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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 738/2019

**THE PR. COMMISSIONER OF  
INCOME TAX -CENTRAL -1**

..... Appellant

Through: Mr. Ruchir Bhatia, SSC with  
Mr. Anant Mann & Mr.  
Pratyaksh Gupta, JSCs.

versus

**PEARL BOTTLING PVT. LTD.**

..... Respondent

Through: Mr. Navin Kumar, Ms. Radhika  
Goyal, Mr. Rohit Pal, Mr.  
Deepak & Mr. Arun Sharma,  
Advs.)

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+ ITA 242/2022

**PCIT, DELHI-7**

..... Appellant

Through: Mr. Aseem Chawla, SSC with  
Ms. Pratishtha Chaudhary, Ms.  
Monica Benjamin & Mr.  
Naveen Rohila, Advs.

versus

**PEARL DRINKS LTD.**

..... Respondent

Through: Mr. Navin Kumar, Ms. Radhika  
Goyal, Mr. Rohit Pal, Mr.  
Deepak & Mr. Arun Sharma,  
Advs.)

**CORAM:**

**HON'BLE MR. JUSTICE YASHWANT VARMA**

**HON'BLE MR. JUSTICE PURUSHAINDR KUMAR  
KAURAV**



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**ORDER**  
**06.05.2024**

1. These appeals impugn the orders dated 27 February 2019 [ITA 738/2019] and 25 February 2020 [ITA 242/2022] passed by the Income Tax Appellate Tribunal [“ITAT”] and pose the following questions of law for our consideration:

**ITA 738/2019**

“2.1 Whether on the facts and circumstances of the case, ld. ITAT was justified in upholding the deletion of disallowance by the CIT(A) made on account of increased profits by estimating the GP rate after invoking the provision of section 145(2) of the I.T.Act, 1961?

2.2 Whether on the facts and circumstances of the case, ld. ITAT was justified in upholding the deletion of addition by the ld. CIT(A), without appreciating the fact that that the books of account were not rejected merely because of low profit rate, rather they were rejected because the assessee did not furnish any documentary evidence to explain the abrupt fall in net profit rate?

2.3 Whether on the facts and circumstances of the case, ld. ITAT was justified in upholding the deletion of ld.CIT(A), without appreciating the fact that ld. CIT(A) had powers co-terminus as that of AO and therefore, the ld. CIT(A) wrongly invoked the principles of natural justice in deleting the addition?

2.4 Whether on the facts and circumstances of the case, ld. ITAT was justified in upholding the deletion of addition by ld. CIT(A), without appreciating the fact that Assessee Income surrendered as 'additional income' offered by the Assessee could not have been credited by the Assessee in the profit and loss account and thereby negated the effect of surrendered income by claiming expenses/loss against it and thereby evading payment of the taxes on the surrendered income?”

**ITA 242/2022**

“3.1 WHETHER, on the facts and circumstances of the case, Hon’ble ITAT was justified in upholding deletion of addition of Rs. 8.58 Crores without appreciating that the books of accounts were not rejected by the AO merely because of the low profit rate, rather they were rejected because the Assessee did not furnish and documentary evidence to explain the abrupt fall in the net profit rate?



3.2 WHETHER, on the facts and circumstances of the case, Hon'ble ITAT was justified in upholding the deletion of addition of Rs. 8.58 Crores without appreciating that the Ld. CIT(A) had powers co-terminus as that of the AO and therefore, the Ld. CIT(A) wrongly invoked the Principles of Natural Justice in deleting the addition?

3.3 WHETHER, on the facts and circumstances of the case, Hon'ble ITAT was justified in upholding the Order of Ld. CIT(A) who held that additional income of Rs. 3.37 Crores surrendered by the Assessee during search can be included in regular P&L Account without appreciating that it would negate the effect of the surrendered income by claiming expenses/ loss against it and thereby evading payment of taxes on the surrendered income?"

2. Insofar as ITA 242/2022 is concerned, it essentially follows the judgment rendered by the ITAT and which forms subject matter of challenge in ITA 738/2019.

3. Undisputedly, the assessments were undertaken in terms of Section 153A of the Income Tax Act, 1961 [**"Act"**] and pursuant to a search of a group of companies which was undertaken. The ITAT has on due consideration of the facts as they existed on the record, observed and held as follows:

**"6.1.** After perusing the aforesaid findings of the Ld. CIT(A), we find that the return of income filed before the A.O. contains report of the auditors u/s 44AB of the Act. The auditors, who have audited the books of account, were fully satisfied that all the accounting standards have been followed and he did not make any adverse remarks in the audited report. The provisions of section 145 describes certain conditions for rejection of books of account but non furnishing of details is not one of the prescribed conditions for rejection of books of account. We also find that all the details called for vide questionnaire dated 1.11.13 have been furnished. As regards fall in net profit ratio, a comparative chart of financial results for the current assessment year and for the three preceding assessment years has been provided. The fall in G.P. and Net profit ratio has been attributed to increase in cost of purchases and raw material and due to increase in financial cost. The fall in G.P. by 5.4% (24.85% to 19.36%) and net profit rate by 18.17% (i.e. 2.81% to *illegible* 5.36%) was on account of increase in cost of purchase and cost of raw material consumed. It is further noted that there is a fall in G.P. by 5.49%. Out of



