

IN THE INCOME TAX APPELLATE TRIBUNAL
“PATNA BENCH, PATNA
VIRTUAL HEARING AT KOLKATA

Before Shri Sonjoy Sarma, Judicial Member and Shri Rakesh Mishra, Accountant Member

I.T.A. No.118/Pat/2020
Assessment Year: 2017-18

ITO, Ward-3(1), Gaya.....Appellant

vs.

Shri Gauri Textile Industries, Gaya.....Respondent
Buniadgaj Manpur, Gaya,
Bihar-823003.
[PAN: AALFS4803J]

C.O. No.5/Pat/2021
(Arising out of I.T.A. No.118/Pat/2020)
Assessment Year: 2017-18

Shri Gauri Textile Industries, GayaCross-Objector
Buniadgaj Manpur, Gaya,
Bihar-823003.
[PAN: AALFS4803J]

vs.

ITO, Ward-3(1), Gaya.....Respondent

Appearances by:

Shri Manish Rastogi, Advocate, appeared on behalf of the assessee.
Shri Ashok Kumar, CIT, appeared on behalf of the Revenue.

Date of concluding the hearing : January 30, 2025

Date of pronouncing the order : March 18, 2025

ORDER

Per Sonjoy Sarma, Judicial Member:

The revenue has filed an appeal against the order dated 31.08.2020 by the Commissioner of Income Tax (Appeals)-1, Patna [hereinafter referred to as the ‘CIT(A)’] and the assessee has filed the corresponding cross-objection relating to assessment year 2017-18.

2. Brief facts of the case are that a survey was conducted on 07.02.2017 in the case of the assessee, a partnership firm engaged in trading business of cotton yarn and hosiery yarn. During the survey, it was observed that the assessee has made substantial deposits in various bank accounts linked with the firm. However, the assessee disclosed

significantly lower net profit compared to the turnover despite earning a high income. Cash book was maintained upto only 30.01.2017 only with a closing balance of Rs.6,67,503/-. Similarly, stock register was updated till 31.01.2017 reflecting a closing balance of Rs.1,22,96,170/-. However, the stock value determined at the time of survey was at Rs.56,37,481/-. As per the assessee's provisional trading account, the stock on the date of survey was Rs.1,69,38,752/- and gross profit was determined at Rs.28,14,960/-. The assessee has filed return of income for the assessment year 2017-18 by declaring total income of Rs.13,78,254/-. The case was subsequently selected for complete scrutiny and notices u/s 143(2) and 142(1) of the Act were issued. In response to the notices, the assessee submitted various details and after examining the same, the Assessing Officer viewed that the stock value recorded in the books at the time of survey was Rs/56,37,481/- whereas provisional trading account showed at Rs.1,69,38,752/-. Hence, there was a difference of Rs.1,13,01,271/- was observed. The Assessing Officer was not satisfied with the assessee's explanations and made addition of alleged excess stock of Rs.95,98,868/- to the total income of the assessee. Similarly, the assessee had declared GP rate @ 2.55% during the year under consideration. However, the Assessing Officer viewed that the GP rate should be at 3.51% based on the turnover of the assessee of Rs.18,04,69,862/- resulting in an additional income of Rs.17,27,924/- and also added the same to the total income of the assessee. Accordingly, net assessed income of the assessee arrived at Rs.12705046/-.

3. Aggrieved by the above order, the assessee preferred an appeal before the ld. CIT(A). After considering the submissions of the assessee, the ld. CIT(A) allowed relief to the assessee by observing in following manner:

“I have carefully considered the discussion made by the A.O. regarding the addition of Rs.95,98,868/- on account of unexplained investment in stock.

The appellant is a partnership firm having its business located at Manpur, Gaya. The same premises are shared by another partnership firm M/s Semraj Ram. Both firms located at the same premises were subjected to survey operation on 08.02.2017.

The A.O. states in the assessment order that the stock register was maintained till 31.01.2017. Further he also states that the value of stock found at the time of survey has been determined on the date of survey i.e. 08.02.2017 at Rs.56,37,481/-. Further, provisional trading account was drawn on by the survey team during the course of survey in which the closing stock was determined to be Rs.1,69,38,752/-. Accordingly, the appellant was liable to furnish a proper explanation for the difference of Rs.1,13,01,271/- of stock as per books and as found.

When questioned about the same the appellant had in reply to question no. 13 stated on oath that the value of closing stock of Shri Gauri Textiles was Rs.80,15,968/- which included Rs.23,78,487/- of consignment stock and the difference Rs.56,37,481/- was the value of closing stock physically present on the date of survey.

During the course of assessment proceedings, I find that instead of asking the appellant to furnish an explanation for this specific difference of Rs.1,13,01,271/-, the A.O. has instead projected the figure of closing stock as on 31.03.2017 i.e. much after the date of survey and comparing the same with the figure of closing stock as per the audited set of account of the appellant. He has then determined the difference of Rs.95,98,868/- and added the same.

The method of calculation adopted by the A.O. includes the purchases and sales made by the appellant after the date of survey and arriving at a figure of closing stock of Rs.8,68,259/-based on such purchase and sale. He has then added the same to the closing stock of Rs.1,69,38,752/- as per the provisional trading and profit and loss account drawn during the course of survey. Thus the A.O. has projected a closing stock of Rs.1,78,07,011/- and after deducting Rs.82,08,143/- which the closing stock as per audited books of account arrived at a difference of Rs.95,98,868/-.

Based on the above set of facts the correct and proper manner of understanding the difference in stock as per books and as physically found was to factor in the purchases and sales during the period upto which the stock register was maintained i.e. 31.01.2017 to the date of survey i.e. 08.02.2017 (wrongly mentioned in assessment order 07.02.2017). Only thereafter a proper provisional trading and loss account could have been made.

In light of the above discussion, the contention of the appellant that the survey team failed to consider the sales made between the period

31.01.2017 to 08.02 2017 while determining the value of closing stock in the provisional trading account. During the course of assessment proceeding the A.O. also failed to consider the same and instead went on to make projections of closing stock.

The details and documents made available by the appellant during the course of assessment as well as these proceedings clearly show that the appellant's contention of the sale made between the period 31.01.2017 to 08.02.2017 has neither been considered by the survey team nor by the A.O. Instead during assessment, the A.O. has directed his enquiry in a completely different direction. I find that the above manner of working is neither based on sound accounting principal nor based on documents and facts found during the course of survey or as disclose by the appellant in his audited regular books of account. The provisional trading and profit and loss account drawn as on 08.02.2017 i.e. the date of survey values closing stock at Rs.1,69,38,752/-. It is on record that the value of the stock as on the date survey based on physical verification was Rs.56,37,481/-. Further it is also on record that on the date of survey the stock register which was found was maintained 31.01.2017. Even during the recording of statement during survey in response question no. 13, the appellant had made the above submission regarding stock found. In view of those facts and discussion I find that the addition of Rs.95,98,868/- is based on assumptions and conjectures and not backed by facts and documents and hence I am of the opinion that the same does not deserve to stand. Instead I find force in the contention of the appellant, the addition of Rs.95,98,868/- is hereby deleted.

As regards, the addition of Rs.17,27,924/- on account of GP based on estimation of GP rate. I have carefully considered the issue I have also gone through the assessment order and submission made by the AR of the appellant.

The sole basis of adopting the rate of 3.51% as GP is question no. 7 and the reply given by the appellant in the statement recorded during the course of survey proceedings the same is reproduced as under:

Q. 7. From the perusal of sale and purchase bills, in which 2-3 bills have been tallied, for which Gross Profit comes to 3.51%. Please explain with the reason?

Ans: Due to variation of bill to bill, the difference arises.

The question itself states that merely two or three bills have been tallied in which the GP is reflected as 3.51% and on the basis of this one single question and its reply the A.O, has made an estimation for the entire turnover of Rs.18,04,69,862/- to be considered at a GP rate of 3.51%. I find that the A.O. has not brought on record, no enquiry or any discussion made by the A.O. on the explanation for this difference submitted by the appellant and which is verifiable from the books of accounts.

From the facts and documents available on record, I find that the appellant firm has shown the following GP rate for the preceding three years.

<i>Sl. No.</i>	<i>Particular</i>	<i>Assessment year</i>	<i>Assessment year</i>	<i>Assessment year</i>
<i>1</i>	<i>Total turnover</i>	<i>180469862</i>	<i>157712641</i>	<i>163779864</i>
<i>2</i>	<i>Gross profit</i>	<i>4606568</i>	<i>3114043</i>	<i>2622885</i>
<i>3</i>	<i>Gross profit%</i>	<i>2.55%</i>	<i>1.97%</i>	<i>1.60%</i>

A simple perusal of the same shows that the same is progressive and in line with the turnover as well as the nature of trade of the appellant firm. Moreover A.O. has also not pointed any defect in books of accounts or vouchers or reject the same by passing an order u/s 145(3) of the Act. Therefore, making a huge addition of Rs.17,27,924/- on the basis of two or three bills on which the appellant was questioned during the course of survey proceeding amounts to making wild surmises and conjectures and does not have any force or merit.

This conclusion drawn by the AO is more in the nature of conjecture than belief as the assessment order is silent on any reasonable basis, as there is no discussion on the documents available to the A.O. and further it appears that the A.O. has not made any significant independent enquiry as the result of any enquiry made on the complete documentation available to the A.O. is not on record. He has also not rejected the books of accounts u/s 145(3) of the Act and adopted GP @3.51% is surmises and conjecture and hence is not tenable and hence addition of Rs.17,27,924/- on account of GP is hereby deleted.

In the result, the appeal is allowed.”

4. Dissatisfied with the above order, the revenue filed the present appeal against the order of the ld. CIT(A) arguing that the ld. CIT(A) granted relief without valid reason as the assessee had failed to justify the difference in stock and did not maintain proper books of account beyond 31.01.2017 despite the fact that the Assessing Officer had properly examined the significant discrepancy and GP enhancement. He also stated that the Assessing Officer's GP enhancement to 3.51% was justified as the assessee was reported as 'low GP compared to the industrial standard'.

5. On the other hand, the ld. AR objected to such prayer made by the revenue. He stated that the ld. CIT(A) had examined the various submissions made by the assessee before him. He stated that the method applied by the Assessing Officer for determining stock value was incorrect and based on assumptions rather than actual record. He also stated that the period from 31.01.2017 to 07.02.2017 was neither properly considered by the survey team nor the Assessing Officer and the ld. CIT(A) rightly allowed the relief to the assessee. Similarly, the ld. AR contended that the GP ratio in preceding three assessment years of the assessee was 1.6%, 1.9% and 2.55%, therefore, without any basis the GP cannot be enhanced to the extent of 3.51%. Therefore, the ld. CIT(A) rightly allowed the appeal of the assessee.

6. We, after hearing the rival submissions of both the parties and examining the records, we find that the period from 31.01.2017 to 07.02.2017 was neither properly considered by the survey team nor the Assessing Officer. The Assessing Officer while framing the assessment order erroneously projected the difference of closing stock of Rs.1,13,01,271/- in the hands of the assessee. Moreover, the method adopted by the Assessing Officer for determining the stock value which was based on assumption rather than actual records. We, therefore, find that the alleged addition of Rs.95,98,868/- made by the Assessing Officer was rightly deleted by the ld. CIT(A) in the hands of the assessee. Similarly, the another issue relating to enhancement of GP ratio by the Assessing Officer to the extent of 3.51% in the case of the assessee, we notice that the assessee has consistently reported lower GP ratio in the preceding three years of 1.61%, 1.9% and 2.55% respectively. However, while framing the assessment, the Assessing Officer failed to point out any defect in the books of account while rejecting the same by applying the proviso to section 145(3) of the Act. Since, GP enhancement of the Assessing Officer is based solely on conjecture, without any supporting evidence, the Tribunal finds that the ld. CIT(A) has rightly deleted the GP

addition of Rs.17,27,924/- in the hands of the assessee. Therefore, we dismiss the appeal of the revenue.

7. C.O. No.5/Pat/2021 – The present cross-objection filed by the assessee stating that there is delay of 34 days in filing the same before the Tribunal due to pandemic and quarantine period on that point of time and accordingly the C.O was filed after the delay of 34 days. We, after considering the petition filed by the assessee, find that there is reasonable cause for the delay in filing the cross-objection. Accordingly, we condone the delay. Hence, we already dismissed the appeal of the revenue, therefore, the corresponding cross-objection filed by the assessee is allowed.

8. In the result, the appeal filed by the revenue is dismissed and corresponding cross-objection filed by the assessee is allowed.

Kolkata, the 18th March, 2025.

Sd/-

[Rakesh Mishra]

लेखा सदस्य/Accountant Member

Sd/-

[Sonjoy Sarma]

न्यायिक सदस्य/Judicial Member

Dated: 18.03.2025.

RS

Copy of the order forwarded to:

1. ITO, Ward-3(1), Gaya
2. Shri Gauri Textile Industries, Gaya
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches