

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, CHANDIGARH**

BEFORE SHRI H.L.KARWA, VICE PRESIDENT
AND MS. RANO JAIN, ACCOUNTANT MEMBER

ITA No. 877/Chd/2012
(Assessment Year: 2008-09)

Shri Hem Raj,
#5489, Modern
Housing Complex,
Manimajra, Chandigarh.
PAN No. ACEPR1688M

Vs.

The A.C.I.T.,
Circle 3(1),
Chandigarh.

And

ITA No. 225/Chd/2013
(Assessment Year: 2009-10)

Shri Hem Raj,
#5489, Modern
Housing Complex,
Manimajra, Chandigarh.
PAN No. ACEPR1688M
(Appellant)

Vs.

The Addl.C.I.T.,
Range III,
Chandigarh.

(Respondent)

Appellant by : Shri N.K. Saini
Respondent by : Mrs.Rajinder Kaur, DR
Date of hearing : 05.11.2015
Date of Pronouncement : 26.11.2015

ORDER

PER H.L.KARWA, VP :

Both these appeals concern the same assessee and are directed against the separate orders of the learned CIT (Appeals), Chandigarh dated 13.7.2012 and 3.12.2012

relating to assessment years 2008-09 and 2009-10 respectively. Both the appeals were heard together and are being disposed off by this common order for the sake of convenience. The issue in both the appeals is also common.

2. For the sake of convenience, firstly, we will take up ITA No.877/Chd/2012 relating to assessment year 2008-09. In this appeal, the assessee has raised the following grounds:

- “1. That the Ld. CIT (A) is not justified in not providing the proper opportunity of hearing which is against the natural justice.
2. That the Ld. CIT (A) is not justified in upholding the rejection of books and the application of provisions of section 145 (3) of the I. T. Act.
3. That the Ld. CIT (A) is not justified in not giving the set off of loss from the business as claimed by the appellant while computing the total income.
4. a) That the Ld. CIT (A) is not justified in upholding the application of net profit rate @ 8% on gross sales.
b) That without prejudice to above, the appellant disputes the quantum of net profit rate.”

3. Briefly stated the facts of the case are that the assessee was running liquor, wine and beer shop in Manimajra and Kaimbwala area of Chandigarh in the name of his proprietary concern M/s Hem Raj & Co. The assessee is a contractor authorized to operate the liquor shop for the period of one year from April, 2007 to March,

2008 under the laws of Excise Department of Chandigarh Administration. The assessee purchased wine from different suppliers and the same is sold in cash. In the return of income, the assessee had shown income under the head "salary" only. During the course of assessment proceedings, the assessee furnished his reply together with Profit & Loss Account, Balance Sheet and Audit Report in Form No.3CD for the financial year 2007-08. The assessee also furnished ledgers, bills/vouchers of the liquor business and original bank account statements alongwith some other replies to the questionnaire. After examining the books of account of the assessee, the Assessing Officer has noticed certain discrepancies in the books of account of the assessee viz; non-maintenance of stock register, non-maintenance of sales records, non-maintenance of bills and vouchers of expenses and that the purchases and freight ledger were not in concurrence. The Assessing Officer also pointed out that the assessee failed to give any explanation about the discrepancies noticed by him and has merely mentioned in his reply that the Assessing Officer had not pointed out any specific discrepancy. The Assessing Officer has also pointed out that the books of account had been prepared by reverse calculations to justify the deposits in the bank account and these were not prepared in the normal course of business. The Assessing Officer also mentioned that the sales shown by the assessee appeared to be deflated as the assessee was showing net loss in the venture, which is

