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

% **DECIDED ON: 20.04.2015**

+ ITA 62/2015, ITA 74/2015, ITA 75/2015, ITA 76/2015, ITA 77/2015
& ITA 78/2015

CIT CENTRE CIRCLE -22 Appellant
Through: Mr. P. Roychaudhuri, Advocate.

versus

KOHINOOR FOODS LTD (FORMERLY KNOWN AS) M/S
SATNAM OVERSEAS LTD Respondent
Through: Mr. Salil Kapoor, Advocate with Mr. Sanat
Kapoor, Mr. Vikas Jain and Mr. Subham Rastogi,
Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K. GAUBA

S.RAVINDRA BHAT, J. (OPEN COURT)

1. Issue notice. Mr. Salil Kapoor, Advocate accepts notice on behalf of assessee.
2. These appeals are arise out of the common orders dated 21st July, 2014 passed by the Income Tax Appellate Tribunal (ITAT) in ITA Nos. 3688/del./2012, 3689/del./2012, 3690/del./2012, 3691/del./2012 and 3867/del./2012.
3. The question in all these appeals is the acceptance of the assessee's appeals with respect to rejection of books of accounts and

addition of 1% G.P. on uniform basis for AY 2002-2003 to 2007-2008.

4. The brief facts are that the assessee deals in processing and trading of rice, pulses and food products. Certain search was carried out in its premises on 5th December, 2007, after which a notice was issued to the assessee under Section 153A of the Income Tax Act, 1961 on 27th January, 2009. Vide order dated 9.9.2009, Assessing Officer (AO) made a reference to the Special Auditor under Section 142 (2A), which lead to a report dated 10th May, 2011.

5. The AO after considering the materials on record made addition to the income for the relevant assessment years to the tune of Rs.19,28,42,391/-. This included 1% of the sale of rice shown in books of accounts for each of the assessment years in question. The relative amounts, to the extent of 1% for various years were added on the ground that the quality wise day to day stock of the rice traded by the assessee was not reflected. The additions made in respect of various years are as follows:-

Assessment year	Rs.
2002-03	2,73,58,354/-
2003-04	4,31,84,627/-,
2004-05	4,01,47,438/-
2005-06	.4,74,53,876/-
2006-07	5,09,45,027/-,
2007-08	4,67,39,217/-
2008-09	5,70,57,439/-
Total	31,28,85,978/-

6. The assessee's grievance against these additions was referred to the Dispute Resolution Panel (DRP) since the assessments also concerned an element of transfer pricing and determination of Arm's Length Price (ALP). The DRP, *inter alia*, upheld these additions. The assessee, however, successfully appealed to the ITAT, which rejected the addition on this account.

7. Learned counsel for the Revenue urges that the ITAT fell into error in rejecting the submissions made with respect to the additions made by the AO. In this regard, it is submitted that assessee has not disclosed anywhere that the qualitative details at all relevant points of time are maintained in a stock register etc. Counsel emphasises the fact that the AO had found that such qualitative details were not reflected in the stock register. He argued that the quality of rice is crucial in the ultimate prices. Learned counsel stated that depending on the quality the cost may vary between Rs.30/- to Rs.300/- per kilogram and having regard to these, the AO's decision ought not have been interfered with by the ITAT, since it was based on an exhaustive appreciation of the circumstances.

8. Learned counsel for the respondents, on the other hand, rely upon the decision of the ITAT and submitted that in the previous assessment years 1999-2000 and 2001-2002, the revenue had accepted the books of accounts as existed as well as the GP rates based on the rice yielding rates disclosed by the assessee. It is submitted that in fact a comparison of the GP rates accepted by the Revenue for previous years, would show that the significantly higher

GP rates were disclosed in the concerned assessment years and this itself ought to have prevented the AO from making any alteration. Countering the suggestion, learned counsel for the assessee argued that rice milling is a continuous process and it is ultimately not possible to maintain the details of day-to-day stock statements based on quality. He relied upon the findings of the ITAT and submitted that the impugned order has been relied upon by the Special Bench decision in *Shankar Rice Companies Vs. Income Tax Officer*, 72 ITDS 139, which had dealt with an identical issue.

9. This court has considered the submissions. The nature of the business, which the AO had considered in the present case, was with regard to procurement and processing of rice. There is no controversy with respect to the other products, which the assessee had traded or engaged with as far as these cases are concerned. The yield rates, as noticed by ITAT for various years, were 61.90% for AY 2002-03, 61.61 % for AY 2003-04, 64.67% for AY 2004-05, 65.11% for AY 2005-06, 68.88% for AY 2006-07, 64.94% for AY 2007-08 and 65.02% for AY 2008-09. The ITAT also noticed that the yield of husk, faak and bran was 38.10%. The by-products were also sold and sales were duly recorded. According to the industry norms apparently the yield rates notified at 61.90% were considered reasonable. The assessee had relied upon a circular issued by Punjab Mandi Board, which notified the milling yield rate as 61%. This too was on record and was duly taken note of by the ITAT.

10. This Court notices that the decision in case of *Shankar Rice Companies (supra)* dealt with somewhat similar, if not identical facts.

Like in the present case, the assessees in those cases also maintained regular books of accounts, which were duly audited. All statutory registers, mandatory local laws too were kept on regular basis. The sales and purchases documents were regular. In the present case, too, neither AO nor the DRP was able to find fault with these documents. Further, for three assessment years prior to the block assessment of the years concerned, the scrutiny assessment orders accepted both the yield rate and the GP rate declared by the assessee. Apparently, additions made to the GP rate had been challenged successfully by the assessee to the ITAT, which rejected them. The matter thereafter attained finality.

11. We also notice that in the circular of Punjab Mandi Board, the assessees were required to pay other tax liabilities. All these materials were part of the record and duly taken note of.

12. At this stage it will be relevant to notice the reasoning of the ITAT, which is extracted below:-

“We have heard the rival contentions and perused the material available on record on this issue. The assessee's books of accounts are regularly maintained, audited and no discrepancies whatsoever have been indicated by the Assessing Officer in any material terms. The alleged inconsistency is to the effect that assessee says that no day-to-day quantitative stock tally was maintained. However, certain papers found indicate that assessee was maintaining regular stock details and a presumption is drawn that assessee is not producing the quantitative tally with a purpose. Apropos assessee's contention is to the effect that all the books of account have been seized during the course of search proceedings. Looking at the volume of branches and places of working, the assessee's employee maintained some or other record at various places. Merely because some papers have been found which are not disputed to be made by some employees, a conclusion is being arrived at

that assessee is not deliberately showing the quantitative details. This is an utter disregard of the fact that all the books of accounts were found and seized and there is no quantitative tally in the account books. Therefore, the conclusion of the Assessing Officer in this behalf to reject the books is purely based on surmises and conjectures. Based on the surmises and conjectures, ad hoc addition of 1% of sales have been made which also is again a fictional work of guesswork and conjectures based again on already indicated conjectures. Thus, the whole addition is nothing but an interplay of surmises and conjectures arrived at by Assessing Officer to willy nilly make the addition.

9.1 It is not disputed that the assessee's yield commensurate to the industrial GP disclosed by the assessee is comparable and satisfactory. In our considered view, when no palpable inconsistency in the books of account they cannot be rejected merely on the basis of assumption that assessee is not producing quantitative tally. Had there been any quantitative tally, assessee has produced stock register but in the absence of day-to-day stock tally at various places of business by itself cannot be a conclusion to give that assessee is shine away from producing the day-to-day tally. In view of these facts, we see no justification in rejection of books of accounts.

9.2 The assessee has demonstrated that its yield of rice, bran and faak is as per the industry norm and the GP rate in all the years is favourably comparable. Under these circumstances, it cannot be held that the assessee's book results are unsatisfactory. Merely because a search is carried on it is not automatically meant that assessee is indulging in some nefarious activities. This is the burden of the revenue to prove in this behalf with material and cogent reasons. Rejection of audited books account otherwise properly maintained cannot be recourse to by Assessing Officer in a casual and wishy vice manner. The ad hoc disallowance, rejection of books and taking support of this fact which we are not able to subscribe the ad hoc addition of 1% of sales is again without any basis whatsoever. Stock

tally cannot lead to an ad hoc assumption that 1% of sales are liable to be added in the income of the assessee. Our findings are supported by Hon'ble Rajasthan High Court judgment in the case of CIT vs. Gotan Lime Khanji Udyog and ITAT, Amritsar Bench in the case of Asha Mehra vs. ACIT, cited supra. In view thereof, we delete the ad hoc addition of 1 % sales. This ground of assessee is allowed."

13. Having regard to the total facts, we are satisfied that the AO's narrow basis for rejecting the books of accounts and addition of 1% of sales and directing the same to tax was legally untenable.

14. Considering that all books of accounts and relevant records could not have been rejected by the AO in the manner so done and for the reasons given, we find no error of fact or law in the orders of ITAT, which are accordingly affirmed.

15. The appeals are accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

R.K. GAUBA
(JUDGE)

APRIL 20, 2015

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