IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.449 OF 2015

Rajhans Metals Private Limited .... Appellant

Vs.

The Assistant Commissioner of
Income-tax-9(3), Mumbai-400 020 .... Respondent

Mr. Bharat Janarthan with Mr. Atul K. Jasani for the Appellant.
Mr. Arvind Pinto for the Respondent.

CORAM: S.C. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.

DATE : SEPTEMBER 12, 2017

P.C:

1. This appeal of the assessee challenges the order passed by the Tribunal dated 10-9-2014 for the Assessment Year 2007-08.

2. At the outset, from the six questions which are proposed as substantial questions of law by the assessee and

appearing at pages 18 & 19 of the paper-book, question Nos.5 and 6, which were restored to the file of the Assessing Officer, with the passage of time, relief is granted in favour of the assessee. Therefore, the appellant/assessee is not pressing these two questions.

3. It is then urged that question Nos.1 to 4 and the overall perversity in the order of the Tribunal would enable this Court to admit this appeal as these questions are substantial questions of law.

4. In that regard, it is urged that there was no reasonable opportunity given to the appellant/assessee so as establish and prove its version. The version is arising from the peculiarity of its business. During the previous year relevant to the Assessment Year 2007-08, the appellant achieved a turnover of Rs.131 crores. The accounts of the appellant were audited by a statutory auditor as per the provisions of the Companies Act, 1956, under Section 44AB of the Income Tax Act, 1961 ("the I.T. Act, 1961" for short) and also for Value Added Tax

purposes. Therefore, repeated scrutiny of the income was undertaken.

5. However, when the appellant was regularly assessed to tax and assessment orders have been passed in its case for the past 10 out of 12 years, there was no objection to the books of account and the method of accounting adopted. During the Assessment Year 2007-08, the Assessing Officer sought various details for the purposes of completion of the assessment. The appellant attended the office of the Assessing Officer on the stipulated dates and produced all the records. The date-wise summary is placed as Annexure-E to the present memo of appeal.

6. Then, there was another notice issued on 1-12-2009 by the Assessing Officer, copy of which is at Annexure-F and in response to which as well, the appellant addressed a letter of 11-12-2009. It was pointed out that insofar as production of the entire books of account, vouchers and materials as required by the Assessing Officer, the said books of account, bills, bank

statements, etc., were maintained at the factory and administrative office at Jamnagar, that is about 800 kms. from Mumbai. It would be, therefore, time consuming. Instead the Assessing Officer can be accompanied by a representative of the assessee so that the Assessing Officer can verify the position from the books by visiting Jamnagar.

7. Yet, the Assessing Officer passed an order on 16-12-2009, only five days after the date of the letter dated 11-12-2009 wherein he rejected the books of account. He estimated the gross profit of the appellant at 9.78% based on the average of earlier two years as against 7.43% gross profit as per the audited accounts of the appellant. Thus, detail submissions by the assessee were not taken into consideration. In any event, had complete opportunity been provided, the appellant would have been in a position to demonstrate and establish that this estimation is wholly uncalled for.

8. Therefore, the resultant addition of Rs.3,43,51,585/- was not justified and all the more when the other

disallowances/additions were held to have not been satisfactorily dealt with necessitating a remand.

9. In appeal to the Commissioner of Income Tax (Appeals) so as to challenge this estimation of the gross profit and rejection of the books of account by the Assessing Officer, nothing other than what the Assessing Officer did transpired and the Commissioner further reduced the gross profit at 9% as opposed to 9.78% taken by the Assessing Officer.

10. Before the Tribunal all these materials were produced and it was urged that as in other two disallowances/additions, even on this point if the matter is sent back, the ends of justice would be served. However, even such a reasonable stand of the assessee was rejected by the Tribunal on flimsy and untenable reasons. Therefore, even these remaining questions are substantial questions of law.

11. Upon a perusal of the appeal paper-book and the order under challenge, and particularly the relevant paragraph of the Tribunal's order, we are unable to agree.

12. It is found by the Tribunal that the Assessing Officer issued a notice under Section 142(1) of the I.T. Act, 1961 on 10-7-2009 for the Assessment Year 2007-08. The scrutiny assessment proceedings under Section 143(3) of the I.T. Act, 1961 were taken up and notice under Section 142(1) was issued on 10-7-2009 requiring the assessee to file certain details. The Tribunal has from the record culled out the opportunities granted to the assessee to file those details. Hearing was fixed for this purpose on 21-8-2009, then on 3-9-2009, 11-9-2009, 22-9-2009, 6-10-2009, 15-10-2009, 23-10-2009, 27-10-2009 and 29-10-2009 respectively. The numerous opportunities resulted in the assessee failing to file the details. It is thereafter on 1-12-2009 a notice was issued requiring the assessee to file such details on 11-12-2009. The assessee failed to produce these details and instead filed a letter. It is in these circumstances and when the Assessing Officer found that there is no response and the assessee is not producing the relevant documents despite opportunities granted to him, that he completed the assessment, that is on the basis of the materials before him. He observed that

since the books of account, documents and other materials as required have not been produced, the satisfaction about completeness or correctness of the account cannot be recorded. It is in these circumstances that he resorted to sub-section (3) of Section 145 of the Act. He rejected the books of account and estimated the gross profit at the rate of 9.78% of sales as against 7.43% of sales declared by the assessee.

13. The First Appellate Authority found that the Assessing Officer compared the gross profit with those declared in earlier years. The First Appellate Authority found that in a best judgment assessment there is always a certain degree of guess work. If the books of account and relevant records were not produced by the assessee, then, he has to blame himself. The First Appellate Authority on an independent scrutiny found that there is arbitrariness in adopting the gross profit rate at 9.7% which is higher than the rate of 9.16% of the immediate preceding year even though there has been increase in turnover by Rs.50.83 crores. It is in these circumstances and deriving the figures from the record produced by the assessee itself that the

restriction of the addition was brought down from Rs.3,43,51,585/- to Rs.2,06,77,484/-. This exercise before the First Appellate Authority resulted in relief of Rs.1,36,74,101/-. Even this was not to the satisfaction of the parties.

14. The Revenue brought an appeal and in ground No.2 stated that it is agitating the reduction in the estimated gross profit rate by the First Appellate Authority and the Assessing Officer's rate should have been maintained.

15. The Tribunal heard the arguments of both sides and perused the record. The ground No.1 in the assessee's appeal and in the Revenue's appeal this ground was common. It was taken up by the Tribunal and after hearing the parties, the Tribunal found that a reasonable and fair view should be adopted in estimating the turnover. The First Appellate Authority while restricting the gross profit rate at the rate of 9%, has taken into consideration the overall facts and circumstances of the case. He has also taken into consideration the increase in the turnover of the assessee as compared to previous years. Once

on facts there was no infirmity found in the partial relief granted to the assessee, then, the grievance of both the Revenue as also the assessee in this regard has been rejected.

16. We do not see any error of law apparent on the face of the record nor perversity in the order of the Tribunal. The reasoning in para 7, pages 190 & 191, of the Tribunal's order is not vitiated by the alleged non-consideration of the grievance of the appellant/assessee that fair and reasonable opportunity was denied to it. The Tribunal found from the record that more than adequate and sufficient opportunity was given to produce the records. The estimation had to be done once the assessee was not co-operating. In such circumstances, a substantial relief has already been derived by the appellant/assessee. We do not think that we should reappraise and reappreciate the same factual materials. We cannot arrive at a different conclusion merely because that would be possible. On the other hand, what we find is that such reappreciation and reappraisal is impermissible in law. More so, when there is no perversity in the findings of the Tribunal. Its view is imminently possible. We do not find any

merit in the appeal. It is dismissed. No costs.

(PRAKASH D. NAIK, J.) (S.C. DHARMADHIKARI, J.)