the issue raised by the assessee in its grounds.

7. We have heard the rival submissions and perused the material available on record. The assessee is a partnership firm, engaged in the business of trading in auto parts. The assessee firm consists of two partners. The assessee firm belongs to big group of assesseees engaged in the business of manufacturing and trading of auto parts. The details of sister concerns of the assessee firm are as under:-

S. No.	Name of the sister concern	PAN	Business activity
1.	Swiss Auto Products	AARPS6458D	Manufacturers of auto parts
2.	Swiss Lamps Pvt. Ltd.	AAJCS1745E	Manufacturers of auto parts
3.	Swiss Auto Pvt. Ltd.	AAFCS5788K	Manufacturers of auto parts
4.	Swiss Devices (I)	ABHFS7066A	Manufacturers of auto parts
5.	Taruna Auto Pvt. Ltd	AAACT4706F	Trading of auto parts

8. The assessee has made major purchases from the above sister concerns, which are manufacturing auto parts and hence, same was subjected to test by applying the provisions of section 40A(2) of the Act by the Id. AO. The return of income for AY 2010-11 was filed by the assessee firm on 26.09.2010 declaring total

income of Rs. 4,36,31,310/-. During the financial year 2009-10, a survey action u/s 133A of the Act was carried out on the business premises of the assessee on 21.01.2010 wherein, pursuant to the discrepancy found by the survey team, a declaration of additional income was made by the assessee towards the following:-

a.	on account of excess cash found	Rs. 1,15,16,100/-
b.	on account of excess stock found	Rs. 1,75,98,542/-
c.	on account of undisclosed investment in furniture and fixtures	Rs. 2,27,29,200/-

9. The main grievance of the revenue was that the total additional income surrendered by the assessee was Rs. 5,18,43,842/- whereas the return of income was filed declaring total income of Rs. 4,36,31,310/-. The additional income offered by the assessee towards excess stock of Rs. 1,75,98,542/- was incorporated by the assessee in profit and loss account under the head "Sales and other income" and after considering the same, the assessee earned gross profit of Rs. 8,42,95,900/- which was worked out to @10.79%. The Id AO observed that excess income offered on account of excess stock to be taxed only as income from other sources and hence, the same cannot be considered as business income of the assessee and consequently, the same should not be considered for the purpose of working out the gross profit. Accordingly, the Id. AO ignoring the value of income on account of excess stock of Rs 1,75,98,542/-, arrived at the gross profit of Rs. 6,66,97,358/- which worked out to 8.53% of turnover. The Id AO compared this gross profit of 8.53% with the gross profit for immediately preceding year at 9.92%. The Id AO sought to add a sum of Rs. 1,08,51,505/- being the difference in gross profit margin disclosed by the assessee for the year under consideration when compared to with the last year as under:-

a.	GP for Assessment year 2009-10	9.92%
b.	GP of current year including additional income on account of excess stock	8.53%

c.	Difference (a-b)	1.39%
d.	Turnover of the assessee	Rs. 78,06,83,867/-
e.	Differential gross profit (c * d)	Rs. 1,08,51,505/-

10. The Id AO observed that the additional income offered by the assessee on account of excess stock of Rs. 1,75,98,542/- surrendered by the assessee during the course of survey was not shown by the assessee in the trading account by including it in the closing stock and that same was offered to income tax only as other income. Hence, the said surrender is not included in the closing stock as on 31.03.2010 at Rs. 4,50,31,614/-. The assessee furnished details of closing stock of Rs. 4,50,31,614/-. The Id. AO observed that what the assessee had surrendered at the time of survey was the value of inventories found during survey in excess over stock as per books of account as on 21.01.2010 and not the value of particular item of stock. The Id AO justified the additional amount on account of difference of Rs. 1,08,51,505/- by taking sample of 10 invoices of purchase and sales made by the assessee and arrived at the corresponding gross profit percentage thereon, wherein he found that the gross profit earned thereon were much more than 8.53% in all the cases. Further, the Id AO noted that the assessee had made majority of the purchases made from sister concern i.e. M/s. Swiss Devices (I) which was claiming deduction u/s 80IC of the Act showing exorbitant GP of 32.08% and net profit 28.81% which means that expenses debited to its profit and loss account was just 3.27% of its sales as against 9.6% of the sales in assessee's case. The Id AO also observed that gross profit shown by the assessee for the period 01.04.2009 to 21.01.2010 (upto the date of survey) was 8.73%, whereas the gross profit shown by the assessee as on 22.01.2010 to 31.03.2010 was only 7.85% . Based on these observations, the Id AO proceeded to reject the books and book results of the assessee to the extent of closing stock and made addition towards difference in gross profit of Rs. 1,08,51,505/- as explained supra. This action of the Id AO was upheld by the Id CIT(A). In our considered opinion, the Id AO had made elaborate verification in the instant case by examining the sample invoices. From the perusal of the orders of the lower authorities, it is found that the Id AO had

made verification of 395 items wherein in respect of 110 items, the assessee had reported gross profit of more than 10%; in respect of 84 items, the assessee has reported gross profit of more than 11%; in respect of 41 items, the assessee had reported gross profit less than 6.9%. Though the assessee had stated that there was heavy competition prevailing in the last quarter of the financial year which led the assessee to sell the products at a much lesser rate when compared to other quarters which had evidently contributed to the reduction of gross profit during the last quarter, we find that the same is not supported with any documentary evidence by the assessee. It is pertinent to note that there was excess stock of Rs. 1,75,98,542/- was found during the survey which was accepted by the assessee by way of a declaration. The same also stood offered by the assessee as income in the return of income which was never retracted by the assessee. Obviously the addition on account of excess stock could be made only as unexplained investment taxable u/s 69 of the Act which could never be business income of the assessee. Hence, the income of Rs. 1,75,98,542/- needs to be taxed separately as unexplained investment and accordingly same could not be included in the gross profit computation of the assessee. Hence, the action of the lower authorities in determining the gross profit @8.53% without considering the value of surrendered stock is correct. Moreover, it is fact that gross profit for the year had declined by 1.39% when compared to that of the immediately preceding year. The Id AO had made extensive verification and found that the gross profit was drastically varying as some of the items were sold at a margin of 10% and some of the items were sold with more than 11%, some on the profit less than 6.9%. It is further, pertinent to note that the assessee having additionally offered 5.18 crores during the survey on 21.01.2010 had ultimately resorted to disclose only 4.36 crores as the returned income. None of the deficiencies pointed out by the Id AO by rejecting the books of account were met by the assessee before us with cogent evidence by giving contrary material. Hence, we uphold the action of the lower authorities for rejecting the books of account u/s 145(3) of the Act and calculating the differential gross profit. In the instant case, the Id AO had not resorted to estimation of the gross profit rather he had retained the gross profit earned by the assessee in the

immediately preceding year and made addition for the difference amount in the sum of Rs. 1,08,51,505/-.

11. Considering the totality of the peculiar facts and circumstances of the instant case, the behavior of the assessee, deficiencies in the gross profit margins by having varying percentages as explained supra, we hold that addition has been rightly made by the Id AO in the sum of Rs. 1,08,51,505/- and the same has been rightly confirmed by the Id CIT(A) and hence the same does not require any interference. Accordingly, grounds raised by the assessee are dismissed.

12. In the result, the appeal of the assessee is dismissed and appeal of the revenue is also dismissed.

Order pronounced in the open court on 14/05/2024.

-Sd/-  
**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

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

Dated:14/05/2024  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi