

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “B” BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No.4037/Del/2017
[Assessment Year : 2012-13]**

Doaba Rolling Mills Pvt.Ltd., Meerut Road, Muzaffarnagar, Uttar Pradesh. PAN-AABCD0822F	vs	ACIT, Circle-1, Muzaffarnagar.
APPELLANT		RESPONDENT
Appellant by	Shri Anil Kumar Jain, Adv.	
Respondent by	Shri Vivek Kumar Upadhyay, Sr. DR	
Date of Hearing	19.06.2024	
Date of Pronouncement	27.06.2024	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee is directed against the order of Ld. CIT(A), Muzaffarnagar dated 01.03.2017 for the Assessment Year (“AY”) 2012-13. The assessee has assailed the impugned order on the following grounds of appeal:-

1. *“The Ld. CIT (A) has erred in confirming the order of the assessing officer in rejecting the gross loss of Rs. 25366571 and estimating G.P. rate at 2% for Rs. 2528065 and rejecting books of accounts and thereby making a total addition of Rs. 27894636.*
2. *The Ld. CIT (A) has erred in confirming the addition of Rs. 15394462 made by Ld. AO on account of remission of liability u/s 41(1).*
3. *The Ld. CIT(A) has erred in allowing the addition of Rs. 665856/- made by Ld. AO on account of disallowance of preliminary expenses, Addition of Rs. 312257/ on account of disallowance of depreciation, Addition of Rs. 217819 on account of Keyman Insurance and addition*

of Rs. 1776755 on account of interest on loan and advances in view of confirming rejection of books of accounts and the addition of G.P. rate for Rs. 2,78,94,636.

4. *The order of the Ld. CIT is against law and facts of the case.*
5. *The appellant craves the right to add, amend or withdraw any grounds of appeal at the time of hearing.”*

2. Facts giving rise to the present appeal are that in this case, the assessee had filed its return of income on 30.09.2012 through e-mode, declaring total loss at INR 1,84,84,544/-. The return of income was processed u/s 143(1) of the Income Tax Act, 1961 (“the Act”). Thereafter, the case was taken up for scrutiny assessment and statutory notices were issued u/s 143(2) of the Act to the assessee. In response to the statutory notices, Ld. Authorized Representative (“AR”) of the assessee attended the assessment proceedings before the assessing authority and furnished the details as and when called for. While framing the assessment u/s 143(3) of the Act vide order dated 30.03.2015, the Assessing Officer (“AO”) rejected the books of accounts of the assessee on multiple grounds namely, notice were issued to the parties, were returned back and there was no verification of the creditors etc. Therefore, the AO made estimation and applied gross profit rate @ 2 % of the total turnover and made addition of INR 2,78,94,636/- on this account. Further, the AO made addition on account of cessation & remission of liability u/s 41(1) of the Act amounting to INR 1,53,94,462/- and other disallowances i.e. preliminary expenses of INR 6,65,856/-; partial disallowance of depreciation of INR 3,12,257/-, the disallowance out of the expenses related to Keyman Insurance expenses of INR 2,17,819/-; interest expenses of INR 17,76,755/-. Thus, the AO assessed the

income of the assessee at INR 2,77,77,241/-, after disallowing loss claimed by the assessee.

3. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, sustained some of the findings of the assessing authority and partly allowed the appeal of the assessee. Thereby, he deleted disallowances namely preliminary expenses, depreciation, Keyman Insurance expenses and interest on loans and advances. Rest of other additions were sustained.

4. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal, assailing the correctness of the decision of Ld.CIT(A) for sustaining the additions related to estimation of profit, remission and cessation of liabilities and disallowance of loss claimed by the assessee.

5. Apropos to the **Ground Nos. 1 & 2**, Ld. Counsel for the assessee reiterated the submissions as made in the synopsis. For the sake of clarity, the list of dates and events as furnished by the assessee are reproduced as under:-

LIST OF DATES AND EVENTS

- *“On 30/09/2012- Return filed at a loss at Rs. 1,84,84,544. Assessee company engaged in the business of manufacturing of ingats and runner risers.*
- *Income is assessed at Rs. 2,77,77,241 u/s 143(3) dated 30.3.2015.*
- *CIT(A)-order was passed on 1.3.17 and appeal was partially allowed.*

Issue 1-Rejection of Books of Accounts u/s 145(3) of IT ACT 1961

- *Poor results were declared for the year under consideration, i.e. A.Y. 2012-2013.*
- *u/s 145(3) the books of accounts were rejected.*

Grounds of rejection of books of accounts

- *The sales during the year was 12.64 cr. As compared to 26.74 cr. In earlier year and the Loss as per the audited accounts was 2.34 cr as compared to 3.72 cr. in the earlier year.*
- *The AO has doubted the high figure of loss and poor results, besides not maintaining any register for inward/outward of goods at the gate of factory*
- *There are numerous discrepancies in the confirmations*
- *Many other details as called either have not been submitted at all or not submitted in desired format.*
- *No comparable instance of any concern at Muzaffarnagar has been submitted in order to justify dismal declared results*
- *books of accounts and bills/vouchers along with cash book not furnished/produced to this office*
- *Comprehensive reasons for decline in sales and loss of as much 2.35 crore not furnished*
- *Insured value of stock was much more than declared value*
- *Profit and loss account submitted by assessee reveals huge gross loss of Rs. 2,53,66,571 after excluding balances written back of Rs.2.04 crores. Whereas, other manufacturing units producing same products have shown reasonable gross profits during the year under consideration. Therefore, gross loss shown by assessee company is not acceptable and rejected*
- *The turnover of the assessee company was Rs. 12,64,03,260 which appeared understated. Gross Profit rate estimated at 2% and income is assessed at Rs. 25,28,065 as against gross loss shown at Rs. 2,53,66,571.*
- *This resulted in addition of Rs. 2,78,94,636.*
- **Submissions**
- *The replies filed are at PB 39.-51 Books Produced along with the Excise records PB 40, and PB 45, Pb 49 Details of creditors with address given*

at PB 42, details of month wise purchases and sales PB 44, Bank accounts PB 44.

- The bank declared the account of the company as NPA on 31.12.2011 resulted in shortage of cash liquidity.
- AO has not pointed out any mistake in the accounting system of accounts, the accounts are rejected on assumptions.
- Reasons for the low profits is given at PB 49 submissions
- Further if accounts are rejected u/s 145A and profit is assumed than no other disallowance can be made as held in various judicial pronouncement s. CIT Vs. Banwari Lal Bansidhar (1998) 229 ITR 229 (All.)
- Submissions before CIT(A) Page 5 to 8

Issue 2 Addition on account of cessation and remission of liability u/s 41(1) Addition of Rs.1,53,94,462

- Following confirmation of creditors has not been accepted and treated as cessation of liability u/s 41(1)

S.No.	Enterprise/Entity name	Amount/unapproved liabilities	Material anomalies
1.	M/s. Shiv Shakti Enterprises	Rs.19,08,400	Confirmation photocopies devoid of date, PAN and address
2.	M/s. Nav Durga Enterprises	Rs.42,95,815	Confirmation photocopies devoid of date, PAN and address
3.	M/s. Unicorn Iron Syndicate	Rs.77,25,388	Confirmation photocopies devoid of date, PAN and address
4.	M/s. Good Luck Traders	Rs.14,64,859	Confirmation photocopies devoid of date, PAN and address
Total		Rs.1,53,94,462	

The assessee has already offered creditors of 2.04 cr. As Income during the year and the above creditors has wrongly been treated u/s 41(1). Submissions before CIT(A) Page 8.

The following grounds are allowed by the LD. CIT(A) in view of the judgement in the case of CIT Vs. Banwari Lal Bansidhar (1998) 229 ITR 229 (All.)

**Issue 3-Disallowance of claim as to preliminary expenses -
Disallowance of Rs. 6,65,856**

- Assessee set off Rs. 6,65,856 on the ground that it is required to be added back.

Issue 4-Partial disallowance of depreciation - Rs. 3,12,257

- In depreciation chart, addition to the building of Rs. 62,45,146 under the block head building. Entire purchase are of M/s Angle, M/s Channel.
- Assessee came out with an explanation that 10 years old sheets were used in making shed. However, as the purchases are from group company so not accepted.
- Building account and purchase bills filed. Reply also filed at PB 46

Issue 5-Disallowance of expenses relating to Keyman Insurance expenses - Rs. 2,17,819

- Under head "Keyman Insurance A/c" a sum of Rs. 2,17,819 was claimed
- On perusal of receipt issued by ICICI prudential of Rs.2,17,819, it is seen that nowhere on the same, it is mentioned that it is for the keyman insurance a/c. No bond or evidence was produced.

**Issue 6 Disallowance of claim as to Interest expenses Rs. 17,76,755
(Rs. 1,60,485 + Rs. 16,16,270)**

Disallowance of Rs. 1,60,485-

Assessee submitted list of loans and advances to various parties -

S.No.	Party Name	Advanced loan amount
1.	Atiya Badar	Rs.2,52,000
2.	Shahzama Rana	Rs.1,74,000
3.	Razia Tak	Rs.4,04,250
4.	Shaistha Badar	Rs.4,04,250
Total		Rs.12,34,500

- Interest @ 13% on Rs.12,34,500 is Rs.1,60,485

It is further observed that the assessee has made claim as to the following interest payment:

S.No.	Particulars	Interest
1.	Interest of Bank	Rs.1,13,28,113
2.	Interest of L/C	Rs.18,89,320

- There are Reserve and Surplus of Rs.44 Lakhs which is non interest bearing amount and the loans given are out of this.
- Disallowance of Rs.16,16,270/-
- It is further observed that the assessee didn't mention specific purpose of extending the following advances:-

S.No.	ENTITY	AMOUNT DUE
1.	M/s. Beam Soften Pvt.Ltd.	Rs.12,00,000
2.	M/s. J K Enterprises Interest of L/C	Rs.18,32,850
3.	M/s. Madhuban Township Pvt.Ltd.	Rs.15,00,000
4.	Ms/s. Geetanjali Infracon	Rs.2,00,000
5.	Padmini Sales Corporation	Rs.77,00,000
Total		Rs.1,24,32,850

- Interest @ 13% on Rs.1,24,32,850 is Rs.16,16,270.
- It is further stated that in all these companies, directors are not interested companies.”

6. Ld. Counsel for the assessee submitted that the AO committed an error in rejecting the books of account of the assessee. He contended that the finding of the AO is erroneous as the AO incorrectly stated that the books of account were not produced by the assessee. He contended that books of accounts were duly produced and he drew our attention to the letter written by the assessee to the assessing authorities in this regard. He further submitted that the confirmations from the creditors were duly furnished. He submitted that the AO without making necessary inquiry, rejected the books of accounts and made addition on estimation basis without bringing any comparable instance. He submitted that the AO has not only rejected the books of accounts but also disallowed the loss. Thereby, the addition so made is more than 20% of the total turnover which cannot be achieved in this line of business.

7. On the other hand, Ld. Sr. DR for the Revenue opposed these submissions and supported the orders of the authorities below. He submitted that the assessing authority had given specific instances therefore, he was justified in rejecting the books of accounts of the assessee. However, both the Ld. ARs of the assessee and the Revenue agreed that the matter may be restored to the AO for verification of the correctness of the claim of the assessee.

8. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. The AO has observed that the assessee had not produced books of accounts however, his finding is contrary to the records. It is not the case where no books of account were produced; the assessee had also filed confirmations. The AO without verifying the correctness of the claim of the assessee, making independent enquiry, was not justified in rejecting the books of accounts of the assessee. It is not in dispute that the assessee is maintaining statutory registers as mandated under excise laws. The AO failed to bring adverse material against the assessee. We therefore, set aside the impugned order and restore the issues to the file of AO for deciding the issues on rejection of books of account/ estimation of profit afresh. In respect of, confirmation of addition on account of cessation and remission of liability amounting to INR 1,53,94,462/-. It is stated by the assessee that the assessee had already offered creditors of INR 2.04 crores as income during the year and the aforesaid creditors have wrongly been treated u/s 41(1) of the Act. The AO would verify the correctness of the submissions of the assessee and if found true, he will delete the impugned addition. Ground Nos. 1 & 2 raised by the assessee are accordingly, allowed for statistical purposes.

9. **Ground No.3** raised by the assessee is against the disallowances on account of preliminary expenses; depreciation; Keyman Insurance and interest on loan and advances.

9.1. However, it is noticed that Ld.CIT(A) has deleted the same and allowed the claim of the assessee. Therefore, Ground No.3 raised by the assessee is not sustainable hence, rejected.

10. **Ground Nos. 4 & 5** raised by the assessee are general in nature, need no separate adjudication hence, dismissed.

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

Order pronounced in the open Court on 27th June, 2024.

Sd/-
(BRAJESH KUMAR SINGH)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI