

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. UDAYAN DASGUPTA, JUDICIAL MEMBER**

**I.T.A. No.126/Asr/2020
Assessment Year: 2016-17**

ACIT, Circle-V, Amritsar. (Appellant)	Vs.	M/s Ludhiana Beverages Private Limited 81, First Floor, Kennedy Avenue, Amritsar. [PAN:-AAACL4148D] (Respondent)
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**I.T.A. No.97/Asr/2020
Assessment Year: 2016-17**

M/s Ludhiana Beverages Private Limited 81, First Floor, Kennedy Avenue, Amritsar. [PAN:-AAACL4148D] (Appellant)	Vs.	ACIT, Circle-V, Amritsar. (Respondent)
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Appellant by	Sh. Amit Jain, CIT DR.
Respondent by	Sh. Sanjiv Mehra & Sh. Kanav Mehra, CAs.

Date of Hearing	16.05.2024
Date of Pronouncement	12.08.2024

ORDER

Per: Udayan Dasgupta, J.M.:

This appeal filed by the department and cross appeal filed by the assessee, are directed against the order of Id. Commissioner of Income Tax (Appeals)-2, Amritsar dated 15.01.2020 for A.Y. 2016-17.

2. Condonation of Delay: Revenue appeal is filed on 1st July, 2020, belatedly by eighty-one days. An application dated 29/11/2023, for condonation of delay is filed by the DCIT- Circle - 1 , Amritsar , explaining the delay due to COVID - 19 . The reasons are considered and accepted, the delay is condoned and the appeal is admitted to be heard on merits.

3. The grounds of appeal as taken by the department and cross appeal as filed by the assessee are as under: -

Grounds of appeal by the department:

“i) Whether on the facts and circumstances of the case, the Ld.CIT(A)-2, Amritsar has erred in deleting the trading addition of Rs. 15,45,05,765/-made by the Assessing Officer, within the provisions of section 145(3) of the Income Tax Act, 1961, by placing reliance on the additional evidence in the form of purchase bills, which were not produced before the Assessing Officer.

ii) *Whether on the facts and circumstances of the case, the Ld.CIT(A)-2, Amritsar has erred in deleting the trading addition by accepting the additional evidence in the form of purchase bills, which were not produced before the Assessing Officer, without giving opportunity to the Assessing Officer.*

iii) *Whether on the facts and circumstances of the case, the Ld.CIT(A)-2, Amritsar has erred in deleting the addition of Rs.5,10,488/- made by the AO on account of entertainment expenses in the absence of supporting vouchers for expenses made in cash.*

iv) *Whether on the facts and circumstances of the case, the Ld.CIT(A)-2, Amritsar has erred in restricting the disallowance of Conveyance Expenditure of Rs.21,04,409/- to Rs.2,00,000/- stating that maximum payments were made by Cheque without giving opportunity to AO as mandated under Rule 46A of the Income Tax Rules, 1962, to verify the facts as stated by the AO in his order that maximum payments were made in cash.*

v) *Whether on the facts and circumstances of the case, the Ld.CIT(A)-2, Amritsar has erred in deleting the addition of Rs.2,35,77,655/- made by the Assessing Officer by making disallowance @ 20% of the total claim of Rebate and Discount, since the assessee failed to prove with documentary evidence, the reasonableness of expenditure claimed even when there has been abnormal increase of expenses under this head from Rs.7,08,39,645/- to Rs.1 1,78,88,226/- and where the sales have reduced from Rs.508 crore to Rs.502 crore.*

vi) *The appellant craves leave to amend or add any more ground of appeal.”*

4. Grounds of Cross-appeal of the assessee are as under: -

“1. That on the facts and in the circumstances of the case, the learned Commissioner (Appeals) has grievously erred in not allowing ERP Software expenses amounting to Rs.99,66,445, when the proper legal claim has been made in the course of assessment proceedings, and a detailed note along with complete details of such expenses has been filed before AO claiming 100% of such expenses as revenue expenses in place of depreciation claimed @ 60% of such expenses, resulting in net reduction of income by Rs. 39,86,578. While rejecting the Appellant's ground, the Ld. CIT(A) has erred in holding that there is no infirmity in the Ld. AO not entertaining the claim made during assessment proceedings without revising the audit report or the return of income, while completely ignoring the settled legal position that the very purpose of assessment proceedings is to correctly assess the tax liability in accordance with law and the provision of furnishing revised return is not relevant for making the aforesaid claim, vide National Thermal Power Co. Ltd. Vs. C.I.T., 229 ITR 383(SC).

2. That on the facts and in the circumstances of the case, the Id. CIT(A) has grievously erred in upholding the

disallowance made by Ld. AO of an amount of Rs. 53,45,179 properly expended by the appellant on the purchase of Ice boxes, Plastic tables and plastic chairs bearing the logo of "Coca Cola" in the course of business carried on by the appellant as soft drinks bottler of Coca Cola Company and promoting the sales of the products. The Id. CIT(A) has erred in ignoring or has not given due weightage to the facts of this case, and established past history. The order of CIT(A) is based on mere conjectures and surmises.

That the Appellant craves leave to add, alter, amend or delete any of the above grounds at any time before the appeal is heard and disposed off."

5. Before we proceed with the grounds of appeal and cross appeal, the brief facts of the case are that the assessee is a private limited company engaged in the business of trading and bottling of soft drinks as franchise of The Coca Cola Company, USA in the designated franchise territory in Punjab. The assessee has manufacturing unit (bottling plant) engaged in the activity of bottling soft drinks in glass bottles at Ludhiana but the major sales is out of TRADING activity. Soft drinks in plastic bottles and cans are purchased from "Kandhari Beverages (P) Ltd." and other authorised bottling plants of Coca- Cola Company in India.

5.1 The assessee Company filed its return u/s 139(1) of the Act, 61, on 28-11-2016 declaring total income of Rs. 31,94,91,410/- on the basis of books of accounts audited under the Companies Act, 2013 and supported by tax audit report under section 44AB of the Income Tax Act. The case of the assessee was selected for scrutiny and consequently the assessment order u/s 143(3) of the Act was passed on 27/12/2018, on an assessed income of Rs. 50,65,52,640/-, by making additions on various heads of income.

5.2 In the assessment order, book results as per audited books of accounts has been rejected by invoking the provisions of section 145(3) of the Act, and trading additions has been made amounting to Rs. 15,45,05,765/- by applying estimated GP rate @ 25% of gross sales declared by the assessee in the audited accounts. Apart from the above separate additions has also been made under the head sales promotion expenses Rs.53,45,179/-, other expenses Rs. 5,10,488/-, travelling and conveyance Rs. 10,17,732/-, conveyance expenses Rs.21,04,409/- and on account of rebate and discount Rs. 2,35,77,655/-.

6. The matter was carried in first appeal and the first appellate authority being the Ld. CIT (A) opined, that on the totality of the facts as discussed in the appellate order, rejection of books of accounts and book results u/s 145(3) of the

Act 61 and estimation of GP @ 25% of sales cannot be sustained and the addition of Rs. 15,45,05,765/- was deleted.

7. Apart from the above the Ld. CIT(A) allowed further relief to the assessee , by deleting the addition of Rs. 5,10,488 under entertainment expenses, Rs. 5,44,100 under miscellaneous expenses, Rs. 2,35,77,655 under rebate and discount, and restricting the disallowance to Rs. 2,00,000 under conveyance expenses. However, the remaining additions made by the AO was upheld and the additional claim of the assessee before the CIT(A) regarding allowability of ERP software expenses, as revenue expenses was rejected.

8. Now, both the revenue and the assessee are before the tribunal in cross appeals in respect of the grounds of appeal contained in their respective appeal memorandum.

9. First we take up the revenues appeal. (Ground No 1 and 2)

9.1 The first two grounds taken by the revenue are interlinked and relates to the addition of Rs.15,45,05,765/- made by the AO, to the trading results of the assessee by rejecting the books of accounts u/s 145(3) of the Act 61, and estimating the gross profit percentage @ 25% on gross sales of Rs. 502,67,34,495/- disclosed by the assessee in the return of income. The allegation of the revenue is

that the first appellate authority has deleted the trading addition by accepting additional evidence in the form of purchase bills not produced before the AO, without giving opportunity to the AO, and the said action of the Ld CIT (A) is against the requirements of Rule 46A of the IT Rules '62.

9.2 In course of argument the Ld DR, filed a written submission containing nine pages (which is taken on record) and he referred to relevant portion of the assessment order in page -4 which reads as follows:

“From the above data, furnished by the assessee company, it is clear that the assessee has shown valuation of stock according to its convenience without any basis as no supporting documents that is purchase bills, sale bills have been furnished by the assessee to justify the correctness of valuation of stock. Moreover, the closing stock of most of raw materials has been valued at high rate to present a rose picture of gross profit during the year under consideration, but the same will also be used to reduce the profit in the next year when the same will be taken as opening stock. Thus the gross profit shown by the assessee company is not only on the lower side but an eye wash also.”

9.3 He further refers to the CIT(A) order page – 24 and 26, and to the observation of the appellate authority, to argue his case of fresh evidence, where the Ld. first appellate authority has observed as follows:

Page 24 – point No (ii)

“During appeal, Ld AR has filed copy of one purchase bill from Khandhari Beverages to illustrate the effect of taxation as under”

Page 26 – Bottom para:

“During appeal Ld AR has filed quantitative details of the closing stock of various items and copies of purchase bills in respect of purchase made towards the end of the year used by it to arrive at the valuation of FIFO method”

9.4 By referring to the above portion of the CIT (A) order, the Ld. DR argued that additional evidences has been produced by way of purchase bills which were not produced before the AO , and the appellate order has been passed without giving any opportunity to the AO to verify the purchase , thereby violating the requirements of Rule 46A of the IT Rules’62.

9.5 However, the Ld. DR has not made any submissions regarding the valuation of stock determined by the AO , as to how the valuation of closing stock at a higher rate by the assessee , (as observed by the AO) can reduce the gross profit disclosed by the assessee , in other words , we fail to understand as to how over valuation of closing stock, as on year end , can have an adverse effect on the GP rate , on the other hand such overvaluation of closing stock as on year end by the

assessee will automatically increase the gross profit , and in such cases the revenue could not have been prejudiced.

9.6 Before proceeding further, to the next ground of the revenue, we considered it appropriate, first to address the issue of fresh evidence, and violation of Rule 46A vis a vis rejection of books of accounts and invoking the provisions of section 145(3) of the Act 61, because it will have a bearing on the entire appellate proceedings.

Assessee arguments on this issue:

The assessee has filed voluminous paper books in five sets containing copies of documents, explanations and submissions made in course of this entire proceedings before lower authorities which also contains copies of judicial decisions relied upon by the assessee in support of his case.

10. In response to the first and second grounds of the revenue, the Ld. AR of the assessee vehemently contended that the books of accounts have been rejected u/s 145(3) of the Act on an incorrect appreciation of facts and on the basis of improper material. He submitted that during assessment proceedings voluminous evidences has been produced including purchase invoices and sales bills , both , along with full details of names of sellers , quantity purchased , monetary value, invoice

numbers and address of sellers , as per format specified by the AO himself for making necessary enquiries with the parties , and there is not even a single incidence of any discrepancy regarding purchases and no adverse findings has been recorded anywhere after verification of purchase relating to any of the parties . In course of assessment proceedings replies and explanations along with evidences has been filed which are all on record and copies of such replies of the assessee, filed on 13-11-2018, 23-11-2018, 06-12-2018, 08-12-2018, 11-12-2018, 17-12-2018, 20-12-2018 and 22-12-2018 (copies of such replies are placed in paper book page No 82-123 PB - second set) . The submissions of the assessee are all before the AO and the same has been just mentioned by way of a passing remark , at page 2 and 3 of the assessment order and the same has been brushed aside casually by observing that these had no force and were not supported by any documentary evidence.

11. The Ld. AR stated that the AO has grossly erred in facts and law in rejecting the books of account u/s 145(3) of the Act and making trading addition of Rs. 15,45,05,765/- by applying GP rate of 25% on declared turnover. It was vehemently contended that the rejection of audited book results and estimation of gross profit is illegal, improper and unjustified. He reiterated the contentions made

before the Ld. CIT(A) and submitted that the Ld. AO has rejected books of accounts u/s 145(3) on the following three grounds:

“(a) The production of Coca-Cola beverage shown by the appellant was 1926 litres per unit consumption of Coca-Cola and NABB, while in comparison to M/S Kandhari Beverages Private Limited, another franchisee bottle of Cola Company was showing production at the rate of 2622 Litres per unit concentrate consumed.

(b) The GP rate shown by the appellant at 21.93% is much lower than that shown by the M/s Kandhari Beverages, another franchisee bottler, at 31.56%.

(c) The closing stock of most of the raw material have been valued by the assessee at a higher rate to present a rosy picture of gross profit, which otherwise was low. No documents were furnished to justify the correctness of the valuation of stock.”

11.1 The Ld. AR pointed out that the ld. AO has erred in comparing average production per unit of NABB (Coca Cola essence) as per assessee's stock records at 1926 litres of Coca Cola soft drinks against computed figure of the average production of coca cola beverage at 2622 litres per 1 unit of Coca Cola NABB (essence) in the case of Kandari Beverages Private Limited.

In this respect the Ld. AR referred to the Ld. CIT(A) order at para 8.3.2 where it is observed as under:

“8.3.2 Learned AO has made an error in computing the average production of Coca-Cola beverage by Kandhari Beverages at 2622

Litres per one unit of Coca-Cola NABB. He has computed the average yield in the case of Kandhari Beverages for FY 2015-16 relevant to AY 2016-17 as under.

<i>Production</i>	<i>28,56,20,330 litres</i>
<i>Concentrate consumed</i>	<i>1,08,933 units</i>
<i>Average production</i>	<i>2622 litres /unit</i>

Learned AO has wrongly taken the consumption of concentrate by Kandhari Beverages Private Limited during the financial year 2015-16 at 1,08,933 units. As per the tax audit reports of Kandhari Beverages Private Limited for AY 2016-17 and 2017-18, the correct consumption of consecrate for AY 2016-17 is 1,35,705 units. The consumption of concentrate at 108933 units is actually for the succeeding AY 2017-18. Thus the correct average yield of Kandhari Beverages for FY 2015-16, relevant to AY 2016-17 works out to 2104 Litres for all the beverage brands instead of 2622 litres.

Another error made by the Ld. AO while computing the average yield in the case of M/s Kandari Beverages is that the total production was taken at 28,56,20,330 Litres, which in fact is the total production of M/s Kandhari Beverages of all the brands. It has been compared with the average yield of 1926 Litres in the case of appellant which is the average yield of only one of the brands manufactured by the appellant, that is, of Coca-Cola. The brands manufactured include Coca-Cola, Limca, Fanta, Sprite, Mazza, soda, and Kinley water. The details furnished by the appellant in its reply dated 22-12-2018 clearly carried the title "Details of Coca-

Cola NABB” as under, but have not been considered accurately by the Ld. AO:

FY 2015-16

Details of Coca-Cola NABB

Consumption: Quantity : 2792 units

Value : Rs. 40,36,032

Production : 53,78,100 litres

Average production per unit NABB : 1926 litres

The total production of all the brands by the appellant during the year was 6,77,11,893 litres out of which the production of Coca Cola brand was 53,78,100 Litres, that is 7.9% only

Hence, the very basis /reference point adopted by the ld. AO for rejecting the books of accounts of the appellant is incorrect.

8.3.3 I also find merit in the submission of the ld. AR that the difference in the average yield percentage between two manufacturers could be on account of different product mix of various brands. Ld. AO should have compared the average yield percentage of Coca-Cola brand in the case of appellant and Kandhari Beverages. Coca-Cola India Private Limited provides NABB (beverage concentrate) to its bottlers for all the brands owned by the company, namely, Coca-Cola, Fanta, Limca, thumbs up, Sprite, kinley soda, Kinley water and MMPO. Manufacturing by all franchise bottles of Coca Cola Company is carried out as per the master mixing instructions issued by Coca-Cola company for quality control and standardisation of its various different Beverages. There are different yields (production for unit of NABB)

for different brands. For instance, it is 1920 Litres for Coca-Cola per unit NABB, whereas for Limca, Mazza, Thumbs up, it is 2400 Litres per unit of NABB. The average yield for different brands is different.”

11.2 The Ld. AR further pointed out that the ld. AO has erred in comparing GP rate of Kandhari Beverages (P) Ltd., another franchise bottler of Coca Cola Company, with that of the assessee company, as the same are not comparable, because Khandari Beverage P Ltd is a manufacturer and the assessee is eighty percent TRADER and manufacturing activity is restricted to only twenty percentages of whole.

11.3 In this respect the Ld. AR of the assessee brought to our notice the observations made by the Ld. CIT(A) at para 8.3.5 and 8.3.6 of the appellate order, which are reproduced hereunder:

“ 8.3.5 I find merit in the submission of ld. AR that the GP rate of the assessee company was not comparable with that M/s Kandhari Beverages. The nature of business activities of the appellant are substantially different from those of M/s Kandhari Beverages for the following reasons:

The appellant is mainly into trading while Kandhari Beverages mainly manufacturer. Nearly 80% of the turnover of the appellant is from trading in 20% from its own manufacturing whereas in the case of Kandhari Beverages, the turnover is mainly from sale of its own manufactured beverages and only about 3% from trading. This is apparent from the

following quantitative data given in the Tax Audit Report of Kandhari Beverages for AY 2016-17:

	Total Sales	Qty purchased	Qty Mfd.
Kandhari Beverages	22346732 crates	529893	21680972

In the case of the appellant, the relevant details available on record are as under :

	Total Sales	Manufacturing	Traded Goods
Ludhiana Beverages	502.67 crores	106.71 crores	395.57 crores

Profitability from trading activity is not the same as that of sale of own manufactured goods .

11.4 The turnover of M/s Kandhari Beverages also includes Rs. 2,88,92,609/- from sale of energy for computing GP, whereas in the case of the assessee the turnover is from sale of beverages only.

11.5 About 80% of the appellant's purchases were sourced from Kandhari beverages and Coca-Cola Company. Aerated drinks are subject to First Stage Taxation. Kandhari Beverages has charged excise duty and VAT @ 71.5% on sales made to the assessee company which increases the cost of purchases for the appellant. During the appeal, the ld. AR has filed copy of purchase bill from Kandhari Beverages to illustrate the effect of taxation as under:

Sale Price	Rs. 365484
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Add: Excise Duty	Rs. 115668
VAT	Rs. 145547
Total	Rs. 626700

11.6 The appellant company has made purchases of ₹3 01,81,09,396 from Kandhari Beverages during the year. Its purchase cost is inclusive of Excise duty and VAT of about 71% on which no profit can be made. So its overall GP will naturally be less. For this reason also, the trading results of the appellant could not be compared with that those of Kandhari Beverages.

8.3.6 During assessment proceedings, the appellant filed separate accounts in respect of its Trading and Manufacturing activities for two years as under:

<i>Particulars</i>	<i>AY 16-17</i>	<i>AY 15-16</i>
	<i>(In Crore)</i>	<i>(In Crore)</i>
<u>Total sales realisation</u>	502.67	508.13
Gross Profit Rs.	110.22	97.57
G.P. Rate	21.93%	19.20%
<u>Own Manufactured goods</u>		
Sales	106.71	119.36
Gross Profit	45.70	40.32
G.P. Rate	42.82%	33.78%
<u>Traded Goods</u>		
Sales	395.97	388.77
Gross Profit	64.52	57.25
G.P. Rate	16.29%	14.73%

12. *The assessee GP rate in manufacturing at 42.82% was in fact more than that of Kandhari beverage is shown at 31.56% as confronted by the Ld. AO in the show cause notice. The assessee's GP margin on traded goods is 16.29%. As 80% of the sales of the appellant company were of goods purchased from Kandhari beverages and Hindustan Coca-Cola Beverages Private Limited, the overall GP rate was lower at 21.93%. Ld. AO was, therefore, not justified in rejecting the books of accounts on account of lower G.P. rate shown by the appellant compared to that of Kandhari Beverages Private Limited."*

13. Therefore, it was argued that for the for the detailed reasons given in the order of Ld. CIT(A) order, it was observed at para 8.3.7 as under:

"As discussed above, not only was Kandhari Beverages, not a comparable case, even the average yield and gross profit as computed by the ld. AO for rejecting the books of accounts were wrong."

14. Therefore, Ld. AR argued that the department does not have any objection to the above finding of the ld. CIT (A) which covers the first two grounds of the Ld. AO for rejection of book results.

15. The Ld. AR further submitted that the last and third remaining ground for rejection of books of accounts under section 145(3) by the Ld. AO is the alleged overvaluing the closing stock of raw materials and inputs by the assessee.

16. The Department has raised the inter-linked grounds (i) and (ii) that the assessee did not produce purchase bills before the AO and these were produced first time before the CIT(A). The department is raising these grounds with respect to valuation of closing stock of raw materials and inputs valued by the assessee company at Rs. 4,52,91,062 at cost by applying First In First Out (FIFO) method which did not find favour with the AO.

17. The AO has observed in his assessment order that:

“On the perusal of the above chart it may be observed that the same is apparently wrong, as per Tax Audit Report method of valuation of stock is “Cost or Net Realisable Value whichever is less” and the above chart shows that the stock has been valued at higher of the purchase price except in the case of CO2, which is against the principles of accounting declared by the assessee in the Tax Audit Report.

17.1 From the above data furnished by the assessee company it is crystal clear that the assessee has shown valuation of stock according to its convenience without any basis as no supporting documents i.e. Purchase bills, sales bills, etc. have been furnished by the assessee to justify the correctness of valuation of stock.”

18. It was explained by the Ld. AR that the observation of the learned Assessing Officer that the data furnished by the company showing valuation of stock according to its convenience and without any basis is totally baseless and opposed to facts. The assessee filed various submissions and explanations (enclosed in the

paper books) providing complete information and details, during the course of assessment proceedings, containing details of purchase and sales and has produced before the AO voluminous documents evidencing purchase and sales for verification and examination , and the turnover of the assessee company being more than 500 crores , purchase and sales invoices are also voluminous and filing photo copies of all purchase and sales invoices, are neither practical or feasible , but he insisted that purchase and sales invoices were physically produced before the AO , and that is the reason why party wise (seller wise) details of purchases were filed with full name and address of sellers, with quantity and value, for easy verification directly from the parties concerned. No adverse findings has been recorded against such third party verification, neither against purchase nor against sales, and gross purchase and sales are accepted without a noise.

18.1 The Ld. AR referred to the letter dated 24-10-2018, stating that the assessee filed statement of accounting policies forming part of corporate audited financial statements and vide letter dated 23-11-18, details of opening stock, purchases, sales, and closing stock of different materials in quantity and value terms in tabulated form were provided together with item-wise valuation of stock of raw materials and primary packing materials duly supported by calculation sheets for valuation of stocks on FIFO method and explanation of the accounting policy

consistently followed by the Company from year to year valuing inventories at lower of cost, determined on the FIFO method, and net realisable value. Further, vide letter dated 08-12-18 and letter dated 11-12-18, at the time of hearing, books of account, stock records as well as vouchers and invoices of purchases and sales produced for verification, along with VAT 20 annual sales tax returns. It was also explained that the average rate of purchases during the entire financial year cannot be applied to the valuation of closing stock at the end of the year, as under First In, First Out (FIFO) method stocks acquired first are disposed of first. FIFO assumes that the remaining inventory consists of items purchased last. It was further explained during assessment proceedings in these letters that the assessee is following method of valuation of stock at cost on FIFO basis consistently from year after year, which has been accepted in the past completed assessments by the department and no addition has been made in the past, and that the accounting policy followed by the company has been declared in the statement of accounting policies, forming part of the financial statements filed before the AO. The Accounting policy with regard to valuation of inventories reads as ‘inventories are valued at the lower of cost, determined on the First In First Out (FIFO) basis and net reliable value.’

18.2 Therefore, the details of valuation of stocks of raw materials and primary packing materials, item wise, together with bill wise, break up of each item, as submitted to the AO during the course of assessment proceedings.

18.3 Therefore, the AO observing that purchase bills and sale bills have not been produced by the assessee to justify the correctness of valuation of stock is based on mere conjectures, surmises and is not the truth, because all invoices has been produced, during assessment, but filing photocopies of all purchase and sales invoices for records, will be voluminous and practically not feasible. He further adds that the job of a auditor includes examination of purchases invoices and bills at the business premises of the assessee and the financial accounts in the instant case reflects the correct figures after due audits under Companies Act 2013 and under Income Tax Act 61, and as such further necessity of filing photo copies of purchase invoices to be kept on departmental record , is not at all practical , more so when party wise and value wise break up of purchase is given with full address for causing verification , and upon verification no defect in purchase has been found.

18.4 The Ld. AR further stated that the assessee has produced all the books of accounts, vouchers, purchase bills and sales bills during the course of assessment proceedings in support the valuation of closing stock of raw materials and primary

packing materials and the information furnished in the statements have been test checked with accounts and vouchers and no irregularity has been noticed by the AO.

18.5 The Ld. AR explained that as the accounting vouchers and purchase invoices were already produced before the Assessing Officer along with the account books during the assessment, they are considered part of the existing record and cannot be considered as additional evidence before the CIT(A).

18.6 The Ld. AR further clarified and explained further that the AO has erroneously interpreted the closing stock valuation details and data to suit his objective of rejection of books of accounts and applying an estimated GP rate. For instance, he has erroneously consolidated NABB of various soft drinks having different costs per unit. Also packing materials of various quantitative measurements and rates have been aggregated and compared.

18.7 The Ld. AR clarified that the AO has failed to appreciate that the average cost of purchases and consumption vis a vis closing stock rates of raw materials and inputs will not necessarily be the same and there are bound to be different when the prices of goods purchased fluctuate during the year and closing stock on FIFO method is computed by taking the last purchases cost only.

18.8 The Ld. AR brought to our notice that during the appellate proceedings, the Ld. CIT(A) specifically required the appellant's counsel to produce copies of specific purchase invoices which have been considered for the valuation of closing stock as she required the same for her comprehension that the stock valuation principle on FIFO method has been correctly applied since she had not verified the books of accounts, vouchers, as had been done by the AO. Therefore, purchase bills as on year end, as mentioned in the calculation sheet for valuation of stocks were produced before the CIT(A), which are simply a small part of the invoices (voluminous invoices for the whole year), produced before the AO. Thereafter, after pursuing the same Ld CIT(A) agreed with the valuation and held that the AO was not justified in rejecting the assessee's valuation of closing stock of Raw Materials and inputs at Cost, made under FIFO method.

18.9 Hence, the Ld. AR contended that there was no additional evidence submitted to the CIT(A). The AR filed the copy of the order sheet of Ld. CIT(A) before the tribunal to clarify that the Ld. CIT(A) had specifically asked for purchase ledgers and item wise bills for March in support of valuation of closing stock. The Ld. CIT(A) also asked the appellant to file Excise and VAT returns tabulation. She also provided copies of trading results of Kandhari Beverages to the appellant, which were not confronted by the Ld. AO, and has given copies of

the relevant extract from the accounts of Kandhari Beverages. She has also called for and examined the entire assessment records of the assessee, in course of appellate proceedings, including information obtained from Kandhari Beverages from the AO.

19. The Ld. AR brought to our notice the irrationality in the assessment order as the Ld. AO does not feel satisfied about the stock valuation of goods valued at Rs. 452.91 lakhs while stating that the Assessee has overvalued the stocks, but proceeds to make trading addition of Rs. 1545.05 lakhs.

19.1 The Ld. AR stated that on the circumstances of the case, the Ld. AO do not have valid reasons and evidence to support the rejection of the books of account. No such discrepancies in maintenance, lack of proper maintenance, inaccuracies, or inadequacy in reflecting the actual income has been pointed out. The rejection of audited book results has been made in a very casual manner while completely ignoring the established past history when the assessments have been completed under section 143(3) and trading results as per audited financial statements have been accepted. That the GP rate declared by the appellant during the year is progressive as per chart stated at page 28 of the Ld. CIT(A) order, which is as under:

<i>Assessment Year</i>	<i>GP rate</i>	<i>Remarks</i>
2016-17	21.93%	Year under appeal

2015-16	19.20%	Assessment made u/s 143(3), order dated 17-11-2017
2014-15	19.44%	Assessment made u/s 143(3), order dated 11-10-2017
2013-14	17.78%	Assessment made u/s 143(3), order dated 08-03-2016
2012-13	21.15%	Assessment made u/s 143(3), order dated 06-05-2014
2011-12	19.14%	Assessment made u/s 143(3), order dated 28-03-2014

19.2 The Ld. AR strongly relied on the CIT(A) order being a very detailed and well-reasoned order and it brings out all the relevant material facts on record. The Ld. CIT(A) has held that the trading addition to be baseless, as per the following observations made at para 8.3.8 (page 27) of her order :

“The observation of the assessing officer that the appellant was suppressing the yield of Coca-Cola beverage, but increasing the gross profit by overvaluing the closing stock is not established from any material brought on record by the Ld. AO.”

19.3 Before concluding his arguments the Ld. AR , stated that without prejudice to all the above arguments that he has made , he submitted that even after rejection of book results u/s 145(3) of the Act 61 , the only remaining work that needs to be done is estimation of gross profits on total sales at a fair percentage , as applicable on the facts and particulars of the case , and in the instant case , since it is accepted that Khandhari Beverage , is not a comparative dealer , (because there cannot be any comparison between a manufacturer and a trader) , the estimation has to be

based on the average gross profit rates for the last five years in the assessee , own case, which is the only proper guide . He further submits that comparative chart of last six years' gross profit rates has been filed and are on record and in all the previous assessments are completed u/s 143(3) of the Act 61, and copies of the orders are also on record. Since the nature, circumstances, location and type of the business has remained the same, over the years, the past records and history of the assessee cannot be ignored and the percentage of profits of earlier years are the best guide.

20. We have heard the submissions of both the parties and we have considered the materials on record and the contents of the paper book filed by the assessee and the written submission filed by the Ld. DR.

20.1 Our findings on alleged violation of Rule 46A:

20.2 The pertinent question that arises is whether the assessee has produced any fresh documents by way of purchase invoices, for the first time, before the first appellate authority which has not been produced or filed before the AO in course of assessment.

20.3 From the paper book filed by the assessee, first we refer to the submission dated 13th November, 2018 (placed in paper book - 2, page - 82), paragraph - 8 of

the submission (reply to question No 20 of notice u/s 142(1) dated 11/07/2018), where the assessee has filed complete details of purchase above Rs.10,00,000/- made during the year in the prescribed format giving name, address of the party, and the items purchased.

20.4 In the same submission complete details of sales with names and address of party to whom sold in amount exceeding Rs.5,00,000/- has also been given, in answer to question no 21 of the same notice u/s 142(1) dated 11/07/2018. (The copies of submissions are made a part of this order for ready reference). The aforesaid details has been fully uploaded in the portal on 14th November, 2018, vide transaction ID: 6409391583 (acknowledgement copy annexed).

20.5 Next we refer to the submission dated 23rd November, 2018 (placed in page - 84 of PB - 2) reply to question No 22 where quantity wise and value wise details of opening stock, purchases , sales and closing stock of all materials has been furnished in portal (copy annexed for ready reference) and transaction ID : 6437230840 dated 24th November, 2018 placed in page - 7 of PB - 5).

20.6 Next we refer to the submissions of the assessee dated 11th December, 2018, (placed in PB-2 page 196-202) where the assessee has filed details in specified formats attached with the submissions and has produced books of accounts, stock

registers, as well as vouchers and invoices of purchases and sales for verification.

(First two pages of the submissions are annexed with this order as ready reference).

20.7 Next we refer to the notice of the AO u/s 142(1) dated 17th December, 2018, where the submission of the assessee dated 11th December, 2018, has been acknowledged by the AO himself, and where queries regarding advertisement expenses and transportation expenses, etc. has been raised, but there is not a single word relating to dissatisfaction regarding purchase or sales invoices.

P.C. Mehra foCo.&@

CHARTERED ACCOUNTANTS

81 Kennedy Avenue, Amritsar 143001 INDIA
Tel: 2566482 Fax: +91 (183) 2229595
E-mail: pcmehra@gmail.com
Website: www.pcmehraandco.com

Dated: 13-11-2018
DCIT/ACIT,
Circle-5, Amritsar.
Sir,

Re: M/s Ludhiana Beverages Private Limited - Assessment Proceedings for the Assessment Year 2016-17.
This may please be read in continuation of our letters dated 29-10-18 and 24-10-18. Further information/details and documents required are submitted as follows: -

1) **Reply to QNo. 11:**

The party-wise details of 10 sundry debtors and sundry creditors outstanding are attached herewith.

2) **Reply to QNo. 12:**

Complete details of sundry creditors which are outstanding for more than three years without any transaction in this period are given in the statement annexed marked 12.

3) **Reply to QNo. 13:**

Details of loans. Advances and deposits given are given in the statement annexed marked 13.

4) **Reply to QNo. 14:**

Certified true copy of the chart of depreciation allowable during the year is attached. Party-wise details of acquisition of fixed assets will be supplied after compilation of the same shortly as the said details are lengthy and require time for its preparation. In respect of usage of borrowed funds for purchase of purchase/installation of fixed assets, interest on the same have been capitalized amounting to Rs. 43.14 Lacs(Refer Note No. 28, Finance Cost).

There are no immovable properties acquired during the year. Further the assessee has carried out construction of new building amounting to 1,27,64,006 during the year which has been capitalized and depreciation claimed thereon.

5) Reply to QNo. 15:

Details of depreciable assets transferred during the year are given in the statement annexed marked 15.

6) Reply to QNo. 16:

Comparative chart showing Gross profit/net profit margins with corresponding turnover for the current and past two years is annexed herewith. There is increase in GP margin as well as the net margin as compared to preceding two years. The GP

P.C. Mehra & Co.
CHARTERED ACCOUNTANTS

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Website: www.pcmehraandco.com

margin increased from 19.20% in the preceding year to 21.93% during the year under consideration. The NP margin has also increased from 3.88% in the preceding year to 6.27% during the year under consideration. Hence the trading results as well as net income for the current year are much better than the preceding years without there being any fall in turnover. There is marginal fall in turnover only from 508.13 crores in the preceding year to 502.67 during the year under consideration. However there is a substantial increase in turnover from the level of 412.51 crores during the A.Y. 2014-15. The overall net profit for the current year is of the order of 31.49 crores as compared to 19.73 crores in the preceding year. It is therefore requested that the trading results and overall profitability of the company may kindly be accepted.

7) **Reply to QNo. 19:**

Particulars of all payments made to persons covered u/s 40A(2)(b) are given in the statement annexed. Comparative chart of such payments made in the preceding two years is annexed herewith, which clearly show that all the payments made are on the same basis as in the preceding years, which has been accepted by the department as per assessments made u/s 143(3) of the Act.

8) **Reply to QNo. 20:**

The complete detail of purchases above Rs. 10,00,000/- made during the year in the prescribed format is attached giving complete name, address of the party and the items purchased.

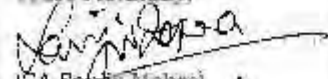
9) **Reply to QNo. 21:**

Complete details of name and address of party to whom sales have been made exceeding Rs. 5,00,000/- during the year under consideration is attached herewith.

The balance information will be submitted at the time of next hearing. Since the information required is voluminous and its preparation is taking time, also the huge list of documents have been required. Hence, it is requested that the assessee be permitted to file balance information by 23-11-2018.

Thanking you,

Yours Faithfully,


ICA Sachin Mehra
Counsel

Enc: As above.




IT

SEARCH

SEARCH FOR: []

SEARCH IN: []

SEARCH DATE: []

SEARCH BY: []

SEARCH RESULTS

Sl. No.	Document No.	Document Name	Document Type	Document Status	Document Date	Document Size	Document Location
1	10000000000000000000	Year 6-Assessment response submission	Assessment	Submitted	14/11/2018	10000000000000000000	10000000000000000000
Year 6-Assessment Response has been submitted successfully and the Transaction ID is 6409091583.							
2	10000000000000000000	...	...	...	...	...	...
3	10000000000000000000	...	...	...	...	...	...
4	10000000000000000000	...	...	...	...	...	...
5	10000000000000000000	...	...	...	...	...	...
6	10000000000000000000	...	...	...	...	...	...
7	10000000000000000000	...	...	...	...	...	...
8	10000000000000000000	...	...	...	...	...	...

10 Attachments
dated 14-11-18

Handwritten signature

5011

10000000000000000000

Page 27 of 28

Page 27

Page 27 of 28

M/s. Tundona Beverages Private Limited – Assessment Proceedings for the Assessment Year 2016-17.

This cover please be read in continuation of our letters dated 29-10-18, 24-10-18 and 07-11-18. Further information/details and documents required are submitted as follows:

1. Reply to QNo. 22:

Details of opening stock, purchase, sales and closing stock of different materials in 2016-17 and value terms for the financial year is attached herewith. Copy of liquidation statement given to bank during the month of March, 2016 is attached.

2. Reply to QNo. 23:

Additional details of opening and closing stock giving valuation of each item is attached herewith marked 23.

3. Reply to QNo. 31:

As per the accounting policy consistently followed by the Company from year to year inventory have been valued at lower of cost, determined on the FIFO method and its realizable value. The cost of finished goods comprises raw material, direct labor, other direct cost and related production overheads and other cost incurred in bringing the inventories to their present location and condition. Indirect taxes which are not recoverable form part of the cost of inventory. The direct expenses which have been considered for valuing closing stock of finished goods are given in the statement annexed.

4. Reply to QNo. 25:

The assessee company has not received any benefit in the form of duty drawback, duty credit or central excise repaid or repayable as drawback, cash assistance.

5. Reply to QNo. 26:

Comparative chart of expenses for the year as compared with the preceding year is annexed, together with the detailed groupings of expenses. In the said chart percentage increase in expenses over the preceding year have been worked out. Also the major increase in expenses are given in the statement annexed.

6. Reply to QNo. 27:

The names and complete postal addresses of all the persons to whom payments were made by way of commission, brokerage under contract u/s 194C is attached herewith. Incentives have been paid to the staff which are considered under the provisions and its provisions are applicable u/s 192. Complete details of Tds on salary have already been submitted.

9) Reply to QNo. 28:

Detailed details of Tds and deposit in the government account are given in the Tds returns filed in Form No. 26G which are attached herewith. The break-up of Tds deducted on interest, rent and professional services are also attached. The chart showing delay in the payment of Tds is also attached. Interest on the delayed payment of Tds have been deposited.

10) Reply to QNo. 29:

Details of "any other amount allowable as deduction" amounting to Rs. 11,39,785/- is given in the statement annexed. This includes sum of Rs. 10,33,855 on account of excess of sale/disposal of fixed assets. The sale proceeds of most assets have already been reduced from the block of fixed assets while claiming allowable depreciation under the Income Tax Act. The other item is in respect of reversal of provision of institutional and building tax amounting to Rs. 1,05,930. This amount has not been allowed as deduction in the earlier years as per the provision of Section 43 and hence the reversal of the same by credit to Profit & Loss Account would not attract income tax.

11) Reply to QNo. 30:

There is no outward remittance to a non-resident during the year under consideration.

12) Reply to QNo. 31:

There is no delay in filing of Income Tax Return in this case. The due date of filing of Income Tax Return is 30th November, 2016 as the assessee is covered under the proviso of regulation 2 in Section 139(1) of the Income Tax Act, 1961. The assessee is required to furnish a report refer to in Section 92. Since the domestic transactions to related parties in respect of expenditure incurred by the company exceeds 20 crores for the financial year. The report filed in Form 3CEB on 28-11-2016 is annexed. The delay in payment of tax was due to variation of income at the time of realization of accounts and audit when the returned income exceeded the income estimated during the FY 2015-16 for payment of Advance Tax. The assessee has paid the full amount of interest leviable u/s 234B & 234C for the short payment of advance tax.

13) Reply to QNo. 32:

There is no mismatch between income/receipt credit to Profit & Loss Account which has been considered under other head of income and income from heads of income other than business/profession.

Hopings will find the above in order.

Thanking you

Sincerely,
Yours faithfully,


Chartered Accountant

112950318

e-filing
Proceedings

PMJ (AA)0141401
Assessment Year - 2016-17
Assessment Year - 2016-17

e-Assessment response submission

Your e-Assessment Response has been submitted successfully. ID : 6437453951.

Reference ID	Status	Year	Assessment Year	Assessment Type	Assessment ID	Assessment Status
1129503180001	A/C	2016		ITB (Normal)	1129503180001	2016
1129503180002	A/C	2016		ITB (Normal)	1129503180002	2016
1129503180003	A/C	2016		ITB (Normal)	1129503180003	2016
1129503180004	A/C	2016		ITB (Normal)	1129503180004	2016
1129503180005	A/C	2016		ITB (Normal)	1129503180005	2016
1129503180006	A/C	2016		ITB (Normal)	1129503180006	2016
1129503180007	A/C	2016		ITB (Normal)	1129503180007	2016
1129503180008	A/C	2016		ITB (Normal)	1129503180008	2016
1129503180009	A/C	2016		ITB (Normal)	1129503180009	2016
1129503180010	A/C	2016		ITB (Normal)	1129503180010	2016

Thank

Note:
1. Please click on the Reference ID provided in the table above.
2. In case of any error in the response, you may re-submit the response before the assessment year.
3. If the response is not submitted, please click on View typed and edit the response.

2. Atul
24-11

Rajeev

India.govt
Ministry of Revenue
www.india.govt

https://portal-norimex.ndiaefiling.govt/MyAccount/assessmentresponse.html?refID=1129503180001

1-7-
96

Dated: 11-12-2018

To: M/s. W.P.

100-3

Amritsar

SI

Re: M/s. Lushiana Beverages Private Limited, 81, First Floor, Kennedy Avenue, Amritsar PAN: AAAC11434F

Subj: Notice L/A 142(H) of the Income Tax Act, 1961 bearing No. ITBA/AST/1/17/2018-19/101300/956(H) Dated 04/12/2018 for the A.Y. 2016-17 received on 04-12-2018 fixed for 11-12-2018.

In order to the submissions made by the assessee vide its letter dated 07-12-18 filed on 07-12-18 giving related information on the issues mentioned at point no. 3,6,8 to 15, the documents/documents/explanations on the balance points raised in your notice are given here under:-

(i) Reply to QNo.1.

It is submitted by the undersigned at the time of hearing on 07-12-18 that the assessee Company has not received any questionnaire regarding the details of Opening Stock, Purchase, Sale, Manufacturing, Closing Stock in the specified format as well as information on Trial Balance and such information could not be furnished as free.

It is also submitted that the assessee has provided the format at the time of last hearing in which the desired information is required to be submitted.

Accordingly, the desired information is submitted in your prescribed formats which are annexed herewith. Information is being submitted with regard to quantitative and value-wise details of raw materials, manufactured goods and traded goods. The value of production of finished goods are also valued at the closing rate of finished goods.

14. And Closing Trial Balance figures as on 31-03-16 are also attached herewith.

15. Books of accounts and stock records as well as vouchers & invoices of purchases and sales can be viewed by your goodself.

16. The separate trading accounts for own manufactured goods, traded goods and consolidated manufacturing & trading accounts are also annexed showing gross profit rate for manufacturing activity, trading activity & consolidated GP as well as the comparison of all the three GP's with that of preceding year together with trading account of preceding years are also annexed.

17. Detailed note explaining the trading results vis-à-vis GP rate achieved by the assessee is attached.

18. The comparison of GP rate of Kandhari Beverages to that of the assessee Company's trading results is not justified proper and acceptable on account of the fact that in the case of the assessee Company 80% of the sales is of traded goods where the GP margin is relatively less than the manufactured goods, whereas Kandhari Beverage who is mainly selling goods manufactured by it.

19. The assessee's manufacturing GP rate is 42.82% which is more than that of Kandhari Beverages.

20. In this case the assessee's GP margin on traded goods is of the order of 16% and therefore in view of a majority 80% of the sales being met out of purchases of finished goods from Kandhari Beverages and Coca Cola company, the overall GP margin is lower at 21.93%.

21. The trading results vis-à-vis GP rate is much better than the preceding year as is evident from the note annexed giving comparative chart of GP rate from manufacturing & trading activity separately. There is substantial increase in GP rate of trading goods, manufactured goods and overall GP rate.

22. In addition to above it may be noted that the assessee Company is an excisable unit and is also maintaining day-to-day stock records of raw materials, finished goods, manufactured and traded



GOVERNMENT OF INDIA,
INCOME-TAX DEPARTMENT,
OFFICE OF THE
DEPUTY COMMISSIONER OF INCOME-TAX CIRCLE-5
OLD C.R. BUILDING, GROUND FLOOR, AETAKAR BHAWAN, MACROOOL ROAD
AMRITSAR.

F.No. D.CIT/Circle-5/ASR/2018-19/

Dated: 17.12.2018

To

M/s Ladhiana Beverages Pvt. Ltd.
81, 1st Floor, Kennedy Avenue, Amritsar

**Sub:- Notice u/s 142(1) of the Income Tax Act 1961 for A.Y. 2016-17 .
Regarding-**

This is with reference to your reply dated 11.12.2018 in connection with the pending assessment proceedings in your case for above noted A.Y.

02. You are requested to comply with the following further requirements to enable me to finalize your assessment for the above noted assessment year:-

i) You have claimed advertisement expenses at Rs. 5.14 Crore. It is observed ongoing through the detail that most of the expenses are not supported by independent vouchers. You are also requested to furnish complete bills for the expenses claimed as simple details filed do not prove the genuineness and reasonable of expenses. Please justify the expenses claimed. In the absence of supporting bills and complete details, expenditure is proposed to be disallowed.

ii) The above expense on advertisement includes expenses under the head "advertisement contract account". Please explain the nature and purpose of this expenditure. It is also observed that lot of expenses debited under this head are in cash. You are requested to produce documentary evidence alongwith copies of bills in respect of above expenditure failing which adverse inference will be drawn.

iii) Expenses under the head advertisement also include total expenditure of Rs. 1,38,85,458/- with the narration advertisement (material & goods) It is seen that copies of bills only to the extent of Rs.55,050/- have been filed. Please file complete copies of bills. An expenditure of Rs. 56,90,879/- has been debited under the head plastics table and chairs. No bills for this expenditure have been furnished. For want of bills, the genuineness of expenditure is not verifiable. You are requested to do the needful failing which expenditure under this head is proposed to be disallowed.

iv) You have shown to have made reimbursement to Ludhiana Bottling Comt towards expenses on marketing incurred by them. Although details of expenses have been filed yet there is no evidence to prove that Ludhiana Bottling Company has made expenses on behalf of assessee has been filed. You are requested to file vice versa copy of account of the above party and also documentary evidence to prove the genuineness of the expenses.

v) Training and Conference expenses have been claimed at Rs. 72.75 lakhs. No details of expenses have been filed. You are requested to file the details and justify the expenditure with reference to genuine need of business and bills & vouchers in support of your claim.

vi) EDP expenses have been claimed at Rs. 86.37 Lakhs. It has been stated that the expenditure is for providing softwares as the expenditure is for the enduring benefits, the same is proposed to be capitalized subject to allowance of depreciation. Please explain as to what you have to say in this regard.

vii) Rental income of Rs. 9.00 Lakhs has been shown as income from house property and deduction at the rate of 30% has been claimed out of above income. As the assets from which property income has been received are in commercial use and as such income derived there from constitute business income and is also proposed to be assessed accordingly. Please let me have your objection in this regard.

viii) You have claimed transportation charges at Rs. 14,57,27,232/-. These include freight charges amounting to Rs. 4,13,85,254/- paid for the month of April and May 2015 to M/s Ludhiana Bottling Company on which no tax has been deducted, as source. Please give reasons for not deducting tax at source which was deductible under the provision of sub-section (3) of section 194C of the Income Tax Act and how your case qualifies for exemption from deduction of tax. Please also produce copy of declaration in Form No. 15I received from the persons to whom payments of freight charges have been made. You should also furnish proof of furnishing of Form No. 15J with the Jurisdictional Commissioner of Income Tax.

ix) You have shown receipt of incentive from Coca-Cola Company amounting to Rs. 34.17 Crore which includes reimbursement expenses from Coca-Cola amounting to Rs. 3.21 Cr. Please furnish details of receipt of Rs. 34.17 Cr. alongwith confirmed copy of your account appearing in the books of Coca-Cola and copy of account of company Coca-Cola appearing in your accounts books.

x) You have shown volume discount at Rs. 4,70,86,765/- for which simple detail unsupported by any evidence has been filed. Please furnish documentary evidence to justify your claim. Also provide a detailed note as to the basis of allowing the discount and also filed vice versa copies of accounts of these parties appearing in your accounts books and confirmation of accounts from the party concerned to whom discount has been allowed.

xi) You have also debited an amount of Rs.11,78,88,227/- under the head "claims". Details showing party-wise claims have been filed. Please adduce evidence justifying the expenditure as simple detail filed is not adequate to justify the above expenditure. Basis of allowing claims alongwith vice versa copies of accounts of the parties as appearing in your books as well as non-confirmed copies as appearing in the books of concerned party alongwith bill/vouchers.

xii) Please file copy of account of M/s Ludhiana Bottling Com. in respect of different transactions made with Ludhiana Bottling Com. and vice versa confirmed copy of account from the books of account of Ludhiana Bottling Com.

xiii) Please file copy of accounts of Directors and other related persons and executive directors to whom remuneration have been paid alongwith copy of Form No.15.

xiv) Please file copy of ITR, Computation of Income, Tax Audit Report, Balance Sheet, P&L A/c with all schedules of Ludhiana Bottling Com.


xv) Copies of accounts of related parties as appearing in your books of accounts and vice versa copy of account from the related parties to whom payment of any kind has been made alongwith their copy of ITR, Computation of Income, Tax Audit Report, Balance Sheet and P&L A/c with all annexure and schedules including of executive Directors.

xvi) Related party transaction have been shown as under:-

a) Ludhiana Bottling		
b) Rent	-	55,35,000/-
c) Transportation	-	14,57,00,000/-
d) Volume Disallowed	-	1,49,00,000/-
e) Market Exp. Reimbursement	-	4.14 Cr.
f) Commission to KK Goenka	-	1,33,05,012/-
g) Remuneration	-	28,00,000/- (Upendra Goenka)
h) Sallni Goenka	-	28.14 Lakhs
i) K.K. Goenka	-	37.04 Lakhs

Please file certified true copy of resolution passed in the board meeting, AGM for payment to related parties alongwith minute book for verification.

Your case is finally fixed for 19.12.2018. No further opportunity will be provided as the case is time barring one and assessment in your case will decided on the basis of information available on record on merit.


(Munshi Ram Sheoran), IRS
Deputy Commissioner of Income-Tax,
Circle-V, Amritsar.

20.8 From the above specific documentary evidences placed before us by the Ld. AR, we have no hesitation in holding that documents and invoices relating to purchase and sales , has been produced before the AO in course of assessment , and it is a different matter that the Ld CIT(A) has specifically asked for copies of some purchases invoices of a particular period required for arriving at a finding , which cannot lead to an automatic conclusion, that those purchases invoices were not produced before the AO , more so , considering the last communication from the AO u/s 142(1) dated 17th December, 2018 , where contents of submission dated 11th December, 2018 has been accepted without a noise. So we hold that in the instant case purchase invoices were produced before the AO in course of assessment.

20.9 However, we also take note of the argument of the Ld. AR, that even if the book results stands rejected for want of proper valuation of closing stock, which according to the AO is the case here, where he has alleged over valuation of stock leading to applicability of provisions of section 145(3) of the Act 61, in that case the only course open to the AO is to estimate the gross profit at a fair percent there on gross sales. Since in the instant case before us, there are no comparative cases

of similar trading business referable, because it is admitted fact that financial results of Khandsar Beverage (being ninty three percentage manufacturing company) cannot be made applicable to the assessee company (which is eighty percentage of trading activity) , and both are not comparable cases , the trading results of the assessee company in past years itself is the best guide.

21. On this issue we refer to the decision of the Jodhpur Bench in the case of Ajay Goyal vs ITO dated 09/05/2005 reported 99TTJ Jodhpur 165, where the Hon'ble Bench has observed as follows:

“The best guide for estimation of the trading results after rejecting the books is either the past history of the assessee or any other comparable case. The past history of the assessee takes preference over a comparable case. In this case, the past history of the assessee is available. In comparison to this year's declared GP rate, the last year's GP rate is less. Meaning thereby, the results declared in this year are better than the last year. There are no very other specific reasons, which can impel a prudent man from taking a different and separate path. In the result, the trading results are accepted and the trading addition of Rs. 65,461 is ordered to be deleted. Ground No. 2 of the appeal is accepted. In view of this finding, ground No. 3 does not survive and hence dismissed.”

22. *Similar view has been taken in the case of Shri Om Prakash Singh Vs ACIT (ITAT Agra) Appeal Number: I.T.A No. 331/Agra/2016 dated 22/03/2019 , A.Year2011-12*

23. *Similar view taken in the case of Anil Kumar Garg v. ITO (2021) 91 ITR 68 (SN)(Jaipur) (Trib).*

“Held that where the books of account have been rejected, the appropriate course of action for the Assessing Officer is to estimate the gross profit in the hands of the assessee on some reasonable basis and in this regard, past history provides a reliable and reasonable basis for estimating gross profit in the hands of the assessee. The average gross profit for the past two assessment years as available on record was 25.18 per cent. as against 24.80 per cent. declared by the assessee. Therefore, the addition to the extent of differential of 0.38 per cent. was to be sustained and the remaining addition sustained by the Commissioner (Appeals) was to be deleted. Followed ACIT v. Allied Gems Corporation (I.T.A. Nos. 794 and 795/JP/2011 and 716/JP/2012, dated December 15, 2017). (AY. 2012 -13)”

22. In the instant case before us the comparative chart of Gross turnover , gross profit and GP rate of the assessee company is placed in paper book - 1 , page - 2 Annexure B - 2 , (already reproduced earlier in above paragraphs) , for the assessment years 2010-11 to assessment year 2015-16 , where in all the years , assessment has been completed u/s 143(3) of the Act 61 , and the average GP rates for the previous six years works out to 19.95% (Nineteen point Nine five) where

it is seen that the GP rate disclosed in the year under appeal is 21.93% (which is more than the average of last six years).

23. As such in the instant case, we proceed as per the provisions of section 145(3) of the Act 61 , and we are of the view that the gross profit declared by the assessee is to be accepted (being on the higher side) and any addition on account of GP rate is uncalled for, and the Ld CIT(A) has rightly deleted the addition of Rs. 15,45,05,765/- on gross profit account.

24. This ground of appeal is decided against the revenue.

25. Now we revert back to the other grounds of appeal by the revenue:

Revenue Ground No 3: In this ground the revenue has challenged the deletion of Rs.5,10,488/- made by the Ld. CIT (A) on account of other expenses including entertainment expenses. The contention of the Ld. DR is that the above expenses incurred are not supported by any proper vouchers but in first appeal proceedings the assessee pointed out before the Ld. CIT (A), that out of the above amount a sum of Rs. 3,27,875/- has been paid by cheque through bank clearing and remaining payment was by cash. Now considering the bank transactions, the Ld. CIT (A) deleted the addition in full. The issue raised by the Ld. DR is that, this evidence of payments made through bank was not produced before AO, and as

such it tantamount of fresh evidence which amounts to violation Rule 46A of IT Rules 62.

26. The response of the Ld. AR was that no fresh evidence has been filed, explanation has only been made based on the bank statements from where the payments has been made and the bank statements are before the AO from the very beginning of scrutiny proceedings and are still a part of assessment records, and without bank statements on record, scrutiny assessment could not have been done. As such referring to the same bank statement, arguments has been made before the first appellate authority, which cannot be termed as fresh evidence by any stretch of imagination, and there is no violation of Rule 46A.

27. **Revenue Ground No 4:**

This ground relates to the restriction of disallowance of conveyance expenditure. The AO disallowed conveyance expenditure of Rs. 21,04,409/-, and the said disallowance was restricted to Rs. 2,00,000/- by the first appellate authority mainly due to the reason that out of total conveyance expenses of Rs. 1.56 crores, an amount of Rs. 1.54 crores, has been paid by way of direct bank transfer to the bank accounts of the individual staffs, so the same cannot be un- vouched. The Ld DR

has raised the issue of violation of Rule 46A, because deletion of addition has been made relying upon bank statements.

28. The Ld. AR submits that payments have been made by bank transfer from the regular bank accounts of the assessee and the bank statements are on record of the AO. The books of accounts produced and examined by AO, contains ledger accounts of such disbursement through bank transfer along with supporting vouchers and the assessee has made reference to such bank statements for arguments, before the Ld. CIT(A), which cannot be termed as fresh evidence and the AO has not made any complaints that bank statement is not produced before him, because without bank statements the scrutiny assessment could not have been completed. The Ld. AR has referred to page No 110 of PB - 2 to submit that books of accounts and entire bank books has been physically produced before the AO, on 17th December, 2018, (which is voluminous and runs into more one thousand pages and cannot be filed in on line portal). Apart from above bank account details, the bank account for March 2016 (all banks) has been filed in online portal (which itself is about 100 pages) on 29th October, 2018, vide ID No 6358373990 dated 29/10/2018.

29. We have heard the rival submissions, and we find that both the above grounds numbers 3 and 4 of the revenue appeal are related to existence of bank

statements which are primary documents without which scrutiny assessments could not have been done. All payments considered by the Ld. CIT(A), has been made out of bank accounts disclosed in audited accounts and balance sheets and reflected in bank statements. It is not the case of the revenue that bank statements of the assessee company which are part of audited balance sheet, are not on record of the assessing officer. When the bank book and bank statements are existing in the assessment records, we fail to understand as to how the same bank statements be considered as fresh evidence, so as to violate Rule 46A.

30. As such we are of the opinion that referring to bank statement at the appeal stage cannot be termed as violation of Rule 46A.

31. At this stage we would also like to refer to some judicial pronouncement, where it has been held that, when books of accounts are already rejected and recourse has been taken to section 145(3) of the Act 61, and gross profit has been estimated at fair percentage on sales, it is not open to the AO to rely upon the same rejected books of accounts, to make additions and or disallowance on other heads of expenditure.

“33. Hon’ble Karnataka High Court in the case of CIT vs Bahubali Neminath Muttin 388 ITR 608 (Karnataka HC) has observed as follows : relevant portion reproduced:

34. *Alternatively, and without prejudice to the preliminary objections raised above, he would submit that, on merits it should be noted that admittedly the books of accounts of the respondent have been rejected by the assessing authority. The profit of the respondent is estimated as provided under Section 145 (3) of the I.T. Act. When the gross profit rate is applied, it would cover any infirmity and there was no need for the Assessing Officer to make a scrutiny of the amounts incurred on the purchases by the respondent. In any event, the revenue would not be in a position to rely on the rejected books of account for making the additions on account of trade creditors and also for the purpose of arriving at a closing stock.*

35. *This is the view taken by at least four High Courts in the following reported judgments:*

1. *Indwell Constructions v. CIT [1998] 232 ITR 776 (AP)*
2. *CIT v. Banwari Lal Banshidhar [1998] 229 ITR 229 (All.)*
3. *CIT v. Aggarwal Engg. Co. [2008] 302 ITR 246/2006] 156 Taxman 40 (Punj. & Har.)*
4. *CIT v. Amman Steel & Allied Industries [2015] 377 ITR 568 (Mad.)*

36. *We also find that the Hon'ble Punjab and Haryana High Court in the case of CIT vs Dulla Ram (ITA No 122 of 1999) dated 22/10/2013 citations in 2013 (12) TMI 253, has held:*

(relevant portion)

Accounts books once rejected, are ruled out of consideration and cannot be pressed into service whether by the assessee or the revenue. Thus when account books are rejected. it would follow, as a necessary corollary , that entries in the account books whether suspicious or not

cannot be relied by the revenue or the assessee. To hold otherwise, would, in essence, render account books valid for certain purposes and invalid for others, a course impermissible in law.

32. We also find that same view has been taken by the Hon'ble Gujrat High Court in the case of PCIT vs Kandla Steel Pvt Ltd (2023) 149taxmann.com224(Gujrat HC) dated 03/01/2023

(Relevant portion)

“ Having rejected the books of accounts of the assessee , the very same set of books could not have been relied upon for revealing the true profitability of the assessee , even though in part ie relating to the period exclusion the last month of the year , since admittedly the books were managed to book losses but also on account of booking expenses of loading and unloading through the year which were found not verifiable.”

33. The basis adopted by the CIT(A) on the other hand we find is just and appropriate having considered the assessors profitability in preceding year and succeeding years and the profitability in this line of business.

34. Respectfully following the law laid down by such judicial pronouncements, as stated above, we find that the revenue cannot rely on the rejected books to press for sustaining of the additions on account of entertainment expenses and conveyance expenditure , which has already been deleted by the Ld. CIT(A).

35. The ground number 3 and 4 of the revenue are decided against the revenue.

Revenue Ground No 5:

36. This ground of the revenue is against the deletion of the addition in appeal, which was made by the AO on account of rebates and discounts. The total claim of the assessee was Rs.11,78,88,277/- as per final accounts, out of which 20% of the same being Rs. 2,35,77,655/- was disallowed by the AO on the ground that the same was excessive and unreasonable.

37 The argument of the Ld. DR, genuineness of the payments are accepted by the AO, paid through credit notes and necessary adjustment of accounts, but the revenue is disputing the reasonableness of the expenditure considering the fact that there was decrease in sales and increase in expenditure, which according to the revenue might have an adverse effect on the profits of the business.

38. Ld. AR of the assessee stated that during assessment proceedings all details were filed along with names of parties to whom paid, nature of payment, calculation of rebates, amount disbursed vis a vis volume of sales effected through them and the assessee fully explained the sales policy of the company and also explained the nature and purpose of the payments and the fact that the said expenditure was incidental to the business of the assessee company was also explained. However, the AO made adhoc disallowances @ 20% of the total claim

on the basis of excessive and unreasonableness, which resulted in an addition of Rs.2,35,77,655/-. The said addition has been deleted by the Ld. CIT(A) on the basis of confirmed copies of accounts filed by third parties and in absence of any adverse materials on record, he prays that the order of the Ld. CIT(A) on this count should be upheld.

39. We are of the opinion that reasonable of expenses incurred cannot be decided by the AO and this aspect of the matter is already settled by the "*Hon'ble Supreme Court in the case of M/s S A Builders Vs CIT (2006) 288 ITR 0001 (SC)*," where the Hon'ble court has opined that revenue cannot assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case.

40. Similar views has also been expressed by the "*Hon'ble Delhi High Court in the case of Dalmia Cement (Bharat) Limited vs CIT (2002) 254 ITR 0377 (Delhi)*."

41. Respectfully following the decision of the Hon'ble Courts cited above, we have no hesitation in upholding the deletion made by the Ld. CIT (A), and the department appeal on this ground is decided against the revenue.

Assesse's Appeal: ITA No. 97/ASR/2020

42. Ground - 1: The first ground taken by the assessee is disallowance of the claim of ERP software expenses of Rs. 99,66,445/-. The ERP software is an accounting software which is used by the assessee for its day to day business operations, for maintenance of accounts, invoicing, inventory management, payroll, and other particulars relating to the operation of the business. The expenditure has been capitalised by the assessee in its books of accounts and has been reflected as part of assets on which depreciation has been claimed at appropriate rates and the same has also been allowed in regular course. Return of income has been filed on the basis of tax audit reports and audited balance sheet, where the said claim of depreciation has been made and also allowed. During the course of scrutiny assessment before the AO, the assessee made a written claim that the above expenditure is a revenue expenditure and should be allowed as such, even though no claim has been made in the return and no revised return has been filed.

43. The Ld. AR argued that it has been held by the ITAT special bench in the case of Amway India Enterprise reported 111 ITD 112, that expenses towards ERP software is a revenue expenditure and the same may be allowed as such , and this claim has not been considered by the AO , and the Ld. CIT (A) has refused to allow the same because no revised return has been filed claiming the same and also

because the tax audit reports has also not been revised and the assessee has claimed the depreciation at appropriate rates , on the same, treating the same as capital assets , which has also been allowed and entertaining the claim at the appeal stage will have a cascading effect on all succeeding years.

44. The Ld. DR also relied on the order of the Ld. CIT(A) and submitted that since there is no revised return on record and the fact that the assessee has claimed depreciation which has been allowed treating the same as part of asset, the claim of the assessee cannot be allowed.

45. We have considered the rival arguments and we note that in this case since we have proceeded on the basis of section 145(3) of the Act 61, and estimated the gross profit on the basis of past history of the assessee at a certain percentage, the books results are deemed to have been rejected both for the assessee and also for the revenue, we are not inclined to accept the claim of the assessee on account of ERP software expenses and as a result this ground of the assessee is rejected.

Ground No.- 2:

46. This ground relates to the addition of Rs.53,45,179/- on account of purchase of ICE BOX and plastic tables and chairs, bearing the “Coco Cola” logo, which are generally distributed to the small vendors, like road - side tea stalls, pan shops, road - side eating house, fruit juice sellers (also selling soft drinks), small retailers

of soft drinks, etc, where company products are stored in ice box, for sale and public consumption, at large. This is basically advertisement expenses of the assessee. From the paper book filed, it is seen that the breakup of the above figure is ice box Rs. 47,68,182/- and plastic tables and chairs Rs.5,76,997/-, (totalling Rs. 53,45,179 /-).

47. The Ld. AR argued that the above disallowance by the AO has been confirmed by the Ld. CIT(A) because the assessee could not produce the details of the small pan shops, road - side tea stalls, road - side eating house, fruit juice sellers (also selling soft drinks) , small retailers of soft drinks, etc, which is practically not possible because these small time vendors are located all over rural areas and not only confined to cities and metros and public consumption of soft drinks are spread all over the urban and rural areas both, and in rural areas , there are no sitting arrangements and no tables in small way side joints , which the assessee company provides as a gesture of goodwill and sales promotion and advertisement, and apart from purchase invoices of such goods purchased by the assessee there cannot be any letter of confirmation from the way side vendors , it is to be accepted as it is because that is the way business is carried out by the company , and plastic chairs and tables are damaged after three four months , of continuous usage in open sun and rain, in rural areas .

48. The Ld. DR relied on the order of the Ld. CIT (A) and retreated the same arguments that out of total expenses of Rs.1,39,35,459/-, only invoices of Rs. 52,55,050/- could be provided under the head of advertisement (materials and goods), and overlapping of expenses could not be ruled out and he prays for sustaining the addition.

49. We have heard the submissions of both the counsels and we find force in the contention of the Ld. AR of the assessee that it is practically difficult to produce details of small vendors and road side eating house and tea stalls, etc. which is also a part of the system and cannot be avoided. Since we have already adopted a gross profit percentage in case of the assessee, on the basis of past records, at this stage we would like to have a look at the net profit rates disclosed by the assessee and accepted by the revenue in past years' vis a vis the net profit percentage actually disclosed in the year under appeal.

From the assessee records the net profit percentage for last five years works out as follows:

Asst Year :	Gross Turnover:	Net Profits	Percentage:	Remarks :
	in crores			
2016-17	502.67	31.50	6.27	Under Appeal

2015-16	508.13	19.73	3.88	u/s 143(3)
2014-15	412.52	17.53	4.25	Do
2013-14	373.96	9.94	2.66	Do
2012-13	313.46	13.77	4.39	Do
2011-12	269.45	9.45	3.51	Do

50. From the copies of the assessment order passed u/s 143(3) of earlier years enclosed in paper book filed, it is seen that no appeal has been preferred by the assessee in last five previous years , and in all the years the assessment has been completed u/s 143(3) of the Act 61 , with minor additions ranging from three to five lakhs each year, which will not have much bearing on the percentage of profits, considering the volume of gross turnover , the ultimate impact on NP rates will be insignificant.

51. As such considering the net profits declared by the assessee , for the year under appeal, the rate of profits declared, are very much on the positive side and a disclosed net profit percentage of **6.27% on a turnover of approximately Rs. 502 crores**, is very much satisfactory and acceptable.

51.1 As such we are of the opinion that in the instant case no further disallowance on account of advertisement materials and goods are called for, and taking a very realistic approach in the matter the disallowance of Rs.53,45,179/- on account of purchase of ICE BOX and plastic tables and chairs, may please be deleted.

52. As such this ground of the appeal of the assessee is allowed.

53. In the result, the appeal of the revenue in ITA No 126/Asr/2020, is dismissed and the Cross appeal of the assessee ITA No. 97/Asr/2020, is partly allowed.

Order pronounced in the open court on 12.08.2024

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(UDAYAN DASGUPTA)
Judicial Member

AKV

Copy of the order forwarded to:

- (1)The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order