



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ON THE 28th DAY OF MARCH, 2022

BEFORE

HON'BLE MS. JUSTICE SABINA

&

HON'BLE MR. JUSTICE SATYEN VAIDYA

INCOME TAX APPEAL No.37 of 2016

Between:-

PR. COMMISSIONER OF INCOME
TAX, SHIMLA.

.....APPELLANT

(BY MS.VANDANA KUTHIALA,
ADVOCATE)

AND

M/S SMART VALUE PRODUCTS
AND SERVICES LTD.,
M-17, 2ND FLOOR, LAJPAT NAGAR-II,
NEW DELHI, THROUGH ITS
MANAGING DIRECTOR.

.....RESPONDENT

(BY SH. VISHAL MOHAN, ADVOCATE)

RESERVED ON : 23.03.2022

DECIDED ON : 28.03.2022

This appeal coming on for hearing this day, Hon'ble Ms. Justice Sabina, delivered the following:

J U D G M E N T

Appellant-department has filed the appeal challenging the order dated 28th October, 2015, passed by Income Tax Appellate Tribunal Division Bench, Chandigarh.

2. Facts of the case, in brief, are that respondent-assessee had filed its return on 30th September, 2009. Subsequently, the income was revised by the assessee. The assessee-company followed direct marketing business model and derived income from retail trading of various consumer goods. The assessee had declared gross turnover to the tune of Rs.91,90,10,669/- and the net profit was declared to the tune of Rs.1,06,69,510/-. Thus, the net profit rate was 1.16%. The Assessing Officer after going through the record, had observed that the assessee had tried to furnish month wise closing stock and had failed to produce/justify/explain/ substantiate the same during the period of assessment. The Assessing Officer had found that the claim of the assessee was incorrect and had concluded that the month wise trading account filed by the assessee was self-contradictory. The Assessing Officer had prepared the trading account and as per the same, the gross profit of the assessee came

out to be Rs.36,39,54,887/- against the sales of Rs.71,24,69,335/- and, as a result, the gross profit rate came to 51.8%. Consequently, an addition of Rs.14.48 crores was made by the Assessing Officer, vide order dated 30th December, 2011. Assessee had filed an appeal before the Commissioner of Income Tax (Appeals), Shimla against the order passed by the Assessing Officer and the appeal filed by the assessee was partly allowed, vide order dated 2nd May, 2014. The department challenged the order dated 2nd May, 2014 before the Income Tax Appellate Tribunal Division Bench, Chandigarh and the said appeal was dismissed, vide impugned order dated 28th October, 2015. Hence, the present appeal by the department.

3. We have heard learned counsel for the parties and have gone through the record available on the file carefully.

4. At the time of admission of the appeal, following question of law was framed on 25th October, 2016:-

“Whether on the facts and circumstances, the findings of the ITAT are perverse and contrary to the material on record, especially since the A.O. had made the addition by calculating the G.P. from the month wise purchase and sales supplied by the assessee for the current year, P & L account and from the Balance Sheet.”

5. The Assessing Officer, while calculating the gross profit rate, has observed as under:-

“To summarize, the month wise trading account now filed by the assessee in response to the showcause is self contradictory and needs no explanation in the light of the facts discussed at length above. Therefore, this trading account is treated as an afterthought in response to the show cause and even that could not serve the purpose of the assessee for which it was cast. Hence, the gross profits came out to Rs.36,39,54,887.88 against the sales of Rs.71,24,69,335.88 which results in a G.P. rate of 51.08%. Therefore the addition proposed to be made vide the show cause notice of the undersigned of Rs. 14.50 Crores at a G.P. rate of 51.16% is now made at a rate of 51.08 % i.e. 14.48 Crores made to the returned income. This G.P. rate of 51.08% is calculated as follows.

Opening Stock	18,508,041.00	Sale	712,469,335.88
Purchases	348,348,793.00	Closing Stock	18,342,386.00
GP	51.08 %	<u>363,954,887.88</u>	
Total:		<u>730,811,721.88</u>	Total <u>730,811,721.88.”</u>

6. It was also observed by the Assessing Officer that the assessee had failed to explain why the payment made to Sai Purna Caters without deducting TDS should not be disallowed and added back. The Assessing Officer had concluded that the assessee had failed to explain the said fact and consequently payment of Rs.4,16,405/- be added back to the income of the assessee. Consequently, the net taxable income of the assessee-company

was rounded off to Rs.15,17,76,070/-

7. The Commissioner of Income Tax (Appeals), while disposing of the appeal, has observed as under:-

“4.17 Thus in view of the aforesaid discussion and findings the addition of Rs.14.48 Crores made on the basis of negative peak closing stock is deleted and addition of Rs.89,94,644/- on account of net profit computation is made by applying the provisions of section 145(3) and 144 of the Act. These grounds of appeal are partly allowed.”

8. The Income Tax Appellate Tribunal, while dismissing the appeal, has observed as under:-

“7. We have considered rival submissions and gone through the material available on record. The Assessing Officer found that GP rate and Stock Register were not mentioned in the audit report. The books of account were, however, test checked but Stock Register was not produced. On the basis of figures available in Profit & Loss Account and details of month-wise purchases and sales provided by the assessee, the Assessing Officer computed the gross profit of 51.16%. The Assessing Officer computed month-wise and quarter-wise trading account for enhancing the GP. The Assessing Officer, however, did not considered that assessee made genuine purchases and sales which were entered into the books of account of the assessee. The Assessing Officer also did not consider the nature of business of assessee, was based on multi level marketing system where the goods

were received through-out the year by different warehouses at separate stations. The goods were received either through bills or through challans. After receipt of intimation of goods, the lumpsum payments were made to different suppliers through out the year. No defects in the purchases and sales have been pointed out by the Assessing Officer. The assessee produced complete books of account, sales and purchase vouchers. However, the Assessing Officer, on imaginary basis, prepared month-wise trading account for making addition against the assessee. In this way also Assessing Officer found a negative stock in the books of account of assessee which is not permissible in law. Thus, the Assessing Officer in his own way has prepared the trading account for enhancing the GP despite the fact that it is well settled that book results are drawn on annual basis. The Assessing Officer did not found any unrecorded purchases. No sales were found outside the books of account. Therefore, the extra profit arrived at by the assessee on month-wise could not be sustained. It is also well settled that profit rate cannot be uniform in each month. The assessee is dealing in large number of items which is also not in dispute. The Assessing Officer accepted the Opening Stock, purchases and sales, therefore, where is the question of considering negative stock in the books of account of the assessee?

7(i) The ITAT Chandigarh Bench in the case of M/s Saqi Brothers V ITO (supra) held that, "No addition can be made on the ground that Assessing Officer found negative stock of analysis of month-wise trading results, assessee itself having offered Rs. 50,000/- for addition, further

addition is not sustainable as gross profit on unaccounted sales, if any, would be far less". This order of the Tribunal has been confirmed by Hon'ble Punjab & Haryana High Court vide judgement dated 31.10.2006 (supra). Copies of the orders are placed on record. The Id. CIT (Appeals), therefore, on proper analysis of facts and material on record correctly came to the conclusion that at the most, the Assessing Officer should have rejected the book results under section 145(3) of the Act. The Id. CIT(Appeals) also correctly did not accept the conclusion arrived at by the Assessing Officer by preparing month-wise trading account for making addition because it would give distorted results. The rejection of the books of account Id. CIT (Appeals) under section 145(3) of the Act have not been challenged by the revenue as well as by the assessee. Therefore, finding of fact recorded by Id. CIT(Appeals) for rejection of the books of account under section 145(3) has become final. Therefore, the question left for consideration would be whether Id. CIT(Appeals) has correctly applied average of net profit of assessed income in subsequent two years which have same mode of business operation at 2.76%. The assessee in assessment year under appeal has shown NP rate of 0.92%. However, in subsequent assessment years, Assessing Officer passed the orders under section 143(3) in respect of the same business activities of the assessee which gave rise to net profit of 2.53% and 2.99% in subsequent assessment years 2010-11 and 2011-12. No comparable case have been cited by the Assessing Officer in the assessment order. Therefore, history of the assessee would be relevant and should be considered by

the authorities below.

8. *Hon'ble Privy Council in the case of Laxmi Narain Badri Dass 5 ITR 170 held that, "Estimate of income should be fair. The Assessing Officer should not act dishonestly or vindictively or capriciously. History, knowledge of previous returns, local knowledge, circumstances of the assessee to be considered to arrive at fair and proper estimation". The Hon'ble Punjab & Haryana High Court in the case of Rajinder Prasad Jain 274 ITR 545 held that "Tribunal applying net profit consistent with past history of the assessee justified".*

9. *Since in the subsequent years, the Revenue Department accepted NP rate in the case of the assessee at 2.53% and 2.99%, therefore, Id. CIT (Appeals) was justified in applying average of the net profit of assessed income of subsequent two years for the purpose of determining the profit of the assessee. The Assessing Officer was, therefore, not justified in adopting GP rate of 51.08% for making addition against the assessee. The Id. CIT (Appeals), on proper appreciation of facts and material on record in the light of the decision of ITAT Chandigarh Bench in the case of M/s Saqi Brothers (supra) as confirmed by the Hon'ble Punjab & Haryana High Court, rightly allowed the relief of Rs.13.60 Cr. We do not find any infirmity in the order of the Id. CIT (Appeals).*

10. *The departmental appeal is, therefore, dismissed."*

9. Thus, in the present case, Appellate Authority as well as the Tribunal have carefully gone through the record of the case and have found that the Assessing Officer had computed month

wise and quarter wise trading account for enhancing the gross profit.

The Assessing Officer had failed to consider the genuine purchases and sales made by the assessee, which had been duly entered in the books of account. The nature of business carried by the assessee was also not considered by the Assessing Officer. The assessee was receiving goods throughout the year from different warehouses, through bills or challans. Lump-sum payments were made to the different suppliers throughout the year. All the records, i.e., books of account, sales and purchase vouchers had been fully produced by the assessee. The Assessing Officer had, however, prepared month wise trading account and had found negative stock in the books of account of the assessee. Although, the Assessing Officer had not found any unrecorded purchases, but had, in his own way, prepared the trading account for enhancing the gross profit. No sales were found outside the books of account. The Assessing Officer could have made the assessment as per the provisions of the Income Tax Act, 1961. In the subsequent assessment years, the Assessing Officer had passed the order under Section 143(3) of the Act in respect of the same business activities of the assessee, which gave rise to net profit of 2.53% and 2.99%.

10. In the facts and circumstances of the case, the learned Tribunal had, thus, rightly dismissed the appeal filed by the

department. The findings arrived by the Tribunal cannot be said to be perverse or against the material on record.

11. The question of law framed in this case stands answered accordingly.

12. No ground for interference is made out. Accordingly, the appeal is dismissed.

**(Sabina)
Judge**

**(Satyen Vaidya)
Judge**

March 28, 2022
(Himalvi)

High Court of HP