

**THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH,
MUMBAI**

**BEFORE SHRI D.T. GARASIA, JM AND SHRI RAJESH KUMAR,
AM**

**I.T.A. No. 6700/Mum/2016
Assessment Year: 2012-13**

Rohit S. Vishwasrao 104, Raj Shree Royal Complex, Eksar Road, Borivali (W), Mumbai- 400092	Vs.	ITO- Ward 32(3)(2) Mumbai
PAN: ADJPV4439N		
(Appellant)	:	(Respondent)

Appellant by	:	Shri Dharmesh Shah
Respondent by	:	Shri Purushottam Kumar (Sr. A.R.)

Date of Hearing	:	08/03/2017
Date of Pronouncement	:	29/03/2017

ORDER

PER D. T. GARASIA, JM:

This appeal is filed by the Assessee against the order of CIT(A)-44, Mumbai, dated 28/10/2016 arising out of order of ITO Ward-32(3)(2), Mumbai passed u/s 143(3) of the Income Tax Act, 1961 for the Assessment Year 2012-13.

Following grounds are raised which reads as under:

1. On the facts circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the AO in making an addition of Rs.30,04,203/- on account of estimation of gross profit, which may be deleted/reduced.

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the AO in disallowing the loss claimed of Rs.5,09,706/- on trading in derivatives.

3. The short facts of the case are as under:-

The assessee is an individual running proprietorship concern under the name of Rohit Synthetics. This ground relate to addition of Rs.30,04,203/- on account of estimation of gross profit. The AO has mentioned in the assessment order that as compared to last two years, the GP of the assessee year under has fallen down. The AO ask the assessee to explain fall in GP. In reply the assessee mentioned that there is fall in GP mainly because of rise in electricity expenses and also because of rise in other expenses like cost of material. However, the AO did not accept the explanation of the assessee and estimated GP @ 2%. As a consequence this addition of Rs.30,04,203/- was made to the total income of the assessee.

Matter carried to CIT(A) and CIT(A) has dismissed.

4. During the course of hearing the Ld. AR has submitted that the Assessing Officer has estimated the GP on trading the turnover of the assessee without rejecting the book of the assessee contrary to law and unjustified. The Assessing Officer has not rejected the book result. The

Assessing Officer has estimated the income from trading business on the ground their gross profit earned by the assessee during the assessment years i.e. 2010-11 & 2011-12 is higher than earned during the year under appeal. Further, According to the Assessing Officer electricity expenses claim are also too high as a result with the profit has gone down. The Assessing Officer was of the view that profit has been suppressed from trading activities by reducing the profit from job work. The profit of the gross profit, gross profit depends upon the various factors such as increase in material cost, bonus, stores and spares, electricity expenses.

5. The Ld. AR submitted before, CIT(A) that the gross profit of estimating the gross profit @ 2% contrary very high at the last. The Assessing Officer adopted gross profit @ 0.24% as considering the fact that the assessee has declare gross profit is 0.11%. Therefore, the addition could have been made only to the extent of 0.13% of the turnover of the assessee. Hence, the addition is unjustified.

6. On the other hand the Ld. DR submitted that, if we look to the assessment order the assessee had hardly shown gross profit is very low which is not possible in this line of business. In reply to DR's argument that the assessee has turnover of Rs.13.13 crores and he has declared GP of 0.11% which is very low.

7. Having heard both the parties. Looking to the facts and circumstances of the case, we find that the assessee has already admitted before CIT(A) that the assessee has declare gross profit of 0.11% and he has no objection the addition should have made to the expenditure of 0.13% of the turnover from trading business of the assessee. Considering this submission and without going to the merit of the case we find that in

this case the Assessing Officer has not rejected the book result u/s 145(3) of the Income Tax Act. Therefore, the assessee's book result should have been accepted but looking to the facts and admission of the assessee himself we direct the AO to take the GP @ 0.24% instead of 0.11% declared by the assessee.

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

8. During the course of AO noted that the assessee has claim derivative loss of Rs.5,09,706/- and said of against the business from proprietary concern. The AO stated that the assessee has not submitted books of account related to the transaction which have let to derivative loss. Therefore, it was disallowed and CIT(A) confirm the same.

9. During the course of hearing the Ld. AR submitted that the only reason for disallowing the claim of the assessee on the ground that the assessee has not filed form No.10DB before the AO and CIT(A).

10. Ld. AR is now ready to file that form before the AO. Therefore, he requested the matter may be restored to the AO to verify the same.

11. The Ld. DR has no objection if the matter is restored to AO. Considering the above submission of the assessee we are of the view that the derivative loss can be verified only to the 10DB forms that the assessee is wanted to file before the AO therefore, we reverse the order of Revenue Authorities and restore the matter back to the file of the AO. The assessee is directed to file form No. 10DB within three months from the receipt of this order and after filing the necessary information the AO is directed to make the assessment as per law. After given due opportunity of hearing to the assessee.

In the result appeal is allowed for statistical purpose.

Judgment pronounced in open court on 29th March 2017.

sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

sd/-
(D.T. GARASIA)
JUDICIAL MEMBER

Mumbai, Dated: 29th March 2017

Rahul Sharma

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "D" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai