

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER
आयकर अपील सं./ITA No.193/SRT/2023
Assessment Year: (2012-13)
(Hybrid Hearing)

The ITO, Silvassa Ward, Silvassa	Vs.	M/s Base Industries Ltd., Navneet Industrial Estate, Canal Road, Behind Parasrampur, Silvassa - 396230
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No: AACCR6479B		
(Appellant)		(Respondent)

Appellant by	Shri Aashish Pophare, CIT-DR
Respondent by	Shri Salil Kapoor with Shri Taran Chanana, AR
Date of Hearing	08/05/2024
Date of Pronouncement	24/05/2024

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the Revenue emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 27.01.2023 by the Learned Commissioner of Income Tax (Appeals), [in short, 'Ld. CIT(A)'] National Faceless Appeal Centre (in short, 'NFAC'), Delhi, for the Assessment Year (AY) 2012-13.

2. The grounds of appeal raised by the Revenue are as under:

"1. On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in granting relief to the assessee by deleting the addition of 3% gross profit estimated by the AO, without considering the facts and of the case in its entirety.

2. The Id. CIT(A) has erred in law and on facts in granting relief to the assessee without considering the fact that the addition on account of gross profit was made by applying the provisions of section 145(3), as no documentary

evidences with regard to purchases, sales and expenses etc. were filed by the assessee, despite sufficient opportunities granted to the assessee.

3. It is, therefore, prayed that the order of the learned CIT(A) be set aside and that the order of the AO be restored.

4. The appellant craves to add, modify or alter any grounds during the course of appeal proceedings.”

3. The facts of the case in brief are that the assessee-company is engaged in the business of manufacturing of polyster, yarn, bright yarn, oriented yarn, texturized yarn, knitting of fabrics under the name and style “Base Industries Limited”. The company was also engaged in the business of trading of circulating knitted fabrics. The assessee-company filed its return of income from AY.2012-13 on 27.09.2012, declaring loss of Rs.4,40,96,771/-. Subsequently, the case was selected for scrutiny under CASS. Notices under section 143(2) and 142(1) of the Act were issued by the Assessing Officer and duly served upon the assessee. Since assessee did not furnish the requisite details, penalty under section 271(1)(b) was passed by the Assessing Officer on 26.02.2015.

4. The Assessing Officer found that the assessee has shown total turnover (sales) of Rs.1,20,00,25,109/- against which it has debited Rs.1,13,48,85,377/- towards purchase and Rs.7,22,92,835/- towards manufacturing expenses. The Assessing Officer has stated that assessee did not produce any corroborative details regarding purchase and other expenses despite issue of several reminders. A show-cause notice was issued by the Assessing Officer on 02.01.2015 asking the assessee to produce bank statement evidencing

payments made to the parties for purchases made and payment received for sales made, copies of lorry receipts for dispatched goods and receipt of goods, details of Octroi and local taxes etc. It was also asked to produce books of account along with all purchases and sales bills, voucher for expenses, bank statement, opening and closing stock, both in quantity and value etc. The assessee was also requested to explain as to why the audited books result should not be rejected as per the provisions of section 145(3) of the Act and as to why the gross profit at the rate of 3% on total sales should not be added back to the total income since no details have been submitted. In response to the show-cause notice, the assessee vide letter dated 10.03.2015 submitted that due to market condition the sale of the goods were at reduced prices. It also replied that there are no laws for Octroi and local tax at Dadra. It further submitted that the assessee is regularly filing sales tax return and excise return. The assessee submitted electricity bill for the year under consideration. Lastly, it submitted that there was fire in its premises on 28.09.2013 and all vouchers and bills of expenses were destroyed. The reply of the assessee was considered by the Assessing Officer and found that the same was general in nature and it is not supported by proper evidences. Regarding lower prices of the goods, the assessee did not furnish any evidence to support its claim. The assessee submitted only electricity bills but no purchase and sale bills etc. were submitted. The Assessing Officer observed that the data furnished by the assessee has no relevance with the actual affairs of the business of the

assessee. Since the assessee failed to produce books of account, bills and vouchers and valuation of finished goods and raw material, the Assessing Officer held that assessee is not maintaining books of account and whatever is maintained by assessee, is not complete and correct. Therefore, he held that there is contravention of provision of section 44AA of the Act. Thereafter he rejected books of account u/s 145(3) of the Act and estimated the gross profit at the rate of 3% of the total turnover, based on such estimation in earlier year. Since the assessee had shown loss of Rs.71,53,103/-, he added Rs.4,31,53,856/- (Rs.71,53,103 + Rs.3,60,00753) to the total income. He initiated penalty under section 271A for failure to keep and maintain the books of account.

5. Aggrieved by the order of Assessing Officer, the assessee filed the appeal before Ld. CIT(A). The Ld. CIT(A) has discussed the facts of the case and reproduced the relevant extract of the assessment order at pages 2 to 5 of the appellate order. The assessee has made similar submissions before the Ld. CIT(A) who observed that Assessing Officer is not clear whether the books are not maintained or are not completed or corrected. He found force in the submission of the assessee that it was filing the sales tax return and excise return regularly and that voucher, copies of bills for the expenses were destroyed in the fire at the premises of the assessee on 28.09.2013. He also observed that the Assessing Officer has summarily rejected the explanation without any strong and well-reason basis. The rejection of the books of account under section 145(3) was found to be based on general observations. In view of

the above, he allowed the grounds of the assessee and deleted the addition of the gross profit made by the Assessing Officer.

6. Aggrieved, the Revenue has filed appeal before the Tribunal. The Learned Commissioner of Income Tax – Departmental Representative (Ld. CIT-DR) for the Revenue strongly relied on the decision of the Assessing Officer. He stated that the Ld. CIT(A) has rejected the reasons, on which addition was made by the Assessing Officer, by giving a general observation that no cogent reason was brought out by the Assessing Officer in the assessment order to add the gross profit. The Ld. CIT-DR stated that the Assessing Officer has discussed at length the reasons for rejecting the books of account which are at pages 3 to 6 of the assessment order. The Assessing Officer has also given adequate opportunity to the assessee before making the addition. The rejection was passed on the fact that complete details regarding purchase and sales and other expenses were not given by the assessee and books of account were not produced before the Assessing Officer. The Ld. CIT-DR also submits that the assessee produced only electricity bills and no supporting evidences for the other expenses including purchasing and sales were submitted. Regarding the fire at the premises of the assessee, the Ld. CIT-DR stated that fire occurred in the godown situated at the back side of Ginger Enterprises Ltd. which destroyed chips of raw material, finished goods, plants and machinery, utility etc. It is nowhere mentioned that the fire broke out at the office of Base Industries Ltd. and the documents, computerized system etc. were burned or

damaged. He further emphasised that the assessee failed to produce books of account, bills and vouchers and valuation of the raw material and finished stocks which necessitated rejection of the books of account under section 145(3) of the Act. He further stated that in the previous assessment year i.e. 2011-12, the gross profit has been estimated at the rate of 3%, which has been sustained by the ITAT, Surat in ITA No.3424/Ahd/2015, dated 08.06.2022. In view of the above, he requested to restore the addition made by the Assessing Officer and to reverse the order of the Ld. CIT(A).

7. On the other hand, Learned Authorized Representative (Ld. AR) of the assessee strongly relied on the decision of the Ld. CIT(A). He stated that the assessee has submitted all the details before the Ld. CIT(A). The appellant had filed its return of income along with the tax audit report including the purchases and sales. He stated that the accounts were duly audited and tax audit report prescribed under section 44AB of the Act was filed with the return of income. He further stated that there was a fire in the premises of the appellant and store division of the appellant company where the goods and maintenance of record room were destroyed. He also submitted that the Assessing Officer was having full details regarding purchase, sales, creditors, debtors etc. of the company; but the Assessing Officer has rejected the books of account without pointing out any specific defects of the books of account or genuineness of the transaction. The Ld. AR for assessee submits that mere allegation that details are no filed, cannot lead to rejection of books of account.

Gross Profit rate addition is not required, when the assessee is unable to produce its books of account. Before rejection of books of account, the Assessing Officer should have brought something on record. To support his submissions, the Id AR for the assessee relied in the case of *CIT vs Gotan Lime Khanij Udhyog*, 256 ITR 243 (Raj. HC). It was submitted that the order passed by the Ld. CIT(A) should be upheld.

8. We have heard rival submissions of the parties and perused the record. The reasons for rejecting the books of account have been elaborately discussed by the Assessing Officer in his assessment order which has been relied upon by the Ld. CIT-DR. On the other hand, Ld. AR has strongly relied on the order of the Ld. CIT(A) and has further stated that various details were submitted before the Assessing Officer and there were no reasons to reject the books of account and estimate the profit of the assessee. We find from the records that during assessment, the assessee was given various opportunities to furnish various details by the Assessing Officer. Despite allowing numerous opportunities, the assessee failed to bring the required details to substantiate book result. In absence of the necessary details, the Assessing Officer has also initiated penalty under section 271(1)(b) of the Act by passing the order on 26.02.2015. We also find that he has subsequently passed penalty order under section 271A of the Act on 29.09.2015 for failure to keep and maintain books of account as required under section 44AA of the Act. In the assessment order, the Assessing Officer has reproduced the content of the show-cause notice where assessee was

asked to produce various details as mentioned in para 5 of the assessment order. It was also asked to show-cause notice as to why the book result should not be rejected under section 145(3) of the Act. In the show-cause notice, the Assessing Officer has specifically asked the assessee-company to submit bank statements evidencing payments made and receipts in respect of purchases and sales respectively. He has also asked the assessee to furnish purchase and sales bills and vouchers for expenses etc. He has also asked to submit the opening stock and closing stock and their valuation both in terms of quantity as well value. In response, the assessee replied that due to market condition it had to sale goods at reduced prices. It has also stated that it is filing the sales tax return and excise return regularly. It has also stated that due to fire in the premises on 28.09.2013 all the vouchers and bills were destroyed. It is seen from the show-cause notice and reply of the assessee that the submission of the assessee is general in nature. Regarding the sale of its goods at reduced prices, no supporting documents have been furnished to justify the sales of Rs.1,20,00,25,109/- at lower rate. Regarding the fire at the premises, it is seen from the "Statement of Facts" that the fire occurred in the godown situated at backside of the Ginger Enterprises Ltd. and not in the office of the Base Industries Ltd. The chips of raw material and finished goods, plants and machinery etc. were destroyed in the fire. It is, therefore, clear that the assessee has not been able to furnish the required details and evidences as well as books of account, which would support the return filed by the assessee. The

explanation given by the assessee is general in nature without giving reason as to how the finding of the Assessing Officer is not proper. The reasons given by the Ld. CIT(A) for allowing relief is also very general in nature. He has simply accepted the explanation of the assessee hook, line and sinker and passed a very general and perfunctory order. On the one hand, it is stated that rejection under section 145A is based on general observation, but he himself has not given proper, acceptable and relevant reasons as to how the explanation of the assessee is reasonable in the facts and circumstances of the case. We find that in the preceding year the assessee has shown gross profit @ 0.76% which was enhanced to 3% by the Assessing Officer. On further appeal, the Ld. CIT(A) enhanced the gross profit from 3% to 7.88%. In this year, gross profit rate was minus (-) 0.6% and net profit minus (-) 3.67% as against 0.76% and 0.01% in the preceding assessment year. The assessee's appeal against the order of the Ld. CIT(A) before the Tribunal for preceding AY. 2011-12. After discussing the facts in detail, the Tribunal in ITA No.3424/AHD/2015, dated 08.06.2022 for AY.2011-12 sustained the estimation of profit by holding that it did not find any reason to disturb the estimation of profit @ 3% made by the Assessing Officer. In this year also, the Assessing Officer has also estimated the profit by giving proper and valid reasons with which we concur. We find no reason to disturb the estimation made by the Assessing Officer.

9. At this stage, we would be proper to refer to the decision of the Hon'ble Supreme Court in the case of **Kachwala Gems vs. JCIT, (2007) 158 Taxman 71**

(SC) wherein the Assessing Officer on finding that the assessee had not maintained and kept any quantitative details / stock registered for goods traded in by it; that there was no evidence on record or documents to verify basis of valuation of closing stock shown by the assessee; and that the gross profit declared by the assessee during the year, rejected the books of account, did not match result declared by the assessee on the previous assessment years. Under this fact, the Hon'ble Supreme Court held that the reason given by the Assessing Officer for rejecting books of account under section 145 of the Act and estimation of income was valid. There is no reason as to why the ratio of the above decision would not be applicable to the facts of the present case. In the case of the assessee, the Assessing Officer had specifically asked to give the valuation of opening and closing stock both quantity and value-wise but the assessee has failed to submit such details. It also did not produce the books of account. The Assessing Officer had also found that assessee had shown lower profit as compared to the profit of earlier year. Therefore, he has rightly rejected the books of account and estimated the gross profit at the rate of 3%. We find that the Tribunal itself in assessee's case has also upheld estimation of profit at the rate of 3%. The ratio of decision of Rajasthan High Court in the case of **CIT vs. Gotan Lime Khanij Udhog (supra)** is not applicable on the specific fact of present case. The facts of the said case are different with the case in hand. In the said case the books result was the same as declared in earlier years, which were accepted by the department. However, in the present

case, the books results are bone of contention between the assessee and the Assessing Officer. The assessee is neither filing any details nor furnishing any details to substantiate their books result. In AY 2011-12, the Tribunal has upheld the estimation of 3% income in order dated 08.06.2022. In view of the facts discussed above and following the decision of Tribunal in assessee's own case in AY 2011-12 cited supra, we allow the grounds of appeal filed by the Revenue and set aside the order of the Ld. CIT(A).

10. In the result, appeal filed by the Revenue is allowed.

Order is pronounced on 24/05/2024 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER
Surat
दिनांक/ Date: 24/05/2024
SAMANTA
Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// TRUE COPY //

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat