

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

**BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER
AND
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 3307/Del/2011
Assessment Year: 2002-03

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| M/s. Muzaffarnagar, Distt. Cooperative Development, C/0- M/s. Malik & Co., 305 ó Thapar Nagar, Meerut City, Uttar Pradesh. (PAN : AAAJM0470E) | Vs. | Addl. Commissioner of Income Tax, Range-2, Aayakar Bhawan, Meerut Road, Muzaffarnagar. |
| (Appellant) | | (Respondent) |

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| Appellant by | Sh. Sanjay Malik, Adv. |
| Respondent by | Sh. P. DAM, Kanunjna, Sr. DR |

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| Date of hearing | 07.03.2016 |
| Date of pronouncement | 30.03.2016 |

ORDER

PER O.P. KANT, A.M.:

This appeal of the assessee is preferred against the order dated 23/03/2011 of the Ld. Commissioner of Income-tax (Appeals), Muzaffarnagar, for assessment year 2002-03 raising following grounds of appeal:

1. (a) *The appellant maintained books of account in the regular course of business and the method of accounting employed by the Appellant was in conformity with the mode and manner adopted in the proceeding Assessment years. The appellant in the Printing Press Division, earned gross profit of Rs. 1,11,717/- as reflected in the Trading Account. Because of adjustment of over-head expenses, depreciation and appropriation of head office expenses, Gross Profit stood reduced to negative figure i.e. loss of Rs. 4,63,952/-. Thus the declared loss was substantiated by flawless method of accounting.*

(b) That by virtue of verifiability of all items on the debit and credit of Trading account and in the absence of any error of omission or commission in the method of accounting and also in the absence of any evidence of inflation of expenditure and purchase or suppression of sales and turnover, there was no legal warrant and justification to reject the declared version and to disallow the declared loss.

- 2. That the declared loss of Rs. 4,63,952/- being based on proper method of accounting deserves to be allowed particularly when the genuineness of purchases, direct & indirect expenses and turnover were neither disputed nor the method of accounting was held to be defective and unreliable.*
- 3. That on facts and in law, there was no legal warrant to charge interest u/s 234A; 234B and 234D. The levy of interest deserves to be quashed, illegal and void.*

2. The facts in brief are that the assessment in the case was completed under section 143(3) read with section 147 of the Income-tax Act (in short the Act) on 28/12/2004 at income of Rs. 17,59,950/- , disallowing the loss of Rs. 4,63,952/- in printing press division of the assessee. On appeal, the Ld. Commissioner of Income-tax(Appeals) confirmed the disallowance of loss of Rs. 4,63,952/- in printing press division. Against the sustenance of the disallowance, the assessee filed appeal before the ITAT, who restored the matter back to the file of the Assessing Officer to decide the issue after examining the storage register which was produced before the ITAT. In compliance to the direction of the ITAT, the AO asked the assessee to produce the relevant stock register/storage register related to printing press division. On perusal, the AO found that the register was showing negative balance of papers which means consumption of various papers was more than the availability of the papers and accordingly, the AO called upon the assessee why the books of accounts may not be rejected. The assessee claimed that goods were received and consumed, however, entry for the receipt was made only on receipt of the purchase bills and therefore there is a negative balance in stock prior to date of entry of the bills in respect of the goods received and consumed. But according to the AO, the assessee could not reconcile the discrepancy of negative stock and the remark in

form no. 3CD that the quantitative details of the items traded was not available for verification with the assessee, therefore the loss claimed in respect of printing division was disallowed.

3. Before the Ld. Commissioner of Income-tax(Appeals), the assessee in context of discrepancy submitted that it had ordered the paper suppliers as per the requirements of the paper material and consumed it to perform the requisite work but the material entered in the stock register on the date of bills issued by the supplier. The assessee also contended that the loss in the printing division was mainly due to appropriation of head office expenses. The assessee also claimed that a lenient view may be taken as the society was not created for the benefit of the persons but it was created for the benefit of the society members. The submissions of the assessee were forwarded by the Ld. Commissioner of Income-tax(Appeals) to the AO for his comments. The Assessing Officer submitted that he personally examined the consumption of different items with reference to manufacturing of registers filed and other items of printing press division and found that no proper details were maintained by the assessee from which day to day consumption of papers and other items may be correlated with the item produced. The Ld. Commissioner of Income-tax(Appeals) forwarded the comments of the Assessing Officer to the assessee and after considering, the rejoinder report of the assessee, the Commissioner of Income-tax(Appeals), upheld the findings of the AO. Aggrieved, the assessee is before the Tribunal.

4. The ground No. 1 and 2 of the appeal are in respect of disallowance of loss of Rs. 4,63,952/- of the printing press division.

4.1 Before us, the Ld. Authorized Representative(in short :-AR) repeated the arguments made before the Ld. Commissioner of Income-tax(Appeals) and submitted that discrepancies in the stock register were duly explained by the assessee, however, the Assessing Officer did not consider the explanations of the assessee and accordingly, requested for allowing the appeal.

4.2 On the other hand, the Ld. Departmental Representative (DR) relying on the orders of the authorities below, submitted that the assessee has been given sufficient opportunities before the AO and the CIT(A) in two rounds of proceedings, still the assessee could not satisfactorily explain the discrepancies in the stock/ storage register related to printing press division and therefore, there was no alternative before the Assessing Officer other than disallowing the loss of Rs. 4,63,952/- of the printing press division.

4.3 We have heard the rival submissions and perused the material on record. On production of stock register of printing press division before the Tribunal, the case of the assessee was restored to the file of the AO by Tribunal in ITA No. 554/Del/2006 in order dated 09/02/2007. The relevant part of the order of the Tribunal is reproduced as under:

"Ground No. 3 in ITA no. 554/Del/06 states that the Id. CIT(A) has erred in confirming the disallowance of loss of Rs. 4,63,952.08 in the printing press division of the assessee. The facts in this regard are that as per the assessment order, the assessee, while running its printing press, had consumed paper for printing and preparation registers, etc. The Assessing Officer observed that the assessee had neither maintained any day to day consumption of paper of different quality and production of register and other items, nor the details of related expenses on the basis of which, the loss incurred in the running of the printing press could be ascertained.

The Assessing Officer also observed that the assessee had not maintained any detailed account from which the quality-wise and quantity-wise consumption of paper and other items in the printing process could be lined with the items produced. It was noted that moreover, the para 28 of the Auditor's report dated 29.10.2002 in form no. 3CD, the assessee's auditor had marked that 'quantitative details of items traded are not available with the assessee for our verification.' Accordingly, the A.O. disallowed the loss claimed. The Id. CIT(Appeal) upheld the assessment order in his regard holding that even in the appellate proceedings, though the assessee claimed that storage registers were duly maintained and that it had shown all the relevant documents relating to the day to day consumption of paper to the IT Inspector during the assessment

proceedings, no such evidence could be produced before the Id. CIT(Appeal).

The Id. Counsel for the assessee has drawn our attention to APB pages 54-82, which is stated to be a copy of assessee's storage register of press division. Accordingly to the Id. Counsel for the assessee, this document was duly produced before the A.O. as well as before the Id. CIT(Appeal). The Id. Counsel for the assessee has contended that this register contains details with regard to loss incurred, including details of purchase, printing done, for whom the work was done, the number of items produced and utilized and balance. The Id. Counsel for the assessee states that other than this document there are nothing with the assessee which should have gone to prove the loss. It is submitted that despite this storage register having been produced before the taxing authorities, neither of them has taken it into consideration, thereby leading to an erroneous conclusion.

Ld. DR, on the other hand has placed reliance on the decision of the Id. CIT(Appeal).

In this regard, we are of the opinion that this issue requires to be remitted to the file of the A.O. to examine the storage register as produced before us (copy of APB-54-82) and then to decide the matter on affording the assessee requisite opportunity to prove its claim."

4.4 Thus we find that the quantity and quality wise consumption of the paper and other items of the printing process could not be produced before the Assessing Officer in 1st round of proceedings. No such evidence were even produced before the Ld. CIT (A) in 1st round proceedings. The tax auditor in form No. 3 CD also reported that quantitative details of the items traded were not available with the assessee for verification. When on the direction of the Tribunal, the AO verified the stock register of printing press division, he found negative stock of various kind of papers in the stock register, which the assessee attempted to explain as not entered in the stock register at the time of receipt of goods, as per the practice followed from earlier years. In appellate proceedings before the Ld. Commissioner of Income-tax (Appeals) in 2nd round, the matter was remanded to the AO for verification of the claim of the assessee that it had ordered the paper suppliers as per its requirement of people material and consumed it but the material was entered in the stock register on the date of the

bill issued by the supplier. However in remand proceedings the assessee could not produced all the bills and vouchers and therefore this contention of the assessee could not be verified by the Assessing Officer. In view of the above observations, the Ld. Commissioner of Income-tax(Appeals) has given his finding on the issue in dispute as under:

“The facts of the case, appellant's submission, remand report of the A.O. and the rejoinder of the appellant have been carefully considered. It is observed that the appellant claimed 'a loss of Rs 4,63,952.08 from running of printing press. The appellant while running the printing press had consumed paper and other inputs for printing and preparation of registers and other items etc. But it was noticed that the appellant could not justify the claim of loss as the appellant neither maintained any day to day consumption of paper of different quality and production of registers and other items nor the details of relative expenses on the basis of which loss incurred-in running the printing press. It was also observed from the para 28 of Auditor's Report dated 29.10.2002 in Form no. 3CD, the remark made by the appellant's auditor that "Quantitative details of items traded are not available with the assessee for our verification": Thus it was clear that even during the course of audit of accounts, no quantitative details were made available by the appellant. In fact, the appellant has not maintained any detail of account from which quality and quantity wise consumption of paper and other items in printing process could be linked with the items produced. Even the ITI of the department in his report has stated that it is not correct on part of the appellant that all the relevant documents relating to day to day consumption of paper of different quality were shown or produced before him. The A.O. during the process of remand report had personally examined the consumption of different items with reference to manufacturing of registers, files and other items of the printing press division and he found that no proper details have been maintained by the appellant from which day to day consumption of paper and other items may be correlated with the items produced. On such verification it was found that loss claimed was not verifiable from the records maintained by the appellant and the A.O. rather in his remand report has emphasized that the appellant is maintaining its books of account in a manner from which verification of loss/profit in printing press division is not possible. In its rejoinder the appellant attempted to justify its method by citing the provisions of Sales of Goods Act and claiming the purchases were made by it by word of mouth, but crucial question is even if such goods were purchased by word of mouth, why such purchases were

not entered into the stock register before showing them as delivered. The appellant cannot take shelter that such method was regularly being adopted by it because a blatantly wrong method cannot be held justified merely because it was in practice. Further, appellant's stand of lenient view is also rejectible in view of glaring discrepancies made in the stock register. Since the actual profit/loss from trading of items from printing division cannot be determined, the claim of loss even if it is because of appropriation of head-office expenses cannot be allowed. Thus it is held that the appellant failed to justify its claim of loss either at the time of assessment proceedings or during the course of appellate proceedings. The appellant had cited various decisions of Hon'ble Apex Court in his rejoinder. The case laws cited by the appellant are not applicable on it because it was not a matter of interpretation but the examination of the facts (stock register) for which Hon'ble ITAT had issued directions. The discrepancies pointed out were not reconciled by the appellant either at the time of assessment proceedings or at the time of appellate proceedings. In view of the above, the AO's action in rejecting the loss in printing press division is fully justified. The grounds of appeal no. 1 to 3 are hereby dismissed."

4.5 We find that Ld. Commissioner of income tax(Appeals) has concluded that the discrepancies pointed out were not reconciled either at the time of assessment proceedings or at the time of appellate proceedings. We observe that the assessee has been provided ample opportunity to substantiate the claim of loss in printing press division by the Assessing Officer as well as appellate authorities, however, the assessee has failed to avail the opportunities. The discrepancies of negative stock have not been explained satisfactorily even before us. In the above facts and circumstances, we are of considered opinion that the order of the Ld. Commissioner of Income-tax(Appeals), on the issue in dispute is well reasoned and no further interference on our part is required. Accordingly the grounds of the appeal are dismissed.

5. The ground No. 3 raised by the assessee is in respect of charge of interest under section 234A, 234B, and 234D of the Act. As charging of interest, is consequential in nature, the ground being general not required to adjudicate upon.

6. In the result, the appeal of the assessee is dismissed.

The decision is pronounced in the open court on 30th March, 2016.

Sd/-

(DIVA SINGH)

JUDICIAL MEMBER

Dated: 30th March, 2016.

Laptop

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

(O.P. KANT)

ACCOUNTANT MEMBER

Asst. Registrar, ITAT, New Delhi