5.49%, 4.91% fall in G.P. has been attributed to increase in cost of raw material consumed and purchases of traded goods. The balance fall in G.P. (5.49% (-) 4.91% - 0.58%), was attributable to increase in salary, wages, repairs & maintenance expenses. The fall in net profit ratio has been attributed to fall G.P. rate which in turn was due to increase in cost of raw material and increase in purchase of credit goods. The net profit rate has been severely affected by increased financial cost by 107.63% during the current previous year as compared to average financial cost of last three preceding years. The loan liability has almost doubled over the years from 25.79% as on 31.3.08 to 44.72% as on 31.3.11. The increase in financial charges was 1.84% during the current previous year as compared to the average of previous three financial years. We further AO has not found any discrepancies in the books of accounts produced before him. During the assessment proceedings, AO has however, not sought any explanation nor confronted with the adverse evidences. It is also observed that the AO has resorted to rejection of books, all of a sudden without any indication to the assessee. No show cause notice has been issued to the appellant before rejecting the books of account. Further, even though the A.O. has noted the fall in N.P. ratio in the assessment order, no effort has been made by him to ascertain the appellant's version about the reason for all in GP/NP rates. The questionnaire dated 1.11.13 issued by him does not seek any clarification or explanation for the fall in N.P. rate. It is further noted that the fall in G.P. is due to increase in cost of raw materials and over the years, the financial charges have seen a growth of 1.84% from average of 3.64% (for the past 3 years) to 5.48% during the current previous year. Further, the fall in N.P. rate has been attributed to the increase in input cost and finance cost. Since this is a search & seizure case and the Previous year of the present assessment year falls within the block period of 6 years. A.P. has not brought on record any adverse material. AO has rejected the books of account merely on the basis of fall in N.P. ratio. There is no rule of law that the enterprise cannot incur losses or it cannot declare lesser net profit that what is shown in the previous year. The same is permissible as long as the same is supported by proper books of account, bills and vouchers. During the remand proceedings, the A.O. has examined the justification for fall in net profit submitted by the assessee and has not reported any discrepancies nor taken any counter arguments. We have also noted that this is not a fit/ case for rejection of books of account and estimation of profits as the search has not thrown up any specific discrepancies in the accounts regularly maintained by the appellant. The A.O. has rejected the books of account and estimated the profits of the business only based upon NP ratio without confronting the same to the appellant. This is completely in violation of principles of natural justice. A.O. has adopted a



very simplistic approach in completing the assessment. Such action of the A.O. cannot be sustained. In view of the above, we agree with the finding of the Ld. CIT(A) that no ground survives for rejection of books and estimation of income. The result of remand proceedings support the stand of the assessee. The assessee group have also honoured there declaration of surrender of income made during search & seizure proceeding. As is evident from the detailed letter dated 28.02.2014 submitted before the AO. The group had surrendered Rs. 10 crore during the search. Therefore, the Ld. CIT(A) has rightly deleted the addition of Rs. 2,66,81,850/- and allowed the appeal of the assessee, which does not need any interference on our part, therefore, we uphold the action of the Ld. CIT(A) on the issue of dispute and reject the ground raised by the Revenue. In view of above facts and circumstances, it is noted that the case laws cited by the Ld. CIT(A) are distinguished to the facts of the present case, hence, the same are not applicable in the present case. In the result, the ITA No. 5305/Del/2015 (AY 2011-12) stands dismissed.”

4. It becomes pertinent to note that the Assessing Officer, while undertaking the assessment under Section 153A of the Act, had made the following pertinent observations:

“d. As already stated above the low percentage of net profit cannot be substantiated by the assessee despite various opportunities provided during the assessment proceedings. The assessee could not produce any details, confirmations, bills & vouchers or books of accounts to substantiate the financial result in the P&L account. Even the detail submitted at the fag end of the year i.e. 18.03.2014 is not open to verification in the absence of confirmations & books of accounts.

e. In the above background the financial results shown by the assessee (after excluding the additional income) cannot be accepted and are rejected u/s 145 of the I.T. Act, 1961.”

5. However, and as we read para 6.1 of the impugned order, it becomes evident that no adverse material appears to have been gathered in the course of the search. It was in the aforesaid backdrop that the ITAT observed that this was not a case which merited rejection of books of accounts and this more so since the search had not led to the unearthing of any material which may have cast a doubt



on the accounts as regularly maintained.

6. In our considered opinion, since the assessment which was being undertaken was in respect of assessments which stood concluded as on the date of search, the rejection of books of accounts and an exercise of fresh assessment would have had to be predicated upon certain material that may have been gathered in the search and which could have been said to be incriminating.

7. In view of the aforesaid, we find no ground to interfere with the view as ultimately taken by the ITAT. The appeals fail to raise any substantial question of law. They shall accordingly stand dismissed.

**YASHWANT VARMA, J.**

**PURUSHAINDRA KUMAR KAURAV, J.**

**MAY 06, 2024/kk**