

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR “SMC” BENCH : NAGOOR

[THROUGH VIRTUAL HEARING AT ITAT : PUNE]

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

I.T.A.No.105/NAG./2020
Assessment Year 2013-2014

DCIT, Circle-2, Room No.318, 3 rd Floor, Aayakar Bhavan, Telangkhedi Road, Civil Lines, Nagpur – 440 001. Maharashtra.	vs.	M/s. Central Cables Ltd., 5, Temple Road, Civil Lines, NAGPUR – 440 001. Maharashtra. PAN AAACC7036R
(Appellant)		(Respondent)

For Revenue :	Shri Kailash C. Kanojiya, CIT-DR
For Assessee :	Shri Soumitra Choudhary A.R

Date of Hearing :	18.03.2024
Date of Pronouncement :	15.05.2024

ORDER

This assessee’s appeal for assessment year 2013-2014, arise against CIT(A)-2, Nagpur Nagpur's Order in Appeal No.CIT(A)-2/69/2016-17/ITBA No.10199, dated 21.07.2020, in proceedings u/s.144 of the Income Tax Act, 1961 (in short “the Act”).

Heard both the parties. Case file perused.

2. The Revenue pleads the following substantive grounds in the instant appeal :

1. *“Whether on the facts and circumstances of the case and in law the CIT(A)-2, Nagpur was justified in deleting the addition*

made by estimating Gross profit @ 8.63% of turnover inspite of non production of the records before the AO by the Assessee.

2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A)-2, Nagpur was justified in deleting the addition made on account of disallowance u/s. 40(a)(ia) of the Income Tax Act, 1961 inspite of the fact that no documents were produced before the AO for non deduction of TDS on interest payment.*
3. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A)-2, Nagpur was justified in deleting the addition made by disallowance of various expenditure amounting to Rs.1,36,03,446/-, inspite of the fact that principal of Res Judicata is not applicable in the tax matters which was held in the case of Radhasoami Satsang Vyas by the Hon'ble Supreme Court.*
4. *Any other grounds of appeal at the time of hearing of the appeal."*

3. It is next noticed that the Ld. CIT(A)'s detailed discussion reversing the assessment findings re-estimating it's profits, reads as under :

5.2 Ground No.4 & 5 challenge the addition of Rs.2,01,56,810/- by rejecting the trading results.

5.2.1 The gist of the arguments of the Ld Counsel (the entire reply has been already reproduced *supra* in para no. 4 of this order) even at the cost of brevity is once again reproduced as under, for ready reference:-

"3.1.1 Addition of Gross Profit of Rs. 2,01,56,810/-: In the return of income, assessee declared Gross Loss of Rs. 69,09,136/-. The Gross Profit to Net Sales percentage was declared (-) 4.5% and for the previous two years, the

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same was declared as follows:

GROSS PROFIT TO NET SALES PERCENTAGE

FY 2010-11	FY 2011-12	FY 2012-13
10.49%	6.75 %	- 4.5%

As can be seen from above, the Gross Profit to Net Sales ratio has been consistently declining. The AO alleged that assessee has undervalued the Sales declared in the relevant assessment year, and therefore AO disallowed the claim of loss of the assessee. Further taking the average of past two assessment years, AO determined the GP % for the relevant year to be at 8.63%, and on the sales of Rs. 15.35 crore amount of Rs. 2,01,56,180/- was added to the Loss declared by the assessee.

3.1.2 At the outset it is submitted that the allegation of the AO that the appellant has undervalued sales is without any basis and also without pointing out any defect in the sales bills and books of accounts maintained by the appellant.

Hence, the rejection of books and consequent addition by adopting average gross profit rate of earlier years is unjustified.

3.1.3 It is also submitted that in the AY 2012-13 there was decline in GP ratio by around 4% as compared to AY 2011-12 however the assessment u/s 143(3) was completed accepting the trading results.

3.1.4 It is further submitted that the management of the assessee company was not able to run the business efficiently due to various factors and it was subsequently decided amongst the directors of the assessee company that it is in everyone's best interest to shut it down. The wife of Director of the assessee company was suffering from cancer since last few years due to which he could not devote time in affairs of the assessee company. Moreover, mother of the Director was also suffering from ailments of old age. Both the wife and mother of the Director of the assessee company passed away subsequently on 19/05/2014 and 21/12/2015 respectively. Death Certificate of wife and mother of Director is annexed as **Annexure A**. Therefore, for the purpose of shutting down of factory, all the stock and machinery which was kept at the premises of the assessee company was decided to be sold. However, the news of shutting down of the factory spread out easily and buyers started taking advantage of the situation by offering only the scrap value for the finished goods. The assessee company was not in a position to negotiate a better deal, as providing after-sales services to such customers was not possible due to closure. To top it all, there was no buyer of the machinery as the same was old and was tailor made for the existing shed only. In other words the assessee could not sell the stock nor the machinery in the relevant assessment year, but the news of closure largely affected the business of the assessee. This has resulted into

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lower sales realisation of the finished goods as compared to earlier years.

3.1.5 The main reasons for decline of profit for the relevant Assessment Year are as follows:-

- i. News of closure of business, resulting in lower realisation of sale price. The factory subsequently closed down in October of 2013, i.e., in the next financial year, but the news of closure spread in the relevant year which hugely affected the sale price. Paper advertisement for sale of factory and machinery attached herewith as **Annexure B**.
- ii. Though sales reduced, fixed cost expenses remained constant. Attention is invited to following chart:

AY	Net Sales	Direct Expenses		Ratio
2012-13	29,81,67,041	Manufacturing	1,15,90,94	3.88%
		Salary, wages, bonus	1,46,10,92	4.90%
2013-14	15,35,07,232	Manufacturing	68,40,733	4.45%
		Salary, wages, bonus	1,47,72,24	9.62%

(All figures in INR)

As can be seen from above, manufacturing to sales ratio increased from 3.88% to 4.45% and Salary and wages expenses to sales ratio from 4.90% to 9.62%. These two heads themselves accounted for 5.29% increase in direct expenses to sales ratio as they are fixed expenses and do not vary with value of sales. One of the major factors for decline in GP ratio is Salary & Wages which are almost fixed and do not change much with increase or decrease due to sales volume.

- iii. The BIS Certificate issued to the assessee was valid upto 15/02/2013, after which no renewal was sought. Subsequently, the ISI mark was withdrawn. The main purchasers of cables made by assessee are different government agencies/departments. The news of assessee's plan to shut down the factory made such government agencies less inclined to purchase material from assessee as the ISI marking is necessary criterion for them. Thus, without the ISI mark the sales could only be made on lower/scrap value of the stock. Communication with BIS authorities regarding validity of certificate is annexed as **Annexure C**.
- iv. Moreover, much of the stock, that was sold, was piled up in the premises of the assessee company for years. Such stock was non-sellable and was thus sold as scrap. Sample sale vouchers showing

sales at scrap value is annexed herewith as Annexure D.

v. *In view of the above facts it is clear that the rejection of books by the Id. AO, that were regularly maintained by assessee and audited under the Companies Act as well as Income Tax Act, and consequent GP addition is unjustified and deserves to be deleted."*

5.2.2 In another appeal order dated 31-01-2020 in case of the same appellant for A.Y. 2014-15 a detailed discussion was made related to the acceptance of book results. The factory of appellant company was closed from October 2013 and therefore, the profit went down and loss was shown in the books. The books as such were regularly maintained and audited under Companies Act as well as Income Tax Act and nowhere the audit has been questioned by the Ld. AO by rejecting the book results. No pointed discrepancy has been discussed in the impugned order and it is also seen that main purchases of the appellant company were from different government agencies and the appellant company was having BIS certificate from the Bureau of Standards. The main reason for decline in the profit was fixed expenses like salary and wages.

5.2.3 In the light of the above discussion, it is found that the appellant company is entitled to get the relief and therefore the **Grounds No.4 & 5 are allowed.**

5. I have given my thoughtful consideration to the vehement rival stands against and in support of the CIT(A)'s impugned lower appellate findings deleting the impugned addition. I find no merit in the Revenue's stand. This is for the precise reason that the Assessing Officer's assessment herein dated 28.03.2016 had compared the assessee's impugned book results vis-à-vis the corresponding figures in assessment years 2012-2013 and 2013-2014 and adopted 8.63% gross profit rate coming to average thereof, for making the addition herein of Rs.2,01,56,810/-. It has already come on record from the CIT(A)'s impugned detailed discussion that the assessee's manufacturing unit was closed from October, 2013 resulting in the decline of not only in its profit rate but also a spike in

the loss figures. Be that as it may, this is indeed coupled with the fact that the learned assessing authority had not found any other defect in assessee's part in declaration of its book results of the relevant previous year. And that the CIT(A)'s order for A.Y.2014-15 on the very issue has not been disturbed till date. Faced with this situation, it is deemed appropriate that although the Revenue's impugned first and foremost substantive ground does not deserve to be accepted in principle, it would indeed be in the larger interest of justice that a *lump sum* addition of Rs.2 lakhs only would be just and proper in these peculiar facts and circumstances. I order accordingly. Necessary computation shall follow as per law. This Revenue's first and foremost substantive ground stands partly accepted in above terms.

6. Coming to the Revenue's latter twin substantive grounds seeking to revive sec.40(a)(ia) and other expenditure disallowance(s) involving varying sums; I find no merit therein in light of *Indwell Constructions vs. CIT* [1998] 232 ITR 776 (AP) that the same would not be applicable once the corresponding book results already stand rejected. It is reiterated here that I have already estimated the assessee's income declared in preceding paragraph and therefore, these twin substantive grounds must fail. Ordered accordingly.

7. This Revenue's appeal is partly allowed in above terms.

Order pronounced in the open Court on 15.05.2024.

Sd/
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 15th May, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Pr. CIT, Nagpur concerned
4.	D.R. ITAT, "Nagpur-SMC" Bench, Nagpur.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,
Pune.