आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ "बी" , चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं श्रीमती अन्नापूर्णा गुप्ता, लेखा सदस्य
BEFORE: Sh. SANJAY GARG, Judicial Member & SMT. ANNAPURNA GUPTA, Accountant Member

आयकर अपील सं./ ITA NO. 1097/Chd/2016
निर्धारण वर्ष / Assessment Year : 2013-14

M/s Paramount Impex, D-202-203, Phase VI Focal Point, Ludhiana	बनाम	The ACIT, Circle-1 Ludhiana
स्थायी लेखा सं./PAN NO: AAEEP3160G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Gaurav Sharma, CA
राजस्व की ओर से/ Revenue by : Shri Rajesh Dhaneshta, ACIT

सुनवाई की तारीख/Date of Hearing : 05/03/2020
उदघोषणा की तारीख/Date of Pronouncement : 30/06/2020

आदेश/Order

PER ANNAPURNA GUPTA, Accountant Member:

The present appeal has been filed by the assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals)-I, Ludhiana(hereinafter referred to as "CIT(A)] u/s 250(6) of the Income Tax Act,1961(in short referred to as "Act") dt.30-08-2015 relating to assessment year(A.Y)2013-14)

2. The Present appeal has been fixed for hearing in consequence to the order passed in a Misc. Application filed by the assessee Dt.12-11-18 , recalling the exparte order originally passed by the ITAT in the said case dt. 20.06.2018

3. The issue involved in the present appeal relates to the rejection of books of account of the assessee u/s 145(3) of the Act and estimation of gross profit earned.

4. Drawing our attention to the facts of the case, it was pointed out that the Assessing Officer(A.O.) on noticing that the assessee did not maintain any stock register and on noting defect in the method of valuation of stock adopted by the assessee, had resorted to rejection of books of accounts maintained by the assessee under section 145(3) of the Act and had thereafter proceeded to apply the Gross Profit Rate(GPR) of 18% to the turnover of the assessee for estimating the profit earned during the year .That the matter was carried in the appeal before the Ld. CIT(A) who upheld the rejection of books of account but at the same time reduced the estimation of GPR from 18% to 16%.

5. Aggrieved by the same the assessee has came up in appeal before us challenging both the act of rejection of books as well as estimation of gross profit raising the following effective grounds:

> *1.a)That the Worthy Commissioner of Income Tax(Appeals)has erred in confirming the order of the Assessing Officer in rejecting the books of accounts as per para 3.2 of his order.*
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> *b)That the Worthy CIT(A) has erred in not considering the fact that assessee has maintained proper day to day books of accounts in the normal course of its business and same was alos got audited by the Chartered Accountant and no specific discrepancy was found during the course of assessment or in appellate proceedings.*
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> *c) That the Worthy CIT(A) has erred in not considering that merely non maintenance of stock register cannot be sole ground for rejection of Books of accounts.*
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> *2.a) That the Worthy CIT(A) has also erred in confirming the G.P ratio of the assessee from 13.21% to 16%,thereby confirming the addition to that extent in the Trading Results as against application of G.P ratio from 13.21% to 18% thereby making the addition of Rs.1,63,87,918/- by the Assessing Officer.*
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> *b) That the Worthy CIT(A) has erred in not considering that the assessee maintained proper books of accounts and same was audited by Chartered Accountant and no specific discrepancy was found during the course of assessment/appellate proceedings. As such, upholding addition in the Trading results by enhancing G.P ratio from 13.21% to 16% merely on guess work and imagination is not justified.*
>
> *c) Without prejudice to ground Nos. 2(a) & 2(b) above, even otherwise, the Ld. CIT(A) has erred in estimating the G.P. rate @16% without considering the previous history and accepted book results of the assessee.*

6. The solitary contention of the Ld. AR before us was that merely because stock registers were not maintained by the assessee it could not be the reason for rejecting the books of accounts more particularly when no other defects were found in the books of the assessee and when the assessee had explained that since it was manufacturing large number of small items it was not feasible and was not in the practice of maintaining stock register for each items. Ld. Counsel contended that it had been explained to the authorities below that the assessee was following the method of physical verification of stock done at the year end for the purpose of determining the value of closing stock at the end of the year. Ld. Counsel contended that it had been also pointed out that the assessee had been consistently following this method in the past years also when assessment had been framed under section 143(3) of the Act . He therefore pleaded that the rejection of books of accounts be set aside.

7. Ld. Sr. DR on the other hand vehemently supported the order of the Ld. CIT(A) rejecting the books of accounts, pointing out that the assessee had not been maintaining stock record and the method adopted by it for determining the value of the stock was an incorrect method since the assessee applied the GP rate of the year for valuation of stock. Ld. DR pointed out that the correct method of valuation of stock is at cost or market value whichever is less and the method adopted by the assessee by applying the GPR for the year to the stock found did not confirm to the accepted modes of valuation. On the contrary the Ld. DR pointed out that the method adopted was only a means for maintaining its GPR from year to year. Ld. DR therefore pleaded that the books of accounts maintained by the assessee had been rightly rejected. He further pointed out that the fact of not maintaining stock record and the incorrect method of valuation adopted by the assessee had been confirmed by the statement recorded by the partner of the assessee firm and the employees during survey conducted at the premises of the assessee in 2015 wherein they had

categorically confirmed the fact of not maintaining of stock register and also the fact that the GPR for the year was applied to determine the value of stock at the year end. Ld. DR contended that though this statement were not recorded in the impugned year, but still they were relevant for the purpose of the impugned year also, Since the assessee had not brought anything on record to the contrary. Ld. DR further contended that it did not matter that assessee had been consistently following this method from year to year since consistency cannot be the reason for upholding the incorrect method adopted by the assessee for determining this profit. The Ld. DR drew our attention to the findings of the Ld. CIT(A) in this regard at para 3.2 of the order as under:

> *3.2 I have carefully considered the facts of the case, the basis of the addition made and the arguments of the AR. When asked to produce the details of wastage and loss, the appellant stated that it is not possible to measure wastage/loss as there are various types of finished goods and various types of manufacturing processes. Further, the quantitative details have not been presented by the auditor in the audit report u/s 44AB. Also, the basis of the valuation of stock has not been certified by the auditor. During the course of the survey operations on 09.10.2015, the statement of the operations manager was recorded. In response to the query to provide the record of quantitative details of finished goods item-wise, it was stated that the same is not available. The statements of the partners were also recorded who stated that the valuation of closing stock is done as per GP ratio taking the standard as of 31st March. Sh. Rakesh Kapoor, partner also stated that the physical verification is done at the end of every year for valuation of stock.*
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> *Thus, it is clear that the valuation of stock is not done as per the accounting standards. Statement recorded u/s 132(4) is admissible as evidence and the only two conditions required to be fulfilled to use such a statement as evidence in subsequent proceedings under the act is that the statement should be recorded by the Authorised Officer during the search and such statement should be obtained on oath as held in the case of **ACIT vs. Yerra Nagabhushanam (1997) 226 ITR 843, 849 (AP).** Further, it has been held in the case of **Kunhambu & Sons vs. CIT (1996) 219 ITR 235, 241-42 (Ker)** that a statement recorded u/s 132(4) can be used as evidence in any proceedings under the act by virtue of the provisions of the explanation to sec 132(4) and such a statement may not only be related to the books of accounts found during the search but also on any other matter relevant for any proceedings under the Act. The only condition is that the statement should be voluntary and should not be obtained through coercion or intimidation. Still further, it has been held in the case of **Hira Singh & Co. vs. CIT (HP) 230 ITR 791** that addition made on the basis of such admission by assessee is justified. From the said statements recorded the AO observed that the valuation is not based on any costing but is just to maintain a certain GP ratio and is arrived*

at by backward calculation from the GP of the previous year. Thus the value of stock shown by the appellant in the balance-sheet is not reliable. The statement of the manager of the company was also recorded for also stated that no details of stocks such as registers are maintained and that it is difficult to ascertain the method of valuation of stock. The same applies to statements recorded during survey operations also. Moreover, the survey may have been conducted subsequently but the contents of the said statements recorded are very much relevant for the year under consideration as it has not been shown with evidence as to how the state of affairs regarding valuation of stock are different in the year under consideration. It has not been shown that the valuation of stock has been done as per laid down accounting standards in the year under consideration as against the year in which the survey was conducted. Therefore, the said statements hold good for the current year also and have been rightly made a basis by the Assessing Officer to prove that the books of accounts are not reliable.

The fact that there is no stock register coupled with the statements recorded which have evidentiary value, justified the rejection of the books of accounts. It has been held in the case of ***S.N Namasivayam Chattiar vs. CIT (1960) 38 ITR 579, 588 (SC)*** *that keeping of the stock register is of great importance because it is a means of verifying the assessee's accounts by having a quantitative tally. The absence of the stock register above was not the basis for rejection of books. The quantitative details were not presented by auditor and the valuation of stock was not certified by him coupled with the statements of the said persons recorded, justified the rejection of the books of accounts. It has been held in the case of* ***Ajay Oil Mills vs. CST (1995) 98 STC 380, 381 (All)*** *that it cannot be laid down as a rule of law as to in what circumstances, the books of accounts can be rejected and basically it is a question of fact to be decided on the facts and circumstances in each case. Rejection of books of accounts was justified on the basis of absence of day to day manufacturing or production account in the case of* ***Bharat Milk Products vs. CIT (1981) 128 ITR 682 (All).*** *The method of valuation of the appellant is against the laid down norms of accounting standards and therefore the books accounts are not reliable. Maintaining of production records and quantitative details of wastage / loss is a statutory requirement of the audit report u/s 44AB. The appellant could well have derived the wastage/loss at periodic intervals. No authority, supporting evidence or comparative case has been relied upon in support of the appellant's contention that it is not possible to measure wastage / loss as various types of manufacturing processes are involved. Further, just because the said system of accounting followed by the appellant has been accepted in the earlier years, does not make it binding for the Assessing Officer to accept it. It has been held in the case of* ***CIT vs. British Paints India Ltd. (SC) 88 ITR 44*** *that it is not only the right but the duty of the Assessing Officer to consider whether the books disclose the true state of accounts. Even if the method of accounting is regularly followed, the Assessing Officer can reject it since there is no estoppel in these matters and each year is a self contained unit. Every assessment year is independent and the Assessing Officer can rectify any error accepted in the earlier years. In income-tax proceedings, each assessment year is independent and the principle of res-judicata does not apply. The fact that the auditor in the audit report has certified that the valuation of stock is as provided by the partners shows that the method of valuation of stock adopted by the appellant is not as per the accounting standards. Merely because this fact* *was found during the survey operations pertaining to another assessment year, does not mean that the same has been borrowed in the year under consideration. It is equally relevant for the year under consideration. In para 28 of the audit report, the auditor has filled as 'NIL' the quantitative details of raw material and finished goods. Since the method of valuation of stock is not in order, reliance cannot be placed on the G.P of earlier years. Therefore, the appellant's plea that it is showing progressive trading results is not acceptable, since the valuation figure of the appellant is not based on any costing but is merely to maintain a certain GP ratio which is arrived at by reverse calculation from the GP ratio of the previous year, as pointed out by the Assessing Officer. Accordingly, the books of accounts are not reliable and have been rightly rejected by the Assessing Officer. It is to be reiterated that the Assessing Officer has not merely relied on the statements recorded during the survey operations but has rejected the books of accounts because there is no stock register and also because the auditor has not given the quantitative details in point 28 of the audit report and in pointl8 of the same, the auditor has certified that the valuation of closing stock is as per the partner and the basis of valuation of stock has not been certified by the auditor.*

Rejection of books of accounts are justified in a case where the quantitative details/stock register for the goods manufactured are not maintained and there is no evidence/document or record to find out the basis of the closing stock valuation shown. In the absence of proper stock records the books of accounts cannot be considered as correct and complete, as it does not amount to deduction of current profits there from.

*In view of the said facts and circumstances, the case laws relied upon by the appellant are distinguishable on facts. The case of **Alfa Radiological Centre P. Ltd. 44 ITR (Trib) 284 Chd** is distinguishable as it relates to 'reason to believe' for reopening of case. Further, in the said case it is held that there is no material found during the survey relating to the year under consideration whereas in the instant case the statements are relevant for the year under consideration as well since it has not been shown whether valuation of stock during the current year is as per the lay down accounting standards. The case-laws relied upon by the AR mainly hold that addition cannot be made merely on the basis of statements recorded and that too for another year. However, statement recorded does have evidentiary value, moreso, since in this case it has not been proved how the same does not apply to the year under consideration. Rather, the AR has himself contended that the same method of accounting has been followed consistently over the years. This itself defies the stance that the statements do not hold good for the year under consideration. Further, the books of accounts have been rejected by pointing specific defects as discussed above and not merely due to the absence of stock register. Therefore, the case-laws relied upon by the AR to the effect that books of accounts cannot be rejected merely because of the absence of stock register, do not help the appellant's case, the facts being different in the instant case. Thus, in the absence of the quantitative details, the Assessing Officer was justified in not being satisfied about the fairness or correctness of the books of accounts of the appellant and the same were rightly rejected.*

8. We have heard both the parties and have carefully gone through the orders of the authorities below.

9. We shall first take up the issue relating to rejection of books of accounts u/s 145(3) of the Act ,whether it was as per law raised in Ground of appeal No.1(a),(b),(c). Undeniably the power to reject books of accounts is to be exercised only when the books are found incorrect or incomplete for determining the true and correct profits earned by the assessee.This power is implied in the Income Tax Officers power to inquire into the total income of the assessee.

10. In the present case, undisputedly the only basis for rejecting the books of accounts is non maintenance of stock register and the incorrect method of valuation of stock adopted by the assessee. No other defect has been pointed out by the Revenue authorities for rejecting the books of accounts. As for the non maintenance of stock register the assessee has explained the non feasibility of maintaining it considering the fact that it was dealing in a large number of small items. It was also explained that the assessee was consistently following the method of physically verifying its stock at the end of the year .

11. Considering the above facts ,we are not in agreement with the Revenue that the non maintenance of stock register was sufficient for exercising the power of rejecting the books of the assessee. It is not unusual for businesses dealing in large number of small items and operating at a small or medium scale to do away with the maintenance of any stock register since it is not feasible maintaining movement of stock of every such item. Such businesses usually verify physically their stock at the end of the year and all wastages ,pilferages and other losses therefore get automatically accounted for in the process, reflecting thus the true profits earned by the assesses. In the present case the assessee has been doing the same consistently, following the method of determining its stock at the end of the year by physically verifying the same

and not maintaining any stock register since it was dealing in a large number of small items. We fail to understand how the non maintenance of stock register has affected the determination of true and correct profits of the assessee in the circumstance. The Revenue has found no other defect in the books of the assessee.All purchase and sale vouchers and other records have been found to be in order . The Revenue has not demonstrated before us as to how the non maintenance of stock register has been a hindrance in determining the true and correct profits earned by the assessee and also what was the infirmity in the method adopted by the assessee of physically verifying its stock at the end of the year. Therefore in our opinion the mere fact of non maintenance of stock register cannot be the basis for rejection of books of accounts.

12. The only other defect which has been pointed out is the method of valuation adopted for determining the value of the stock. Admittedly the assessee has been applying the Gross Profit Rate of the year to the stock for determining the value. We agree with the Revenue that this is not a correct method of valuation of stock which ideally should be valued at cost of market price whichever is less. But merely because of adoption of an incorrect method of valuation or merely on account of non compliance with the prescribed accounting standard , the books of accounts cannot be rejected. In fact in such cases the correct accounting standard or the correct method of accounting should be applied by the Revenue and the true and correct profits determined. Such defects, relating to method of valuation of stock, do not render the books of accounts unreliable, incorrect or incomplete ,in which circumstances alone the Books of accounts can be rejected. On the contrary such defects can be cured and the taxable profits determined by applying the correct method of accounting/valuation. After all the entire exercise of assessment is aimed towards determining the correct taxable income of

assesses and the power of rejecting books of accounts therefore must be exercised only towards that end and not arbitrarily.

13. In view of the above we set aside the order of the Ld. CIT(A) upholding the rejection of books of accounts of the assessee under section 145(3) of the Act. We further direct the AO to determine the value of stock after applying the correct method of valuation and thereafter determine the taxable profits earned by the assessee. For this limited purpose the issue is restored back to the AO who is directed to determine the value of stock after giving due opportunity of hearing to the assessee.

14. Ground of appeal No.1(a),(b),(c) raised by the assessee is therefore allowed.

15. Ground No.2(a),(b),(c) relates to the application of estimated Gross Profit Rate. Since we have set aside the rejection of the books of accounts ,there arises no occasion for the estimation of GPR. The grounds raised by the assessee are therefore infructuous.

16. In effect the appeal of the assessee is allowed.

Order pronounced on 30/06/2020

Sd/-	**Sd/-**
संजय गर्ग	**अन्नापूर्णा गुप्ता,**
(SANJAY GARG)	**(ANNAPURNA GUPTA)**
न्यायिक सदस्य/ Judicial Member	**लेखा सदस्य/ Accountant Member**

AG

Date: 30/06/2020

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File