

आयकर अपीलिय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

HEARING THROUGH: HYBRID MODE

श्री आकाश दीप जैन, उपाध्यक्ष एवं श्री विक्रम सिंह यादव, लेखा सदस्य
BEFORE: SHRI. AAKASH DEEP JAIN, VP & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं. / ITA NO. 1164/Chd/2017
निर्धारण वर्ष / Assessment Year : 2012-13

M/s Gold Star Amco Steels Pvt. Ltd. C-202, Phase-VII, Focal Point, Ludhiana	बनाम	The Dy. CIT Circle-1, Ludhiana
स्थायी लेखा सं. / PAN NO: AADCG4212G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA NO. 1198/Chd/2017
निर्धारण वर्ष / Assessment Year : 2012-13

The Dy. CIT Circle-1, Ludhiana	बनाम	M/s Gold Star Amco Steels Pvt. Ltd. C-202, Phase-VII, Focal Point, Ludhiana
स्थायी लेखा सं. / PAN NO: AADCG4212G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Sudhir Sehgal, Advocate
राजस्व की ओर से / Revenue by : Shri Manveet Singh Sehgal, Sr. DR

सुनवाई की तारीख / Date of Hearing : 07/03/2024
उद्घोषणा की तारीख / Date of Pronouncement : 04/06/2024

आदेश / Order

PER VIKRAM SINGH YADAV, A.M. :

These are Cross Appeals file by the Assessee and the Revenue against the order of the Ld. CIT(A)-1 dt. 17/05/2017 wherein the respective grounds of appeal read as under:

2. In ITA No. 1164/CHD/2017, the assessee has raised the following grounds of appeal:

"1. That the Worthy CIT(A) has erred in confirming the action of the Assessing Officer in framing the assessment u/s 144 of the Income Tax Act and without allowing sufficient opportunity and also no notice u/s 143(2) had been served upon the assessee before 30th of September 2013 and, as such, framing of assessment by the Assessing Officer without observing mandatory

requirement of service of notice is not valid and the assessment proceedings deserves to be quashed.

2. That the finding of the CIT(A) about service of notice on the director of the company is not justified and, thus, the assessment as framed by the Assessing Officer deserves to be quashed.

3. That the Ld. CIT(A) has erred in confirming the addition of Rs. 38 lacs in respect of amount received from M/s Neelkanth Concast (P) Ltd. as per para 5.5 of his order despite the fact that confirmation from the party concerned had been furnished before CIT(A) and no adverse comments had been given by the Assessing Officer during remand proceedings.

4. That the Ld. CIT(A) has erred in confirming the disallowance of depreciation to the tune of Rs. 10,34,306/- as per para 7.3 of his order.

5. That the Ld. CIT(A) has erred in applying the net profit rate of 1% on the declared sale, which is against the facts and circumstances of the case and considering the same business of the assessee, specially when all the details had been filed during the course of proceedings before the CIT(A) and no adverse comment had been given by the Assessing Officer and also the Ld. CIT(A) has not been able to find any fault on the same and, thus, application of net profit rate as applied is not justified.

6. That the Appellant craves leave to add or amend the ground of appeal before the appeal is finally heard or disposed off."

3. In ITA No. 1198/CHD/2017, the Revenue has raised the following grounds of appeal:

"1. Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in allowing relief on account of advance received from customers.

2. Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in allowing relief on account of reducing N.P. rate to 1% as against 1.5% adopted by the AO on the declared sales / turnover ?

3. That the order of the Ld. CIT(A) be set aside and that of the Assessing Officer be restored.

4. That the appellant craves leave to add or amend any ground of appeal before it is finally disposed off."

4. Both these appeals were heard together and are being disposed off by this consolidated order.

5. Briefly the facts of the case are that the assessee company filed its return of income declaring loss of Rs. 2,46,67,816/-. Subsequently, the case of the assessee was selected for scrutiny under CASS and notice under section 143(2) and 142(1) were issued and necessary information were called for. Thereafter, a show cause under section 144 was issued due to non

compliance of statutory notices and absence of replies to the questionnaire issued from time to time and thereafter, the AO invoked his jurisdiction under section 144 and assessment was completed under section 144 dt. 09/03/2015 wherein the assessed income was determined at Rs. 3,54,58,572/- as against the returned loss of Rs. 2,46,67,816/-.

