

211

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**I.T.A. No. 554 of 2017 (O&M)
Decided on : 06.08.2018**

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Pr. Commissioner of Income-Tax, Faridabad

Appellant

Versus

M/s. K.K. Kohli & Brothers Pvt. Ltd., Faridabad

Respondent

**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present : Mr. Tajender K. Joshi, Standing Counsel for the Revenue.

Mr. Rajiv Agnihotri, Advocate
for the assessee.

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AVNEESH JHINGAN, J.

The present appeal has been filed under Section 260A of the Income Tax Act, 1961 (for short 'the Act') against the order dated 05.04.2017 passed by the Income Tax Appellate Tribunal, New Delhi (for short 'the I.T.A.T.'), dismissing the appeal of the Revenue and allowing the cross-objections of the assessee. The assessment year involved is 2007-08.

2. The assessee company was engaged in the business of processing of fabric at Faridabad. During the relevant year, return was filed showing an income of ₹3,42,590/-. The case was selected for scrutiny and notice was issued under Section 143(2) of the Act.

The Assessing Officer, vide order dated 29.12.2009, finalized the

assessment under Section 144 of the Act. An addition of ₹ 1,56,86,870/- was made as gross profit rate had fallen in comparison to earlier years. An addition of ₹1,43,72,485/- was made disallowing the bad debts. An amount of ₹1,41,83,879/- was added by disallowing the additional depreciation claimed on Plant & Machinery.

3. Aggrieved of the assessment order, an appeal was filed before the Commissioner of Income Tax (Appeals) {for short C.I.T.(A)}. The appeal was partly allowed, vide order dated 26.04.2012. C.I.T.(A) deleted the addition of ₹1,26,86,871/- on account of fall in gross profit rate and addition of ₹30 lakhs was only upheld. Out of addition made of ₹1,43,72,485/- on account of disallowance of bad debts, only disallowance sustained was ₹18,18,058/-. The Appellate Authority deleted additions of ₹53,860/- made under Section 43B and ₹2,71,431/- made under Section 40(a)(ia) of the Act. The addition made on account of ₹1,41,83,879/- by disallowing the short term capital gain was also deleted.

4. Aggrieved of the order of the C.I.T.(A), Revenue preferred an appeal before the Tribunal and the assessee filed cross-objections. The Tribunal vide order dated 05.04.2017, dismissed the appeal filed by the Revenue and allowed the cross-objections of the assessee.

5. As per the appellant-revenue, following substantial questions of law arise for consideration:-

(i) Whether on the facts and in the circumstances of the case, the Ld. ITAT, New Delhi was right in law in deleting the addition of Rs. 1,56,86,871/- made by the Assessing Officer on account of fall in GP rate as the assessee had intentionally not produced the bills and vouchers

with books of account in order to verify book results?

(ii) Whether on the facts and in the circumstances of the case the Ld. ITAT was right in law in deleting the disallowance of Rs.1,43,72,485/- made by the Assessing Officer on account of bad debts written off as the assessee has failed to discharge the onus to prove that the debts had actually become bad?

(iii) Whether on the facts and in the circumstances of the case the Ld. ITAT was right in law in deleting the depreciation allowed at Rs.72,69,675/- @ 80% instead of Rs. 22,71,774/- by the Assessing Officer as the assessee itself had claimed depreciation at different rate in the past and also failed to substantiate its claim by not supplying the necessary evidence that the machinery fulfill all the conditions laid down in Rule 5 item (ix) of the depreciation?

(iv) Whether on the facts and in the circumstances of the case, the Ld. ITAT was right in law in deleting the disallowance of Rs. 1,48,76,639/- made by the Assessing Officer on account of short term capital loss claimed on block of assets(having 15% rate of depreciation) which did not cease to exist?

6. Learned counsel for the appellant-Revenue argued that the Tribunal had erred in dismissing the appeal. His grievance is that only hand-written books were produced before the Assessing Officer and the veracity of the same was not verifiable as the supporting documents were not produced. He further argued that bad debts were claimed but without making any efforts to recover the amounts. He defended the order of Assessing Authority for disallowing short term capital loss on sale of Plant & Machinery as the block asset had not ceased to exist. He challenged the allowance of additional

depreciation of 80% on Boiler.

7. The Tribunal dismissed the appeal of the Revenue mainly relying on the findings recorded by the C.I.T.(A). It would be appropriate to quote the relevant portion of the order of the Tribunal by which the contention of the Revenue has been rejected on the first issue :-

“6. We have heard the rival submissions and carefully perused the relevant material placed on record. As far as the department's ground challenging the deletion of addition of Rs. 1,26,86,871/- made on account of fall in GP rate and the related ground of invoking the provisions of Section 144 are concerned, it is seen that the Ld. CIT(A) has given a categorical finding that the action of the Assessing Officer in invoking the provisions of Section 144 was not justified when the books of accounts were produced and compliances were made during the course of assessment proceedings. Ld. CIT(A) has held that even when the Assessing Officer had chosen to proceed on passing a best judgment assessment order, the addition was required to be made on the basis of material available on record. The Ld. CIT(A) has also noted that the Assessing Officer had not cited any reason for not accepting the gross loss @ 31.71% as declared by the assessee, but adopting the rate of 20% instead. He has also noted that during the course of assessment proceedings, the assessee was specifically asked about the valuation of closing stock. The Ld. CIT(A) has further observed that on the basis of the sales bills filed, the average sale price of fabric worked out to Rs.14 per metre whereas the average rate of fabric for which no sale bills had been filed worked out to Rs.9.20 per

metre. Ld. CIT(A) has further observed that the items in closing stock inventory were mentioned as "cotton fabrics" without any mention of specific quality or brand identification and as such, the valuation of stock was not amenable for verification. Thereafter, the Ld. CIT(A) proceeded to estimate the difference in valuation at Rs.5 per metre and restricted the estimation of under-valuation of closing stock to Rs.30 lakh. A perusal of the assessment order also shows that although the Assessing Officer has proceeded on best judgment assessment u/s 144 of the Act on the ground that books of accounts were not produced, the Ld. CIT(A) has given a finding that in view of the books of accounts having been produced, the Assessing Officer was not justified in invoking the provisions of section 144 of the Act. However, the Ld. CIT(A) has not specifically addressed the issue of rejection of books of accounts. A perusal of the assessment order also shows that although the Assessing Officer has not accepted the GP loss rate at 31.71%, he has not given any reasoning for adopting the loss rate at 20%. The entire case of the Assessing Officer seems to be based on the allegation that the books of accounts were not produced before him. Ld. AR has filed copy of the entire order sheet and has submitted that the order sheet does not mention that the books of accounts were not produced. It has been submitted by the Ld. AR that in view of not mentioning the specific non-production of books of accounts, it goes out in assessee's favour to prove that the books of accounts were duly produced. The Ld. AR has also contended that the details of valuation of closing stock were filed which had not been contradicted by the Assessing Officer.

6.1 On due consideration of the entire factual

matrix on this issue, we do feel that irrespective of the fact as to whether the books of accounts were duly produced or not produced before the Assessing Officer, the fact remains that the valuation of closing stock has been made without categorising it in terms of specific quality or brand. The Ld. CIT(A) has also noted that although manufacture, purchases and sales details were filed before the Assessing Officer in respect of trading of fabric, the assessee had not filed quantitative details and as such, the stock of trading goods, included in the closing stock was not ascertainable. The Ld. CIT(A) has also noted that the assessee had not been able to establish that the valuation of stock as on 31.03.2007 was based on sale rate prevailing on that day. Ld. CIT(A) has also noted that the average rate of fabric was Rs.52.51 per metre at a stock of 623830 metres on 31.03.2006 whereas the average rate of valuation as on 31.03.2007 worked out to Rs.11.96 per metre stock of 557971 metres and thus, there was a drastic fall in the rate of valuation even when the major portion of the stock was out of opening stock. Given the circumstances, we feel that the Ld. CIT(A) had no option but to make a reasonable estimate, specially when individual details in terms of quality as well as quantity were not available. During the course of hearing before us, the department could not suggest any other alternate method of valuation which could have reasonably been adopted by the Ld. CIT(A) except arguing that there was no basis for such estimation.

(emphasis supplied)

8. From the perusal of impugned order, it is evident that certain aspects mentioned hereinafter were not considered by CIT(A) while allowing the appeal of assessee. The Tribunal has also not

adverted to the following issues which were required to be examined. The average sale price, on the basis of the bills filed, of the fabric was Rs.14 per meter, whereas, the average rate of fabric for which no sales bills were produced, worked out as ₹9.20 per meter; the inventory of the closing stock did not mention quality or brand for identification, hence, valuation could not be verified; the issue of rejection of books of accounts was not considered; the assessee failed to establish that the valuation of stock as on 31.03.2007, was made on rates prevailing on the said date. The average rate of fabric was ₹52.51 per meter whereas evaluation worked out at ₹11.96 per meter and there was a drastic fall. The Tribunal while dismissing the appeal of the Revenue took note of these issues but has not dealt with the above referred issues.

9. In such circumstances, without expressing any opinion on the merits of the case, it would be appropriate that the matter be remitted back to the Tribunal to decide the same afresh in accordance with law after providing opportunity to both the parties.

10. The appeal is disposed of, accordingly.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

06.08.2018
pankaj baweja

Whether speaking/reasoned: **Yes / No**
Whether reportable : **Yes / No**