

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

BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER

ITA No.660/Del/2019

Assessment Year: 2011-12

Shri Raghunath Traders 2046, Katra Tobacoo, Khari Baoli, Delhi PAN No. AABFS5596C	Vs	Income Tax Officer Ward – 29 (1) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Shri K. P. Manjani, Advocate
Respondent by	Shri S. L. Anuragi, Sr. DR

Date of hearing:	04/07/2019
Date of Pronouncement:	02/08/2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 03.12.2018 of the CIT(A)-16, New Delhi relating to A. Y. 2011-12.

2. Facts of the case, in brief, are that the assessee is a partnership firm and deals in trading of Kiryana Merchants. It filed its return of income on 30.09.2011 declaring total income of Rs.45,240/-. During the course of assessment proceedings the Assessing Officer observed from the audit report that assessee is not maintaining any stock record and the auditors have pointed out that physical stock was verified and certified

by the partner. He, therefore, held that all sales/ purchases are not properly entered in the books of account. He, therefore, rejected the book results by invoking the provisions of section 145 of the IT Act. He analyzed the past results of the assessee vis-à-vis the current year results which are as under :-

Asstt. Year	Turn over	G. P.	GP%
2009-10	Rs.2,50,17,229/-	Rs.19,01,928/-	7.60%
2010-11	Rs.76,45,540/-	Rs.5,63,794/-	7.37%
2011-12	Rs.2,09,13,300/-	Rs.11,98,677/-	5.73%

3. Adopting the GP rate of 10% the Assessing Officer made addition of Rs.8,92,653/-to the total income of the assessee.

4. In appeal the Ld.CIT(A) sustained the addition so made by the Assessing Officer.

5. Aggrieved with such order of the CIT(A) the assessee is in appeal before the Tribunal by raising following grounds of appeal :-

1. *The Learned A. O. as well as CIT(A) have erred on facts as well as in law in sustaining the trading addition of Rs.8,92,653/- even though no defects in books indicated, books are audited ones.*

2. *It is wrongly stated there is a history of G. P. Rate of 10% in this case, which is contradictory to the facts given in this Order.*

3. *It is wrong that there is no stock register, quantitative tally itself is a stock register because it indicates of*

purchases and sales in rupees and goods by quantity and weight.

4. The above addition is merely on surmises.

6. The Ld. Counsel for the assessee strongly challenged the order of the CIT(A) in sustaining the addition made by the Assessing Officer. He submitted that no defects were found in the books of accounts except non Maintenance of stock records. However, the books of accounts are maintained by the assessee giving quantity wise purchases and sales. The quantity of closing stock also tallies. The Assessing Officer has not given any instance of earning of higher GP of any other comparables concern. He submitted that from the A. Y. 2000-01 to 2006-07 the trading addition made by the Assessing Officer was deleted by the CIT(A) and on further appeal by revenue, the Tribunal has dismissed the appeal filed by the revenue.

7. So far as the decision relied by the CIT(A) in the case of Kachwala Gems Vs. CIT [2007] 288 ITR 10 (SC) is concerned he submitted that there were so many defects pointed out by the lower authorities and there was no quantitative tally for which the basis of valuation of closing stock by the assessee was rejected and best judgment assessment was adopted. However, in the instant case there is no such defect except non maintenance of the stock record. However, the books maintained by the assessee gives the full quantitative details and, therefore, the decision relied on by Ld. CIT(A) is not applicable.

8. So far as the decision of the Hon'ble Delhi High Court in the case of M/s. Chadha Automobiles India reported in 13 taxman.com 152 is concerned, he submitted that in that case also the Assessing Officer found various discrepancies in the books of accounts produced and, therefore, he rejected the book results and went for estimating the profit. However, in the instant case as mentioned earlier, there is no such other defect except non maintenance of stock record. Therefore, both the decisions relied on by Ld. CIT(A) while sustaining the addition is not justified.

9. The Ld. DR on other hand heavily relied on the order of the CIT(A). He submitted that the Ld. CIT(A) has given categorical finding that stock register is indispensable necessity for arriving of the correct profit of the business. She had also held that availability of sale/ purchase ledger alone in the absence of the corresponding stock register cannot give correct and true nature of the state of affairs of the business. Further the assessee has purchased from the sister concern M/s. Shri Raghunath Traders where also the books of accounts were rejected. He accordingly submitted that an assessee who is not maintaining any stock register cannot be equated with an assessee maintaining stock record. Therefore, the Ld. CIT(A) was fully justified in sustaining the addition made by the Assessing Officer by adopting the GP rate of 10%.

10. I have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the CIT(A) and the paper book filed on behalf of the assessee. I have also

considered the various decisions cited before me. I find the Assessing Officer estimated the GP rate at 10% as against 5.73% shown by the assessee on the ground that assessee has not maintained any stock register and the closing stock was certified by the partners on the basis of verification of physical stock. I find the Ld. CIT(A) relying on various decisions upheld the action of the Assessing officer. It is the submission of the Ld. Counsel for the assessee that although assessee has not maintained any stock register, however, the accounts are maintained in such a way that quantitative details can be arrived at any point of time since quantity is given in purchase and sales register. In my opinion an assessee who is not maintaining any stock register cannot be equated with an assessee who maintains a stock register on day today basis giving quantitative details of items traded. Further in the instant case I find the GP rate has fallen although the turnover has significantly gone up to Rs.2.09 crores as against 76.46 lacs in the preceding year. When the turnover goes up substantially it is quite possible that the GP rate may come down. However, as mentioned earlier an assessee not maintaining any stock register cannot be equated with an assessee maintaining stock register giving full details. Therefore, deleting the entire trading addition as argued by the Ld. Counsel for the assessee in my opinion cannot be accepted. Considering the totality of the facts of the case I am of the considered opinion that addition of Rs.50,000/- on estimate basis for possible leakage of revenue due to non maintenance of stock records will meet the ends of

justice. I, therefore, direct the Assessing Officer to restrict the addition to Rs.50,000/- as against Rs.8,92,653/- made by him and upheld by the CIT(A). The grounds raised by the assessee are accordingly partly allowed.

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

Order pronounced in the open court on 02.08.2019.

Sd/-
(R.K PANDA)
ACCOUNTANT MEMBER

Neha

Date:- 02.08.2019

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	23.07.2019
Date on which the typed draft is placed before the dictating Member	23.07.2019
Date on which the approved draft comes to the Sr.PS/PS	24.07.2019
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	02.08.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	