

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI**

**BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.1311/DEL/2023
(Assessment Year: 2018-19)**

ACIT, Circle-13(1),
New Delhi

vs. M/s Kamdhenu Limited,
L-311, Khasra No. 724,
Street No. 7, Mahipalpur Extension,
New Delhi – 110 037.

(PAN : AAACK7155M)

**CO No.24/Del/2024
(in ITA No.1311/DEL/2023)
(Assessment Year: 2018-19)**

M/s Kamdhenu Limited,
L-311, Khasra No. 724,
Street No. 7, Mahipalpur Extension,
New Delhi – 110 037

vs. ACIT, Circle 13(1),
New Delhi

(PAN : AAACK7155M)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Sanjay Garg, CA,
Shri Udyan Garg, CA,
Shri Akarsh Garg, Advocate
Shri Harish Aggarwal, CFO

REVENUE BY : Shri Dayainder Singh Sidhu, CIT (DR)

Date of Hearing : 16.10.2024

Date of Order : 27.11.2024

ORDER

PER S. RIFAUR RAHMAN, AM:

1. This appeal is filed by the Revenue against the order of Id. Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre (NFAC), New Delhi [hereinafter referred to 'Ld. CIT (A)'] dated 29.3.2023 and assessee has also filed cross objection for Assessment Year 2018-19.
2. Brief facts of the case are, the assessee filed its return of income on 29.09.2018 declaring total income of Rs.27,85,77,150/-. The case was selected for complete scrutiny under CASS for verification of issues, like, claim of any other amount allowable as deduction in Schedule BP, stock valuation, ICDS compliance and adjustment. Accordingly, notices under section 143 (2) and 142(1) of the Income-tax Act, 1961 (for short 'the Act') were issued and served on the assessee. In response, assessee has submitted/uploaded various details as called for in the above notices.
3. The assessee is engaged in the manufacturing and marketing of Steel and Paints. The Assessing Officer observed during assessment proceedings that assessee has reduced opening valuation of finished goods declared in its financial statement to the extent of Rs.23,12,48,649/-. Further he observed that even in the tax audit report, the auditor has reported that there is no change in the valuation method applied during the year as per the provisions of ICDS-II Valuation of inventories notified u/s 145(2) of the Act. Accordingly, assessee was asked to submit details as per the tabular format given by the Assessing Officer. In response to the above notice, vide letter dated 18.01.2021 the assessee has submitted as under :-

“ The assessee in its earlier submission filed on 26th September, 2020 had explained the reason of difference in opening stock of the current year and closing stock of previous year reflected in the P&L Account as per Return of Income. The assessee had also explained that the assessee Company had valued its opening stock of finished goods as at 1st April, 2017 at Rs. 44,26,95,229/- as against the figure of Rs. 67,39,43,878/- reflected in the audited balance sheet of the Company as at 31st March, 2017.

The assessee Company has also explained that it had not claimed reduction in value of stock of Rs.23,12,48,649/- being the decrease in value of finished goods of the Company as on 1st April, 2017 in its income tax return in the A.Y. 2018-19 in any earlier years. The decrease in value of finished goods of the Company as on 1st April, 2017 has been reduced from retained earnings as at 1st April, 2016.

The decrease in the value of opening stock as at 1st April, 2017 as compared to closing stock as at 31st March, 2017 has not been incorporated in its income tax returns and has no Tax implication. Therefore, difference in valuation of opening stock of the current year and closing stock of previous year is not to be considered as unexplained income as the assessee had neither claimed the reduction in value of inventory as expenses in profit and loss account nor in ITR. Even otherwise, reduction in opening stock as on 1st April, 2017 resulting the book profit, not the book loss for

the AY 2018 as stated by your honour while raising this observation.

4. Further, the Assessing Officer issued further notice dated 11.02.2021 directing the assessee on the issue of tax neutrality point as well as reliability of books/basis of such reduction as retain earning/accumulated profit. In this regard, assessee submitted vide letter dated 22.02.2021 as under :-

“6.1 In the said questionnaire your goodself has stated that why not provisions / of Section 145(3) be invoked in respect of the fact that closing stock of finished goods has been reduced by Rs.23,12,48,649/- from 31.03.2017 to 01.04.2017 resultant in rejection of books of accounts due to manipulation in the valuation of closing stock besides unrecorded sales on this count.

6.2 At the outset it is strongly submitted that the books of account of the assessee are not manipulated nor there is any unrecorded sale and the same shall be explained and discussed in the following paragraphs to the satisfaction of your kind honor.

6.3 Applicability of Ind AS :

The Ministry of Corporate Affairs vide notification dated 16.02.2015 had notified Companies (Indian Accounting Standards) Rules, 2015.

The Rule 4(1)(iii)(a) of the Companies (Indian Accounting Standards) Rules, 2015 requires that every listed company shall prepare its annual accounts for accounting periods beginning on or after April 1, 2017, with the comparatives for the periods pending on March 31, 2017. The relevant extract of Rule 4 is reproduced as under:

(1)

(i)

(ii)

(iii) the following companies shall comply with the Indian Accounting Standards (Ind AS) for the accounting periods beginning on or after .1st April, 2017, with the comparatives for the periods pending on 31st March, 2017, or thereafter, namely(a) companies whose equity or debt securities are listed or are in the process of being listed on any stock exchange in India or outside India and having net worth of less than rupees five hundred crore;

6.4 The assessee being a listed company and in order to comply with the Companies (Indian Accounting Standards) Rules, 2015 had prepared its

financial statements in accordance with Indian Accounting Standards (Ind AS) for the year ended 31.03.2018 along with comparatives for the year ended 31.03.2017 i.e. not only Figures of FY 2017-18 were as per Ind AS but figures of FY 2016-17 were recasted/revalued as per Ind AS as disclosed in Audited financials as on 31.03.2018.

6.5 The assessee company had prepared its financial statements till the Financial Year ended 31.03.2017 on the basis of Companies (Accounting Standard Rules), 2006 (i.e. old Accounting Standards) which are prepared under historical cost method and returns for the respective years were filed only on the basis of old accounting standards.

6.6 Thus it is important to mention that figures of FY 2016-17 being revalued/recasted to make it comparable with figures of FY 2017-18 in the Audited financials of AN 2018-19 and has no effect on ITR filed for AN 2017-18. The same was done just to make figures of FY 2016-17 and FY 2017-18 comparable by applying Ind AS to both years.

6.7 The Para 11 of Ind AS-101 requires that any adjustments due to adoption of IndAS in place of old Accounting Standards requires to be adjusted directly to retained earnings. The relevant extract of Para 11 of Ind AS is reproduced as under:

"the accounting policies that an entity uses in its opening Ind AS Balance Sheet may differ from those that it used for the same date using its previous GAAP. The resulting adjustments arise from events and transactions before the date of transition to Ind AS. Therefore, an entity shall recognise those adjustments directly in retained earnings (or, if appropriate, another category of equity) at the date of transition to Ind AS.

6.8 *The assessee company not only had to prepare its Audited financial statements of FY. 2017-18 in accordance with Indian Accounting Standards (Ind AS) applicable from 01/04/2017 but also had to recast/revalued the comparatives i.e. figures of FY 2016-17 as per the provisions of Ind AS and difference of which has to be adjusted in the reserve & surplus account on 01.04.2016 as discussed in paras above, So that figures of FY 2017-18 become comparable to figures FY.2016- 17.*

6.9 *Further your kind attention is drawn towards CBDT circular No.24/2017 dated 25/07/2017 copy of which appears at Annexure-5 of the paper book where in at Question 3 it is stated as under:-*

"Question 3: As per Explanation to Section 115 JB (2C) of the Act, the convergence date is defined as the first day of the first Indian Accounting standards reporting period as defined in Ind AS 101. The Memorandum explaining the provisions of the Finance Bill 2017 mentions that the adjustment as on the last day of the comparative period is to be considered. It may be clarified as to what would be the appropriate manner for computation of transition amount on convergence date, 1st April i.e. at the start of the day or at the end of the day?

Answer: In the first year of adoption of Ind AS, the companies would prepare Ind AS financial statement for reporting year with a comparative financial statement for immediately preceding year. As per Ind AS 101, a company would make all Ind AS adjustments on the opening date of the comparative financial year. The entity is also required to present an equity reconciliation between previous Indian GAAP and Ind AS amounts, both on the opening date of preceding year as well as on the closing date of the preceding year. The amounts as on start of the opening date of the first year of adoption should be considered for the purposes of computation of transition amount. For example, companies which adopt Ind AS with effect from 1st day of April 2016 are required to prepare their financial statements for the year 2016-17 as per requirements of Ind AS. Such companies are also required to prepare an opening balance sheet as of 1st day of April 2015 and restate the financial statements for the comparative period 2015-16. In such a case, the first time adoption adjustments as of 31st day of March 2016 should be considered [i.e. the start of business on 1st day of April 2016 (or, equivalently, close of business on 31st day of March 2016)] for computation of MAT liability for previous year 2016-17 (Assessment year 2017-18) and thereafter"

6.10 Therefore, in order of comply with the same, figures of FY 2016-17 coming in Audited financials of FY 2017-18 were different from figures appearing in Audited financials of FY 2016-17.

6.11 This is the only reason as to why closing stock as on 31.03.2017 in the ITR of A.Y 2017-18 was different from opening stock as on 01.04.2017 in the ITR of A.Y 2018-19.

