R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL NO. 615 OF 2017

Pr. Commissioner of Income Tax -15 .. Appellant

Versus

Pharmalab Engineering India Pvt Ltd .. Respondent

....

- Mr. Akhileshwar Sharma for the Appellant
- Mr. Tanmay Phadke i/by Mr. Satendra Kumar Pandey for the Respondent

....

CORAM : AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATE : AUGUST 5, 2019.

P.C.:

1. This appeal is filed by the Revenue to challenge the judgment of the Income Tax Appellate Tribunal, Mumbai (**"the Tribunal"** for short) dated 22.6.2016.

2. Following question is presented for our consideration:-

"Whether on the facts and in the circumstances of the case, the Tribunal was correct in law in deleting the addition of Rs. 1,38,47,120/- made on account of suppression of profit by recording that no cogent material has been deduced from audited accounts to show suppression of profit, thereby completely ignoring the authoritative findings of the Assessing Officer and excluding the entire sales to its sister concern from turnover for calculating gross

> profit and passing an order in favour of the assessee on erroneous finding of facts giving rise to a substantial question of law?"

3. The respondent - assessee is an engineering company and had filed return of income for the assessment year 2008-09. The Assessing Officer made additions inter alia on the ground of lower GP rate in the present year. The CIT(A) granted partial relief being calling for remand report. The assessee carried the matter further in appeal before the Tribunal. The Tribunal, by the impugned judgment, deleted the entire additions retained by CIT(A), making following observations:-

> "10. We have considered the rival contentions and perused the material on record including case laws relied upon. We have observed that the assessee is a company engaged in the business of manufacturing of equipments / machineries which are used by Pharmaceuticals and allied industries. The AO has made additions on the grounds that the gross profit margin earned during the year being lower than the gross profit margin of immediately preceding year and the additions were made to the income of the assessee by applying the gross profit margin of 31.82% to the sales of the previous year relevant to the assessment year under appeal , based on gross profit margin earned during the preceding year. The assessee contended that in respect of some items, the sale price to outside parties is inclusive of accessories being supplied along with the manufactured products as well is inclusive of installation and commissioning whereas in the case of sister concern, the installation and commissioning was carried on by the sister concern itself. The

AO rejected the contentions during assessment proceedings as the same were not based upon documentary evidences, while the assessee had duly submitted all the details before the authorities below. No particular defect was pointed out by the AO in the remand report proceedings with respect to this contention of the assessee. The submissions made before the AO with this regards are placed in paper book page 18-22. It was also explained by the assessee that the sale price to the sister concern was lower because excise duty and sales tax(against H form) was not included in the sale price for manufactured products as the products were procured by the sister concern which were meant for exports. This contention of the assessee was accepted by the AO in remand report proceedings . It was also accepted by the AO in remand report proceedings that the AO in the assessment proceedings while computing the gross profit margin has not included the other manufacturing costs such as labour, power and fuel , carriage inwards etc. and only material costs were considered by the AO in arriving at gross profit margin while framing assessment u/s 143(3) of the Act. With respect to the sale of spares components to sister concern of Rs.6.49 crores at cost owing to assessee merger , the same were accepted of being sold at cost by learned CIT(A) and consequent relief was given by learned CIT(A) in the first appellate proceedings vide orders dated 23.12.2013 and the Revenue is not in appeal before the Tribunal against the said relief granted by the learned CIT(A) . It was also observed by the AO while framing assessment that the assessee booked sales commission of Rs 99 lacs on sales of Rs 19.01 crores during the previous year relevant to the impugned assessment year, while in the immediately preceding assessment year the sales commission was only Rs.1.08 lacs on sales of Rs.20.58 crores. A separate addition was made by the AO of Rs. 99 lacs in the assessment order for the impugned assessment year under appeal. The learned CIT(A) deleted the said addition after calling remand report from the AO whereby the AO accepted that the commissions expenses were duly verified. It is not brought on record by the Revenue that the second appeal has been filed with the Tribunal by the Revenue challenging the relief granted by the learned CIT(A) in his appellate orders. In our considered view, merely because gross profit margin is lower in the instant assessment year under appeal vis-a-vis preceding assessment year cannot be a ground of additions to the income of the assessee unless the Revenue points out particular defect or discrepancies in the books of accounts maintained by the assessee. The assessee is maintaining books of accounts which are audited. The assessee has duly met all the adverse reservations of the AO in remand report/appellate proceedings before learned CIT(A) as set out above. No cogent material has been brought on record to prove that the assessee has manipulated its accounts to suppress profits. Therefore, there are no reasons or justification in law to reject the explanation given by the assessee to support its contentions. Mere fall in the gross profit ratio , in the absence of any cogent reasons could not be a ground to hold that the proper income could not be deduced from the audited accounts maintained by the assessee and the book results ought to be rejected, and consequently gross profit margin rate of preceding years be applied to the sales of the instant assessment year under appeal. There is no averments that there is an deliberate attempt to inflate cost of material or other expenses on the part of the assessee or to suppress sale price of products sold by the assessee. The allegations of the AO were duly met by the assessee in remand report/appellate proceedings as set out above. The Revenue is not in appeal before the Tribunal with respect to the relief's granted by the learned CIT(A). Our view is consistent with the decision of Hon'ble Delhi High Court in the case of CIT v. Smt Poonam Rani (2010) 326 ITR 223 (Del.HC). In our considered view, the additions made by the learned AO as sustained/confirmed by the learned CIT(A) to the tune of Rs.1,38,47,120/- is not sustainable in law and we order deletion of the same. We order accordingly."

It can, thus, be seen that the Tribunal after detail consideration came to the conclusion that the assessee's books were not rejected. Merely because, in the present year, the assessee had reflected lower margin, would not be a ground for making additions. Most significantly, the assessee had explained the reason for sale of products to its sister concern at a lower rate than that of the assessee had supplied to the other purchasers by pointing out that the price quoted to the sister concern was minus sales tax component since the product was meant for export. The entire issue is based on appreciation of evidence on record. No question of law arises. The Appeal is dismissed.

[S.J. KATHAWALLA, J.] **[AKIL KURESHI, J]**