IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI J.S. REDDY, ACCOUNTANT MEMBER

	I.T.A. No. 2792/DEL/2013		
	A.Y. : 2009-10		
ACIT, CIRCLE-24(1), ROOM No. 1305, E-2, SP Mukherjee, Civic Centre, Minto Road, New Delhi	VS.	M/s Ess Ell Cables Co., D-50, 1st floor, Basant Lok, Vasant Vihar, New Delhi (PAN: AAAFE3222A)	
(APPELLANT)		(RESPONDENT)	

Department by : Smt. Parvinder Kaur, Sr. DR
Assessee by : Sh. Amit Goel, CA

Date of Hearing : 10-06-2015
Date of Order : 11-06-2015

ORDER

PER H.S. SIDHU, JM

Revenue has filed this appeal against the Order dated 27.2.2013 passed by the Ld. Commissioner of Income Tax (Appeals)-XXIII, New Delhi pertaining to assessment year 2009-10 on the following grounds:-

"1. On the facts and on the circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 4,31,41,035/- made by the AO.

2. The assessee craves leave to add, alter or amend any of the grounds of appeal before or during the course of the hearing of the appeal."

2. The brief facts of the case are that the assessee firm filed its return of Income for the Assessment Year 2009-10 on 23.09.2009

disclosing loss of Rs. 3,63,85,885/-. The assessee is engaged in the business of manufacturing of enamelled wire, submersible wire, bare copper wire, etc. During scrutiny assessment proceedings, the Assessing Officer examined the claim of gross loss of (-) 3.65% against the total turnover of Rs. 59,07,03,526/-, particularly in view of the fact that the assessee had disclosed gross profit at the rate of 5.48% in the earlier year. The assessee explained that the loss was on account of continuous fall in the price of the principal raw material, copper, which had an average cost of Rs. 445 per kg at the beginning of the year, and an average cost of Rs. 233 per kg at the end of the year. The assessee stated that its purchases were booked at the prices prevailing on the date of order whereas the prices had fallen substantially by the time delivery was taken. The assessee also incurred heavy losses where forward contracts had been booked at higher prices than those prevailing on the date of delivery. The assessee also stated that direct expenses had increased, and higher depreciation had been debited on account of investments in new plant. The Assessing Officer held that the fall in the rate of copper was not an acceptable reason for incurring loss as monthwise details of purchase and sale showed that the sale price was lower than the purchase price only in the two months of November and December 2008. The Assessing Officer also observed that the assessee was involved in sale and purchase of copper with its group concerns. In such a situation, the Assessing Officer apprehended the possibility of diversion of income. The Assessing Officer noticed that the assessee had sold copper scrap at Rs. 320 to 330 per kg. to. M/s Bombay Metal Industries, an associate concern, and at Rs. 160 to 200 per kg. to M/s KG Metal and Alloys, another sister concern. The Assessing Officer disallowed the claim of gross loss of Rs. 2,15,80,361/-, and estimated the gross profit at 3.65% for the year under consideration, at Rs. 2,15,60,678/- and completed the assessment u/s. 143(3) vide order dated 19.12.2011 wherein he computed the gross profit @ 3.65% (2/3rd of last year gross profit rate of 5.48%) of the immediately preceding previous year and after disallowing gross loss declared of Rs. 2,15,80,361/- by the assessee and making his own calculations and made additions for Rs. 2,15,60,678/- for gross profit earned (effectively disallowing Rs. 4,31,41,039/-) and computed the net taxable income at Rs. 67,55,154/-.

3. Against the aforesaid assessment order of the Assessing Officer, Asseessee appealed before the Ld. First Appellate Authority, who vide impugned order 27.2.2013 has allowed the appeal of the assesee by deleting the addition of Rs. Rs. 4,31,41,039/-.

4. Aggrieved by the aforesaid order dated 27.2.2013, Revenue is in appeal before the Tribunal.

5. At the time of hearing Ld. Departmental Representative has relied upon the order of the Assessing Officer and reiterated on the contentions raised in the grounds of appeal filed by the Revenue.

6. On the other hand, Ld. Counsel of the assessee relied upon the order of the Ld. CIT(A) and submitted that the order of the Ld. CIT(A) may be upheld. In support of his contention, he filed the synopsis. For the sake of convenience, the synopsis are reproduced hereunder:-

> *"The assessee is a partnership firm engaged in the-business of manufacturing of enameled wire, submersible wire and bare copper wire etc. Return of income was filed by assessee declaring loss of Rs.3,63,85,885/-. The A.O. completed the assessment at income of Rs.67,55,154/- by making addition of Rs. 4,31,41,035/- by estimating*

G.P. rate of 3.65%. The Ld. CIT(A) has deleted the disallowance made by the A.O. The assessee is maintaining proper books of accounts. The books of accounts of the assessee are based on actual state of affairs and not based on any adhoc G.P.rate basis. The accounts of the assessee are duly audited u/s 44AB of Income Tax Act. The assessee is maintaining proper records (both, quantity wise and amount wise) of opening stock, purchase, sales and closing stock. All the details in relation thereto had been furnished before the A.O. The books of accounts were produced before the A.O. which has been examined by him as admitted by himself in first part of the assessment order. The book of accounts have not been rejected. No discrepancies whatsoever has been pointed by the A.O. in the books of accounts or the details furnished by assessee. No discrepancies in the quantity and amount of purchase and sales has been pointed out by the A.O. Similarly no discrepancy in the quantity and valuation of opening and closing stock has been pointed out by A.O. No discrepancy in any of the expenses claimed by the assessee has been pointed by A.O. Under the circumstances, there was no rationale for the A.O. to make the addition. The A.O. has made the addition in an arbitrary manner without appreciating the facts of the case.

It is a settled law that A.O. cannot make any addition based on estimated G.P. if the books of accounts have not been rejected by him. In fact, the various courts have held that merely fall in G.P. rate cannot be a ground for rejection of books of accounts. In the assessee's case, the *facts are even stronger in as much as even the books of accounts have been duly accepted by A.O. and has not been rejected. Reliance is placed on the following case laws :-*

CIT v Smt Poonam Rani (Delhi High Court) 326 ITR 223 (2010)

CIT v Jacksons House (Delhi High Court) 198 Taxman 385 (Delhi)(2011)

DCIT v Hanuman Sugar Mills (P) Ltd (Allahabad High Court) (2013) 221 Taxman 156

Madnani Construction Corp. Ltd. v CIT (2008) 296 ITR 45 (Gauhati High Court)

CIT v UP State Food & Essential Commodities (2013) 39 Taxmann.com 106 (Allahabad)

ACIT v Hitech Grain processing Pvt. Ltd. (ITAT, Delhi) ITA No. 2885/De1l2011

ACIT v Ercon Composites (2014) ITAT Jodhpur 49 taxmann.com 489

Century Tiles Ltd v JCIT (2014) 51 taxman.com 515 (Ahd. ITAT)

ITO v Sani Trade Agency (Ahd. ITAT) ITA No. 3524/Ahd/2007

ACIT v. Rushabh Vatika (Rajkot Bench) ITA No. 51 (RJK) 0[2013]

The CIT(A) in para 4 to para 4.4 (page No. 15 to Page No. 18 of her order) after elaborate discussion and cogent reasons has rightly deleted the addition made by the A.O."

7. We have heard both the parties and perused the records especially the impugned order dated 27.2.2013, synopsis filed by the Assessee, we find that the assessee before the Ld. CIT(A) has submitted that the return of Income was filed on 23.09.2009

declaring a loss Rs. 3,63,85,885/-. When AO has selected the case of assessee and assessee has filed the computation of income along with audited accounts and tax audit report for the year during the course of assessment proceedings along with other details called for from time to time. The assessee is a partnership firm engaged in the manufacture of enamelled and submersible wire, bare copper wire, etc. During the course of assessment proceeding the AO had raised query as to the gross loss on operations amounting to Rs. 21580361/- calculated to be 3.65% of the turnover of Rs. 590703526/- as compared to a gross profit of 5.48% and 5.47% declared for the immediately two preceding assessment years 2008-09 and 2007-08 and consequent net loss declared by the assessee. The assessee vide its submission dated 13.9.2011 filed the comparative gross profit and net profit chart for three years (including the year under assessment) wherein the reasons for declaring the gross loss on operations and incurring net loss for the year were elaborated upon along with documentary evidence in support of its claims. No further queries were raised by the AO on the issue nor was any show cause given to the assessee that the arguments advanced by it explaining the loss incurred was not acceptable to the AO thereafter. The AO then framed the assessment order under section 143(3) of the Act on 19.12.2011 wherein he computed the gross profit @ 3.65% (2/3rd of last year gross profit rate of 5.48%) of the immediately preceding previous year and after disallowing gross loss declared of Rs. 2,15,80,361/- by the assessee and making his own calculations / assumptions figures made additions for Rs. 2,15,60,678/- for gross profit earned (effectively disallowing Rs. 4,31,41,039/-) and computed the net taxable income at Rs. 67,55,154/-.

7.1 We further find that the scrutiny assessments had been framed in its case for the Assessment Years 2006-07, 2007-08 and 2008-09, in which only some disallowance out of expenses had been made The assessee has argued that comparing the month wise rates of purchase and sale does not take into account the value of opening and closing stock as also of direct expenses. The assessee has shown that merely comparing the difference of sales and cost of sales and inventories would show a nominal profit of Rs.82,04,274/-, but after including the manufacturing expenses, the assessee incurred a gross loss of Rs. 2,15,80,361/-, which is evidenced by the audited accounts. The assessee has also pointed to the fact that in the immediately succeeding year, the Assessment Year 2010-11, with the increase in the prices of copper, the gross profit jumped back to 7.5%. It has been" argued that there was a global melt down in commodity prices between September 2008 and March 2009 following the collapse of banks in the United States. The assessee has submitted a chart of the monthly average rates prevailing at the London Metal Exchange, which shows that the average rate of April 2008 was USD 8684.93, which fell to USD 3717.00 in November 2008, and for the month of March 2009 was at USD 3749.75. The assessee has pointed out that, as compared to the earlier year, its sales increased in quantity from 15,27,065/- kgs to 16,40,902 kgs but in value fell from Rs. 64,44,74,892/- to Rs.59,07,03,526/- due to fall in prices.

7.2 We note that the CIT(A) observed that the assessee's contention regarding loss incurred on account of forward contracts entered into for purchase of copper has also been verified with reference to the booking orders placed and the corresponding purchases made. The assessee has shown with reference to the bookings made and the deliveries taken, that it paid an excess value of Rs. 2,45,85,874/- on account of forward contracts entered into between 16.07.2008 and 29.09.2008. To give an example, the assessee had contracted to purchase 18 MT of copper on 29.07.2008 at a rate of Rs. 434.25, but when delivery was taken on 02.11.2008, the market rate was only Rs. 221.73. Copies of purchase bills in respect of the forward contracts with the suppliers M/s Sterlite Industries and M/s Hindalco have been filed by the assessee. The excess price paid on account of forward contracts alone works out to Rs. 2,45,85,874/-. The assessee has also furnished evidence of cancellation of a forward contract for purchase of 25 MT of copper which was cancelled without delivery resulting in a loss of Rs. 38,70,047/-.

7.3 The observation of the Assessing Officer that profit may have been diverted to sister concerns is also found to be unsubstantiated. The instances of sales of copper scrap mentioned in the. assessment order are of different times of the year. The sale of copper scrap at Rs. 320-330 per kg. took place between April and July 2008 when the sale price of copper wire was between Rs. 410 and 430 per kg. The sale of scrap at Rs. 160-200 per kg. was in December 2008 when the sale price of copper wire was Rs. 225 per kg. The Assessing Officer has not compared these sale instances with any sales to outside parties, and the Assessing Officer has not shown that the sale price of copper scrap prevailing at the time was lower than the rate charged from the sister concerns.

7.4 The counsel for the assessee has submitted that the gross loss is also on account of the opening stock of 88,692 kgs. of copper valued at Rs. 445 per kg. The purchase quantity of 1552.210 MT is less than the sale quantity of 1640.90 MT which could only have come out of the opening stock. Hence the finding of the Assessing Officer that the monthly rates of sale and purchase shows a surplus of Rs. 5,25,35,185/- at the end of the year inspite of the fall in the rate of copper, ignores the value of opening stock of Rs. 3,94,67,940/- (88,692 x 445). We find that this contention is correct, as a working of gross profit must necessarily take into account the opening and closing stock, and direct expenses, and not only be based on comparison of purchase prices of raw material and sale prices of finished products. That the Assessing Officer has based the addition of Rs. 4,31.41,035/- entirely on the fall in gross profit rate, without bringing any other material on record, and without disputing the results. It is established law that fall in gross profit alone, without pointing out defects in the books of account, is not an adequate basis for making additions. "Additions to the profits of the assessee made solely on the ground that it was low without giving a specific finding that the accounts of the assessee were not correct and complete, or that the income could not be properly determined and deduced from the accounting method employed by the assessee, is not justified. We find considerable cogency in the finding of the Ld. CIT(A) in the impugned order that the mere fact that there was a less rate of gross profit declared by an assessee as compared to the previous year would not by itself be sufficient to justify the addition." In this regard, Ld. CIT(A) has referred the decision in the case of Aluminium Industries (P) Ltd. Vs. CIT (1995) 80 Taxmann 184 (Gauhati). After considering the evidences filed before Ld. CIT(A) regarding the continuous fall in the prices of copper, and after verifying the quantitative tally of consumption of raw material and manufacture of finished goods, the addition made on account of estimation of gross profit, has rightly been deleted by the Ld. CIT(A). In the background of the aforesaid detailed discussions, we find that Ld. CIT(A) has rightly deleted the addition of Rs. 4,31,41,035/- entirely on the fall in gross profit rate. Therefore, we do not see any reason to interfere with the well reasoned order of the Ld. CIT(A), accordingly, we uphold the same by dismissing the appeal filed by the Revenue.

8. In the result, the Appeal filed by the Revenue stands dismissed.

Order pronounced in the Open Court on 11/06/2015.

Sd/- Sd/-

[J.S. REDDY] [H.S. SIDHU]
ACCOUNTANT MEMBER JUDICIAL MEMBER

Date 11/6/2015
"SRBHATNAGAR"

Copy forwarded to: -

1. Assessee -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Assistant Registrar,
ITAT, Delhi Benches