

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

**ITA No. 144 of 2000**  
**Date of decision: 21.1.2020**

**M/s Gopal Mills**

**.. Appellant**

**v.**

**The Commissioner of Income Tax, Patiala and another**  
**.. Respondents**

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI  
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Alok Mittal, Advocate for the appellant.  
Mr. Kunal Sharma, Senior Standing Counsel for the  
revenue.

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**AVNEESH JHINGAN, J.**

The assessee is in appeal under Section 260A of the Income Tax Act, 1961 (for short, 'the Act') against the order dated 12.7.2000 passed by the Income Tax Appellate Tribunal, Chandigarh (for short, 'the Tribunal') allowing the appeal of the revenue. Following substantial questions of law have been claimed in the appeal:

- “(a) Whether in the facts and circumstances of the case orders Annexures P-1 and P-3 are legally sustainable?
- (b) Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in sustaining the rejection of the books of accounts of the assessee-appellant, the same being based on mere presumptions

and conjectures which cannot form the basis for adjudication?

- (c) Whether in the facts and circumstances of the case, the addition of Rs.5,41,148/- on account of G.P. rate is legally sustainable in as much as the amount surrendered was on account of the excess stock which stood credited in the trading account and thus was to be taken into consideration for arriving at the gross profit rate?
- (d) Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in sustaining the rejection of the books of account when there was no discrepancy in the books of account subsequent to the search and seizure operations?
- (e) Whether in the facts and circumstances of the case, the Ld. ITAT was right in sustaining the addition of Rs.5,41,148/- but not including the amount surrendered in the trading account for calculation of loss and profit rate?"

The appeal was admitted only with regard to question (c).

The facts necessary for adjudication of the present appeal are that the assessment year involved is 1990-91. The assessee filed return declaring income of ₹4,03,566/-. A search was conducted on business premises on 11.8.1989, excess stock worth ₹10,50,000/- was found and it was noted that various books of account were not written upto date. The assessee failed to explain the source of investment but Mr. Rajesh Kumar

partner surrendered a sum of ₹10,50,000/-. The Assessing Officer while framing assessment considered various aspects including that high consumption of electricity for per quintal production and the fact that G.P. Rate worked out to 1.12% as compared to 4.49% for the assessment year 1988-89, 2% for the assessment year 1989-90 and 3% for the assessment year 1991-92 and rejected the books of account. The income was assessed applying rate of 2% as shown in the previous year. The assessment was finalised vide order dated 12.3.1993 calculating the total assessable income as ₹8,33,845/-. The Commissioner of Income Tax (Appeals) (for short, 'CIT') allowed the appeal on 29.6.1993 and deleted addition of ₹5,41,148/- made on the basis of estimated gross profit of 2%. The revenue preferred an appeal before the Tribunal. The Tribunal set aside the order of the CIT and allowed the appeal on 12.7.2000, hence the present appeal.

Learned counsel for the assessee argued that while making addition of ₹5,41,148/- on account of G.P. rate, the amount surrendered worth ₹10,50,000/- should have been considered for calculating the gross profit.

The contention raised is not well founded. The books of account of the appellant were rejected. The gross profit as per the previous year was considered by the Assessing Officer. The same cannot be said to be excessive or arbitrary. The Tribunal rightly came to the conclusion that surrendered amount of ₹10,50,000/- was on account of un-explained investment in the stock. It represented unaccounted transaction and does not represent the profit of unaccounted transaction of purchase and sale. There was no convincing reason put forth by the assessee justifying the low

G.P. Rate.

There is another aspect of the matter. The Assessing Officer while finalising the assessment considered the profit amounting to ₹3,06,705/- as covered under the surrendered amount of ₹10,50,000/- and thereafter made the addition.

The conclusion arrived at by the Tribunal is plausible and calls for no interference. No question of law much less a substantial question of law arises.

The appeal is dismissed.

**(AVNEESH JHINGAN)**  
**JUDGE**

**(AJAY TEWARI)**  
**JUDGE**

21.1.2020  
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| Whether speaking/reasoned: | Yes/No |
| Whether reportable:        | Yes/No |