

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
and
SHRI A.T. VARKEY, JUDICIAL MEMBER**

**ITA No.2043/Del./2013
(ASSESSMENT YEAR : 2008-09)**

M/s. Samwon Precision Mould Mfg. (India) Pvt. Ltd., vs, ITO,
1 / 24, Ground Floor, Asaf Ali Road, Ward 7 (2),
New Delhi – 110 002.

(PAN : AAHCS8926K)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Salil Kapoor, Advocate
REVENUE by : Shri Sujit Kumar, Senior DR

ORDER

PER A.T. VARKEY, JUDICIAL MEMBER :

This appeal, at the instance of the assessee, is directed against the order of the CIT (Appeals)-X, New Delhi dated 16.01.2013 for the assessment year 2008-09.

2. The brief facts are that the assessee company is engaged in the manufacturing of plastic moulded components of plastic good. It declared Nil income in its return, which was not accepted by the AO, by rejecting the books of account, which was upheld by the CIT(A) and as such this appeal before us.

3. Ground Nos.1 and 7 to 10 are general so not adjudicated

4. The grounds no.2 to 4 relate to estimation of net profit by rejecting the books of account of the assessee company.

5. It is noticed that during the assessment proceeding, the books of account was produced before the AO, which were rejected by the AO on the following basis :-

- (a) Cash vouchers above Rs. 5,000/- were not bearing revenue stamps and the assessee had made many cash payments above Rs.20,000/-. The AO specifically stated that on 14.09.2007, the assessee has shown cash payment of Rs.1,74,500/- in cash book which the AR stated, was an amount paid in the court. On going through the vouchers produced, it was observed that the payment was actually made on 12.09.2007 while the entry in the cash book was made on 14.09.2007.
- (b) Similarly, the AO pointed out that the assessee made a payment of Rs.5,49,237/- in cash to M/s Superwell Services on 07.04.2007 for providing labour. In other instances, cash payment to Shri Lee Geua yeop on 07.04.2007 were also made on dates which did not tally with the books of accounts and no vouchers in support of these cash payments were available.
- (c) The AO has pointed out that the assessee company submitted that it does not maintain any payment voucher except salary sheet.

- (d) Two cash payment of Rs.10,000/- each as payments of electricity bill were shown on successive dates i.e. on 09.06.2007 and 10.06.2007. The electricity board does not receive such payments usually. The assessee could not produce any bill or voucher in respect of these expenses.
- (e) Similarly, there were many vouchers amounting to Rs.19,000/- and below Rs.20,000/- shown bifurcated in the cash book to escape the provisions of section 40A(3) of IT Act, as well above Rs.20,000/- for which the assessee could not produce any bills or vouchers.

Having regard to the above, the AO applied the net profit at the rate of 3% and computed the income at Rs.1,35,47,020/-. The CIT(A) has upheld the said action of the AO, by holding as under :-

“ After considering carefully the facts of the case, and the reply of the AR of the appellant, it is observed that the AR has no case for justifying the discrepancies and establishing that the books of accounts were maintained properly. In the present case, the issues are not insignificant mistakes or issues which are not relevant for arriving at the correct results. Therefore, the arguments of the AR of the appellant regarding non application of provisions of section 145 of the I.T. Act, on this basis is not justified. In the present case, the nature of mistakes and discrepancies are of serious nature and the same cannot be ignored. Accordingly, the AO was fully justified in rejecting the books of accounts u/s 145 of the income Tax Act.

With regard to the application of net profit rate @ 3% of the turnover, the assessing officer has made this estimation by considering the market rates and results of similar companies in this line of business. Even though the AR of the appellant has submitted that there is no basis for applying this net profit rate, the AR has not

brought on record any comparable results of other companies to argue or justify that the rate applied was on higher side. Accordingly, I do not find any reason to consider the arguments of the appellant regarding the rate of 3% of net profit applied by the assessing officer. Accordingly, this issue is also decided in favour of the revenue.

On the basis of the above observations, I am of the opinion that the assessing officer was fully justified in rejecting the books of accounts and applying 3% net profit rate resulting in an addition of Rs.1,35,47,020/-. This ground of the appellant is dismissed.”

6. The Id AR highlighted the replies and submissions before the CIT(A), to contend that the action on the facts of the case was highly arbitrary and unjustified and, therefore, the addition made may be deleted.

7. The Id. DR supported the orders of the authorities below.

8. We have considered the rival submission and perusal the records. The first and foremost specific objection is regarding a cash payment of Rs.1,74,500/- on the ground that such payment was not supported by voucher. Whereas before the CIT(A), the assessee produced the court receipt in support of the expenditure. Further, as regards payments to labour under the labour contractor, it was sated that payments were made directly to the contract laboures due to the dispute with the contractor. Further, as far as salary is concerned, the assessee placed on record the salary sheets to support the expenditure claimed. The above factual aspects have not been denied by the CIT(A), however, he has held that the issues are not insignificant mistakes or issues which are not relevant and the nature of mistakes and discrepancy are of

serious nature and, therefore, cannot be ignored. We, however, neither support the conclusion, on the contrary castigate such an arbitrary approach of the authorities below in the facts of the case. The assessee is a company having declared a turnover of Rs.44.45 crores and profit thereon of Rs.1.65 crores. The books of accounts are duly audited and no defect has been pointed out vis-a-vis the sales, purchase or profit. The purported defects are confined to cash book, which have no nexus with the trading results. It is a subsidiary of a Korean Company and, therefore, the authorities below had to be circumspect before arriving at such a conclusion, particularly when there is no iota of material to doubt the quantitative details, audited results vis-a-vis the turnover and profit declared so as to warrant rejection. Instances of irregularities in cash payment cannot warrant ipso facts rejecting of books of accounts, at best disallowance could have been made u/s 40A (3) of the Act. We, therefore, hold that the books of accounts were incorrectly rejected as it is not a case where it can be held that the books of account was incorrect or incomplete or correct profits could not be deduced. On the contrary, we find that completed audited books of accounts were produced before the AO, which were duly examined and such book of accounts have not been shown to have been maintained from where correct profits could not be deduced, thus vitiating the entire action of the AO and CIT(A) for rejecting the books of account. Further, there is no basis for applying rate of profit at 3% which is an ad hoc rate estimated by AO, so it falls particularly here we would like to state that the assessee has been incurring

losses since start of production and the year in question is the first year where the results have been positive. The assessee falls under preview of various laws of the country such as Excise, Sales Tax, Provident Fund and Employee State Insurance and regular inspections/scrutiny's by these Government departments is carried out. Accordingly, the results declared by the assessee are accepted and addition made including addition of Rs.1,16,68,281/- on account of exchange fluctuation in excess of the declared profit are deleted.

5. Ground No.5 and 6 relates to addition of Rs.7,35,30,351/- u/s 41(1) of the Act.

6. The AO has noted that the assessee has shown a closing balance of unsecured loan of US \$.18,37,340.11/- which is equivalent to Rs.7,35,30,351/- from M/s S.P.M. Trade Company Korea. He has noted that such liability is because of purchase of machinery. He, however, held that in the absence of extension from RBI and fact that the assessee is showing a closing balance of M/s S.P.M. as on 31.03.2009 of US \$ 1,25,173/-, he held that "*either the assessee has paid this liability or such liability has been squared up. In another manner, Income from undisclosed sources*". He has therefore concluded as under :-

The assessee would be claiming depreciation of the machinery and interest of loan as well and in either way this amount is liable to be added to the income of the assessee in the shape of cessation of liability u/s 144 (1) of Income Tax Act or income from undisclosed sources used to pay of the liability.

“Whether the liability of the assessee has been fully discharged is within the special knowledge of the assessee. He has to prove that in fact the liability subsists. Where the conduct and surrounding circumstances demonstrate that the amount has been remitted or forgone or the sum has ceased to be claimable against the assessee, it would be a clear case of remission or cessation of the liability of the assessee.” Kesoram Industries and Cotton Mills Ltd. v. CIT [1992] 196 ITR 845 (Cal.)

The confirmation is placed in the assessment records. Therefore, out of the total liability shown towards M/s SPM by the assessee is Rs.7,35,30,351/- + Rs.50,09,447/-, while M/s SPM has confirmed only USD 1251736 x 40.02= INR 50,09,447/-. Therefore the balance amount of Rs.7,35,30,351/- is liable to be added back to the case of the assessee.

7. The CIT(A) has affirmed the aforesaid approach of the AO by holding that once the confirmation letter did not tally with the accounts of the assessee, and the assessee has not provided any reason for not furnishing the documentary evidence before the AO, and held that addition is justified.

8. We have considered the rival submission and perused the material on record. We notice that there is a fundamental misconception on the facts as appreciated by the AO and CIT(A). It is noticed that during the instant year, the assessee had shown in the beginning of the year unsecured loan of Rs.8,04,75,496/- (Page 55 of the PB) which was reduced to Rs.7,35,30,351/- on account of exchange fluctuation gain of Rs.69,45,145/- which has been declared as part of exchange gain (Page 104 of PB). Further, there was a credit balance of M/s SPM at the beginning of the year of Rs.59,20,969/- which was reduced to Rs.50,09,447/- (Page 57 of PB). It was this balance which was confirmed at US \$ 125,173.60 thus the balance of US \$ 125,173.60 had nothing to do with

the unsecured loan of Rs.7,35,30,351/-. There is neither a payment towards the loan, nor there was cessation or remission of the liability of the loan. Even the AO has proceeded merely on conjecture to hold that such liability is the income of the assessee. There is no evidence to suggest that liability was squared up or paid. In the absence of any evidence to come to such impugned conclusion, the addition is arbitrary and has to go. Therefore, we order deletion of the addition. So ground No. 5 of the assessee's appeal is allowed.

9. Ground No. 11 is consequential.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in open court on this day of 2nd February, 2016.

**Sd/-
(N.K. SAINI)
JUDICIAL MEMBER**

**sd/-
(A.T. VARKEY)
ACCOUNTANT MEMBER**

**Dated the 2nd day of February, 2016
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-X, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**