highly improbable. The Assessing Officer also pointed out that the bills/vouchers of expenses, like freight, miscellaneous expenses, repair & maintenance, staff welfare, printing & stationery were not available. In the above circumstances and also in view of the discrepancies noticed by the Assessing Officer in the books of account of the assessee, the Assessing Officer invoked the provisions of section 145(3) of the Income Tax Act, 1961 (in short 'the Act') and as a consequence of which, he rejected the books of account of the assessee. The Assessing Officer applied the net profit rate of 8% on the sales of Rs.1,60,23,400/- as declared by the assessee himself in the Profit & Loss Account. The Assessing Officer observed that as per the prevalent conditions in liquor business in Chandigarh and around for the financial year 2004-05 and as per statistics available on internet, a liquor contractor is able to save anywhere between a minimum of around 6% to 8% on bulk sales and 17% to 20% on retail sales and he has worked out the net profit rate between 9% to 12% by taking a weighted average of bulk and retail sales made by the assessee. The Assessing Officer further pointed out that the rate of profit estimated at 8% was very reasonable and much lesser than the profit rate of 13.13% applied in the case of M/s Singh Associates of Gwalior and 15.5% of M/s Luxmi Narain Shivhare & Co. of Gwalior. Accordingly, the Assessing Officer made an addition of Rs.12,81,872/-.

4. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the learned CIT (Appeals) and the learned CIT (Appeals) vide his order dated 13.7.2012 upheld the order of the Assessing Officer, and hence the assessee is in appeal before the Tribunal.

5. Before us, Shri N.K.Saini, learned counsel for the assessee reiterated the submissions made before the lower authorities. He further submitted that the assessee submitted his return for the year under consideration declaring salary income at Rs.1,65,800/-. He further submitted that during the year under consideration, the assessee was also engaged in the business of wine and liquor and incurred a loss of Rs.1,07,746/-. According to him, the other loss was not claimed in the return as the same was not allowed to be set off against the salary income. He further pointed out that the assessee was maintaining proper books of account alongwith purchase, expenses bills/vouchers and daily sales statements, which were duly audited and the same were produced before the lower authorities. He also submitted that the copy of audited Balance Sheet, Profit & Loss Account and other related documents were submitted before the lower authorities. Shri N.K.Saini, learned counsel for the assessee vehemently argued that the purchases are made from various suppliers in accordance with the permits given by the Government, which had been duly vouched

and the same has also been verified by the lower authorities from the original purchase bills. He further stated that the sales in this line of business are made in cash and recorded on the basis of daily sales statements given by the employees attending to the shop. Shri N.K.Saini, learned counsel for the assessee further pointed out that all the original bills for purchase and different expenses, bills, handmade bills for freight, miscellaneous expenses, repair & maintenance, staff welfare, printing & stationery, daily sale summary made by the employees, quantitative opening stock, purchases, sales and closing stock were produced before the authorities below. No specific discrepancies in the same were found out by the Assessing Officer except that absence of day-to-day stock register, lack of sale records, discrepancies in purchase and freight ledger and absence of supporting bills/vouchers without any proper justification and accordingly, he held that the books of account are hit by the mischief of section 145 of the Act. The learned counsel for the assessee further submitted that it is practically impossible to issue sale bills to the customers for sale of liquor and the practice of not issuing bills is prevalent all over the country in this trade. The sale price, however, is displayed by the assessee at the shop and the assessee cannot charge more price than as displayed at the shop because it is practically impossible as every customer looks at the prices displayed at the shop. The Assessing Officer has

accepted the purchases and sales as disclosed by the assessee. The learned counsel for the assessee also submitted that with regard to discrepancy in purchase and freight ledger, as pointed out by the Assessing Officer, the payments shown under the head 'freight payment' relates to the payment to loading/unloading of the stock purchased while getting it delivered at the liquor shops and sale to the customers. These charges are entered in the books of account on the day on which actual payment for the same is made. He further pointed out that there is no discrepancy in purchases and freight ledger, as pointed out by the Assessing Officer. The total charges paid on this account are Rs.32,083/-. These expenses were never held to be bogus expenses by the Assessing Officer. He further pointed out that certain handmade bills for freight, miscellaneous expenses, repair & maintenance, staff welfare, printing & stationery were submitted before the Assessing Officer. The learned counsel for the assessee submitted that in para 8.6 of the assessment order, the Assessing Officer has mentioned that the rate of profit estimated at 8% is very reasonable and much lesser than the profit rate of 13.13% applied in the case of M/s Singh Associates of Gwalior (supra) and 15.5% applied in the case of M/s Luxmi Narain Shivhare & Co. of Gwalior (supra). The learned counsel for the assessee pointed out that these two cases pertain to assessment year 2000-01. The learned counsel for the assessee referred to the

decision of I.T.A.T., Agra Bench in the case of ITO Vs. Luxmi Narian Ramswaroop Shivhare (2009) 119 ITD 0015 (TM) relating to assessment year 2001-02. In the said case also, the Assessing Officer has rejected the book results of the assessee on the basis of results shown by the other traders, namely M/s Singh Associates of Gwalior and M/s Luxmi Narain Shivhare & Co. of Gwalior (supra). These are the same cases, which have been mentioned in para 8.6 of the assessment order in the case of the assessee before us. The learned counsel for the assessee pointed out that on similar set of facts, the I.T.A.T., Agra Bench (TM) held that there was no justification in rejecting the book results and estimating the income by applying GP rate of 5% as against profit rate declared at 3.11% by the assessee. The learned counsel for the assessee submitted that in the instant case also, the Assessing Officer relying on the cases of M/s Singh Associates of Gwalior and M/s Luxmi Narain Shivhare & Co. of Gwalior (supra) has applied higher profit rate without any justification. He accordingly, submitted that the impugned addition made by the Assessing Officer and confirmed by the learned CIT (Appeals) may be deleted.

6. Mrs.Rajinder Kaur, learned D.R., on the other hand, heavily relied upon the orders of the lower authorities. She further submitted that the book results shown by the assessee cannot be accepted in view of the discrepancies pointed out by the Assessing Officer. She

further submitted that the Assessing Officer was fully justified in adopting/applying the net profit rate of 8%. Accordingly, she submitted that the impugned order may be upheld.

7. We have considered the rival submissions. The admitted facts are that during the year under consideration, the assessee was engaged in the business of wine, liquor and incurred a loss of Rs.1,07,746/-. This business loss was not claimed in the return. It is also an admitted fact that the assessee has maintained proper books of account alongwith purchase, expenses bills/vouchers and daily sales statements, which were duly audited and the same were produced before the authorities below. It is also true that the copy of audited Balance Sheet and Profit & Loss Account were filed before the Assessing Officer. It is relevant to state here that the purchases are made from various suppliers in accordance with the permits given by the Government, which have been duly vouched and the same have also been verified by the Assessing Officer from original purchase bills. The assessee has also admitted that the sales are made in cash and recorded on the basis of daily sales statements given by the employees attended to the shop. It is also stated that this practice is prevalent all over the country. The Assessing Officer has not accepted the book results and rejected the books of account by invoking the provisions of section 145(3) of the Act. The Assessing

Officer has observed that the assessee had not maintained day-to-day stock register due to lack of sale records. He further pointed out the discrepancies in purchase and freight ledgers. He also stated that the bills/vouchers of several expenses were not available, for example freight, miscellaneous expenses, repair & maintenance, staff welfare and printing & stationery. It is true that the Assessing Officer has accepted the sales of Rs.1,60,23,400/- declared by the assessee, however, he has applied the net profit rate of 8% on the declared sales and made the addition of Rs.12,81,872/-. It is observed that the assessee furnished trading and Profit & Loss Account for the year ending 31.3.2008 before the Assessing Officer, which is reproduced at page 4 of the assessment order and the same reads as under :

MR. HEMRAJ
TRADING AND PROFIT & LOSS
ACCOUNT FOR THE YEAR
ENDING 31.3.2008

Particulrs	Amount	Parituclar	Amount
To Opening stock	318800.00	By sales	16023400.00
To purchase	9964178.07	By Closing stock	417375.00
To freight & cartage	32083.00	By Misc. Income	873.24
To license fees	5200000.00	By net loss	107746.63
To accounting charges	18000.00		
To Bank charges & Intt.	5782.00		
To Travelling expenses	15846.00		
To Depreciation	35940.00		
To electricity & Water charges	91762.00		

To Misc. expenses	3532.00		
To New paper & Periodical	1800.00		
To Printing & stationery	12215.00		
To telephone expenses	8495.00		
To Audit fee	19663.00		
To Rent	470000.00		
To Repair & Maintenance	12630.00		
To salary & wages	302600.00		
To staff Welfare	18869.00		
To Professional charges	17500.00		
Total	16549396.07	Total	16549398.07

8. The Assessing Officer observed that the bills/vouchers of certain expenses were not available, for example freight, miscellaneous expenses, repair & maintenance, staff welfare and printing & stationery. It is clear from the Profit & Loss Account (supra) that the assessee had claimed freight and cartage charges at Rs.32,083/-, miscellaneous expenses at Rs,3532, repair & maintenance expenses at Rs.12,630/-, staff welfare expenses at Rs.18,869/- and printing & stationery expenses at Rs.12,215/-. In our considered view, the Assessing Officer was not justified in doubting the above expenses, particularly the quantum involved therein. Furthermore, the nature of expenses is such that incurring of the same for the purposes of business cannot be doubted. The main contention of the Assessing Officer while rejecting the books of account was that the assessee has not maintained any sales bills for the sales carried from its liquor shops. We find that the daily sales are,

however, recorded on the basis of daily statements given by the employees attending to the shop. The entries to the said sales are recorded in the books of account maintained at its main office. It is also observed here that the assessee has time and again explained that it is impossible to issue sale bills to the customer for sale of liquor and the practice of not issuing bills is prevalent all over the country in this trade. It is also the case of the assessee that the sale price is displayed at the shop and there cannot be any variance in the price so displayed. In the instant case, the Assessing Officer himself has accepted the correctness of sale amount by admitting the declared sales by the assessee, which were substantiated by the entries in the books of account maintained in the regular course of business carried on by the assessee. We may also observe here that the Assessing Officer has not pointed out any discrepancy in the quantitative details of purchase or sales made by the assessee. Shri N.K. Saini, learned counsel for the assessee submitted that the cost of goods dealt inter-alia including purchase price, duties and fees paid, shop licence fee and bottling and sealing charges paid by the assessee has been accepted by the Assessing Officer. The learned counsel for the assessee submitted that the books of account cannot be rejected merely on the basis of lack of sale bills. He relied upon the decision of I.T.A.T., Amritsar Bench in the case of Ashok Kumar & Company Vs. ITO (2004) 90 TTJ 666 (Asr). In this case, the GP rate of

2.44% shown by the assessee has been accepted. He also relied upon the decision of the I.T.A.T., Agra Bench (TM) in the case of Luxmi Narian Ramswaroop Shivhare (supra). In this case, GP rate of 3.11% and NP rate of 0.34% was accepted. In the case of Luxmi Narian Ramswaroop Shivhare (supra), the Assessing Officer rejected the book results under section 145(3) of the Act, on the ground that all the sales are made in cash without proper vouchers supporting the sales and brand-wise, quality-wise and date-wise were not verifiable and estimated the GP rate at 5% as against 3.11% shown by the assessee. In the aforesaid case, the assessee was a liquor contractor engaged in the business of trading of country liquor and (Indian Made Foreign Liquor) IMFL. While deciding the case, the learned Accountant Member has held as under :

“7. Having heard the parties and upon careful consideration of the material on record with reference to precedents cited at Bar, I am satisfied that the grounds in appeal taken by the assessee deserve to be allowed. The admitted facts are that this is the first year of business of the assessee for sale of country liquor and IMFL. The contract has been awarded for a limited period of one year only. There was no opening or closing stock of goods dealt by the assessee. No discrepancy has been found in the quantitative details of purchase or sales effected by the assessee. The cost of goods dealt, inter alia including purchase price, duties and fees paid, shop license fee and bottling and sealing charges, etc. paid by the assessee stand duly accepted by

the AO with no adverse comments thereon. The AO himself is found to have accepted the declared sales at Rs. 8,33,25,882. The books of account have been maintained for the business carried (on) by the assessee. The accounts are duly audited and the return of income is accompanied by report of auditors which also came into consideration of the AO. The report of auditors constituted a material for the purpose of assessment of income under s. 143(3) of the Act. Reference on this is available from the judgment rendered by Hon'ble Delhi High Court in the case of Addl. CFT vs. Jay Engineering Works Ltd. (1978) 113 ITR 389 (Del). No adverse comments thereon have been made by any of the authorities below. Though the assessee did not maintain any cash vouchers for the daily sale of liquor effected at its various shops in terms of system prevalent in the trade, the fact remains that the daily sales effected by the employees deployed at its various shops and brought to assessee's central office were taken into sales account in such books of account, as the same were the sale proceeds that were actually received by the assessee. The entries in the books of account maintained in regular course are considered as relevant and is a prima facie proof or basis to justify the correctness thereof. Reference may be had to the judgment rendered by Hon'ble Assam High Court in the case of Tolaram Daga vs. CIT (1966) 59 ITR 632 (Assam). The AO himself is found to have accepted the correctness of sale amount by admitting the declared sales at Rs. 8,33,25,882. It is not the case of Revenue nor has been found by the AO that the sales effected by the employees are not at the rate displayed on the shops nor is the case that the daily sales effected are more than the

amount remitted at the central office or recorded in the books of account. It is also not the case of Revenue that other persons engaged in the similar business in the area have sold the similar goods at a higher price or on premium. Discrepancy in stock or quantitative details has also not been found. Nothing has been brought on record to show any discrepancy in the quantities of goods dealt by the assessee. The only difficulty that was found expressed by the assessee is that he was not maintaining sale vouchers, but that fact alone could not be a basis to reject the books of account when the AO himself had accepted the sale value as well as cost of goods declared by the assessee to be correct which were evidenced by entries in the books of account maintained in the regular course of business carried by him. The AO at some stage of proceedings proposed to apply a GP rate on the basis of instances given in his order but the proposed GP rate was never applied by him for the obvious reason that such cases were not the comparable cases. The only acceptable basis to arrive at gross profit is by way of deducting cost of goods sold and direct expenses from the sale value. In the present case, the facts reveal that there is no opening or closing stock. The cost of goods and direct expenses are fully admitted. Sale price is also duly admitted. Therefore, the resultant gross profit would be Rs. 25,89,426 as under :

Sales value	(in Rs.)	Rs.8,33,26,000
Less :		
(i) Spirit purchases	1,05,10,000	
(ii). Beer purchases	21,35,000	
(iii). Issue fee (duty) paid	2,66,04,000	
(iv). Differential duty paid	3,59,99,000	
(v). Sub-shop license fee	4,50,000	
(vi) Bottling and sealing charges	50,39,000	

	Rs.8,07,37,000
Gross profit	Rs.25,89,000
GP rate	3.11%

The above gross profit is exactly the same that has been declared by the assessee. In case, the AO was not satisfied by the sale price or profit rate on sales, he could have estimated the sales, but that has not been done in the present case in appeal before me. Even the proviso as referred to s. 145(3) in the order of AO does not exist in the statute. This itself shows non-application of mind by the AO. The mandatory requirement as contained under sub-s. (3) of s. 145 of the Act is that where the AO is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-s. (1) or Accounting Standards as notified under sub-s. (2), have not been regularly followed by the assessee, the AO may make an assessment in the manner provided in s. 144. The AO, however, has not recorded any finding so required by the statute nor the learned CIT(A) is found to have recorded any such finding as envisaged under sub-s. (3) of s. 145. The finding reached by the learned CIT(A) that all the sales claimed cannot be established because of lack of vouchers is also without any good basis. The same also is set aside, as the AO himself has accepted the sale value disclosed by the assessee. I, therefore, do not find any factual or legal justification in rejecting the book results and estimating income by applying higher profit rate than that was declared by the assessee. Accordingly, the profit rate declared at 3.11 per cent by the assessee is directed to be applied on the declared sales of Rs. 8.33,25,882 as against modified rate applied by learned CIT(A). Thus, the grounds raised by Revenue in appeal stand dismissed and those raised by assessee stand allowed.”

9. Since there was a difference of opinion between the learned Members of the Bench and Third Member was

nominated by the Hon'ble President of the Tribunal under section 255(4) of the Act and the Third member agreed with the view taken by the learned Accountant Member in deleting the addition by applying estimated GP rate of 5%, applied by the Assessing Officer as against 3.11%, declared by the assessee. The learned Third Member has stated that the purchases made by the assessee are duly supported by proper vouchers and are regulated by the Excise Authorities and payment of country liquor is made through Government Warehouses against payment made to the Government on the basis of the auction conducted by the Government. In the instant case also, the purchases made by the assessee are duly supported by proper vouchers and are regulated by the Excise Authorities and payment of liquor is made through Government on the basis of the auction conducted by the Government. In the case of Luxmi Narian Ramswaroop Shivhare (supra), the majority view was that as regards the sale, the nature of the assessee's business was such that it cannot maintain proper sale bills. In this case also, the nature of assessee's business is such that it cannot maintain proper sale bills. In the case of Luxmi Narian Ramswaroop Shivhare (supra), the majority view was that the profit varies from area to area and the bid money and small variation of the profit cannot be ruled out.

10. In view of the above discussion, we do not see any ground for rejecting the book results. Therefore, the

declared results are to be accepted and estimation of income by applying the net profit rate of 8% was not proper. Accordingly, we delete the addition of Rs.12,81,872/- made by the Assessing Officer and confirmed by the learned CIT (Appeals).

11. The appeal of the assessee is allowed.

ITA No.225/Chd/2013 :

12. In this appeal, the assessee has raised the following grounds :

- “1. That the Ld. CIT (A) is not justified in not providing the proper opportunity of hearing which is against the natural justice.
2. That the Ld. CIT (A) is not justified in upholding the rejection of books and the application of provisions of section 145 (3) of the I. T. Act.
3. a) That the Ld. CIT (A) is not justified in upholding the application of net profit rate @ 8% on gross sales.
b) That without prejudice to above, the appellant disputes the quantum of net profit rate & additions.”

13. During the year under consideration, the assessee had declared gross receipts of Rs.6,17,34,456/- and the Assessing Officer despite rejecting the books of account, accepted the sales declared by the assessee and had applied the net profit rate of 8% on the declared sales. Consequently, the Assessing Officer made the

addition of Rs.24,70,797/-, as against the net profit shown by the assessee from the business at Rs.24,67,959/-. The Assessing Officer rejected the book results on similar grounds as that those in assessment year 2008-09 and the learned CIT (Appeals) upheld the order of the Assessing Officer following his own order passed in assessee's own case for assessment year 2008-09. It is admitted by the learned representatives of both the parties that the facts of the present year are similar to that of assessment year 2008-09 and rival contentions are also same. In that view of the matter, the findings given by us in ITA No.877/Chd/2012 shall also apply to this appeal with equal force. For the detailed reasons given therein, we allow the appeal of the assessee and delete the impugned addition of Rs.24,70,797/-.

14. The appeal of the assessee in ITA No.225/Chd/2013 is allowed.

15. In the result, both the appeals of the assessees are allowed.

Order pronounced in the open court on this 26 day of November, 2015.

Sd/-
(RANO JAIN)
ACCOUNTANT MEMBER

Sd/-
(H.L.KARWA)
VICE PRESIDENT

Dated : 26th November, 2015

Rati

Copy to: The Appellant/The Respondent/The CIT(A)/The CIT/The DR.

Assistant Registrar,
ITAT, Chandigarh

