

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : B : NEW DELHI

BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITAs No.2905 to 2907/Del/2022
Assessment Years: 2017-18 to 2019-20

Gorja Steel Processors,
C-182, BS Road, Industrial Area,
Ghaziabad,
Uttar Pradesh – 201 002.

Vs DCIT,
Central Circle,
Ghaziabad.

PAN: AAKFG3318B

(Appellant)

(Respondent)

Assessee by : Dr. Rakesh Gupta, Advocate &
Shri Deepesh Garg, Advocate
Revenue by : Shri T. James Singson, CIT-DR
Date of Hearing : 29.08.2024
Date of Pronouncement : 08.10.2024

ORDER

PER ANUBHAV SHARMA, JM:

These appeals are preferred by the Assessee against the orders dated 31.10.2022 of the Commissioner of Income Tax (Appeals), Kanpur-4 (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No. CIT(A)-IV/KNP/11915, 11103, 11238 arising out of the appeal

before it against the order dated 26.08.2021 passed u/s 143(3)/153A of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the DCIT, CC, Ghaziabad (hereinafter referred to as the Ld. AO).

2. Heard and perused the record. The three appeals are connected and at the time of hearing, both the learned representatives argued the appeals referring to the facts and impugned orders of assessment years 2017-18 and, accordingly, the grounds for AY 2017-18 are reproduced below:-

“1. That having regard to the facts and circumstances of the case, Ld. CIT(A) ought to have quashed the impugned order passed by Ld. AO as the assumption of jurisdiction u/s 153A is bad in law, invalid and without complying with the mandatory conditions in accordance with law.

2. That in any case and in any view of the matter, Ld. CIT(A) ought to have quashed the impugned order passed by Ld. AO which is bad in law and against the facts and circumstances of the case and the same is not sustainable on various legal and factual grounds.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not deleting the entire addition of Rs.61,93,125/- made by Ld. AO by estimating the gross profit @4% and has further erred in sustaining the same to the extent of Rs.43,31,703/- by reducing the gross profit rate from 4% to 3% and that too after rejecting the books of accounts by applying the provisions of section 145(3) and more particularly when no deficiency has been found in the books of accounts of the assessee and impugned addition has been made/sustained without any basis and by recording incorrect facts and findings and without appreciating the facts and circumstances of the case and in violation of principles of natural justice and without providing the entire adverse material available on record and without providing the opportunity of cross examination of the deponents and without there being any incriminating material as a result of search.

4. That in any case and in any view of the matter, action of Ld. CIT(A) in not deleting the entire addition of Rs.61,93,125/- made by Ld. AO by estimating the gross profit @4% and sustaining the same to the extent of Rs.43,31,703/- by reducing the gross profit rate from 4% to 3% and that

too after rejecting the books of accounts by applying the provisions of section 145(3), is bad in law and against the facts and circumstances of the case.

5. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in rejecting the books of accounts of assessee by applying the provisions of section 145(3) and more particularly when no deficiency has been found in the books of accounts of the assessee.*

6. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in rejecting the books of accounts of assessee by applying the provisions of section 145(3), is bad in law and against the facts and circumstances of the case and the same is not sustainable on various legal and factual grounds.*

7. *That in any case and in any view of the matter, addition made in the impugned assessment order are beyond jurisdiction and illegal also for the reason that these could not have been made since no incriminating material has been found as a result of search.*

8. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in passing the impugned assessment order without there being requisite approval in terms of section 153D and in any case approval, if any, is mechanical without application of mind and is no approval in the eyes of law.*

9. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not allowing the benefit of credit of prepaid taxes claimed by the assessee.*

10. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234B and 234C of Income Tax Act, 1961.*

11. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*

2.1 The following are the identical **additional grounds** taken by the assessee in all the appeals:-

“1. That having regard to the facts and circumstances of the case, the action of Ld. AO in passing the impugned assessment order u/s 143(3)/153A dated 26.08.2021 is illegal, bad in law, inter alia for the reason that the said assessment order has been passed without DIN number as is must as held in the judgements of CIT (International Taxation) vs. Brandix Mauritius Holdings Ltd., ITA No. 163/2023, dated 20.03.2023 (Del), PCIT(E) vs. M/s Tata Medical Centre Trust, ITAT/202/2023, dated 26.09.2023 (Cal) and Ashok Commercial Enterprises vs. Asstt. CIT, WP No. 2595 of 2021, dated 04.09.2023 (Bom) and CBDT Circular No.19/2019 dated 14.08.2019.

2. That in any case and in any view of the matter, the passing of impugned assessment order u/s 143(3)/153A dated 26.08.2021 is illegal, bad in law and the same is not sustainable on various legal and factual grounds.

Since the above grounds of appeal are purely legal, do not require fresh facts to be investigated and go to the root of the matter, it is prayed that the same may please be admitted in view of the following judgements:-

- CIT vs. Sinhgad Technical Education Society, (2017) 397 ITR 0344 (SC).
- NTPC Ltd. vs. CIT, (1998) 229 ITR 0383 (SC).
- VMT Spinning Co. Ltd. vs. CIT & Anr., (2016) 389 ITR 0326 (P&H).
- CIT vs. Sam Global Securities, (2014) 360 ITR 0682 (Del.).
- Siksha vs. CIT, (2011) 336 ITR 0112 (Orissa).
- Inventors Industrial Corporation Ltd. vs. CIT, (1992) 194 ITR 0548 (Bom.).”

3. On hearing both the sides it came up during the hearing that appellant is not pressing additional grounds and Ld. Counsel for the appellant has restricted his arguments to ground no. 4-5 only.

3.1 It comes up from the rival contentions that a search / seizure and survey operation was conducted at the residential & business premises of the group of Assessee Company on 30.07.2018. M/s Gorja Steel Processors is a sister concern of M/s Panna Lal & Company which is close associates with M/s P S

Enterprises and the whole group allegedly indulged in entries of bogus sale and purchase specifically during the last quarter of the year to increase its turnover and inflate its expenses. The main allegation of the search was that they used to take entries of purchases and sales without delivering any goods. AO mentions that it was found during the search that assessee firm maintained parallel books of accounts and was manipulating its books of account. During the course of search operation statement of Sh. Sandeep Sharma (accountant at M/s P S Enterprises one of the group entity) was recorded under oath u/s 132(4) of the Act and he had stated that the assessee firm M/s P S Enterprises has also made bogus transactions with M/s Gorja Steel Processor. He also admitted that all related concerns used to do under invoicing in the last quarter to produce its profit. During the search purchase ledger of M/s Panna Lal & Company was obtained from the books of account M/s National Steel Suppliers and to further investigate statement of Sh. Anand Prakash was recorded under oath, who admitted that the transactions mentioned therein were made to increase the turnover and actually no goods were received by him. Bank statements of M/s Panna Lal & Company were examined and it was found that money received from bogus sale/ purchase was further rooted to related concerns i.e. M/s Gorja Steel Processors. Considering all these facts, as the completeness and the correctness of books of accounts was found doubtful by the AO, he concluded that books of accounts do not reflect the true and correct accounts and the AO

invoked provisions of section 145(3) of the Act by rejecting the books of account of the assessee and to estimate the GP @ 4% in similar lines of business of trading Iron & Steel. It is also pertinent to mentioned here that as per the AO, the GP computed from the actual data derived from the computer system of the assessee during the survey operation was also found 7 to 8 times higher in the current year compared to previous years because search was conducted in the month of July 2018 and assessee group concerns are allegedly in the habit of manipulating books by bogus entries in the last quarter.

4. We find that during the assessment proceedings assessee was asked to explain all the issues relating to modus operandi of the group mentioned and the AO categorically mentioned in the order that assessee was asked to produced its sales, purchase and stock register along with bills / vouchers, bilties, transportation slips etc. as evidence of transaction with the related entities but assessee failed to produce the requisite details. CIT(A) also held that the assessee's claim that all the details were produced is not correct.

4.1 The only ground of appeal is against the action of both the authorities rejecting the books of accounts and making trading addition initially of Rs. 61,93,125/- by applying gross profit at the rate 4% by A.O. and thereafter, Ld. CIT(A) reducing the G.P. rate to 3% and sustaining the trading addition to the extent of Rs. 43,31,703/-.

5. Ld. AR has submitted that A.O. has made general and bald assertions without leading any evidence whatsoever for rejecting the books of accounts.

5.1 On the basis of paper book filed the Ld. AR submitted that following pleadings and evidences were submitted during the course of assessment proceedings relating to the aspect / matters concerning the issue at hand:-

PB 5-27 is the copy of audit report and audited financial statements.

PB 35-39 is the copy of assessee's submission dated 22.03.2021 submitting inter-alia quantity-wise and value-wise details of closing stock, amount of total sales, gross profit, gross profit rate, net profit rate and that it was the first year of the business and that results are verifiable with reference to books of accounts maintained and that books of accounts were produced for examination and further that expenses incurred were petty-nature and expenses were incurred against bills / vouchers and their authentication could be examined with the reference to the bills / vouchers for which complete books of accounts were produced and the ledger account of expenses under major head with complete details were enclosed and further that regarding purchases, comprehensive details were given in para 36, 37.

PB 69-71 is another details of sales and purchases and quantity-wise, value-wise details of purchases from JSW Steel Ltd.

PB 79 is the ledger copy of account of Sanjay Iron Store.

PB 80 is the details of sundry creditors

PB 84-88 is the confirmation ledger of JWS Steel Ltd

PB 89-91 is the confirmation ledger of Pannalal and Co.

PB 125 are the details of the sales made during the year

PB 126 is the ledger of account of P.S. Enterprises

PB 127 is the ledger account of M/s Laxmi Steel in the books of assessee firm

PB 132-134 is further submissions to Ld. A.O. dated 12.04.2021, submitting about the sundry creditors and detailed explanation about various cases

PB 155 is the sundry creditors details

PB 175 is the GP chart

PB 176-178 is the sales register

PB 179, 180-183 is the ledger account of M/s P.S. Enterprises

PB 184-185 is the purchase register

PB 186 is another reply to Ld. A.O. dated 12.04.2021 giving further evidence of purchase / sales and enclosing bills, vouchers, transportation slip etc. enclosed.

PB 187-198 is the month-wise list of sales.

PB 199-210 are the invoices raised to M/s PS enterprises

PB 211-336 are the invoices raised by the assessee to Pannalal & Co. along with transport memo.

5.2 Ld. AR has submitted that A.O. has also recorded in para 4 at page 2 of the assessment order that during the course of assessment proceeding assessee has filed various details / documents / information including bank accounts and all these were looked into. It has also been recorded that audit report, Profit & loss account and balance sheet was furnished.

5.3 It was also submitted that A.O. has mentioned in Para 5.6 of the assessment order about statement of one Sh. Sandeep Sharma accountant of M/s P.S. Enterprises in which Sandeep Sharma allegedly stated that M/s P.S. Enterprises and its related concerns do under invoicing to reduce its profits. It is submitted that no such statement was ever confronted by A.O. Therefore statement does not have any evidentiary value against the assessee.

5.4 Ld. AR has submitted that in any case, Gorja Steels i.e. the appellant sells the goods to M/s P.S. Enterprises and does not purchase, how can the profit be reduced if allegation of Mr. Sandeep Sharma though denied vehemently, is accepted for the sake of argument.

5.5 Ld. AR pointed out that A.O. has mentioned in Para 5.7 of the assessment order that there was difference in G.P. rate and Mr. Dilip Singh in his statement

on oath u/s 133A during survey proceeding stated that the reasons for variation in G.P. and N.P. may be due to increase in the cost of material. It was submitted that comparison of G.P. with the result of part of the year, where many entries may yet to be posted is not justified. Moreover, statement of Mr. Dilip Singh nowhere incriminates the assessee and in any case according to A.O. such statement was recorded on oath in survey proceeding now which is not permissible in view of the decision of *Paul Mathew & Sons vs. CIT [2003] 129 Taxman 416 (Kerala)*.

5.6 It was also submitted that there is nothing adverse in assessee purchasing and selling with the related parties and there was no transfer pricing provision applicable for the year under appeal and transaction in the form of payments made to the related parties were in the nature of the partner salary, interest on capital and purchase and there is no evidence of any adverse aspect that too with the help of any evince in respect of these transactions.

6. Ld. DR has submitted that the submission of the appellant on the same grounds were dismissed by the CIT(A) after giving its clear findings that various discrepancies were found in the books of account of the appellant, non production of various details called for by the AO during the assessment proceedings and non production of books of account before the AO. There were

huge related party transactions and the details in the search assessment proceedings were called for but the same were not produced.

6.1 It was also submitted that appellants claim that statement of Sh. Sandeep Sharma and Sh. Anand Prakash recorded at the back of the appellant and never confronted to the appellant before using such information was also not found correct by the Ld. CIT(A). It has clearly been observed by the Ld. CIT(A) that all the documents were provided to the appellant during the course of assessment proceedings therefore no separate opportunity to further cross examine was required to be given to the appellant in light of various judgments of the Hon'ble Apex court, (reference para 7.2 page 39 of the CIT(A) order).

6.2 Further, the attention was drawn to the following findings of the CIT(A) which are recorded in the CIT(A) order page - 33 para 6.18:-

"6.18 The above details coupled with the fact that the appellant has not produced the books of accounts and other details as called for by the Ld. AO in the search assessment proceedings vindicate the findings of the search as well as conclusions of Ld. AO. Since the appellant failed to produce books of accounts in the search assessment proceedings, especially when there are huge related party transaction, (page 34 - 1st para) the decision of the Ld. AO to reject the books of accounts and to estimate the GP is upheld. In this regard opportunity of being heard was also given to the Ld. AR in appellate proceedings and he relied on all the written submissions filed before Ld. AO as well as undersigned and submitted that the books have been properly audited hence the same should be accepted in toto. However, from the facts of the case, it has been found that the books of accounts and all the details as called for by the Ld. AO have not been supplied to him and the Ld. AR cannot take plea of audited books of accounts to be perfectly right, flaw-less and above board and deprive Ld. AO from scrutinizing the same."

(page no. 34- last para) "In the assessment order the AO has categorically observed that the appellant has not produced books of accounts with all the supporting vouchers and a plea has been taken that in the search proceedings, all the computerized books of accounts have been seized by the department. In this regard, it is observed that the cross verify on tally the taxable income which has been offered in the return of income and various details found during search, the appellant is required to furnish all the details as are called for in terms of section 142(1) of IT Act. However the appellant failed to furnish these details. Hence the decision of Ld. AO of rejecting the books of accounts and invocation of provisions of sec. 145 of IT Act is upheld.

6.3 It is submitted that the recording and finding of the CIT(A) is clear on the facts of the case which are reproduced above i.e. details as called for by the AO for verification has not been produced by assessee before the AO during the assessment proceedings despite of the AO accorded several opportunities. Therefore, the Ld. CIT(A) agreed with the findings of the AO and confirmed the rejection of books u/s 145 and estimation of profit.

7. After giving thoughtful consideration to the material on record and the submissions, we are of the considered view that the ld. tax authorities have rejected the books of account of the assessee on the basis of lack of information and not on the basis that any discrepancy was found in the books of account to show that the same were not maintained in regular course of business. The AO has primarily relied the statements recorded during search operation and certain facts as had come up during pre-search inquiry to draw the conclusion that the assessee was indulging in manipulating the books of account by making bogus

purchase/sales, under-invoicing, taking bogus advances in order to reduce its profits and to introduce their undisclosed income. In para 5.11, the AO has mentioned of the fact that a reply dated 24.04.2021 was filed explaining the nature of business of the assessee and the reasons for low GP. The copy of this reply dated 12.04.2021 is made available at pages 297 to 303 of the paper book and, further, the documents attached with this reply have been made available at pages 304 to 404 of the paper book.

7.1 We find that in its reply the assessee had given an account of the reasons for low GP and NP. A copy of capital account of Aditya Kumar Garg in the account of M/s Gorja Steel Processors was filed. The list of creditors giving their names, addresses, PANs and the amounts payable was filed and it was mentioned that the confirmations have already been filed with the main reply. It was mentioned in this reply that ledger account of expenses incurred in excess of Rs.5 lakhs have already been submitted earlier. It was specifically mentioned that the soft copy of the account books are also in the hard disk seized during the search and opportunity was sought to be informed of the date and time when complete print outs are to be produced for examination. The detailed print outs of the purchase register and sales register duly confirmed was enclosed. The bank ledger from the books of the assessee was enclosed with narration of all the debit and credit entries. It was mentioned in this reply that the month-wise GP and NP ratio cannot be worked out in such a short time period because of

continuity of the trading activities normally at the month end, there may be goods in transit as well that has to be worked out. The detailed purchase and sales register was enclosed party-wise and date-wise. It was mentioned that the ledger accounts of all the parties from whom purchases are made have been already submitted in the reply filed on 22.03.2021. The ledger account of M/s Panna Lal & Company and M/s P.S. Enterprises duly certified was enclosed and it was informed that no transaction had taken place with M/s National Steel Suppliers and M/s Aryaman Ispat Pvt. Ltd. The assessee vide this reply, had also enclosed copies of bills/vouchers, transportation slips, bilty, e-way bills and other documentary evidences in respect of purchase and sale of materials.

7.2 Thus, it was not justified on the part of the AO to observe that the assessee has nothing to say on the query raised to hold that books of account are not reliable. It appears that before the CIT(A) all these aspects were brought on record. However, the CIT(A) preferred to sustain the observations of the AO with very general observation and showing generosity gave relief to the assessee by reducing the GP rate from 4% as considered by the AO to 3% in those years in which GP rate is not already shown above three years. It seems to be more an act of benevolence rather than an exercise of quasi judicial function. Such ad-hocism has no place in law when otherwise assessee had provided all the relevant pieces of financials and records. The Ld. Tax authorities seems to have taken a short cut of rejecting the books of accounts instead of showing due

indulgence to the material before them and point specific instances of misreporting income or expenses in the books.

8. Thus, we are of the considered view that at one end the AO has failed to justify the rejection of books of account and on the other hand, the CIT(A) has failed to consider the relevant pleas of the assessee and to make an ad hoc assessment. The grounds No. 4 and 5 as raised deserves to be sustained. The findings as arrived in AY 2017-18

squarely applies *pari materia* to all the other assessment years under consideration in respective appeals. As a sequel to aforesaid, the appeals of the assessee are allowed with consequential effects.

Order pronounced in the open court on 08.10.2024.

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 08th October, 2024.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi