



आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAJKOT BENCH, RAJKOT**

**BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER AND  
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.461/RJT/2024

निर्धारणवर्ष /Assessment Year: (2015-16)

M/s Starware Ceramic 8-A, National Highway, AT. Jambudia, Morbi-363 642	बनाम Vs.	Deputy Commissioner of Income-tax, Morbi Circle, Aayakar Bhavan, Chambers, Anand Nagar, Morbi-363 642
स्थापितेखासं./जीआइआरसं./PAN/GIR No. <b>AABFT1589Q</b>		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by : Shri Mehul Ranpura, AR

राजस्व की ओर से/Revenue by : Shri Abhimanyu Singh Yadav, Sr-DR

सुनवाई की तारीख/**Date of Hearing** : **15/10/2024**

घोषणा की तारीख/**Date of Pronouncement** : **13/01/2025**

आदेश/**Order**

**Per Dr. Arjun Lal Saini, A.M**

Captioned appeal filed by the assessee, pertaining to assessment year (AY) 2015-16, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre, Delhi [in short 'Ld. CIT(A)/NFAC'], under section 250 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), dated 11.05.2024, which in turn arises out of an assessment order passed by Assessing Officer u/s 143(3) of the Act vide order dated 28.12.2017.



2. The grounds of appeal raised by the assessee are as follows:

*"1. The grounds of appeal mentioned hereunder are without prejudice to one another.*

*2. The Ld. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred to as the "CIT(A)"] in confirming rejection of book results and thereby confirming the estimated addition.*

*3. Ld. CIT(A) erred on facts as also in law in retaining estimation of gross profit @ 10.05% as against returned loss 53.54% shown by the appellant and thereby confirming the addition of Rs.25,47,486/- out of total addition of Rs.1,61,18,866/- on turnover of Rs.2,53,48,115/-. The addition confirmed by the learned CIT(A) is totally unjustified on facts as also in law and may kindly be deleted.*

*4. Your honour's appellant craves leave to add, to amend, alter, or withdraw any or more grounds of appeal on or before the hearing of appeal."*

3. Succinctly, the factual panorama of the case is that assessee before us is a partnership- firm and filed the return of income, showing total income at loss of (-)Rs.58,43,516/-, on 29.09.2015. The return of income so filed, was processed u/s. 143(1) of the Act. Subsequently, the assessee's case was selected for scrutiny through CASS. Accordingly, notice u/s 143(2) of the Act, intimating the selection of the case for scrutiny was issued on 29.07.2016, by the ITO, Ward-2, Morbi and duly served upon the assessee. The assessee- firm is engaged in the business of manufacturing of Wall Glazed Tiles during the year under consideration. The accounts of the assessee are audited and Audit Report dated 12.06.2015, in Form No. 3CB & 3CD was filed during the course of assessment proceedings. On verification of the details filed by the assessee as well as available on record, it was observed by the assessing officer that in preceding year i.e. A.Y. 2014-15, on total turnover of Rs.7,41,42,759/-, the assessee has declared gross profit at Rs. 74,50,9987- @ 10.05% whereas in A.Y. 2015-16, under consideration, on



total turnover of Rs.2,53,48,115/-, the assessee has declared gross loss of Rs.1,35,71,576/-, in place of gross profit. Despite opportunity availed by the assessee, no justification with regard to the gross loss declared, has been filed by the assessee. Therefore, a show cause notice u/s. 142(1) of the Act was issued on 18.12.2017 and duly served upon the assessee requiring to furnish its reply to the queries raised by the assessing officer. The operative part of show-cause notice is reproduced as below:

*" In preceding year i.e. 2014-15, on total turnover of Rs.7,41,42,759/- you have declared gross profit at Rs.14,30,998/- @ 10.05% whereas in A.Y, 2015-16 under consideration, on total turnover of Rs.2,53,48,116/- you have declared gross loss of Rs.1,35,71,576/- in place of gross profit. Please justify the gross loss declared by you. Please also show cause as to why in absence of proper justification your books result may not be accepted by rejecting your books of account and G.P. rate of preceding year applied to your total turnover, and necessary addition made to the total loss declared."*

4. In response to the above query, the assessee vide its written submission dated: 21.12.2017 has submitted the following explanation:

*"Sir, in respect of GP %, we hereby wants to clarify that as mention above, we have discontinued our business in AY 2015-16 and we have sold out all our goods including fixed assets. Sir, as we were discontinuing our business, we could not get the market price for our products, we have to sold out our raw materials at cost price. Finished goods has been sold at the best price available at that time."*

5. However, the assessing officer rejected the above explanation of the assessee and observed that the assessee has failed to furnish any justification for selling the goods at cost price or below the cost price, therefore, the books of accounts claimed to have maintained by the



assessee, for the year under consideration, does not reflect the true & correct picture of its accounts, the books of account maintained for the year are not reliable. Therefore, the books of account of the assessee, maintained for the year were rejected by invoking the provisions of Section 145(3) of the Act. The assessing officer observed that in the immediate preceding year, i.e. AY 2014-15, the GP was declared @ 10.05% at Rs. 74,50,998/-, against the total turnover of Rs.7,41,42,759/-, whereas in the A.Y. 2015-16, the assessee has declared gross loss of Rs. (-)1,35,71,576/-, in place of gross profit against the total turnover of Rs.2,53,48,115/ and the ratio of loss, as against the total turnover, during the year comes 53.54%. As discussed, the GP with regard to immediately preceding year i.e. AY 2014-15 was declared @ 10.05% and during the year it was declared @ (-)53.54%. Therefore, it is clearly seen that the assessee has declared the GP lower side by 63.59% [53.54% + 10.05%] during the year. Thus, GP @63.59% on total turnover of Rs.2,53,48,115/- calculated at Rs.1,61,18,866/- for the year under consideration i.e. AY 2015-16. Therefore, an addition of Rs.1,61,18,866/- has been made by way of GP, rejecting the books of account of the assessee and invoking the provisions of Section 145(3) of the Act, as the books of account claim to have maintained for the year under consideration, does not reflect the true and correct picture of its accounts. Therefore, assessing officer made addition to the tune of Rs.1,61,18,866/- (@63.59% on total turnover of Rs.2,53,48,115/-).



6. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Ld. CIT(A) who has partly allowed the appeal of assessee. The Id. CIT(A) observed that rejection of books of accounts by the assessing officer cannot be faulted since the onus was on the assessee to substantiate, as to how the GP ratio could fall from 10.05% in the preceding year to a whopping loss of 53.54% in the very next year. Therefore, Id. CIT(A) noted that prima facie facts clearly show that the assessee had booked abnormal losses for the year and the reasons adduced therefor did not have any basis and or evidence to substantiate such claim. In view thereof, rejection of books of accounts and estimation of GP at 10.05% based on preceding year's gross profit (GP) rate is found to be fair and reasonable in the given facts and circumstances of the case. However, the assessing officer did err in adding the returned GP loss of 53.54% to the estimated GP rate of 10.05%. In doing so, assessing officer had failed to appreciate that the estimation of GP ratio based on preceding years has already taken into account the unsubstantiated loss claimed and therefore no further addition is warranted thereon. In view of the above facts, addition based on estimated GP was restricted to 10.05%, by the Id. CIT(A), as against the rate of 63.59% adopted by the assessing officer.

7. Aggrieved by the order of Ld. CIT(A) the assessee is in further appeal before us.



8. Learned Counsel for the assessee, argued that addition based on estimated GP which was restricted by the Id. CIT(A) to 10.05%, is very higher side, as the assessee, during the year under consideration, Incurred losses. Therefore, no addition should be made in the hands of the assessee. Besides, rejection of books of accounts by the assessing officer on account of fall in the gross profit ratio, is not tenable. The Id Counsel further stated that assessee, under consideration, had discontinued its business in current year, that is, in assessment year, 2015-16 and that it had sold out its assets including stock, raw materials and fixed assets at a less than market rate, therefore, such a huge loss has occurred in the assessee's business and the same should not be compared with the previous year. Hence, the Id. Counsel prayed the Bench that entire addition made by the assessing officer may be deleted.

9. On the other hand, Learned Senior Departmental Representative (Ld. Sr. DR) for the Revenue relied on the order of Assessing Officer and stated that without production of the relevant evidence, to the effect that firm's business was closed, the plea of the Id. Counsel cannot be accepted. The absence of formal documentation, financial records, and procedural compliance undermines the credibility of the firm's assertion, making it very probable that the business was not operational. Consequently, the version presented by the Id Counsel and business -firm should be rejected.



10. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. The Ld. Counsel submitted before as following documents and evidences. Viz: (1) copy of acknowledgement of return, computation of Income and audit report along with audited financial statement; (ii) copy of reply dated 21.12.2017 filed before assessing officer; (iii) copy of acknowledgement of return and ITR form for AY 2016-17 and (iv) copies of acknowledgement of return of income for AYs 2017-18 to 2021-22. We have gone through the above documents and evidences submitted by the assessee, before the lower authorities. We find that profit estimated by the Id. CIT (A) is on higher side, considering the facts of the assessee's case and circumstances that assessee's business was closed down, during the assessment year under consideration. Considering the nature of assessee's business and the fact that assessee has closed down its business, the estimation of gross profit may be made, keeping in mind, the following principles, and facts:

- (i) The estimate is not opened up to be framed in an arbitrary manner.
- (ii) The estimate by rule of thumb is absolutely infirm.
- (iii) The estimation of rate of profit return must necessarily vary with the nature of the business.
- (iv). There cannot be any uniform yardstick.



(v) An assessment to be best of judgement can only be based on the material available on record and past records and considering the totality of the facts.

(vi). Only real income and neither notional income nor astronomical Income can be taxed under the Income Tax Act, 1961.

11. We note that assessee was selling goods at below cost, due to closure of its business, hence, there was hardly a profit. Accordingly, we hereby estimate the G.P. percentage at 2%, keeping in mind the principle that the method to be adopted for estimation, must be that method, which is approximately nearer to the truth, having regard to the facts and circumstances of the case. Therefore, the assessing officer is directed to take the gross profit rate @ 2% on sales, to compute the income of the assessee.

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

Order is pronounced in the open court on 13/01/2025.

**Sd/-**  
**(DINESH MOHAN SINHA)**  
न्यायिक सदस्य/**JUDICIAL MEMBER**

**Sd/-**  
**(DR.ARJUNLALSAINI)**  
लेखा सदस्य/**ACCOUNTANT MEMBER**

Rajkot

दिनांक/ Date: 13/01/2025

**Copy of the Order forwarded to:**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT

ITA No.461/Rjt/2024 (AY-15-16)  
M/s Starware Ceramic

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5. DR/AR, ITAT, Rajkot
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Rajkot