

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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND SHRI T.R.SOOD, ACCOUNTANT MEMBER

**ITA No. 418/Chd/2015**  
(Assessment Year: 2010-11)

The Commissioner of Income Tax, Patiala.  (Appellant)	Vs.	M/s Hind Agro Industries, Alohran Gate, Nabha  PAN: AACFH0708A (Respondent)
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**ITA No. 464/Chd/2015**  
(Assessment Year: 2010-11)

M/s Hind Agro Industries, Alohran Gate, Nabha  PAN: AACFH0708A (Appellant)	Vs.	The Addl. Commissioner of Income Tax, Sangrur Range, Sangrur.  (Respondent)
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Appellant by : Shri Manjit Singh, DR.  
Respondent by : Sh. N.K. Sahi, Adv.

Date of hearing : 06.08.2015

Date of Pronouncement: 12.08.2015

**ORDER**

**PER BHAVNESH SAINI, J.M. :**

These cross appeals are filed by the assessee and the department against the order of the CIT(A)-Patiala, dt.26.02.2015

2. The brief facts of the case are that the assessee is a manufacturer of harvester combines. During the assessment proceeding assessee failed to produce the books of accounts such as cash book, ledger, day book, purchase and sale bills and expenditure bills as asked for by the Assessing Officer vide various letters. No quantitative details of opening stock or closing stock was submitted, neither the production register nor stock register for raw material and finished/semi finished goods were produced.

No record of monthly scrap was shown. Further in this year there was a decline in gross profit to 10.59% from 11.28% and 11.09% in assessment year 2008-09 and 2009-10 respectively. Further there were certain differences in the closing balances of certain parties. The assessee has also debited brokerage of Rs.24,50,000/- in the Profit & Loss Account. No agreement in respect of brokerage paid has been produced and the major brokerage has been paid to close relatives/family members specified under section 40A(2)(b) of the I.T.Act. No details regarding the services rendered by the brokers could be submitted. The Assessing Officer on this basis and relying on various case laws rejected the books of accounts under section 145(3) of the Income Tax Act, 1961 and estimated Gross Profit @12.5% of the turnover.

3. Further, the assessee had made payment of Rs.51,945/- under the head advertisement and publicity expenses which exceeded Rs.20,000/- paid in a day and Rs.50,000/- paid in a year. Therefore, the Assessing Officer was of the view that the same were liable to tax deduction at source under section 194C of the Act. In view of this invoking the provisions of section 40(a)(ia) the Assessing Officer made disallowance of Rs.51,945/-.

4. The assessee went into appeal before the CIT(A) and made detailed submissions against the action of the Assessing Officer rejecting the books of account. The assessee pleaded since details were furnished before AO and it is not feasible to maintain stock register therefore books should not be rejected. However, there is no need to elaborate the same as the AR preferred not to press the ground related to rejection of books. Further assessee cited various comparable cases to justify the fall in N.P. rates.

5. The detailed submission so made by the assessee were sent to the Assessing Officer for counter comments by the CIT(A), who in reply vide letter No.11 dated 25.01.2014 again relied on the assessment order & submitted that assessee has not produced complete books of accounts, cash book day book ledger purchase and sale bills besides other points mentioned in Assessment Order.

6. As regards the addition Rs.51,945, it was submitted before the CIT(A) that the assessee has purchases various items vide bill No.61 for Rs.21,945/- and further purchases vide bill no.62 and these amounts paid to M/s. P. K. Traders are not subject to deduction under section 194C, therefore, it was contended that the provisions of section 40(a)(ia) cannot be invoked in such circumstances.

7. The CIT(A) considered the detailed submissions made by the assessee and looking into the entirety of the facts and circumstances of the case opined that books of A/c are rightly rejected u/s 145(3) of the Income Tax Act and in this case since the appellant itself has shown Gross Profit rate of 11.28% in the assessment year 2008-09, the Gross Profit rate of 11.5% may be taken for this year compared to the Gross Profit rate of 10.59% shown by the assessee as against 12.5% applied by the AO. In this way, the CIT(A) partly allowed this ground of the assessee.

8. As regards the addition of Rs.51,945/-, the CIT(A) held that the amounts pertain to advertisement expenses and therefore provisions of section 194C are attracted. Therefore the provision of Section 40(a)(ia) are applicable in such circumstances. In view of the same, this ground of appeal was dismissed by the CIT(A).

9. Now, both the assessee as well as the department have come in appeal before us. The department has raised following grounds:

"1. In the facts and in the circumstances of the case, Ld. CIT(A) has erred in rejecting the GP rate of 12.5% applied by the AO to 11.5% even while upholding the rejection of the book results u/s 145(3).

2. In facts and circumstances of the case and in law, the Id. CIT(A) has erred in relying upon the trading results of earlier year to estimate the net profit, ignoring the fact that each year has to be assessed on its merits which has been done by the AO and, therefore, the previous assessment results cannot be relied upon to estimate the profit in the current assessment year.

3. In the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in directing the AO to apply the G.P rate of 11.5% instead of 12.50% without appreciating the fact that other assessee dealing in the same business had shown higher G.P rate than the assessee.

4. It is prayed that the order of Ld. CIT(A) be set aside and that of the AO restored.

5. The appellant craves leave to add or amend any grounds of appeal before the appeal is heard and finally disposed."

Wherein the assessee has raised the following grounds.

"1. The assessee is partnership firm running the business of manufacturing of Harvester Combines and its parts. The books of accounts of the assessee has been wrongly rejected by invoking the provisions of section 145(3) of the I.t. Act, 1961 and the assessment framed in the manner provided in section 144 deserves to be deleted.

2. The assessee has declared G.P @ 10.59% on the sales of Rs.1421.72 Lacs. The Id. Add. Commissioner of Income Tax, Sangrur Range, Sangrur assumed the G.P. @ 12.505 without any relevant facts and ignored the business results declared by the assessee while framing the assesment order.

The Ld. CIT(A), Patiala has wrongly assumed the G.P @ 11.50% stating that G.P for the A.Y 2008-09 was @ 11.28% ignoring that the Sales were Rs.360.46 Lacs only. The appeal of the assessee was partly allowed. The assessee also submitted before the Ld. CIT (A), Patiala that the G.P @ 11.09% was declared by the assessee for the A.Y.2009-10 on the sales of Rs.1195.78 Lacs. The case of the assessee was seleted for scruitiny. The assessment was completed u/s 143(3) on 05.12.2011 and the G.P rate of 11.09% was accepted (Copy of the assessment order for the A.Y.2009-10 was also provided). The submission of the assessee has been wrongly ignored by the Ld. CIT(A), Patiala while assuming the G.P. @ 11.50%

instead of G.P declared by the assessee @ 10.59% hence the additions on account of higher G.P. @ 0.91% amounting to Rs.12937665/-

3. Rs,. 51945/- was paid to M/s P.K. Traders for purchase of materials of advertisement & Publicity expenses. These items were purchased vide Bill No. 61 of Rs.21945/- and Bill No. 62 of rs.30000/-. The material purchased for advertisement & publicity expenses are not subject to deduction of TDS u/s 194C hence no TDS was deducted. These expenses were wrongly added back in the income for the A.Y.2010-11 u/s 40 (a) of the I.T. Act, 1961. the submission of the assessee has been wrongly ignored by the CIT(A), Patiala. The additions of Rs. 51945/- deserves to be deleted."

10. The learned Counsel for the assessee while appearing before us preferred not to press ground No.1 related to the rejection of books of accounts. The Ground No. 1 is therefore, dismissed as not pressed.

11. Further on the issue of estimation of Gross Profit rate, it was submitted that the assessee has declared following trading results in the earlier years.

A.Y	Turnover	Gross Profit	GP Rate
2008-09	3,60,46,991/-	40,66,099/-	11.28%
2009-10	11,95,78,609/-	1,32,60,730/-	11.09%
2010-11	14,21,72,875/-	1,50,62,002/-	10.59%

It was also submitted that for the immediate preceding Assessment Year i.e., Assessment Year 2009-10 the assessment was completed under section 143(3) and an addition of Rs,30,000/- only was made in the trading results declared by the assessee. After taking into account this addition of Rs.30,000/-, Gross Profit rate of 11.11% was accepted by the Assessing Officer. The Copy of the assessment order for the Assessment Year 2009-10 was also filed before the CIT(A). It was further submitted that the A.O. has wrongly based his estimation on the basis of Gross Profit rate declared in the Assessment Year 2008-09. Since, there was an increase of Rs.10.61 crores in the turnover of the year under consideration as compared to Assessment Year 2008-09. It was also explained that increase in turnover

has been achieved by reducing the sale rate of goods sold and margin of profits thereon. Small decrease of 0.69% as compared to the Assessment Year 2008-09 stands well explained by steep increase of 10.61 crores in sales during the year under consideration. It was also submitted that since department has accepted the Gross Profit rate of 11.11% in the immediate preceding assessment. There is no reason for making such estimation during the relevant assessment years.

12. Regarding the estimation of Gross Profit rate learned Counsel for the assessee submitted that Gross Profit rate for Assessment Year 2008-09 being 11.28% and that of Assessment Year 2009-10 being 11.09% the rate of 10.59% in Assessment year 2010-11 is not a big fall. Further it was submitted that the fall in Gross Profit has been explained to the Assessing Officer as well as CIT(A). This was due to steep increase in turn over of the assessee. In view of the said submissions it was prayed that Gross Profit rate 10.5% shown by the assessee may be upheld.

13. Ld. DR relied on the order of the Assessing Officer and prayed to uphold the Gross Profit Rate of 12.5% as held by A.O. as against 11.5% held by CIT(A).

14. We have heard the rival contentions and perused the material on record. It is undisputed that the books of accounts were never produced before the Assessing Officer. Certain other alarming facts were also found by the Assessing Officer, the obvious conclusion made by him was to reject the books of account. The assessee preferred not to press the ground related to rejection of books of accounts before us. In such a scenario the estimation of Gross Profit rate is a must. The assessee cannot plead to accept the Gross Profit rate as declared by him, when books of A/c and details were not produced before authorities below. The CIT(A),

in this case has given a very detailed reasoned finding as to the fact that, why a Gross Profit rate of 11.5% may be applied. He stated in his order at Para 4.3, as follows:

*“4.3 I have considered the submission made. It is noted that the assessee failed to produce complete books of accounts before the Assessing Officer and therefore appellant definitely defaulted in this respect. A huge amount has been paid by the appellant to persons covered under section 40A(2)(b) of the Act regarding payment of brokerage. No doubt the persons might have accepted receipt of the amount but the nature and extent of the service provided by such persons is not clearly established as mentioned by the Assessing Officer. In absence of complete books of accounts coupled with the fact that heavy expenses pertain to payment made to specified persons I am of the opinion that books of accounts have been correctly rejected by the Assessing Officer. As regards estimation of profit the appellant himself has shown 11.28% gross profit in the Assessment Year 2008-09. As regards comparable cases cited by the Assessing Officer the appellant has given submission in this regard during the course of assessment proceedings as reproduced by the Assessing Officer in the Asstt. order. During the course of assessment proceeding as well as during appellate proceeding, appellant further referred to some other cases where gross profit rate is little lower. The appellant has also submitted additional evidence under Rule 46A producing few photocopies of bills contending that M/s Preet Agro Industries are purchasing engines at lower cost directly from the manufacturer. However, submitting only a few copies of such bills do not justify the fall in margin as the appellant itself in earlier years has shown higher margin and the appellant failed to show that the facts were different in that year. Therefore, the additional evidence submitted has no relevance and is not acceptable. Looking into entirety of the facts and circumstances of the case, I am of the opinion that in this case since the appellant has himself shown gross profit of 11.28% in the Assessment Year 2008-09. The gross profit rate of 11.5% may be taken for this year compared to 10.59% shown. Thus there is an increase of 0.91% in G.P. In the result this ground of appeal is partly allowed.*

Considering facts of case it is clear that there is increase in turnover of assessee as compared to earlier years. The Ld. CIT(A) considered past history of assessee for estimating profit when no books were produced before AO. We rely on decision of Punjab & Haryana High Court in case of CIT Vs. Rajinder Parshad Jain, 374 ITR 545.

15. In view of the above, we do not find any infirmity in the order of CIT(A) on this issue. The Gross Profit rate 11.5% as estimated by the CIT(A) seems reasonable in the facts & circumstances of the case.

16. In the result, ground No.2 of the assessee's appeal & ground No.1-5 of the department's appeal are dismissed.

17. Regarding the addition of Rs.51,945/-, on Ground No. 3 of appeal of the assessee, learned Counsel for the assessee submitted that the books having been rejected and Gross Profit rate having been estimated a separate disallowance of expenses made by the Assessing Officer is not tenable.

18. The learned DR relied upon the order of the Assessing Officer as well as CIT(A).

19. We have heard the rival contentions and perused the material available on record. Since, we have upheld the estimation of Gross Profit @ 11.5% while adjudicating the earlier grounds, no other disallowance of any expenses separately is called for. Our view gets strengthened by the judgement of the Hon'ble High Court of Andhra Pradesh in the case of Indwell Constructions vs. Commissioner of Income Tax(1998) 232 ITR 776, whereby Hon'ble High Court held as under:

"4. The pattern of assessment under the IT Act is given by s.29 which states that the income from profits and gains of business shall be computed in accordance with the provisions contained in ss.30 to 43D. Sec. 40 provides for certain disallowance in certain cases notwithstanding that those amounts are allowed generally under other sections. The computation under s.29 is to be made under s. 145 on the basis of the books regularly maintained by the assessee. If those books are not correct or complete, the ITO may reject those books and estimate the income to the best of his judgement. When such an estimate is made it is in substitution of the income that is to be computed under s. 29. In other words, all the deductions which are referred to under s. 29 are deemed to have been taken into account while making such an estimate. This will also that the embargo placed in s. 40 also taken into account."

20. In view of the above, income having been estimated. Any other disallowance is not warranted. In the result ground No.3 of the assessee's appeal is decided in its favour.

21. In the result the appeal of the assessee is partly allowed, while appeal of the department is dismissed.

Order pronounced in the Open Court on 12/08/2015

**Sd/-**  
**(T.R. SOOD)**  
**ACCOUNTANT MEMBER**  
Dated : 12/08/2015  
Pramod / AG

**Sd/-**  
**(BHAVNESH SAINI)**  
**JUDICIAL MEMBER**