6.12 Thus the issue raised on account of difference in stock has been worked out by your goodself in respect of valuation of finished goods being part of total stock which is stated as under:-

	Total Stock	Finished goods (Rs.)
	Rs.	(Part of total stock
Closing stock as on 31.03.2017	81,33,53,995	67,39,43,878
Opening stock as on 01.04.2017	58,21,05,346	44,26,95,229
Difference	23,12,48,649	23,12,48,649

6.13 Thus following assets were revalued as on 01.04.2016 in the audited financials for the period ending 31.03.2018 so that figures of FY 2016-17 and FY 2017-18 become comparable in order to make it Ind AS compliant :-

Property, Plant & Equipment	Dr	38,46,41,589
Investment in M/s. Orange Spa Hotels & Resorts Pvt. Ltd.	Dr	6,12,500
Interest receivable on Security Deposit	Dr	1,56,99,490
Dividend Payable and Tax thereon	Dr	1,97,14,583
To Retained Earnings (Net Result)	Dr	3,08,29,308
To Deferred Tax Liabilities	Cr	8,14,15,690
To Investment in M/s. Shree Bankey Behari	Cr	70,35,490

Ispat Pvt. Ltd.		
To Investment in M/s. Stalex Coating Ltd.	Cr	3,00,406
To Trade Receivable (Expected Credit Loss)	Cr	5,41,39,128
To Interest Accrued on Security Deposit	Cr	1,56,99,490
To Inventory of Finished Goods	Cr	23,12,48,650
Total		42,06,68,162

6.14 Thus from the aforesaid entry it is clear that inventory of finished goods was revalued as on 01.04.2016 by Rs.2312.48 lacs in Audited financials ending on 31.03.2018 whose treatment in the books of accounts were actually given only on i.e. at the time of applicability of Ind AS. Further details of finished goods as on 31.03.2017 being re-valued on 01.04.2017 on applicability of Ind AS appears at Annexure 6 of the paper book and also revaluation report of property, plant & machinery is also enclosed as Annexure 7 of the paper book.

6.15 Thus figures as on 01.04.2016 were revalued in the Audited financials for the period ending 31.03.2018 and effect of the same was given only on 01.04.2017 in the books of accounts.

6.16 Further the net effect of valuation of various assets on Fair Value as per Ind AS as on 01.04.2016 amounting to Rs.308.29 lacs was adjusted in Reserve & Surplus Account as on 01.04.2016. The said fact can be illustrated as under :-

	Audited Balance sheet of FY 2017-18 DATED 28.05.2018	Audited Balance sheet of FY 2017-18 dated 28.05.2018	Adjustment
Value of Reserve and Surplus as on 01.04.2016	6263.39 lacs	5955.10 lacs	308.29 lacs

6.17 Relevant pages of Reserve & Surplus are being highlighted in the audited financials of assessee company as on 31.03.2017 dated 30/05/2017 (as per old AS) and 31.03.2018 dated 28/05/2018 (As per new Ind AS) which appears as Annexure - 8 of the paper book.

6.18 Thus from the aforesaid discussion it is summarized that aforesaid entries were passed in order to comply with the provisions of accounting standards which were mandatory applicable on the assessee company w.e.f. from 01.04.2017 and to make figures of FY 2016-17 comparable to figures of FY 2017-18 in the audited financials for the period ending 31.03.2018, values of various assets as on 01.04.2016 were revalued.

6.19 Secondly it is submitted that these figures are tax neutral merely values of various assets were re-valued in order to make them AS compliant. However no change in quantitative figures is being made, therefore it cannot be said that assessee has made sales outside the books of accounts.

6.20 Quantities wise details of Stock summary for FY 2016-17 finished goods are stated as under:-

Quantative details of Finished Products for the FY 2016-17							
Sr. No.	Item	Unit (Qty.)	Opening Stock Qty 01.04.2016	Qty Purchase during the year	Quantity manufactured during the	Qty Sales/ Consumed during the year	Closing Stock as on 31.03.2017
1	2	3	4	5	6	7	8
1	TMT Bar	MT.	1,683.42		55,651.01	56,045.06	1,289.37
2	Waste/Scrap & Runner Riser (By Product)	MT.	11.72	-	1,959.25	1,897.51	73.46
3	Ingot	MT.	-		20,599.63	20,550.63	49.00
4	Trading TMT Bar		-	1,30,138.97		1,30,138.97	-
5	Plywood (Not Principal Item)			-		-	-
6	Paints (All Products)	MT	2,102.00	3,158.60	23,756.00	27,229.20	1,787.40
	Total		3,797.14	1,33,297.57	1,01,965.89	2,35,861.37	3,199.23

Quantative details of Finished Products for the FY 2017-18							
Sr. No.	Item	Unit (Qty.)	Opening Stock Qty 01.04.2017	Qty Purchase during the year	Quantity manufactured during the	Qty Sales/ Consumed during the year	Closing Stock 31.03.2018
1	2	3	4	5	6	7	8
1	TMT Bar & Waste	MT.	1,289.37	-	53,851.33	53,643.60	1,497.10
2	Waste/Scrap & Runner Riser (By Product)	MT.	73.46	-	2,123.49	2,037.95	159.00
3	Ingot	MT.	49.00	-	17,896.00	17,879.31	65.69
4	Trading TMT Bar		-	1,95,907.00	-	1,95,354.90	552.10
5	Plywood (Not Principal Item)			-		-	-
6	Paints (All Products)	MT	1,787.40	5,921.00	23,771.00	28,804.00	2,675.40
	Total		3,199.23	2,01,828.00	97,641.82	2,97,719.76	4,949.29

6.21 Thus from the aforesaid table, it can be seen that only value of finished goods as on 01.04.2017 has been changed to give effect of Ind AS and there is no change in the quantitative figures. Therefore it is again submitted that there is no sale of finished goods outside the books of accounts.

6.22 In view of the Ind AS, the assessee company to make a fair assessment of various assets including property, plant & equipment, building apart from fair valuation of debtors & other assets. The net impact of the fair valuation has been adjusted in the reserve & surplus.

6.23 The assessee company has adopted lesser amount as per Ind AS in the value of opening stock by Rs.2,312.48 lakhs without effecting quantitative details. In a way, the assessee company has claimed less expenditure on account of brought forward opening stock and has not sold any goods as inferred by your honor out of the books of account. The books of accounts have been prepared in accordance with Ind AS- 101 which are audited both under Income Tax Act and Companies Act. The Company is listed on stock exchange and is also governed by rules and regulations of SEBI. Its accounts are regularly audited and the stock inventory is also physically verified by bankers, throughout the year.

6.24 Even otherwise the assessee company had not claimed book loss of Rs.2312.48 lakhs being the decrease in value of finished goods of the Company as on 01.04.2016 in its Income Tax Return for the A.Y. 2017-18 and A.Y. 2018-19 or in any other years as this is just an accounting entry to comply with Ind.AS and this has no effect on the taxable income

6.25 The financial statements were duly approved by the Board of Directors and subsequently approved by the Shareholders of the Company in the AGM. The assessee company is a listed company having fifty percent professional independent directors and made all compliances required under the various statutes. Entire financial results including but not limited to Balance Sheet, Profit & Loss statement, cash flow statement and its annexures for the F.Y. 2017-18 (A.Y.2018-19) have been approved by the Board of Director in their meeting held on 28.05.2018. Further, AGM notice dated 28.05.2018 for calling Annual General Meeting to approve the annual accounts along with other resolutions had been served to the shareholders as well as designated stock exchanges i.e. Bombay Stock Exchange and National Stock Exchange. The Shareholders in their meeting held on 24.09.2018, approved the audited financial statement for the F.Y. 2017-18. Copy of the Board Resolution for the approval of annual accounts, extract from the Minutes of the Board of Directors dated 28.05.2018 appears as **Annexure-9** of the paper book, Notice of AGM dated 28.05 2018 appears as **Annexure-10** of the paper book and Shareholder Resolution for the approval of annual accounts, extract from the Minutes of the AGM dated 24.09.2018 appears as **Annexure-11** of the paper book.

6.26 The assessee company is mainly having two business verticals, steel business and paint business. Kindly note that the cost audit is applicable on the steel business only whereas, cost audit is not applicable on the paint business. Therefore, we are enclosing herewith the Cost Audit Report dated 28.05.2018 towards the steel business as **Annexure-12**. It is pertinent to mention here that the difference in the value of inventories of Rs.2,312.48 lakhs pertains to paint products only on which cost audit is not applicable. Notification dated 31/12/2014 issued by Ministry of Corporate Affairs regarding applicability of cost audit appears as **Annexure-13** of the paper book.

6.27 Further it is submitted that there is no manipulation in the books of accounts as the QUANTITY of closing stock (31.03.2017) and opening stock (01.04.2017) are same, therefore, the question for any unrecorded sales does not arise. The difference in the value of stocks for the same quantity is on account of fair valuation is as per the first time adoption of Ind AS. The books of accounts have been prepared in compliance with all the provisions of Companies Act as well as Income Tax Act.

6.28 We would like to submit before your honor that the provision of section 145(3) of the Income Tax Act, pertaining to rejection of books shall not be attracted in the present case, as we are providing a detailed submission along with documentary evidences to justify the reason for difference in value of opening stock as on 01.04.2017.

6.29 The assessee has maintained its books of accounts in accordance with the accounting standards laid down by the Institute of Chartered Accountants of India and in accordance with the provisions of Companies Act, 1956 from which correct income could be arrived at. The books of accounts have been audited under the Companies Act and also under the Income Tax Act. The statutory auditor and the tax auditor have not made any adverse inference with respect to maintenance of accounts.

6.30 The entries for sale purchase and expenditure as reflected in the audited books of accounts are backed with requisite documentary evidence and support. The books of accounts cannot be rejected summarily without pointing out any defect / deficiency because of which the correct income of the business of the assessee cannot be deduced.”

5. After considering the detailed submissions of the assessee, Assessing Officer rejected the same as not acceptable and observed that the accounting method adopted by the assessee are not correct and complete to his satisfaction. Accordingly, he invoked the provisions of section 145 (1) of the Act and further relying on Circular No.10/2017 dated 23.03.2017 of the Board Circular and he was of the opinion that the assessee has reduced the value of finished goods without any valid reasons and not given a true and fair view in tax audit report as well as Notes to Financial Statements. With the above observation, he proceeded to make the addition on the basis of last two years GP ratio declared by the assessee with the following observations :-

“(i) The assessee has objected to the estimation of GP vide its submission dated 24/7/2021 wherein it has stated following things justifying its valuation of opening stock at lower value and also the GP shown by the Company:-

Vide point 9.3 of submission it states that:-

If the opening stock is considered to have been undervalued, then, by the very same yardstick, the closing stock also should be considered as undervalued. Consequently, there will be practically no impact on the gross profit or GP ratio as revealed by the accounts.

From the explanations submitted by the assessee for valuation of opening stock at lower valuation, it is seen that the Auditor's comment was not in agreement with the assessee's claim of lower valuation of operating stock as the Auditor has specifically stated that there was no change in the method of valuation of stock.

Secondly, if we consider the above reply of assessee made vide Para 9.3 of its submission, i.e. if the opening stock is taken as closing stock as on 31/03/2017, there would not be any impact. **However, if the assessee had not revalued the opening stock, the GP would have been too low or negative.**

(ii) Despite giving several opportunities to the assessee, the assessee could not justify the huge reduction of valuation of the stock as on 31/03/2017 to 01/04/2017 when its Auditor certifies that there was not any change in the method of valuation during the year.

(iii) Further vide Para 9.8 of its submission, the assessee has tried to justify the reduction of GP by providing the comparable prices of raw materials as well as finished products for AY 2017-18 and AY 2018-19 as per the submission of assessee, there were increase in price of raw materials and decrease in selling price of Paints manufactured by assessee. The average increase in cost of raw materials was 16.56% and average decrease in selling price was 6.78% viz-a-viz that of previous year.

This very submission of assessee itself contradicts the assessee's claim of reduction of opening stock valuation as there was no reduction of price/value of raw material, the assessee had as on 01/04/2017. **Further, as submitted by assessee itself, the reduction of selling price was in an average of 6.78% only whereas the assessee has reduced the value of opening stock by Rs.23,12,84,649/- (62,08,35,268 minus 38,95,66,619) which comes to around 37.25 percentage which at any stretch of imagination cannot be justified** keeping in view of assessee's submission that selling price of finished goods were decreased to 6.73% only from the prevailing rates of previous year.

(iv) The assessee company takes **shelter off Ind AS adoption but could not justify the reduction in value of opening stock to the tune of rupees 23.13 crore i.e. 37.25%**. The assessee company is a listed entity in Stock Exchange and by simply reducing the value of opening stocks without any justification, the company siphoned of rupees 23.13 crore from its reserves and surplus which would have been distributed as dividend to its shareholders. The management of the company has siphoned off 23.13 crore of shareholder's money by simply reducing the reserve without routing the proper entry through P&L account.

(v) The submission of assessee in its Para number 10.2 that the valuation was done by taking account of gelled stock and slow moving item lying with it under finished goods of Paint Division is also not acceptable because as per method of valuation followed by the assessee year to year and as certified by

assessee's auditor is that the assessee makes its valuation of stock at cost or realisable value whichever is lower. This means that the closing stock shown by assessee necessarily takes into account of the saleable value or cost whichever is lower for all its items included in closing stock is every valuation of stock as on 31st March of every year.

The assessee failed through justify its claim of reduction of value of opening stock of paints as on 01/04/2017 viz-a-viz the valuation of same items taken and certified by assessee itself as on 31/03/2017.

(vi) Despite availing several opportunities to explain the reduction of value of opening stock, the assessee has not produced any reasonable explanation and documentary evidence nor produced any valuation reports as on 31/03/2017 and 01/04/2017 of item wise stock under the head Paint. The assessee simply took shelter of Ind AS but not produced the valuation report of stock in question and in this situation it can be concluded that the assessee necessarily failed to justify its reduction of rupees 23.12 cr from its opening stock and accordingly not showing the correct GP on sale of paint division during the year.

(vii) The assessee company is subject to obtain cost Audit report, however, the assessee has obtained Cost Audit Report for Steel Division only and not for Paint Division. This also shows that the assessee has arbitrarily reduced the opening stock of its Paints without proper valuation.

(viii) It is pertinent to note here that the assessee is earning Royalty Income also which is directly added under its Gross sales and operating revenue. During the year, the assessee has earned royalty income of Rs. 62,26,76,813/-, however, NP shown by the assessee is only 24.41 cr and in every year the NP is much lower than its Royalty. This clearly shows that the assessee is continuously showing loss from its business activities

(ix) The decision relied upon by the assessee is not applicable to facts of the case.

(x) The contention of the assessee has been already considered and countered in preceding paragraphs 4.5 to 4.8 in details regarding reduction of closing stock to the tune of Rs. Rs. 23,12,48,649/- just within one day i.e. from 31/03/2017 to 01/04/2017 and reduction of GP ratio nearby 9 %. The contents of Para 4.8 is again re-produced which clearly state that assessee has not disclosed the GP in a fair manner.

Para- 4.8

The chart in Para-4.7, clearly indicate that G.P Ratio of Paint Division for the FY.2017-18 relevant to AY. 2018-19 is very low compare to A.Y. 2016-17 and 2017- 18 even though the decreased in opening stock of Finished Goods of Paint Division amounts to Rs.23,12,48,649/- without considering the net realisable value in accordance with the provision of

Section 145 and 145A read with ICDS-II. **Now, when the opening stock is under-valued to the extent of Rs. 23,12,48,649/-, it means trading account has to give higher result of Gross Profit but it's not happened in the assessee's case which establish that assessee has not disclosed true and correct GP Margin in Paint Division.** The adoption of value of opening stock of finished goods of paint division without any supporting documents to enable for verification. Therefore, the prima facie opening stock of finished goods of paint division has been sold by the assessee at a price higher than what is declared in the accounts books which is not provided during the assessment proceeding to substantiate the genuineness of sale of opening stock of finished goods of paint division. The explanation of the assessee dated 30/03/2021 in respect of reduction of GP for Paint Division is not satisfactory, even though the decision relied upon by the assessee from the various court is not applicable to the facts of the case. The rate of Gross Profit declared by the assessee is low as compared to assessee's margins in earlier years. The past history of the declared G.P. is considered as a reasonable and proper guidance for estimation of the income of Paint Division. Further, it is observed that G.P ratio of the assessee of entire division is reduced to 10.96 % compare to previous year 14.17% on a total turnover even though the **assessee has received Royalty of Rs. 62.27 Crore compare to previous year 41.36 crore only.** In totality of facts, the GP Ratio of Paint Division has been taken for average of two years which comes to 38.2%(37.21+39.19) after invoking the provision u/s 145(3) that income has not been computed in accordance with the standards notified under sub-section (2). In view of the above, the GP Ratio of Paint Division is determined as under:-

GP Ratio of 38.2 % of Rs.1,98,51,00,000/-= Rs. 75,83,08,200/-

5.5 As the assessee has shown GP margin of Paint Division at Rs.61,38,00,000/-. Hence the difference of Rs. 14,45,08,200/- is added to the total income of the assessee on account of GP Addition (**As discussed in Para- 4.8**). Penalty proceedings u/s 270A is separately initiated for under reporting of income by issuance of a separate notice.”

6. Aggrieved with the above order, assessee preferred an appeal before the Id. CIT (A) and filed detailed submissions. Before Id. CIT (A), assessee has raised the issue of rejection of books invoking provisions of section 145 (3) of the Act and after considering the detailed submissions, Id. CIT (A) allowed the grounds raised by the assessee with the following observations :-

“Firstly, the AO had to specify the limb under which the appellants case fall. The same has not been done and

therefore, the rejection of books of accounts was not in order. For this, reliance placed by the appellant on CIT vs. Hughes Communication India Ltd. [(2013) 215 Taxman 136] (Del. HC), Duncans Industries Ltd. vs. CIT (2002) 173 CTR (Cal) 258 : (2002) 254 ITR 463. (Cal), [ITO vs. Rupal Chem Dyes and Metal Salts Corporation TC1R.500, Srinivasa Rice and Oil Mills vs. ITO TC1R.501. Of. Sapna Traders vs. Asstt. CIT TCTR.502] that on mere suspicion and in the absence of any omission, irregularity or other defect in the method of accounting or positive evidence to show that the accounts did not disclose the whole income of the assessee, the books of account cannot be rejected, is rightly placed. Accordingly, the action of the AO of rejecting books of the appellant by invoking power u/s 145(3) was not correct and the said action is hereby reversed and this ground of the appellant is allowed, accordingly.”

7. Further assessee has raised the ground challenging the addition made by the Assessing Officer by recomputing the gross profit of Paint Division by applying previous year GP rate. After considering detailed submissions of the assessee, ld. CIT (A) allowed the above said ground with the following observations :-

“In the case of the Appellant, AO estimated the gross profit ratio and passed the assessment order u/s 143(3) and not u/s 144 of the IT Act. The AO ought to have rejected the books with valid reasons and passed the order u/s 144 of the IT Act.

Further, during the appellant proceedings, appellant has provided the explanation for fall in GP ratio of the paint division during the year in question along the comparative analysis of the company's results with the market leaders of the Paint Industry. The appellant has explained that due to the fall in selling prices of the finished products, due to increase in raw material prices and due to increase in turnover, there was genuine fall in GP Rate from 38% in earlier years to 30% in the year in question. This explanation was made by the appellant

before the Ld. AO also who could not find any defect in the same.

I have gone through this explanation and evidences filed for the same. In my opinion, the appellant has led sufficient reasons for fall in GP Rate in this year. In view of this, explanation provide by the appellant is justifiable and the addition made by the Ld. AO of Rs. 1445.08 lacs by recomputing the gross profit was incorrect and is hereby deleted. Accordingly, this ground is allowed.”

8. Aggrieved with the above order, Revenue is in appeal before us raising following grounds of appeal :-

“1. Whether on the facts and in law the Ld. CIT(A) is erred in accepting the variation in the valuation of finished stock when the same is not in agreement with the tax audit report and notes to financial statements.

2. Whether on the facts and in law, the Ld. CIT(A) is erred in deleting the addition of Rs. 14,45,08,200/- made on account of re-computing the gross profit of paint division by rejecting the books of accounts of assessee and applying previous year's GP rate.”

9. At the time of hearing, ld. DR for the Revenue submitted that the issue under consideration is recording of closing stock of previous year and opening stock in the current assessment year. Assessee has not recorded the closing stock of previous year and recorded the value of stock of Paint Division at Rs.23,12,48,649/- as opening stock. Because of this, the book results declared by the assessee are not proper and assessee has not satisfied with proper documents before the AO. Accordingly, the AO has rejected the

books of account and proceeded to apply GP rate of previous assessment year to above said difference in recording of value of opening stock. He supported the findings of the Assessing Officer who considered the fact that assessee has reinstated the opening stock to reduce the taxable income. In this regard, he brought to our notice findings of the Id. CIT (A) at para 8.4 of the appellate order and he objected to the findings of the Id. CIT (A) and prayed that the reasonable and proper findings of the AO may be sustained.

10. On the other hand, Id.AR for the assessee brought to our notice page 22 of the paper book which is the balance sheet prepared based on Indian Accounting Standard 101 (Ind. AS-101). He submitted that assessee has adopted Indian Accounting Standard first time and, therefore, assessee has to reinstate the balance sheet of previous two FYs in order to present assets and liability in its financial statements/Books of accounts and carried forward the fair value by adopting Indian Accounting Standards. The assessee has followed the procedure as laid down in Ind. AS-101. In this regard, he submitted a certificate from the statutory auditor. For the sake of clarity, the same is reproduced below :-

“We wish to confirm and certify that the company M/s Kamdhenu Limited (PAN: AAACK7155M) has adopted Ind AS in the Financial Year 2017-18, mandatorily made effective from 1st April, 2017 vide notification dated 16th February, 2015 issued by the Ministry of Corporate Affairs.

As per Ind AS 101, in order to make comparable of the first Financial Year 2017-18, figures of the previous Financial Year 2016-17, the Company was required to prepare and present its opening Ind AS Balance Sheet at 1 April 2016 by giving all transitional effect of assets and liabilities with the balances as at 1st April, 2016.

As per Ind AS 109, Financial Assets and Liabilities have to be valued at fair value. Accordingly, the Company has made fair valuation of its Assets and Liabilities as per applicable Ind AS 101 and 109 as on 1st April, 2016 and its impact has been adjusted with related entries as on 1st April, 2016. The impact of accounting entry for Ind AS as on 1st April, 2016 are given below:

Property Plant & Equipment	Dr.	38,46,41,589	
Investment in M/s. Orange Spa Hotels & Resorts Pvt. Ltd.	Dr.	6,12,500	
Security Deposit Recd.	Dr.	1,56,99,490	
Dividend Payable and Tax thereon	Dr.	1,97,14,583	
To retained Earning	Cr.		3,08,29,308
To Deferred Tax Liabilities (Net)	Cr.		8,14,15,690
To Investment in M/s. Shree Bankey Bihari Ispat Pvt. Ltd.	Cr.		70,35,490
To investment in M/s. Stalex Coating Ltd.	Cr.		3,00,406
To Trade Receivable (Provision of ECL)	Cr.		5,41,39,128
To Interest Accrued	Cr.		1,56,99,490
To Inventory of Finished Goods	Cr.		23,12,48,650
Total Rs.		42,06,68,162	42,06,68,162

Further, decrease in the value of 'Inventory of Finished Goods' was mainly on account of identification and consideration of gelled stock of paints division while arriving at the fair value on the date of transition i.e. 1st April, 2016 and taken the restated figures in Financial Year 2016-17. There was no impact on the Profit & Loss Account of the Financial Year 2017-18 due to implementation of Ind AS, stock position as at 31.03.2016, 01.04.2016, 31.03.2017 & 31.03.2018 are given hereunder:

Sl. No.	Particulars	As at 31.03.2016 (before Ind AS)	Effect of Transition to Ind AS	As at 01.04.2016 (After Ind AS)	As at 31.03.2017 (before Ind AS)	Effect of Transition to Ind AS in FY 16-17	As at 31.03.2017 (After Ind AS)	Effect of Transition to Ind AS in FY 17-18	As at 31.03.2018 (After Ind AS)
(i)	Raw Material and Packing materials	1,136.18	-	1,136.18	1,322.64	-	1,322.64	-	1,166.94
(ii)	Stock in process	58.78	-	58.78	71.47	-	71.47	-	75.68
(iii)	Finished Goods	5,314.91	-2,312.49	3,002.42	6,271.02	-2,312.49	3,958.53	-	4,223.34
(iv)	Stock in Trade	302.12	-	302.12	434.19	-	434.19	-	927.78
(v)	Storres, Spares and Fuel	276.89	-	276.89	334.19	-	334.19	-	253.38
(vi)	Waste, Scraps and Runner Risers	1.96	-	1.96	34.24	-	34.24	-	43.94
	Total Rs.	7,090.84	-2,312.49	4,778.35	8,467.75	-2,312.49	6,155.26	-	6,691.06

This Certificate is being issued on the request of Kamdhenu Limited (PAN: AAACK7155M) and as per the documents provided to us further the figure also verified by management.”

11. Further he submitted that the assessee has revalued the closing stock of Paint Division and decreased the value of inventory goods by

adopting the fair value of finished goods as on 01.04.2016 and accordingly, it reinstated the balance sheet. Further he submitted that the AO has rejected the books of account merely on this issue without properly giving reasons for rejection of regular books of account followed by the assessee consistently and also adopted various other Accounting Standards. He further submitted that by re-evaluating the closing stock in the previous assessment year by following Ind.AS-101, the assessee has not claimed loss in profit and loss account as well as in computation of income. He objected to the findings of the AO that assessee has revalued the closing stock to reduce the book results by taking shelter by adopting Ind.AS-101. He submitted that book results submitted by the assessee are as per ICDS as per Ind.AS-101.

12. Considered the rival submissions and material placed on record. We observed that the assessee has adopted Ind.AS first time during the current assessment year. As per the procedure laid down in Ins. AS-101, assessee has to reinstate its balance sheet for past two Financial Years and accordingly assessee has followed the same and prepared reconciliation of balance sheet as on 31.03.2017 and 01.04.2016. After careful consideration, we observed that assessee has revalued the closing stock of Paint Division as on 01.04.2016 and by which assessee has reduced only the value without the reduction of any

quantity. Since assessee is adopting Ind.AS-101 first time it has chosen to adopt fair value of plant & machinery, investment, security deposit received, dividend payable and tax thereon, deferred tax liabilities, trade receivable, interest accrued and inventory. Accordingly, it has adjusted to the extent of Rs.3,08,29,308/- directly in the retained earnings of the shareholders without routing above transaction through profit & loss account statement. This is done in order to carry forward fair value of various assets. After careful consideration, we observed that the assessee has not changed the method of valuation of closing stock. It has continued to follow the valuation of closing stock as per Accounting Standards as well as ICDS. Since there is no change in valuation of closing stock or method followed by the assessee, there is no requirement to disclose the same as per AS-5 issued by Institute of Chartered Accountant of India in order to disclose the impacts of such change in accounting policies in the financial statements. In the given case, assessee has merely revalued the value of closing stock, the revaluation of closing stock is accepted as convention method of accounting as per which costs or resale value, whichever is less, has to be adopted. In the given case, assessee has revalued the finished stock based on the resale value of the stock which assessee is adopted considered to be a prudent method, which it has carried forward to the next financial year

and declared the actual fair value for the purpose of adopting new Ind.AS-101.

13. Since the assessee has reinstated the closing stock as of previous assessment year as opening stock of this Assessment Year and not routed through the above loss in profit & loss statement, the AO was of the view that assessee has distorted the book results and not given satisfactory explanation for such reduction in opening stock resulting in reduction in GP. The abovesaid observation of the AO is not proper. When the reinstated opening stock does not affect the GP but in the contrary the GP is increased to the extent of reduction in reinstatement of opening stock. This can be explained with the following simple example :-

Take example as under :

(i)	Assessee has opening stock of	Rs. 200/-
(ii)	Purchases of	Rs. 800/-
(iii)	Sales of	Rs.1,000/-
(iv)	Closing Stock of	Rs. 300/-

When the same is stated in the form of Trading Account, the result will be :

(i)	Sales of	Rs.1,000/-
(ii)	Closing stock of	<u>Rs. 300/-</u>
(iii)	Total	(A) <u>Rs.1,300/-</u>
(iv)	Less :Opening stock	Rs. 200/-
(v)	Less :Purchase	<u>Rs. 800/-</u>
(vi)	Total	(B) <u>Rs.1,000/-</u>
(vii)	GP ratio is	(A) – (B) Rs. 300/-

Now when the assessee reinstates the opening stock from Rs.200/- to Rs.100/-, the result will be :

(i)	Sales		Rs.1,000/-
(ii)	Closing Stock		<u>Rs. 300/-</u>
(iii)	Total	(A)	<u>Rs.1,300/-</u>
(iv)	Less : Opening Stock		Rs. 100/-
(v)	Less : Purchase		<u>Rs. 800/-</u>
(vi)	Total	(B)	<u>Rs. 900/-</u>
(vii)	GP Ratio is	(A) – (B)	Rs. 400/-

14. From the above, it can be noticed that by reduction of opening stock will result in increase of GP to that extent.
15. After careful consideration of submissions made by both the counsels and the findings of Id. CIT (A), we observed that the findings given by the Id. CIT (A) are justified in the facts available on record. Therefore, we are inclined to agree with the findings of Id. CIT (A). Accordingly, grounds raised by the Revenue are dismissed.
16. Since we have already decided the issue in favour of the assessee, we are not inclined to adjudicate cross objections filed by the assessee.
17. In the result, the appeal filed by the Revenue and cross objections filed by the assessee are dismissed.

Order pronounced in the open court on this 27th day of November, 2024.

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

sd/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 27.11.2024
TS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI