

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'C' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Accountant Member
and Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A. No. 180/KOL/ 2013
Assessment Year : 2006-2007**

Income Tax Officer,.....Appellant
Ward-1, Haldia,
Basudevpur, Khancanchak, Haldia,
Purba Medinipur-721 602

-Vs.-

Shri Gour Hari Debdas,.....Respondent
S-17 & 18, Haldia Industrial Estate,
Durgachak, Haldia,
Purba Medinipur-721 602
[PAN : AGPPD 4285 R]

&

**C.O. No. 31/KOL/2013
(arsing out of I.T.A. No. 180/KOL/ 2013)
Assessment Year : 2006-2007**

Shri Gour Hari Debdas,.....Cross Objector
S-17 & 18, Haldia Industrial Estate,
Durgachak, Haldia,
Purba Medinipur-721 602
[PAN : AGPPD 4285 R]

-Vs.-

Income Tax Officer,.....Respondent
Ward-1, Haldia,
Basudevpur, Khancanchak, Haldia,
Purba Medinipur-721 602

Appearances by:

None, for the Department
Shri Soumitra Choudhury, Advocate, for the assessee

Date of concluding the hearing : December 09, 2015
Date of pronouncing the order : December 16, 2015

O R D E R

Per Shri P.M. Jagtap:-

This appeal is preferred by the Revenue against the order of Id. Commissioner of Income Tax (Appeals)-XXXIII, Kolkata dated 29.11.2012

for the assessment year 2006-07 and the same is being disposed of along with Cross Objection filed by the assessee being C.O. No. 31/KOL/2013.

2. The solitary issue raised in the appeal of the Revenue relates to the relief allowed by the Id. CIT(Appeals) to the assessee by reducing the estimated income of Rs.15,05,421/- made by the Assessing Officer to Rs.3,94,232/-.

3. The assessee in the present case is an individual, who is engaged in the business of manufacturing and supplying of Bitumen Drum Lids metal to Indian Oil Corporation, Haldia Refinery. The return of income for the year under consideration was originally filed by him on 30.03.2007 declaring total income of Rs.1,40,540/-. The said return was initially processed by the Assessing officer under section 143(1). Subsequently, the Assessing Officer found on the basis of information received from WBSEB, Durgachak that the consumption of electricity was suppressed by the assessee. He, therefore, reopened the assessment and issued a notice under section 148 on 30.04.2008 after recording the reasons. In response to the said notice, the return of income was filed by the assessee on 21.06.2008 declaring total income of Rs.1,68,960/-. From the perusal of the profit and loss account filed by the assessee along with the said return, it was noticed by the Assessing Officer that the sales and job work receipts have been shown by the assessee at Rs.39,42,325/- as against Rs.14,92,745/- as shown in the Profit & Loss Account filed along with the original return of income. He also found that even some of the other figures appearing in the Profit & Loss Account were changed and the net profit was shown at Rs.1,85,365/- as against Rs.1,56,947/- shown in the original return of income. He, therefore, required the assessee to explain this difference by producing the books of account along with the bills and vouchers for verification. The assessee, however, failed to comply with this requirement. Some of the financial details furnished by the assessee

during the course of assessment proceedings were also found to be different by the Assessing Officer from the figures appearing in earlier two Profit & Loss Accounts filed by the assessee. He, therefore, rejected the books of account of the assessee and proceeded to estimate the income of the assessee to the best of his judgment. In this regard, he found that the consumption of raw material in the Profit & Loss Account filed along with the original return was shown by the assessee at Rs.4,55,137/- for sales of Rs.14,92,745/-. By applying this ratio to the consumption of raw material shown by the assessee in the Profit & Loss Account filed along with the return of income in response to notice under section 148 at Rs.17,12,020/-, the Assessing Officer estimated the total sales of the assessee at Rs.56,15,033/- and on the basis of the said figure of sales, the gross profit of the assessee was worked out by him at Rs.18,94,983/- as against Rs.5,46,510/- shown by the assessee. This difference of Rs.13,48,473/- was added by the Assessing Officer to the net profit of Rs.1,56,948/- shown by the assessee and accordingly the income of the assessee from business was estimated by the Assessing Officer at Rs.15,05,421/- in the assessment completed under section 144/147 vide an order dated 31.12.2009.

4. Against the order passed by the Assessing Officer under section 144 read with section 147, an appeal was preferred by the assessee before the Id. CIT(Appeals) challenging the validity of the said assessment as well as disputing the trading addition made therein. After considering the submissions made by the assessee as well as the relevant material available on record, the Id. CIT(Appeals) did not find merit in the preliminary issue raised by the assessee challenging the validity of assessment made by the Assessing Officer under section 144 read with section 147 and dismissing the same, he upheld the validity of the order passed by the Assessing Officer under section 144 read with section 147 of the Act.

5. The Id. CIT(Appeals) also upheld the action of the Assessing Officer in rejecting the books of account of the assessee but reduced the estimate of business income of the assessee made by the Assessing Officer at Rs.15,05,421/- to Rs.3,94,232/- for the following reasons given in paragraphs no. 5.2 to 5.5 of his impugned order:-

"5.2. I have carefully considered the facts of the case. As mentioned above, the appellant had filed three different profit and loss accounts before the assessing officer. The first account was filed alongwith the original return of income in which net profit had been worked out at Rs. 1,56,947/-. Then, alongwith the return filed in response to notice under section 148, another profit and loss account was filed showing net profit at Rs. 1,85,365/-. There was vast difference in figures of many items in the two accounts. For example, sale was shown at Rs.14,92,745/- in the first account and at Rs.39,42,325/- in the second one. Purchase of raw material and electricity expenses were shown at Rs.6,93,158/- and Rs.24,288/- respectively in the first account whereas the corresponding figures in the second account were of Rs.19,50,041/- and Rs. 2,87,766/- respectively. When these discrepancies were discussed with the assessee in the course of assessment proceedings, yet another profit and loss account was filed. Net profit shown in this account matched with the same in the second account. However, certain other figures, including sales, were changed. Not only that, some of the figures were presented in an unusual manner. Gross value of sale and job work were shown at Rs.36,22,425/-, from which raw material, power and labour amounting to Rs.13,13,398/-, Rs.2,63,478/- and Rs.5,52,804/- respectively were deducted in order to arrive at net figure of Rs.14,92,745/- which matched with the sales shown in the first account. The difference between the amount debited towards raw material, labour and power in the second account and the amount deducted from gross sales were debited separately. The reason for the unusual accounting has been attributed to the fact that accounts were prepared for two periods. In the first period i.e. 01.04.2004 to 25.07.2005 the business was being looked after by the manager and thereafter by the appellant himself. However this explanation does not fully clarify the matter. It is not understood, as to why a part of raw material cost, power and labour expenses were reduced from gross sales and the remaining part debited separately to the profit and loss account. Also, the figure of gross value of sales and income from job work is not same in the second and the third accounts. In the second account, it was mentioned at Rs.39,42,325/- which has been reduced to Rs.36,22,425/- in the third account.

Such unexplained discrepancies do not inspire any confidence in accuracy of any of the profit and loss accounts prepared by the appellant. It has also been mentioned by the assessing officer in his order that the appellant did not produce all the details called for during the assessment proceedings. Considering these factors, the assessing officer was quite justified in not accepting the accounts of the appellant. Here it may be mentioned that the appellant has objected to the estimation made by the assessing officer, inter alia, on the ground that the assessing officer had not applied section 145 of Income Tax Act, 1961. I do not agree with the appellant on this point. As a matter of fact, the assessing officer has specifically mentioned in the paragraph before computation of assessed income, that - "as the assessee cannot justify his accounts the same is rejected under section 145(3) of Income Tax Act, 1961 and assessment is completed ex parte on the basis of material available on record." Thus the appellant is not correct in stating that the assessing officer has not applied section 145. The fact is that, the assessing officer noticed serious discrepancies in the accounts, issued show cause notice and thereafter invoked provisions of section 145(3) of Income Tax Act, 1961. Considering the foregoing discussion, I uphold the action of the assessing officer in rejecting accounts of the appellant and invoking provision of section 145(3) of Income Tax Act, 1961.

5.3. However, it is well settled that even in a case where accounts are rejected and income is assessed by resolving to estimate, the assessment has to be made on a reasonable basis. In the appellant's case, the assessing officer has computed gross' profit by recasting the trading account. Such recasting is based on estimation of sales. In fact in the body of assessment order, basis of such estimation has not been mentioned and only a reference to working in a showcase letter dated 21.12.2009 has been made. On going through the said show cause letter, it is seen that the assessing officer first worked out the raw material consumed as per the accounts submitted in the return filed under section 139(1) and same as per the accounts submitted with the return filed in response to the notice u/s 148. The two figures came out to Rs.4,55,137/- and Rs.17,12,020/- respectively. As the sales shown in the first accounts were of Rs.14,92,745/-, he estimated that sales achieved from consumption of raw material of Rs.17,12,020/-, as declared in the second set of accounts, must be of Rs.56,15,033/- on a proportionate basis. Based on this figure of sales, he re-casted the trading account and arrived at gross profit of Rs.18,94,983/-.

5.4. The above method of estimating sales suffers from serious defects. The assessing officer has compared two figures for consumption of raw material which were, in reality, not comparable. As per the explanation given by the appellant, the figure of Rs.19,50,041/- debited towards purchase of raw material in the second account consisted of two parts. Out of total raw material cost, amount of Rs.13,13,398/- had been directly reduced from gross sale to arrive at sales of Rs.14,92,745/- and balance of Rs.6,93,158/- was debited separately, which matched with the figure in the first account. If this factor is considered, raw material consumption would not be different in the two accounts. While the explanation cannot be accepted in toto in light of several discrepancies mentioned earlier, nor the same can be altogether discarded in a summary manner as done by the assessing officer. It is to be noted here that both the accounts were provided by the assessee himself. It is not a case as if the assessing officer detected a different figure of raw material consumption from some independent source such as physical verification or third party inquiry etc. Thus, it is not a case where raw material consumption was partly recorded in the books and some unaccounted raw material consumption was detected. It is true that there is some defect in the accounting made by the appellant but no evidence has been gathered regarding unaccounted consumption, production or sales. It is also important to note that the entire sales made by the appellant are to Indian Oil Corporation which is a public sector undertaking and therefore possibility of unaccounted sales is practically nil. It is also to be noted that the raw material consumption of Rs.17,12,020/- has also been taken by the assessing officer from one of the profit and loss accounts prepared by the appellant from his regular books only and hence there cannot be presumption that a part of the same was utilized for unaccounted production and sales. As a matter of fact, there is no evidence whatsoever regarding there being any unaccounted production or sales and the estimation of unaccounted sale is based on conjectures and surmises. Therefore the addition made by an unsubstantiated presumption of unaccounted sales cannot be sustained.

5.5 However, that also does not mean that the income shown by the appellant can be accepted as correct. As mentioned earlier, the accounts of the appellant suffer from serious discrepancies and inconsistencies and were rightly rejected under section 145(3) of Income Tax Act, 1961. Once the accounts are rejected, reasonable profit is required to be estimated. As per the profit and loss account filed with return submitted in response to notice under section 148, the sales and income from job work were of Rs.39,42,325/-, It is seen that in the immediately

preceding year, i.e. F.Y.2004-05, net profit rate shown by the appellant himself was about 10%. Though certain addition had been made by the assessing officer in scrutiny assessment in that year, the same was deleted by ITAT and thus finally assessed income was also about 10% of turnover. Considering all the facts in entirety, I am of the view that profit for the year under appeal can be reasonably estimated in the appellant's case by applying net profit rate of 10% on the turnover of Rs.39,42,325/- which comes to Rs.3,94,232/-. The assessing officer is directed to reduce income accordingly”.

Aggrieved by the order of the Id. CIT(Appeals), the Revenue has preferred this appeal before the Tribunal.

6. At the time of hearing before us, none has appeared on behalf of the Revenue. The Id. CIT (D.R.), who is present in the Court has submitted that this case is to be argued by the Id. Sr. D.R., who is neither present in the Court nor has given any intimation of his absence or any instruction to seek adjournment. We, therefore, proceed to dispose of this appeal filed by the Revenue ex parte after hearing the arguments of the Id. Counsel for the assessee and perusing the relevant material available on record.

7. It is observed that the books of account of the assessee were rejected by the Assessing Officer for the reasons that three Profit & Loss Accounts giving different figures were filed by the assessee at three different stages and there was failure on the part of the assessee to produce the books of account as well as supporting bills/vouchers for verification and keeping in view all the facts and circumstances of the case, the action of the Assessing Officer in rejecting the books of account was upheld by the Id. CIT(Appeals). He, however, held that once the books of account are rejected, the income of the assessee from business is required to be estimated on some reasonable basis. In this regard, he found that net profit of 10% was declared by the assessee in the

immediately preceding year, i.e. A.Y. 2005-06 and although certain additions had been made by the Assessing Officer to the net profit, the same were deleted by the Tribunal thereby accepting finally the net profit rate of 10% declared by the assessee. The Id. CIT(Appeals), therefore, applied the net profit rate of 10% to the higher turnover of Rs.39,42,325/- declared by the assessee in the Profit & Loss Account filed along with the return of income in response to notice under section 148 and estimated the income of the assessee at Rs.3,94,232/- as against Rs.15,05,421/- estimated by the Assessing Officer. Having considered all the facts and circumstances of the case, we are of the view that the estimate so made by the Id. CIT(Appeals) is quite fair and reasonable as the same is based on the results declared by the assessee in the immediately preceding year, which have been finally accepted by the Tribunal. On the other hand, the estimate of business income of the assessee made by the Assessing Officer by applying the raw material consumption ratio shown in the first Profit & Loss Account to raw material consumption shown in the second Profit & Loss Account to work out the sales at higher side than declared by the assessee in the second Profit & Loss Account, in our opinion, is not well founded especially when the assessee is dealing with a Public Sector Undertaking where there is hardly any chance of having any undisclosed turnover. We, therefore, uphold the impugned order of the Id. CIT(Appeals) estimating the income of Rs.3,94,232/- and dismiss this appeal of the Revenue.

8. In his Cross objection, the assessee has merely supported the impugned order of the Id. CIT(Appeals) estimating his business income by applying the net profit rate of 10% on the higher turnover as declared in the Profit & Loss Account filed along with the return in response to notice under section 148. Since the impugned order of the Id. CIT(Appeals) giving relief to the assessee on this issue has already been upheld by us while disposing of the appeal of the Revenue, the Cross Objection filed by

the assessee has become infructuous and the same is accordingly dismissed.

9. In the result, the appeal of the Revenue as well as the Cross objection of the assessee both are dismissed.

Order pronounced in the open Court on December 16, 2015.

Sd/-

Sd/-

(S.S. Viswanethra Ravi)
Judicial Member

(P.M. Jagtap)
Accountant Member

Kolkata, the 16th day of December, 2015

- Copies to :
- (1) ***Income Tax Officer,
Ward-1, Haldia,
Basudevpur, Khancanchak, Haldia,
Purba Medinipur-721 602***
 - (2) ***Shri Gour Hari Debdas,
S-17 & 18, Haldia Industrial Estate,
Durgachak, Haldia,
Purba Medinipur-721 602***
 - (3) *Commissioner of Income-tax (Appeals)-XXXIII, Kolkata*
 - (4) *Commissioner of Income Tax, Kolkata*
 - (5) *The Departmental Representative*
 - (6) *Guard File*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.