6. While passing the assessment order, the AO made an addition of Rs. 32,50,000/- under Section 68 of the Act on account of share application money received by the assessee during the year, Rs. 2,76,67,243/- under Section 68 on account of advances from customers, disallowance of depreciation amounting to Rs. 10,34,306/- and an addition of Rs. 2,81,74,839/- by estimating N.P. Rate in the hands of the assessee company.

7. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) who has partly allowed the appeal of the assessee whereby the addition of Rs. 32,50,000/- under Section 68 on account of share application money has been deleted by him and in absence of any further appeal, the same has attained finality. Out of addition of Rs. 2,76,67,243/- under Section 68 on account of advance from customers, he has allowed relief of an amount of Rs. 2,38,17,243/- against which the Department in appeal before us and regarding the addition sustained by him amounting to Rs. 38,00,000/-, the assessee is in appeal before us. The disallowance of depreciation has been confirmed by the Ld. CIT(A) against which the assessee is again in appeal before us and lastly, regarding estimation of N.P. rate, the Ld. CIT(A) has estimated the N.P. Rate @ 1% as against 1.5% by the AO and both the parties are in appeal before us against the said action of the Ld. CIT(A).

8. Firstly, we will take up the issue of advances received from the customers and addition made by the AO under Section 68 wherein the Revenue is in appeal against the deletion of addition of Rs. 2,38,67,243/- and the assessee is in appeal against the sustenance of addition of Rs. 38,00,000/-.

8.1 In this regard, briefly the facts of the case are that during the course of assessment proceedings, the AO observed that the assessee company has

shown a sum of Rs. 2,76,67,243/- as advance from its customers in its balance sheet for the F.Y. 2011-2 and which has been received during the year under consideration whereby Rs. 2,38,67,243/- has been received from M/s Goldstar Industry and Rs. 38,00,000/- has been received from M/s Neel Kandh Concast Steels Pvt. Ltd. As per the AO, the purpose of advance could not be established in the absence of books/ record or information which are not shown / provided by the assessee and since these advances have been lying since long in the account without any purpose, the whole of the amount of Rs. 2,76,67,243/- shown by the assessee as advance received from the customers was brought to tax invoking the provisions of Section 68 of the Act.

8.2 Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A).

8.3 Regarding M/s Goldstar Industry, it was submitted during the appellate proceedings that the company had been making sales to M/s Goldstar Industry against advances received from time to time. In support confirmed copy of the accounts of the assessee in the books of M/s Goldstar Industry, copy of Income Tax Return of M/s Goldstar Industry and its audited balance sheet for F.Y. 2011-12 were submitted. It was further submitted that the assessee has actually received a sum of Rs. 2.62 Crores as against Rs. 2.39 Crores as mentioned by the AO.

8.4 Regarding M/s Neel Kandh Concast Steels Pvt. Ltd., the assessee submitted that it had agreed to supply goods and make sales to M/s Neel Kandh Concast Steels Pvt. Ltd. but due to adverse conditions, the sales could not be made and the amount continue to stand in the books of account of the assessee. In support, confirmed copy of the account of the assessee company in the books of M/s Neel Kandh Concast Steels Pvt. Ltd., copy of its ITR and audited balance sheet for the F.Y. 2011-12 were submitted wherein the amount advanced to the assessee was stated to be clearly reflected in its balance sheet.

8.5 The submissions and the information so filed by the assessee were forwarded to the AO for necessary examination and the AO in its remand report has reiterated the fact that the assessment was completed ex-parte and he did not offer any specific comments on merit of the addition so made as well as the information/documentation so submitted by the assessee and it was stated by him that the matter may be decided on merits of the case.

8.6 The Ld. CIT(A) thereafter, considering the submissions of the assessee as well as the remand report of the AO has deleted the addition of Rs. 2,62,20,043/- as far as the advance received from M/s Goldstar Industry was concerned, however, he has confirmed the addition of Rs. 38,00,000/- in respect of advance received from M/s Neel Kandh Concast Steels Pvt. Ltd.

8.7 Regarding M/s Goldstar Industry, the Ld. CIT(A) has returned his finding stating that he has gone through the copy of the account of the assessee in the books of M/s Goldstar Industry and it was found that there have been regular transaction of purchases made by the said party from the assessee in F.Y 2011-12 and 2012-13. It was further stated by the Ld. CIT(A) that as against the opening balance of Rs. 23,51,430/- there was closing balance of Rs. 2,62,20,043/- as on 31/03/2012 and which has further reduced to Rs. 1,77,57,759/- as on 31/03/2013. The Ld. CIT(A) accordingly held that in view of the regular dealings made by the assessee with the said party, he did not find any justification in the action of the AO in treating the amount of advances received from customers as income of the assessee merely on account of assumption that amount has been standing for long and accordingly the amount of Rs. 2,62,20,043/- was treated as a genuine advance received by the assessee from its customer M/s Goldstar Industry and addition so made by the AO was deleted.

8.8 As regards the advance of Rs. 38,00,000/- received from M/s Neel Kandh Concast Steels Pvt. Ltd., the Ld. CIT(A) returned his finding stating that this amount has been received only on 25/11/2011 by two cheques of Rs. 30.00 lacs and Rs. 8.00 lacs respectively and there has been no sale/

purchase transactions with the said party during the period under consideration. Further from the review of the confirmed copy of the account filed by the assessee for the next year also, the balance remained the same as on 31/03/2013 except for a transaction of Rs. 2,00,000/- which was received on 16/06/2012 and paid back on 06/09/2012. It was accordingly held by the Id CIT(A) that in absence of any transaction being executed with the said party during the period under consideration and also in the subsequent years, the amount of Rs. 38,00,000/- is nothing but the income of the assessee and which has been rightly brought to tax by the AO under section 68 of the Act.

8.9. Now Revenue is in appeal against the action of the Id CIT(A) in deleting the addition of Rs. 2,38,17,243/- and the assessee is in appeal against the sustenance of addition of Rs. 38,00,000/- u/s 68 of the Act.

8.10. During the course of hearing, the Ld. AR reiterated the submissions made before the Ld. CIT(A) and relied on the findings of the Id CIT(A) as far as amount of Rs 2,38,17,243/- received from M/s Goldstar Industries. Regarding advanced received from M/s Neel Kandh Concast Steels Pvt. Ltd, it was submitted that assessee duly furnished confirmed copy of the assessee's account in the books of M/s Neel Kandh Concast Steels Pvt. Ltd. and even furnished copy of its ITR and audited Balance Sheet for F.Y. relevant to A.Y 2012-13. It was submitted that the AO in his remand report has not given any adverse comment regarding the documentation so submitted and merely mentioned that the case may be decided on merits. It was submitted that review of the audited balance sheet of M/s Neel Kandh Concast Steels Pvt. Ltd. would clearly indicate that the company was a profit making concern having good creditworthiness to advance the amount to the assessee company. It was submitted that the Ld. CIT(A) sustained the addition without considering the fact that the assessee's business was in a poor state and the assessee's account was ultimately categorized as NPA and possession of the assessee's unit was taken over by the bank and

therefore the assessee was unable to repay the amount or make sales to M/s Neel Kandh Concast Steels Pvt. Ltd. At the same time it was submitted that the assessee discharged the necessary onus in terms of identity, genuineness and the creditworthiness of the said party and therefore there is no basis for making the addition under section 68 of the Act. In support, reliance was placed on the decision of Hon'ble Punjab & Haryana High Court in case of CIT Vs. Varinder Rawley (2014) 366 ITR 0232 and decision of Hon'ble Delhi High Court in case of CIT Vs. Gangeshwari Metal Pvt. Ltd. 361 ITR 0010.

8.11 In his submissions, the Ld. DR relied on the findings of the AO as far as the deletion of addition of Rs. 2,38,17,243/- is concerned. Further, he has relied on the findings of the Ld. CIT(A) regarding the addition sustained by him amounting to Rs. 38,00,000/-.

8.12 We have heard the rival contentions and perused the material available on record. During the appellate proceedings, it was submitted by the assessee company that it had been making sales to M/s Goldstar Industry against advances received from time to time and in support, confirmed copy of the accounts of the assessee in the books of M/s Goldstar Industry, copy of Income Tax Return of M/s Goldstar Industry and its audited balance sheet for F.Y. 2011-12 were submitted. Similarly, in respect of M/s Neel Kandh Concast Steels Pvt. Ltd., the assessee submitted that it had agreed to supply goods and make sales to M/s Neel Kandh Concast Steels Pvt. Ltd. but due to adverse conditions, the sales could not be made and the amount continue to stand in the books of account of the assessee and in support, confirmed copy of the account of the assessee company in the books of M/s Neel Kandh Concast Steels Pvt. Ltd., copy of its ITR and audited balance sheet for the F.Y. 2011-12 were submitted wherein the amount advanced to the assessee was stated to be clearly reflected in its balance sheet. The documentation so submitted were sent to AO and there is no adverse finding returned by the AO in his remand report on the documentation so submitted. The Id CIT(A) has also gone through these documentation and has not

returned any adverse finding, at the same time, he has deleted the addition as far as amount received from M/s Goldstar Industry and has confirmed the addition as far as amount received from M/s Neel Kandh Concast Steels Pvt. Ltd stating that there have been certain transactions/movement during the year in the account of M/s Goldstar Industry whereas there were no transactions/movement in the account of M/s Neel Kandh Concast Steels Pvt. Ltd.

8.13 To our mind, where the AO has invoked the provisions of section 68, what is relevant to examine is the reasonability of the explanation of the assessee regarding identity, genuineness and creditworthiness of the person from whom the amount has been received and stood credited in the books of assessee. In the instant case, the assessee has explained and demonstrated that both the transactions were in normal course of its business where the sales are made against the advances received. It has also been explained that in the first case, the sale were actually made and the advances stood adjusted however, in the latter case, the sale couldn't be made due to certain adverse conditions and the advance continue to stand in the books of assessee as well as that of the person who has advanced the money to the assessee and the said person has confirmed the same in writing. Further, the necessary documentation in terms of confirmed copy of the ledger account of the assessee in books of both these parties, their tax returns and audited balance sheets have been submitted which clearly demonstrate their ability to advance the funds to the assessee and the fact that the amount has been standing in their books as due from the assessee. We therefore find that the assessee has duly discharged the onus cast on it in terms of section 68 and in view of the same, both the additions so made by the AO are hereby directed to be deleted.

8.14 In the result, the ground no. 3 of the assessee's appeal is allowed and ground no. 1 of the Revenue's appeal is dismissed.

9. In Ground No. 4, the assessee had challenged the sustenance of disallowance of depreciation to the tune of Rs. 10,34,306/-.

9.1. In this regard, briefly the facts of the case are that during the course of assessment proceedings, the AO observed that the assessee had made capital addition during the F.Y. 2011-12 on account of Plant & Machinery, Computer, Furniture & Fixture and Vehicle and the assessee was asked to submit ledger account and bills & vouchers in support of the addition so made to the fixed assets. However, in absence of any documentation been submitted in support of the purchase of the assets, the depreciation so worked out by the assessee was disallowed.

9.2 During the course of appellate proceedings, the assessee company furnished copy of the account of the fixed assets as per books of account as well as copy of the account of the parties from whom the said purchases were made. It was submitted that all the purchases are as per regular banking channels and there are no cash payment except for an amount of Rs. 9500/-. It was further submitted that the assessee company also paid the excise duty on purchase of Plant & Machinery and necessary proof in respect thereof were submitted alongwith copy of the purchase register which were considered but not found acceptable to the Ld. CIT(A) and his findings are contained at para 7.3 which read as under:

"7.3 I have carefully considered the facts of the case, the basis of the disallowance made and the arguments of the AR. The Assessing Officer / disallowed the claim of depreciation amounting to Rs. 10,34,306/- on plant and machinery, computers, furniture & fixture and vehicle (cars) due to failure of the appellant to file copies of ledger accounts or bills and vouchers. During the course of appellate proceedings, the AR submitted that such assets were purchased and had been accounted for in the books of accounts. The appellant has also filed detailed evidence in the form of schedule of fixed assets/depreciation chart and copy of accounts of the parties from whom assets have been purchased and also purchase register showing details of addition made to plant & machinery along-with excise register copy to substantiate payment of duty on purchase of machinery. The Assessing Officer did not comment on this issue in his remand report and has reiterated the reasons given in the assessment order. In view of the fact that necessary details in the form of bills with supporting evidence have not been filed on record by the appellant, I do not find any justification in allowing the claim of the appellant. The appellant has failed to furnish any evidence in the form of copy of sale bills for purchase of assets. I hold that Assessing Officer was

justified in disallowing the claim of depreciation made on account of purchase of new assets during the period under consideration. The appeal filed on this ground is therefore dismissed."

9.3 During the course of hearing, the Ld. AR submitted that assessee had made certain additions to plant and machinery, computers, furniture and vehicles during the year under consideration. The AO disallowed the depreciation on these assets due to non production of bills. It was submitted before the Id CIT(A) that the premises of the assessee were in the symbolic and physical possession of the State Bank of India. Proof of possession of assessee's premises in the form of auction notice by the bank alongwith the letter furnished to the bank for release of the documents has been placed on record. It was further submitted that the assessee had subsequently obtained the details and filed the details of addition to fixed assets along with the copy of accounts before the Id CIT(A) Further, the assessee had also filed relevant copies of the purchase register along with the excise register and copy of vat account which ensures that the assessee had paid all the applicable duties on such capital assets. It was submitted that all the payments had been made through regular banking channels and the Assessing Officer has not raised any issue in remand proceedings. It was submitted that the above facts clearly state that the assessee was prevented by sufficient cause for producing the bills for purchase of capital assets and the documents available with the assessee were furnished before the Id CIT(A) which were sufficient enough to ensure that the capital addition done by the assessee was genuine and not bogus. It was accordingly submitted that the disallowance of depreciation so made and confirmed by the Id CIT(A) be deleted to be deleted.

9.4 In his submissions, the Ld. DR relied on the findings of the AO as far as that of the Id CIT(A).

9.5 We have heard the rival contentions and purused the material available on record. We find that during the appellate proceedings, the

assessee had submitted the details of addition to fixed assets in terms of individual asset ledgers containing the date of purchase, name of the party from whom the asset has been purchased and the cost of the asset which has been capitalised in the books of accounts. The particulars of the assets so purchased have been recorded in the purchase register which has also been produced for necessary verification. Further, the assessee has produced the excise register and copy of vat account showing the amount of taxes and duties which have been paid at the time of purchase of the asset. Separately, the ledger account of the parties from whom the asset has been purchased evidencing the name and address of the parties, the cost of the asset purchased and payment made through the banking channel has been submitted. The documents so submitted by the assessee were sent to the AO for necessary verification and in his remand report, there is no adverse finding recorded by the AO. The Id CIT(A) has also acknowledged the fact of submission of these documentation and no adverse finding has been recorded by him. In light of the same, we are of the considered view that the assessee has placed on record necessary documentation in support of the purchase of the fixed assets. It is not the case of the Revenue that the assets so purchased have not been put to use during the financial year. In light of the same, we don't find any justifiable basis to deny the claim of the depreciation which the assessee is eligible to and the same is directed to be allowed and the findings of the Id CIT(A) are set-aside.

9.6 In the result, ground no. 4 of the assessee's appeal is allowed.

10. In Ground No. 5, the assessee has challenged the application of N.P. rate of 1% on declared sales as per the books of account and not accepting the results as shown in the books of accounts whereas the Revenue in ground no. 2 has challenged the action of the Id CIT(A) in reducing the net profit rate to 1% as against 1.5% as determined by the AO.

10.1. In this regard briefly the facts of the case are that on perusal of the audit report of the assessee, the AO observed that the assessee has a total

turnover of Rs.45,23,34,897 and has shown a G.P. rate of 5.18% but against this G.P. rate, the assessee has shown loss against the N.P. rate. A careful examination of the P&L A/c of the assessee shows the following expenses, namely, personnel expenses including salaries, ESI, labour welfare fund, employee provident fund, administration charges and staff and workers welfare amounting to Rs.22,07,618/-. These are expenses on which liability regarding TDS deduction and proofs of payments u/s 43B are required to be furnished for allowing them. But due to non-cooperation by the assessee, no such proofs are there. Finance cost, administrative and general expenses include bank interest, bank charges, charities and donations, preliminary expenses, car expenses, security expenses and repair expenses amongst others which cannot be verified in absence of any documents. The selling expenses of the assessee include heads like advertisement expenses and freight & cartage outward, the allowability of which requires actual verification. In view of the fact that, no expenditure of the Profit and Loss account is verifiable, and in view of the fact that certain expenditures are such which are not normally seen in the normal course of the business of the assessee, the AO held that it would be reasonable to estimate N.P. rate figure of 1.5% on declared sales (Rs.45,23,34,897 x 1.5%) which works out to Rs.67,85,023/- while the actual N.P. shown was loss of Rs.2,13,89,816/- and an amount of Rs. 2,81,74,839/- was added to the income of the assessee.

10.2. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) and it was submitted that it is submitting all the details with regard to the expenses as debited in the profit and loss account and all such expenses are verifiable and the assessee is ready to produce such books of accounts before the Assessing Officer and even the comparative chart of expenses as per earlier year and in this year was filed and it was submitted that all the expenses are genuine and, as such, no disallowance is called for and, therefore, the application of net profit rate was not proper.

10.3 It was further submitted that no adverse finding has been pointed out by the Assessing Officer in his remand report. It was further submitted that in the earlier assessment year, no addition has been made and, as such, this application of net profit rate is not proper and the books of accounts could not be produced because they were under the custody of the bank. It was submitted that the past history suggests that no addition has been made and even otherwise if the best judgment has to be made, it has to be made on the basis of past history. The assessee has already submitted a comparative chart of all the expenses vis a vis the previous year i.e. AY 2011-12. A perusal of the same clearly indicates that all the expenses made were genuine and made as per the business needs of the assessee. Thus, even if best judgment has to be made, it has to be made keeping in view the past history of the case as per binding judgment of Supreme Court in the case CIT Vs. Laxmi Narain Badri Dass as reported in 5 ITR 170 wherein it has been held that "The officer is to make an assessment to the best of his judgment against a person who is in default as regards supplying information. He must not act dishonestly, or vindictively or capriciously because he must exercise judgment in the matter. He must make what he honestly believes to be a fair estimate of the proper figure of assessment, and for this purpose he must, be able to take into consideration local knowledge and repute in regard to the assessee's circumstances and his own knowledge of previous returns by and assessments of the assessee, and all other matters which he thinks will assist him in arriving at a fair and proper estimate; and though there must necessarily be guess-work in the matter, it must be honest guess-work. In that sense, too, the assessment must be to some extent arbitrary. The section places the officer in the position of a person whose decision as to amount is final and subject to no appeal, but whose decision if it can be shown to have been arrived at without an honest exercise of judgment, may be revised or reviewed by the CIT under the powers conferred upon that official by s. 33. There is no justification in the language of the Act for holding that an assessment made by an officer under s. 23(4) without conducting a local

inquiry and without recording the details and results of that inquiry cannot have been made to the best of his judgment within the meaning of the section." It was reiterated that all such details have been submitted in the paper book and the Assessing Officer has not given any comment on the same in his remand report.

10.4 The submissions so filed by the assessee were considered but not found fully acceptable to the Ld. CIT(A) and his findings are contained at para 9.2 to 9.3 of the impugned order which read as under:

"9.2 I have carefully considered the facts of the case, the basis of the addition made and the arguments of the AR and find that AO has estimated the net profit @ 1.5% of the declared turnover on the ground that no compliance was made by the appellant in the course of the assessment proceedings. The detailed evidence along-with the justification filed by the appellant in the course of appellate proceedings was forwarded to the AO for examination but the same reasons have been reiterated in the remand report without offering any comments on merits of the case. The appellant has in the course of proceedings submitted that no disallowance u/s 43B is called for and also the details of expenses incurred have been filed. It is further stated that a comparative chart of all the expenses vis-a-vis in the previous year A.Y 2011-12 has been submitted and any addition if at all is to be made has to be based on the past history of the case itself as has been held by the Hon'ble Supreme Court.

9.3 The appellant has in the course of present proceedings, failed to furnish any evidence to substantiate its claim of deduction u/s 43B of the IT Act on the ground that business premises have been under the control of banks on account of non-payment of dues to them. The loan account of the appellant has become NPA and business is closed. The appellant has stated that NP rate in the preceding year was 0.95%, in this year was (-)4.73% and in the next year (-)10.38%. Thus, considering all these factors and also taking into account the fact that books of accounts with supporting vouchers for the expenses could not be produced by the appellant in the course of present proceedings, I hold that the Assessing Officer was justified in rejecting the declared results. However, I find that estimated NP rate of 1.5% applied by the Assessing Officer is on the higher side considering the history of the profits declared and hold that it would be just and fair to apply NP rate of 1% on the declared sales/turnover. The appeal filed on this ground is partly allowed."

10.5 During the course of hearing the Ld. AR submitted that the assessee had declared a loss of Rs. 2,46,67,816/- during the AY 2012-13. The AO applied a net profit rate of 1.5% and made an addition of Rs. 2,81,74,839/- with a contention that certain expenditures are such which are not normally

seen in the normal course of business of the assessee. The assessing officer however did not mention or point out any of the expenditure which could have been construed to be unreasonable.

10.6 It was submitted that the assessee furnished a comparative chart of the expenses for the Assessment Year 2011-12 and 2012-13 along with the copies of ledger accounts of all the expenses (pages 91-160 of the paperbook) and no objection was raised by the AO or the CIT(A) in respect of the same. A perusal of the comparative chart clearly depicts that the assessee's expenses were normal business expenditures and were in line with the previous year expenses.

10.7 It was submitted that no specific defect has been pointed out by AO in his order or his remand report. Major increase in expenses are like bank interest and depreciation etc over which assessee has no control and further, the past history of the assessee clearly depicts that no addition has been made in the hands of the assessee and thus, the application of the NP Rate is not proper and needs to be deleted. Further, a comparative chart of the expenses is being enclosed which proves that major expenses is of 'Bank Interest', which has increased by Rs. 98,91,628/- on which, the assessee had no control. It was submitted that a comparative study of the expenses of last two years reveals that other expenses either have remained or decreased as percentage of sales and, thus, the finding of the CIT (A) is not correct. In the remand report even the Assessing Officer could not object to the detailed submissions of the assessee and has stated that it should be decided on merits only and which proves that he could not rebut the detailed submissions of the assessee.

10.8 In his submissions, the Ld. DR relied on the findings of the AO and it was submitted that there was no reasonable basis for the Id CIT(A) to reduce the net profit rate from 1.5% to 1% as so done by him.

10.9 We have heard the rival contentions and perused the material available on record. The AO has referred to the profit/loss account of the assessee company and has stated that no expenditure in the profit and loss account is verifiable, and secondly, certain expenditures are not normally seen in the normal course of the business of the assessee, and thereafter, the AO held that it would be reasonable to estimate N.P. rate figure of 1.5% on declared sales. Firstly, what kind of the expenditure which is not normally seen in the assessee's line of business and which has been found debited in the profit/loss account of the assessee has not been specified by the AO. Regarding verification of the expenditure, it is a matter of record that audited financial statements and the auditor report in Form 3CA and Form 3CD were already available on record before the AO. There is no finding recorded by the AO as to the reasons why he cannot rely on the audit report and what further information/clarification is required from the assessee to substantiate its claim of the expenditure. The fact that the accounts have to be audited as so required under law shows that the legislature has shown certain degree of importance of such audit being carried out by the auditor and issue necessary report certifying the accounts of the assessee as true and correct which the assessee has duly complied. The AO can refer to such report and where he still desires, he can ask for specific information/clarification. At the same time, negating the existence of such audit report and the fact that the assessee couldn't submit details of the expenditure shown in the profit/loss account during the course of assessment proceedings (without specify what further information / details are required) cannot result in a situation as in the present case where the AO has summarily rejected the book results and gone ahead and estimated the net profit. Further, the basis of estimation of net profit has not been specified as to how he has arrived at the rate of 1.5% - whether he has looked at the assessee's past history, any abnormal expenditure incurred during the year which he found to be not allowable or which need to be excluded while comparing past data or comparative data of other assessees in the similar line of business and what kind of filters he has

applied in that regard and we find that there is nothing on record in this regard and thus, the very basis of estimation the net profit @ 1.5% cannot be sustained and liable to be set-aside.

10.10 Moving further, during the appellate proceedings, the assessee has submitted the ledger account of each of the expenditure accounts and the same were sent to the AO for necessary examination and verification. In his remand report, the AO has not returned any adverse finding in this regard. The Id CIT(A) has also acknowledged the fact of submission of ledger accounts of the various expenditure debited in the profit/loss account, the comparative claim of expenses during the year and in the previous year, the fact that no disallowance under section 43B is called for as verified by the auditor in the tax auditor report and the fact that the previous year results have been accepted by the Revenue without any additions. No adverse finding has been recorded by Id CIT(A) and at the same time, he has also followed the same practice as done by the AO whereby he has revised the estimate of net profit and has estimated the net profit at the rate of 1% as against 1.5% done by the AO. The question is once the necessary details are on record during the appellate proceedings, and there is acceptance of such details and claim of the expenditure has not been disputed by the authorities, whether estimation of net profit is still valid which, to our understanding and in our opinion, is clearly untenable in the eyes of law as we don't see any valid reason and justification for such an act by the authorities.

10.11 Further, we have gone through the comparative chart of the expenditure claim in the year under consideration as well as last year and find that there are no abnormal increase in the expenditure claimed during the year under various heads of expenditure, the expenditure so incurred as percentage of sales are in broad range as in the earlier year except certain expenditure namely, bank interest, vehicle insurance, depreciation which are clearly verifiable from the ledger accounts.

10.12 In light of the aforesaid discussion and in the entirety of facts and circumstances of the case, we are of the considered view that the assessee has placed on record necessary documentation in support of the claim of expenditure and there is no basis for estimation of net profit as so done by the AO and which has been revised by the Id CIT(A). In the results, the book results as duly audited need to be accepted and the addition so made is hereby directed to be deleted.

10.13 In the result, ground no. 5 of the assessee's appeal is allowed and ground no. 2 of the Revenue's appeal is dismissed.

11. Ground no. 1 & 2 were not pressed by the AR during the course of hearing, hence the same are dismissed as not pressed.

12. In the result, the appeal of the assessee is partly allowed and the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 04/06/2024

Sd/-

आकाश दीप जैन
(AAKASH DEEP JAIN)
उपाध्यक्ष / VICE PRESIDENT

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar