

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 932/Ahd/2016
Assessment Year 2002-03**

Dy. Commissioner of Income Tax, Circle-2(1)(1), Ahmedabad (Appellant)	Vs	Gujarat Cypromet Ltd. Administrative Office No. 37, 5 th Floor, Onlloker Building, 14, Sir Phiroze Shah Mehta Road, Fort, Mumbai-400001 PAN: AAACG5591R (Respondent)
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Assessee Represented: None
Revenue Represented: Shri Ashok Kumar Suthar, Sr.D.R.

Date of hearing : 13-06-2024
Date of pronouncement : 12-09-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Revenue as against appellate order dated 15.01.2016 passed by the Commissioner of Income Tax (Appeals)-2, Ahmedabad arising out of the assessment order passed under section 144 r.w.s. 254 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2002-03.

2. Originally this appeal was dismissed on Low Tax Effect vide order dated 18-11-2019. Thereafter the Revenue's filed M.A. No. 113/Ahd/2020 and the Miscellaneous Application was allowed vide order dated 11-01-2023 and now posted for hearing. None appeared on behalf of the respondent-assessee in spite of service of notices. Today is the 17th time of hearing of this appeal (in M.A. Proceeding 23 times of hearing). So with the assistance of Ld. Sr. D.R., we are proceeding with the case.

3. The solitary ground raised by the Revenue is that the Ld. CIT(A) erred in restricting the disallowance of Rs.5,53,98,138/- made on account of estimate of gross profit margin without properly appreciating the facts of the case and material available on record.

4. The brief facts of the case is that the assessee is a company engaged in manufacturing & trading of ferrous and non ferrous metal tube, brass, etc. The A.O. observed that there was substantial decrease in the Gross Profit rate at 3% as compared to preceding years G.P. Gross Profit 15.37% and thereby made addition of Rs.9,01,23,276/-.

5. In the course of appellate proceedings before Ld. CIT(A), the assessee contended that the business conditions that prevailed in the immediately preceding assessment year were different and distinct, therefore the gross profit margin of this year cannot be compared with that of the preceding year. Further the Tax Audit Report did not pinpoint any specific defect with respect to the maintenance of the books of account and the purchases, sales and

expenditure are fully supported with bills and vouchers. Presently the assessee company became a Sick Industrial Company due to increase in the rate of electricity power unit from Rs.6.23 to Rs.7.62 and also increase in price of diesel from Rs.6.07 to Rs.7.55 which has led to reduction in G.P. margin. The assessee contended that there is an arithmetical error in working of the G.P. addition at Rs.9.01.23,276/- by wrongly adopting the gross profit declared by the appellant company at Rs. 52,95,543/- as against actual figure of Rs. 1,52,95,543/-. As per the working furnished by the assessee in the written submission, the amount of G.P. addition as per the AO's own estimate would correctly work out to Rs.6,82,86,140/- whereas the AO has computed the G.P. addition at Rs. 9,01,23,276/-. After considering the above submissions of the assessee, Ld. CIT(A) given partial relief to the assessee by observing as follows:

“10.4. Taking into consideration the totality of the facts and circumstances of the case, and the fact that the appellant had explained the reason for the decline in the Gross Profit Rate as compared to that in the preceding year. At the same time, fact remains that Gross Profit Rate during the year under appeal has declined considerably as compared to the G.P. in the assessee's own case in the preceding year. The steep decrease in the G.P. Rate during the year under appeal would lead to the inference that there has been some leakage of revenue which has not been satisfactorily explained. During the course of appellate proceedings, it has been pointed out by the appellant that even as per the working of the AO, the addition on account of G. P. ought to have been at Rs.6,82,66,140/- in place of the addition of Rs.9,01,23,276/-, as there were mistake in working out the G. P. rate on two counts. Firstly, the gross profit by the appellant itself has shown at Rs.1,52,95,543/- in the audit report while the AO has taken this figure only at Rs.52,95,543/-. Further, while working out the G. P. rate of 15.37%, the AO has applied the same on sales and on the increase in stock totals which was not correct. In fact, the sale was at Rs.54,37,97,545/- while increase in the stock was at Rs.5,84,15,763/- totalling to Rs.60,22,13,308 as against which AO has taken the figure at Rs.62,05,38,397/-. In the remand report proceedings, the AO and the Addl. CIT has admitted this mistake and agreed to the revised G. P. addition at

Rs.6,82,66,140/- as against the working of Rs.9,01,23,276/- made in the assessment order.

10.5. It is also worth here to mention that appellant has shown various reasons for fall in G. P. rate which also included two main reasons in fall in G. P. i.e. Increase in the average rate of power per unit from Rs.6.23 to Rs.7.62 which resulted in to the higher cost of power and fuel attributed to fall in G. P. ratio. Similarly, due to increase in the price of diesel, the cost of power generated per unit increased from Rs.6.07 to Rs.7.55 which also led to decrease in the gross profit. These are the valid reasons given by the appellant which have not been adversely commented upon by the AO in the remand proceedings.

10.6. Taking into consideration, the totality of the fact and circumstances of the case, I am inclined to hold that due to the reasons for fall in G. P. extended by the AO by granting the rebate of 2.37% in the G. P. rate as taken of the preceding year, now the revised G.P. of 13% is applied on the turnover of Rs.54,37,97,545/- for the year under consideration. Thus, the G.P. for the year under consideration is worked out to Rs.7,06,93,681/-against which the appellant has only shown the G.P. at Rs.1,52,95,543/- and in result, the addition to the extent of Rs.5,53,98,138/- is confirmed. Relief is granted for the balance addition of Rs.3,47,25,138/-."

6. Ld. Sr. D.R. appearing for the Revenue could not point out any factual error in the findings rendered by the Ld. CIT(A). In our considered view, the Ld. CIT(A) has called for a Remand Report from the Assessing Officer and Addl. CIT who accepted the revised GP addition at Rs.6,82,66,140/- as against worked out by the A.O. of Rs.9,01,23,276/-. Further the Revenue could not dispute the increase in the electricity power charges and fuel charges which has led to decrease in the Gross Profit. Thus we do not find any infirmity in the order passed by Ld. CIT(A) which does not require any interference. Therefore the appeal filed by the Revenue deserves to be dismissed.

7. In the result, the appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 12-09-2024

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 12/09/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद