

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC', NEW DELHI**

**Before Sh. N. K. Saini, Accountant Member**

**ITA No. 3460/Del/2017 : Asstt. Year : 2013-14**

M/s Raj Khansari Udyog, Village Malhupura, Tehsil Dhanaura, District Amroha (UP)	Vs	DCIT, Circle-1, Moradabad
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAGFR4526E</b>		

**Assessee by : Sh. Piyush Kaushik, Adv.**

**Revenue by : Sh. T. Vasanthan, Sr. DR**

<b>Date of Hearing : 19.09.2017</b>	<b>Date of Pronouncement : 25.09.2017</b>
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**ORDER**

This is an appeal by the assessee against the order dated 07.03.2017 of Id. CIT(A), Moradabad.

2. Following grounds have been raised in this appeal:

*“1. That on the facts and circumstances of the case and in the law the CIT(A) has grossly erred in confirming the addition of Rs.9,01,043 on account of Gross Profit ratio.*

*2. That on the facts and circumstances of the case and in the law the CIT(A) has grossly erred in not accepting the past history of GP rate in assessee's own case as required, interalia, in the decisions of Jurisdictional High Court in various cases.*

*3. That on the facts and circumstances of the case and in the law the CIT(A) has grossly erred in enhancing the G.P. rate to 10.58% as against the G.P. rate of*

*9% accepted by the AO itself in gross violation to the provisions of section 251 of the Act.*

*That the above grounds are independent and without prejudice to one another.*

*That the appellant craves leave to Add to and / or amend, modify or withdraw the grounds outlined above before or at the time of hearing of the appeal.”*

3. From the above grounds, it is gathered that only grievance of the assessee relates to the enhancement of addition by increasing the GP rate to 10.58% as against 9% applied by the AO.

4. Facts of the case in brief are that the assessee e-filed its return of income on 19.09.2013 declaring an income of Rs.22,600/- which was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act). Later on, the case was selected for scrutiny. During the course of assessment proceeding, the AO noticed that the assessee had shown gross profit ratio of 3.55% on the total turnover of Rs.4,09,56,553/- and net profit ratio of 0.06%. He also noticed that the other units engaged in the similar trade of the same vicinity had shown gross profit ratio hovering between 8% and 12%. The AO observed that the sugarcane purchased by the assessee was Rs.20/- to Rs.30/- per quintal higher than the purchases shown by the other similar units in the same vicinity. The AO pointed out that almost every page of the purchase register was tampered especially in the month of February and

March 2013 in which the variation in the price of sugarcane was more. He also pointed out certain other discrepancies in the purchase register and concluded that the purchases of sugarcane were inflated and bogus expenses had been booked, therefore, the books of accounts were rejected by invoking the provisions of Section 145(3) of the Act, the AO applied the gross profit rate of 9% and made the addition of Rs.22,32,133/- by observing as under:

*“5(E) After rejection of books of accounts now the question before me is to estimate the profit. It is well settled law when the assessee has not proved the correctness of the books of account and has not produced any record to support his claim as to the taxable income; it is always open to the AO to estimate the income and profit therein as per similar business data. Now I have only option to compare the GP rate shown by the similar other units. The gross profit rate shown by M/s Khalsa Cane Crusher, Village Khandsal, M/s Rana Khandsari Udhhyog, Village Makhdumpur, M/s Paigamberpur Khandsari Udhhyog, Village Paigamberpur and M/s Uppal Cane Crusher, Peepli Katan are 12.59%, 7.85%, 11.44% and 10.45% respectively. Thus, the gross profit is hovering from 7.85% to 12.59% and the average gross profit rate works out to be 10.58%  $\{(12.59 + 7.85 + 11.44 + 10.45)/4 = 10.58\}$ . For estimating gross profit of the assessee, the average gross profit of these units i.e. 10.58% can be adopted. But considering all other factors, I hereby modestly apply gross profit rate from 10.58% which is the average ratio to 9% and thus giving a leverage of 1.58% to the assessee.*

*5(F) The assessee has shown total gross receipts of Rs.4,09,56,553/-. On applying GP @ 9%, the gross profit comes to Rs.36,86,089/- while the assessee has shown a gross*

*profit of Rs.14,53,956/-. Thus the difference of Rs.22,32,133/- (3686089-1453956) is treated as more gross profit earned by the assessee. The assessee in the profit and loss account has debited several expenses. Though in the absence of supporting documentary evidences these expenses are also unverifiable yet it is presumed that the assessee firm must incurred certain expenses As I have estimated gross profit rate of 9% hence no further disallowance has been made and giving the full expenditure booked in P&L account and made an addition of Rs.22,32,133/- and the same is added back to the income of the assessee. Penal proceedings will be initiated separately on this issue u/s 271(l)(c) of Income-tax Act, 1961.”*

5. Being aggrieved the assessee carried the matter to the Id. CIT(A) and submitted that trading accounts of the units with whom the AO had compared the assessee's account, did not include certain expenses such as bardana, Jhonk, Mandi Fees and Purchase tax. Therefore, the comparison of GP rate with those would have to be done after excluding those expenses from the assessee's trading account. The assessee also furnished the past history, the details of the GP rate and net profit rate as per following details:

Particulars	A.Y. 2009-10	A.Y-2010-11	A.Y. 2011-12	A.Y. 2012-13	A.Y. 2013-14
Sales Amount	22428332.00	24983800.00	26894546.00	37916915.00	40956553.00
Gross profit Amount	729789.00	993635.00	1083850.00	1175079.00	1452048.00
Gross Profit (%)	3.25%	3.98%	4.03%	3.10%	3.55%
Net profit Amount (Capital Intt. & Remu)	303100.00	993635.00	526830.00	436427.00	466009.00
Net profit (%) (Capital Intt. & Remu.)	1.35%	2.02%	1.96%	1.15%	1.14%

6. However, the Id. CIT(A) did not agree with the submission of the assessee and enhanced the addition by Rs.9,01,043/- by observing as under:

*“I do not agree with the appellant's submission as above. He can either rely on one argument or the other which is either rely on the past history of his own or a comparative figures of the G.P. rate with other units in the vicinity. He has relied on jurisdictional High Court decision in the case of Ram Prakash vs CIT [1983] 15 taxman 533. In this case, the jurisdictional High Court pronounced that profit could be worked out in the light of earlier years of the assessee. The jurisdictional High court's decision may not be applicable to the appellant since the factual matrices in both cases are different. For example, the exemplars of the case relied on were from different cities (liquor business) and not from the vicinity. In the instant case the AO has compared exemplars of the same vicinity, therefore the comparison of result is more accurate.*

*The AO here has compared the rate of profit with directly comparable cases in the same vicinity for the same assessment year. There is little room to disagree with the AO. However agree with the contention of the appellant that gross profit is to be calculated after taking into account certain expenses which have not been taken into consideration by other Exemplars. To this extant the AO's order needs to be corrected. But at the sometime I also do not agree with the AO's decision to apply only 9% as G.P. rate instead of 10.58% (which is the average rate of G.P. of the other 4 units for the same year). Thus I direct the AO to calculate the G.P. 10.58% instead of 9% after taking into account the additional expenses that others units have not shown in their trading account.*

*The G.P. of the appellant comparable with their units would come to Rs.34,33,187/- i.e. 8.38% thus the addition will be of (10.58% - 8.38%) 2.20% and at this rate the extra profit would work out to be Rs. 9,01,043/- instead; of Rs.22,32,133/-. The appellant gets relief to the extent of the balance amount.”*

7. Now the assessee is in appeal. The ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the AO after considering the facts that the assessee had incurred more expenses for purchase of the sugarcane in comparison to the comparable cases, applied the GP rate of 9% and the ld. CIT(A) also accepted this contention of the assessee that certain expenses were not included by the comparable cases. Therefore, the enhancement made by the ld. CIT(A) by applying GP rate of 10.58% was not justified.

8. In his rival submissions the ld. Sr. DR supported the impugned order passed by the ld. CIT(A) and further submitted that the AO applied the GP rate which was lower than the GP rate shown by the comparables. Therefore, the enhancement made by the ld. CIT(A) was fully justified.

9. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is an admitted fact that the AO worked out the average GP rate of the comparable units which were working in the same line and vicinity at 10.58%, and after considering this fact that the assessee incurred more

expenses of Rs.20/- to Rs.30 per quintal higher than the purchases shown by the other similar units of the same vicinity. He, therefore, allowed a leverage of 1.58% to the assessee and applied the GP rate of 9%. The Id. CIT(A) also accepted this contention of the assessee that the trading account of the units with whom the AO had compared assessee's account did not include certain expenses such as bardana, Jhonk, Mandi Fees and Purchase tax etc. In our opinion, the action of the Id. CIT(A) for adopting the average GP rate of 10.58% shown by the comparable cases was not justified, particularly when, he had not also given any reason for not accepting the GP rate applied by the AO at 9%. I, therefore, by considering the totality of the facts as discussed hereinabove, modify the order of the Id. CIT(A) and direct the AO to apply the GP rate of 9% instead of 10.58% applied by the Id. CIT(A) and work out the addition, if any.

10. In the result, the appeal filed by the assessee is partly allowed.

(Order Pronounced in the Court on 25/09/2017)

Sd/-  
(N. K. Saini)  
**ACCOUNTANT MEMBER**

**Dated: 25/09/2017**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**