

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : G : NEW DELHI
(Through Virtual Court Hearing)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.3552/Del/2018
Assessment Year: 2013-14

Silburn Papers Pvt. Ltd.,
BM-125, West Shalimar Bagh,
New Delhi.

Vs ITO,
Ward-23(4),
New Delhi.

PAN: AAPCS5300R

(Appellant)

(Respondent)

Assessee by	:	Shri P.C. Yadav, Advocate
Revenue by	:	Shri Saras Kumar, Sr. DR
Date of Hearing	:	28.07.2020
Date of Pronouncement	:	07.08.2020

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 16th March, 2018 of the CIT(A)-28, New Delhi relating to assessment year 2013-14.

2. Although a number of grounds have been raised by the assessee, these all relate to the order of the CIT(A) in sustaining the addition of Rs.1,43,88,769/- as against addition of Rs.1,55,39,870/- made by the AO by directing the AO to adopt the GP rate of 25% as against 30% taken by him.

3. Facts of the case, in brief, are that the assessee is a company engaged in the business of wholesale trading in paper, paper board, corrugated board, binding material and packing material, etc. It filed its return of income on 4th September, 2013 declaring an income of Rs.3,60,210/-. The AO, during the course of assessment proceedings noted that the assessee has shown sundry creditors of Rs.2.35 crores which is almost 23% of the total purchase of Rs.9.75 crores. Therefore, to get the clear and true picture of business activities of the assessee, he issued notice u/s 133(6) to the sundry creditors and parties from whom heavy purchase have been made by the assessee company. He noted that most of them were returned back as unclaimed/left/no such person/no such address, etc. by the postal authorities. The AO gave the list of such persons/parties, the details of which are as under:-

S. No.	Party name	Total Purchases during the year amount (Rs.)	Sundry creditors for amounting Rs.	Notice u/s 133(6) sent on	letter returned - back on
01	Om Overseas	15,51,079/-	14,61,819/-	28.10.2015	04.11.2015
02	Gupta Trading Co.	1,60,29,348/-	53,62,350/-	28.10.2015	2.11.2015
03	Jindal Enterprises	1,99,68,491/-	69,50,867/-	28.10.2015	2.11.2015
04	Shree Ram Traders	11,71,740/-	11,00,000/-	28.10.2015	04.11.2015
05	Soraya paper and marketing pvt ltd	9,45,380/-	1,72,260/-	28.10.2015	Reply not received
06	Vipin sales india	96,96,336/-	54,50,000/-	28.10.2015	04.11.2015
07	Vishnu marketing	19,44,206/-	17,97,495/-	28.10.2015	04.11.2015
08	Yogesh trading co.	6,18,790/-	5,00,000/-	28.10.2015	Reply not received
09	Kangaroo industries ltd	56,29,703/-	7,23,833/-	28.10.2015	Reply not received
	Total	5,75,55,073/-	2,31,18,624/-		

4. He, therefore, asked the assessee to give the current and complete address of the above parties to which the assessee filed its submissions and provided copies of

a few purchase bills in support of address of these parties. Therefore, again, notice u/s 133(6) were issued to find out the true picture. However, all these notices were returned back or no reply was received. Thereafter, the AO deputed the Inspector to conduct field inquiry at the addresses provided by the company. The Inspector reported that the premises of BM-125, West Shalimar Bagh, Delhi-88 is a residential area and no registers of the company were found from there. Further, the house is 100 sq. yard and consists of two floors. The ground floor contains 1 hall and 2 rooms, doors were of normal size and house is situated at the end of lane which is 15 ft. wide and the main road is around 20 ft. wide. No business activity was noticed at the said premises. A map was also submitted in the report. To further investigate, summons u/s 131 were issued to the directors of the company and Mrs. Manisha Gupta and Shri Akshay Gupta appeared before the AO whose statements were recorded. They stated that the assessee company was engaged in the business activity only at BM-125, West Shalimar Bagh, Delhi-88. They were confronted with the report of the Inspector however, no proper reply, according to the AO was received. The AO further noted that there was a single person who was operating the bank accounts of assessee's creditors, namely, Vikas Trading Co., Khushi International, Laxmi Industries and Kartikey Enterprises. The AO also deputed his Inspector to enquire about two major parties, namely, M/s Gupta Trading Company and Jindal Enterprises who reported that the said parties were not found at the addresses given by the assessee company. In view of the above the AO reached to the conclusion that the books of account of the assessee company

are not reliable and, therefore, he rejected the same u/s 145(3) of the Act. He further concluded that the entire purchases of the assessee should not be added back and only the main element embedded in such purchases should be added to the income of the assessee. Referring to various decisions, the AO estimated the GP @ 30% of the total unverifiable purchases of Rs.5,75,55,073/-. However, taking into consideration the average GP for the last 3 years @ 3.16%, he adjusted the GP rate @ 27% of such unverifiable purchases and added back the amount of Rs.1,55,39,870/-.

5. Before the CIT(A), the assessee challenged the action of the AO in making addition of Rs.1,55,39,870/-. It was submitted that the company is registered with VAT department for VAT and Central Sales Tax Liability. The company filed before the AO its quarterly VAT returns, the monthwise/partywise sales details and purchase details. The company also filed the quantitative details of each item of purchase, sale, opening stock and closing stock. The company also filed the bank statements to substantiate that payments were made to the creditors against purchases. The gross profit of the above two years were also filed before the AO. Various details were brought to the notice of the CIT(A) substantiating that the purchases are genuine. It was submitted that the creditors have filed their confirmations and the assessee had made purchases from some of those parties in the past and subsequent years. Further, the assessee had made the payments in subsequent year and since the assessee has closed down its business, the Inspector

could not find any business activity. It was further submitted that most of the parties were old parties and genuineness of the purchases has been accepted in the previous year. Relying on various decisions, it was submitted before the CIT(A) that the action of the AO is not justified.

6. However, the Id. CIT(A) was also not satisfied with the arguments advanced by the assessee. Relying on various decisions, he restricted the GP rate to 25% of the bogus purchases of Rs.5,75,55,703/- thereby giving a relief of Rs.11,55,101/-.

7. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

8. The Id. counsel for the assessee, strongly challenged the order of the CIT(A) in directing to adopt the GP rate of 25% of the purchases of Rs. 5,75,55,703/-. The Id. Counsel for the assessee filed the following chart to show that all the said purchases have been paid subsequently:-

Name of Party	Amount of purchases made	Amount remain payable	Remarks	PB Pg
Om overseas{ new Party)	15,51,079	14,61,819(Account finally sq off in AY 2015-16- which means substantial amt was paid in subsequent years and accepted by revenue is next years	99-100
Gupta Trading Comp(New party)	1,60,29,348/-	53,62,350/-(Account finally sq off in AY 2015-16- which means substantial amt was paid in subsequent years and accepted by revenue is next years'	91-98

Jindal Enterprises - old partv	1,99,68,491/-	69,50,867/-	Account finally sq off in AY 2014-15 which means substantial amt was paid in subsequent years and accepted by revenue in next years	81-90
Shri Ram Traders - new Party	11,71,740/-	11,00,000/-	Account finally sq off in AY 2014-15	80
Soraya Papers- Old partv	9,45,380/-	1,72,260	Account finally sq off in AY 2014-15- Accepted by revenue	79
Vipin Sales- new Party	96,96,336/-	54,50,000/-	Account finally sq off in AY 2014-15- Accepted by revenue	77-78
Vishnu Trading New Party	19,44,206/-	17,97,495/-	Account finally sq off in AY 2014-15- Accepted by revenue	75-76
Yogesh Trading Company New Party	6,18,790/-	5,00,000/-	Account finally sq off in AY 2015-16 Accepted by revenue	73-74
Kangaroo Industries Ltd - A limited Company Old party	56,29,703/-	7,23,833/-	Account finally sq off in AY 2014-15- Accepted by revenue	71-72

9. He submitted that this position has been accepted by the Revenue and the return filed by the assessee has been accepted although u/s 143(1). It was submitted that by the time the Inspector was deputed by the AO, the assessee had closed down its business. Further, the directors of the assessee company appeared before the AO in response to summons u/s 131(1) and their statements were recorded and they have confirmed the business activity of the assessee company. So far as the various allegations made by the AO in the body of the assessment order is concerned, the Id. Counsel rebutted each of the allegations. So far as the report of the Inspector that no business activity was noticed at the premises of the company is concerned, he submitted that the report of the Inspector is without any

local witness. Further, the Inspector visited the spot on 25th January, 2016 and, by that time, the company had already closed its business and this fact was brought to the notice of the CIT(A). So far as the allegation of the AO that the report of the Inspector was confronted to the directors and they could not reply satisfactorily is concerned, the Id. Counsel, referring to the copy of the statement recorded of the directors which are placed in the paper book, submitted that this is factually incorrect since no such report was ever confronted to any of the directors. So far as the allegation of the AO that on the basis of enquiries made from the bank it was noted that accounts of some of the parties were operated by one person is concerned, the Id. Counsel submitted that the AO has not made any addition on account of purchases from those parties. So far as non-compliance to notices u/s 133(6) is concerned, the Id. Counsel submitted that the notices were served to three parties, but, they did not respond. However, the AO has not taken any further step to enforce the attendance of the parties. He submitted that it is not a case of section 68 and the burden of the assessee stood discharged after filing the following details:-

- i) VAT details of the parties
- ii) Ledger account of the parties
- iii) Stock details
- iv) Payment made by cheque
- v) Mismatch report from the server of VAT filed before the AO.

vi) Many of the parties were old parties and genuineness of the purchases has been accepted in the previous year.

10. Referring to the decision of the Honøble Gujarat High Court in the case of CIT vs. Nangalia Fabrics, vide ITA No.689 of 2010 he submitted that the Honøble High Court has categorically held that the burden of the assessee stood discharged after filing the above details and the provisions of section 68 are not applicable to trade creditors. Further payments were made by cheque and the position of the sundry creditors has been accepted by the revenue in the next year. So far as the allegation of the AO that two companies have withdrawn money from their current account immediately on the next day, he submitted that the assessee has no control over the conduct of those parties and there is nothing on record to suggest that money has come back to the assessee. He submitted that evidence available on VAT server vis-à-vis mismatch of purchases of these parties would prove beyond doubt about the existence of the parties. The Id. Counsel further submitted that the assessee has received commission on sale from M/s Kangaroo Sales and TDS has been deducted from such commission received by the assessee. He further submitted that out of total purchases of Rs.9.75 crores, the AO has accepted the purchases to the tune of Rs.4 crore and has doubted only purchases of Rs.5.75 meaning thereby that the assessee was in business. Further, the sales has been accepted and without purchases there could not have been any sales. Referring to various decisions, the Id. Counsel for the assessee submitted that the AO, without

bringing on record any comparable instance and without considering the past records had made huge addition by estimating the profit at 30% on purchases which is highly an absurdity and without any basis and the Id.CIT(A) also was not justified in reducing the same to 25%. The Id. Counsel filed the following chart to substantiate the GP of the preceding and succeeding year which is as under:

A.Y	Gross Turn over	Gross Profit	G.P
2012-13(Immediately previous year)	3,48,63,147/-	7,29,765	2.9%
2013-14(Impunged Year)	9,93,23,196/-	30,75,363/- (better results)	3.10% accepted by AO
2014-15(nextyea)	8,62,24,688/-	36,92,457/-	4.28%

11. The Id. Counsel for the assessee, referring to the decision in the case CIT vs. Cavinkare Pvt. Ltd., 263 taxman 740 (Mad) submitted that the Honøble High Court has held that Inspectorø Report could not be accepted in contrast to approvals of various parties which were obtained by the assessee. Referring to the decision of the coordinate Benches of the Tribunal in the case of ACIT vs. Karam Chand Rubber, order dated 12th December, 2018, the Id. Counsel for the assessee drew the attention to the following observation of the Tribunal:-

öIt is a fact that the payments have been made through banking channel and the assessee had substantiated the purchases by providing documents such as purchase invoices, copy of the ledger accounts, evidences for having made payments through banking channels, C Form issued to the suppliers, copy of VAT return duly reflecting the said purchases, etc.ö

öNo doubt, those four parties were not available at the given address at the time of enquiry by the Inspector. However, is it is also an admitted fact that the enquiries were conducted at a later stage and there may be a number of reasons for those parties to shift their place of businessö (Emphasis supplied)

12. Referring to the decision of the Jaipur Bench of the Tribunal in the case of M/s Kedia Exports Pvt. Ltd. vs. ACIT, vide ITA No.1068/JP/2019, order dated 19th June, 2020, he submitted that once the accounts of the assessee are rejected, past history of the assessee or history of the similarly situated other businessmen has to be considered as a proper and reasonable basis for estimation of income. Referring to the decision of the Honøble Punjab & Haryana High Court in the case of CIT vs. Rajinder Prashad Jain, 374 ITR 545, he submitted that the Honøble High Court held that once the books are rejected previous year result has to be considered.

13. Referring to the decision of the Honøble Rajasthan High Court in the case of CIT vs. Gupta K.N. Construction Co., 371 ITR 325, he submitted that the Honøble High Court in the said decision has held that when the AO failed to bring on record any comparable case so as to justify any addition on account of improper system of accounting and for rejection of account books, then such addition ought to be deleted. He accordingly submitted that the estimation of GP @ 25% of the purchases is highly improper and, therefore, the same should be deleted by accepting the book results.

14. The Id. DR, on the other hand, heavily relied on the order of the AO. Referring to the assessment order, he drew the attention of the Bench to various defects pointed out by the AO. He submitted that the purchases shown by the assessee from various parties were proved by the AO to be non-genuine and bogus. Further, he has only made estimated addition of the GP at 27% which has been

reduced by the CIT(A) to 25%. He submitted that under the peculiar facts and circumstances of this case, the addition sustained by the CIT(A) is fully justified and, therefore, the same should be upheld and the grounds raised by the assessee should be dismissed.

15. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and CIT(A) and the paper book filed on behalf of the assessee. We have also considered various decisions cited before us. We find, the AO, in the instant case, on the basis of non-reply to notice u/s 133(6) by the trade creditors and the report of the Inspector, found that the purchases to the tune of Rs.5,75,55,703/- is unverifiable. Since, according to the AO, the entire purchase cannot or should not be added back and only the profit element embedded in such purchases should be added, after considering the average GP rate of last three years at 3.16%, he adjusted the GP rate at 27% on the unverifiable purchases of Rs.5,75,55,703/- and made an addition of Rs.1,55,29,870/- to the total income of the assessee. We find, in appeal, the Id. CIT(A) restricted such GP rate to 25% on the unverifiable purchases of Rs.5,75,55,703/- and thereby gave relief of Rs.11,51,101/- to the assessee and sustained the balance addition. It is the submission of the Id. Counsel that some of the parties from whom the assessee had made purchases are old parties and accounts of all the parties have almost been settled in 2014-15 and 2015-16. It is also his submission that when the Inspector visited the premises, the assessee had closed down its business by that time.

Further, the directors of the assessee company were summoned by the AO who appeared before him and their statements were recorded. It is his submission that all the payments have been made by account payee cheque and the VAT details filed before the AO have not been proved to be false. Further, it is also his submission that the assessee has also received commission from M/s Kangaroo Sales on which TDS was deducted and, therefore, under these circumstances, the order of the CIT(A) in sustaining GP addition of 25% of the purchases is uncalled for being excessive and arbitrary.

16. We find some force in the argument of the Id. Counsel. It is an admitted fact that sales of the assessee has been accepted by the AO and the same has not been disputed. A perusal of the past results show that for A.Y. 2012-13, the assessee had shown GP rate at 2.9% on a turnover of Rs.3,48,63,147/- and GP rate of 4.28% in A.Y. 2014-15 on a turnover of Rs.8,62,24,688/-. Further, the AO has not brought on record any comparable case as to what is the reasonable rate in such type of trade or any purchase showing such higher GP rate. In the instant case, the payments have been made through banking channel and the assessee has substantiated the purchases by providing various documents such as purchase invoice, copy of ledger account, evidence for having made payment through banking channels, VAT return duly reflecting the said purchases, etc. Merely because some of the parties did not respond to the notice issued u/s 133(6) of the IT Act, the same cannot go against the assessee to make such huge addition

especially when purchases from those parties were accepted in the preceding year and no reopening of assessment u/s 147 or 263 has taken place.

17. We find, the Jaipur Bench of the Tribunal in the case of Kedia Exports Pvt. Ltd. (supra), has held that once the past year results have attained finality and not in dispute, the same can form the basis for estimating the GP rate for the current year. The rejection of books of account by invoking the provisions of section 145(3) of the Act shall lead to the estimation of income of the assessee based on some reasonable and proper criteria. The relevant observation of the Tribunal at para 14 reads as under:-

¶14. We have heard the rival contentions and perused the material available on record. For the year under consideration, the assessee has declared total turnover of Rs. 3,17,37,004/- with a gross profit of 10.04%. The A.O. has considered the purchases to the tune of Rs. 50,79,735/- made from these three parties as unverifiable. The A.O. consequently rejected the books of account of the assessee by invoking provisions of Section 145(3) of the Act and made disallowance of 25% of the aforesaid purchases. Hence, the A.O. has made addition of Rs. 12,69,933/-. Though, the assessee has challenged the action of the A.O. before the Id. CIT(A), however, the Id. CIT(A) has confirmed/upheld the disallowance made by the A.O. by observing that the assessee failed to establish the genuineness of the purchases made from these parties. It is pertinent to note that the even if the A.O. has doubted the genuineness of the purchases from these parties, once the books of account of the assessee are rejected by invoking provisions of Section 145(3) of the Act, the A.O. is bound to frame the assessment on best assessment as per provisions of Section 144 r.w. Section 145(3) of the Act. Therefore, after rejection of books of account, the A.O. is required to estimate the income of the assessee on some reasonable and proper basis. It is a settled proposition as held by the Hon'ble Rajasthan High Court in number of cases that for estimation of income of assessee after rejection of books of account, past history of the assessee or history of the similarly situated other businessman is considered as a proper and reasonable basis. In the case in hand, the assessee has undisputedly declared GP for the year under consideration at 10.04% whereas the GP declared by the assessee in the preceding three years is as under:

A.Y	Turnover (in Rs.)	Gross profit (in Rs.)	GP (in%)
2006-07	22827562	2189727	9.59%
2007-08	24854921	2662725	10.71%
2008-09	29762344	3078965	10.35%

The GP so declared in the earlier years is not in dispute as there is no finding that in the past, the assessee has obtained any accommodation entries as in the instant year and therefore, the contention of the Id DR that the past history cannot form the basis for estimating current year GP cannot be accepted. Once the past year results have attained finality and not in dispute, the same can form the basis for estimating the GP rate for the current year. It is clear from the details of the GP declared by the assessee for the preceding three years that the average of past three years of GP declared by the assessee comes to 10.22%. Thus, the GP declared for the year under consideration at 10.04% is lower than the average GP declared by the assessee in preceding three years by 0.18%. The rejection of books of account by invoking provisions of Section 145(3) of the Act shall lead to estimation of income of the assessed based on some reasonable and proper criteria. Since the average of past history of GP declared by the assessee is considered as a proper and reasonable basis for estimation of income for the year after rejection of books of account, therefore, the GP is estimated at 10.22% as against GP declared by the assessee at 10.04% for the year under consideration and differential trading addition equivalent to GP rate of 0.18% on declared turnover is upheld and the appeal of the assessee is partly allowed.ö

18. Considering the totality of the facts of the case, we are of the considered opinion that adoption of GP rate of 4.5% on the turnover of Rs.9,93,23,196, under the facts and circumstances of the case will meet the ends of justice. We hold and direct accordingly. The AO is directed to recomputed the addition accordingly. The grounds raised by the assessee are accordingly partly allowed.

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

The decision was pronounced in the open court on 07.08.2020.

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 07th August, 2020

dk

Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi