IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "E": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA.No.5258/Del./2015
Assessment Year 2012-2013

The DCIT, Central Circle-7, Room No.330, ARA Centre, Jhandewalan Extension, New Delhi – 110 055.	vs.,	M/s. Varun Beverages Ltd., R/o.F-2/7, Okhla Industrial Area, Phase-I, New Delhi – 110 020. PAN AAACV2678L
(Appellant)		(Respondent)

For Revenue :	Ms. Pramita M. Biswas. CIT-DR
For Assessee :	Ms. Rano Jain, Advocate And Shri Pranshu Singhal, C.A.

Date of Hearing :	18.02.2020
Date of Pronouncement :	26.02.2020

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Revenue has been directed against the Order of the Ld. CIT(A)-24, New Delhi, Dated 08.06.2015, for the A.Y. 2012-2013 on the following grounds :

1. *"The order of Ld. CIT(A) is not correct in law and on facts.*
2. *On the facts and circumstances of the case, the Ld. CIT (A) has erred in deleting the addition of Rs.56,81,31,074/- on account of increased profit after invoking provision of Section 145(2) of the I. T. Act, 1961.*
3. *On the facts and circumstances of the case, the CIT(A) has erred in not appreciating the facts that books of accounts 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..*
4. *On the facts and circumstances of the case, the CIT(A) has erred in deleting the addition of Rs.56,81,31,074/- on the ground of non-following of principle of natural justice, when it has co-terminus power as of A.O.*
5. *On the facts and circumstances of the case whether the CIT(A) has justified in holding that the 'additional*

income' of Rs.34,50,00,000/- surrendered by the assessee during search can be included in regular P & L account of the assessee."

2. Briefly the facts of the case are that search and seizure operation under section 132 of the Income Tax Act was carried out on M/s Jaipuria group (R.K. Jaipuria Group) of cases on 27.03.2012. Warrant of authorization under section 132 of the I.T. Act, 1961 was also issued in the name of the assessee. Notice under section 142(1) of Income Tax Act, 1961 was issued to the assessee to file the return for the A.Y. 2012-13 under appeal. In response thereto, assessee filed the return of income on 22.01.2014 declaring loss at Rs.24.06 crores. The A.O. required the assessee to file necessary details and to produce the books of accounts. The A.O, however, noted that there was no compliance made to various notices, details of which are noted in the assessment order.

2.1. During the year under consideration, the assessee is deriving income from house property and business and profession. The assessee-company was engaged in the business of manufacturing and trading in soft drinks under the brand name Pepsi, Miranda, 7 UP, Miranda Lemon, Everest Soda etc and other allied products and was also engaged in job work etc. The details filed by the assessee have been examined and placed on record. During the post search proceedings, the assessee has surrendered an amount of Rs.39 Crores under 03 Heads *i.e.,* Transactions with M/s Rockhard Infrastructure Pvt. Ltd. Rs.4.50 crores, As per Annexure A-l, Party A-3 Rs.3 crores and any discrepancy in seized/ impounded annexures and others Rs.31.50 crores. However, during the assessment proceedings, the assessee has revised the chart and shown this surrendered amount of Rs.39 crores, but, surrendered the amount on account of discrepancy in seized documents/impugned Annexures of Rs.28 crores, Alteration/renovation etc. in Residential house at 7A Aurangzeb Road, New Delhi of Rs.6.50 crores and Payment made to M/s Rockhard Infrastructure of Rs.4.50 crores. The A.O. examined the seized material and documents and noted certain discrepancies, which were confronted to the assessee. The explanation of assessee was called for as regards Annexure-A1 found during the course of search, which according to explanation of assessee, contains noting made by staff such as name, contact number, salary calculation, day to day working and payment made through bank etc., Further, the assessee submitted the copies of bank statements as supporting evidences in respect of some of the seized entries. The reconciliation in respect of entries/transaction recorded in the seized annexures are noted in the order at pages 7 to 14 of the assessment order. The A.O. found from these reconciliation as per the seized annexure the amount to be Rs.23,51,32,189/-, out of which, assessee has explained entries in a sum of Rs.2,20,05,795/-. Thus, A.O. noted that the transactions to the tune of Rs.21,31,26,394/- remained unexplained. The assessee was given opportunity to explain the transactions and source of the cash and accountability of the same in the books of account. The assessee was directed to produce the books of account along with details. The assessee filed reply stating therein that cash transactions amounting to

Rs.21.31 crores as per Annexure-A1 have not taken place, but, due to buy peace of mind, surrender was made at the time of search. The A.O. noted that assessee has nothing substantial in his possession to explain the transaction and did not produce the books of accounts. Therefore, the assessee has no explanation. The A.O. also noted that during the post-search proceedings, the assessee has surrendered an amount of Rs.3 crores on account of the above discrepancies and filed the documents. The A.O, however, noted that findings of the Investigation Wing regarding construction expenses as per Annexure-A2 in respect of which Rs.4.50 crores was surrendered. It was submitted that assessee paid Rs.4.5 crores to M/s. Rockard Infrastructure P. Ltd., and balance of Rs.5 crores is only contra entry. The A.O. noted that no compliance was made by M/s. Rockard Infrastructure P. Ltd., in response to the summons. The A.O. noted further facts with regard to the findings given at the assessment stage. Shri R.K. Jaipuria was asked to appear personally and to produce the books of account. Shri R.K. Jaipuria, Director of the assessee

Company attended the proceedings. His statement was recorded. No books of account have been produced. The A.O, therefore, made addition of Rs.4.50 crores. The A.O. made further addition of Rs.43,91,000/- on account of unaccounted cash seized.

2.2. The A.O. further examined the issue of surrender of Rs.39 crores under three heads as noted above and after considering the same noted that out of Rs.39 crores, assessee has credited Rs.34.50 crores in the P & L A/c under the Head "Additional Income" and Rs.4.5 crores have been shown as Land Development Advance in the balance-sheet against M/s. Rockhard Infrastructure Pvt. Ltd., The credit entry of the additional income of Rs.34.5 crores in the P & L A/c appears just before claiming expenses. The A.O. noted last three years N.P. rate of F.Ys. 2008-2009, 2009-2010 and 2010-2011 which ranges from 3.96% to 5.03%. The A.O. further noted that in case additional income of Rs.34.50 crores would not have been unearthed and disclosed, the N.P. rate of the assessee would come to 0.18% only which is extremely at lower side. The explanation of assessee was further called for. The A.O. in view of the fact that assessee made surrender of additional income found that books of account of the assessee are not reliable, the same are not correct and true to disclose correct profit. The assessee has shown net profit of Rs.36.79 crores in the P & L Account after crediting additional income of Rs.34.50 crores declared in the P & L A/c. The A.O, therefore, noted that if additional income is out of P & L A/c, the N.P. rat would be 0.18% only. However, in the preceding three assessment years, the N.P. rate range from 3.96% to 5.03%, therefore, books of account of the assessee were rejected. The net profit was estimated by taking average N.P. on last three preceding years which worked-out to 4.57%. It was applied to the turnover of Rs.1243.18 crores and the net profit was worked-out to Rs.56.81 crores. The A.O. taken this figure in the P & L A/c for computing the income of the assessee. The A.O. also added Rs.34.50 crores separately as additional income declared and made the addition accordingly.

3. The assessee challenged the additions before the Ld. CIT(A). The detailed written submissions of the assessee is reproduced in the appellate order in which the assessee briefly explained that A.O. has not detected any defect in the documents and details provided at assessment stage. No incriminating material was found during the course of search. The addition was made merely on account of decline in the N.P. rate which cannot be static each and every year and the books of account are audited and supported by documentary evidences. The A.O. has not rejected the books of account till passing of the assessment order. No basis have been shown for rejecting the books of account. All the expenses are recorded in the books of account which were subjected to verification before A.O. The Auditor has not given any adverse report against the assessee. The financial cost of the assessee has increased in assessment year as compared to earlier years, the details of the same are noted in the impugned order. The assessee, therefore, pleaded that there was no justification to apply higher N.P. rate to make the addition of Rs.56.81 crores against the

assessee. The assessee made further submissions with regard to rejection of books of account which are noted in the appellate order. The Ld. CIT(A) considering the material on record and by calling the remand report from the A.O. found that no show cause notice have been given to the assessee before making the proposed addition. There was no basis to reject the books of account. The financial cost of the assessee have increased. No discrepancy was noted in the books of account. Therefore, the addition was found wholly unjustified. The Ld. CIT(A) accordingly deleted addition of Rs.56,81,31,074/-. The findings of the Ld. CIT(A) in paras 4.1.1 to 4.1.18 are reproduced as under :

"4.1. Ground No. 1 to 5 :

4.1.1. These relate to estimation of net profit of the appellant's business at Rs.56,81,31,074/- by rejecting books of accounts. The AO has made addition on account of fall in Net Profit (NP) by rejecting books of account. He has rejected the books of accounts and estimated the profit for the following reasons:

(i) Inspite of repeated requested, the appellant did not produce books of accounts for examination.

(ii) The assessee did not go back on its declaration of additional income, but it surreptitiously credited the undisclosed income to P&L account. This way according to the AO, the assessee has neutralized the effect of surrender of undisclosed income.

(iii) The NP ratio of 3.96% declared for A.Y. 2011-12 is misleading. The real NP ratio was only 0.18%, if one takes out Rs. 34.50 crore of undisclosed income (surrendered during search) from credit side of P&L account. The said 0.18% NP ratio is too low when compared to NP ratio of 5.03% for A.Y. 2009-10 & 4.74% for A.Y. 2010-11.

(iv) The assessee has not substantiated the trading results.

4.1.2. After rejecting the books of accounts, the AO has applied NP rate of 4.57% on the total turnover of Rs. 1243.18 crore to arrive at 56.81 crore. He has arrived at the said NP ratio of 4.57 by averaging the NP rates Of A.Y. 2009-10, 2010-11 & 2011-12 (5.03%, 4.74% and 3.96%).

4.1.3. It is noted here that assessee has not produced the books of accounts before the AO inspite of having several opportunities. Secondly, appellant has also not complied with the requirements of the AO during the assessment proceedings to substantiate the trading results. Hence, the AO has rejected books of accounts and estimated the profit.

4.1.4. However it was observed from the AR's submissions that the appellant had made certain submissions during the assessment proceedings which seems to have been not considered and in any case not cited in the assessment order.

4.1.5. It was noted that the AO had called for various details which have not been submitted in time by the appellant. However, it was also observed that apart from calling for various details, the AO had not given any show cause notice to the appellant about the proposed action of estimating the net profit at the rate of 4.57% of the gross turnover, which has resulted in a huge addition of Rs.56.81 crores. In the Questionnaire issued to the appellant, the AO had asked for providing certain ratios such as GP, NP ratios, but there was no correspondence with the assessee indicating that he would be estimating the net profit at such and such percentage which would result in such and such addition. There is no requirement under the law that the trading results should be constant or should keep going up always even if there are valid reasons for the same to vary. The AO has not given adequate opportunity to the appellant to clarify on the *adverse inferences which he was going to draw based on non-submission of details in time. In the given circumstances, AO should have given out some indication to the appellant to allow them to explain their side of the story especially since the issue involved huge addition of Rs.56.81 crores. In this background, the explanations given during the appeal proceedings in the form of written submission were admitted as additional evidences under Rule 46A(1)(d) of Income Tax Rules, 1962. The AO was called upon to examine the explanations and submit his comments/ report on the same. The AO was authorized to call for any further information, books of accounts and other details and examine the same before sending his report.*

4.1.6. The A.O. has submitted his remand report after examining submissions made during appeal proceedings. He has also examined the books of accounts and bills and vouchers. He has *not reported any discrepancies. The JCIT, who has forwarded the report, has observed that the issue of rejection of books of accounts was in fact confronted to the assessee and that assessee was given adequate opportunity to present his case. He has submitted that in the said background the additions made by ht AO were reasonable and required to be confirmed. The relevant remand report of the AO and contents of the forwarding letter of JCIT are reproduced below :*

Report of the A.O. :

Kindly refer to your office letter F. No. CIT (A)-24/Remand Report/15-16/951 dated 28.02.2015 on the above mentioned subject.

<u>Detail required by the CIT(A):</u>

" …. I have noted from the assessment records that the AO had called for various details which have not been submitted in time by the appellant.

However, I also find that apart from calling for various details, the AO has not given any show cause notice to the appellant about the proposed action of estimating the net profit at the rate of 4.57% of the gross turnover, which has resulted in a huge addition of Rs.56.81 crores. In the questionnaire issued to the appellant, the AO had asked for providing certain rations such as GP, NP ratios, but I do not see any correspondence with the assessee indicating that he would be estimating the net profit at such and such percentage which would result in such and such addition. There is no requirement under the law that the trading results should be constant or should keep going up always even if there are valid reasons for the same to vary. The AO has not given adequate opportunity to the appellant to clarify on the adverse inference which he was going to draw based on non-submission of details in time. In the given circumstances, I am of the *view that AO should have given out some indication to the appellant to allow them top explain their side of the story especially since the issue involves huge addition of Rs.56.81 crores. In this background, the explanations given during the appeal proceedings in the form of written submission are hereby admitted as additional evidence under Rule 46A(l)(d) of Income Tax rules, 1962. The AO is hereby required to examine the explanations and submit his comments/ report on the same. The AO may call for any further information, books of account and other details and examine the same before sending his report.*

Further during the appeal proceedings, it has been submitted that the appellant has only paid Rs 4.5 crores to M/s Rockhard Infrastructure Pvt. Ltd. and not Rs.9 crores as stated in the assessment order. The AO is requested to examine the seized documents and also the explanation of the AR on this issue and submitted the correct *details of the amount paid by appellant to M/s Rockhard Infrastructure Pvt. Ltd. "*

Brief facts of the case:

Search and Seizure operation u/s 132 of Income Tax Act 1961 was carried out on Jaipuria group (M/s Varun Beverages Ltd.) of cases on 27.03.2012. Warrant of authorization u/s 132 of the I.T. Act, 1961 was also issued in the name of M/s Varun Beverages Ltd., F-2/7, Okhla Industrial Area, Phase -I, New Delhi.

As per the directions of C1T(A), I have gone through the whole assessment record and also the written submission filed by the assessee company before the CIT(A) as forwarded to us.

Point No. 1

Books of Accounts have been called from the assessee company, as the AO had estimated net *profit from the Business at 4.57% being average of net profit for the last 3 years which were duly produced before the undersigned on various dates. The undersigned examined the books of accounts and the same were tallied with the balance sheet/financial result. The assessee company was further asked to produce the bills and vouchers which were thoroughly examined. As per the Tax Audit Report the company is following mercantile system of accounting.*

Further, it has also been observed from the assessment records that the AO has not given any show cause notice to the appellant about the proposed action of estimating the net profit based on the average of last 3 years, which resulted a huge addition of Rs. 56.81 crores. No books oj accounts were called for in the summons issued u/s 131 dated 10.02.2014. The said summon only talks about other details required from the assessee company (copy enclosed).

From the perusal of the assessment records, even though there was no specific questionnaire/ notice asking to produce the books of accounts of the assessee company , however, there was a question No. 50 on production of books of accounts in the initial detailed questionnaire dated 23.10.2013.

Also, it has been observed from the statement of the director recorded by the AO, that no questions were asked for producing the books of accounts of the assessee company.

Point No.2

Further, on perusal of assessment record it is found that during the course of assessment proceedings, the AO had issued summons u/s 131 on 29.01.2014 to M/s Varun Beverages Pvt. Ltd. in respect of Payment made to M/s Rockhard Infrastructure Pvt. Ltd.. The said summon only *talks about certain specific details as mentioned below;-*

"1. Personal appearance along with the following information/documents regarding M/s Rockhard Infrastructure Pvt. Ltd :

i. Please produce the agreement made with M/s Rockhard Infrastructure Pvt. Ltd. outling the terms & conditions of the work to be executed, the payments to be made, and copy of bills in support of your transactions with M/s Rockhard Infrastructure Pvt. Ltd.

ii. Please furnish the detail nature of transaction made between M/s Varun Beverages Ltd. to Rockhard Infrastructure Pvt. Ltd.

iii. Please also produce the principal officer of M/s Rockhard Infrastructure Pvt. Ltd.

In respect of the summons u/s. 131 issued by the A.O. the assessee company has filed reply on 07.02.2014 along with the relevant documents i.e., purchase order, bank statements evidencing payments, ledger accounts and bills raised by M/s Rockhard Infrastructure Pvt. Ltd. "

Further, it is pertinent to mention here that statement of Sh. Ravi Kant Jaipuria was also recorded on oath during the course of assessment proceedings. The relevant part of the said statement is reproduced below :-

" Ques. No. 8. What was the total amount of transaction involved? Also state that amount paid by M/s Varun Beverages Ltd. to M/s Rockhard Infrastructure (P) Ltd.

Ans: The total paid against contract to M/s Rockhard Infrastructure (P) Ltd. during F Y

2011-12 by M/s Varun Beverages Ltd, was Rs.4,50,00,000/-.

" Ques. No. 9. I am showing you annexure A-2 of party A-3. In the said annexure of page 2 the detail payment made by M/s Varun Beverages Ltd. to M/s Rockhard Infrastructure (P) Ltd. shown payment in F Y11-12 of Rs. 9.5 cror. Please explain the same?

Ans: I have seen this annexure and two entries of 2.5 crore each are contra entries and therefore the net payment is 4.5 crore only.

On going through the seized documents page No. -2, Annexure - A-2, Party A-3, it is found that the debit balance in the books of M/s. Varun Beverages Ltd, is Rs. 9.50 Crores . During the remand proceedings the AR of the assessee company has confirmed that it includes 2 transactions of Rs.2.50 crores each *which are contra entries resulting in a net payment of Rs.4.50 crores made to M/s. Rockhard Infrastructure Pvt. Ltd. The contra entries mentioned have been verified.*

In view of the facts narrated above, it is requested that the appeal of the assessee may kindly be decided on merits.

Forwarding letter of JCIT:

Sub : Appellate proceedings in the case of M/s Varun Beverages Ltd. for the A.Y. 2012-13- Appeal No. 397/14-15- forwarding of report- regarding.

Kindly find enclosed herewith Letter F.No.ACIT/CC-7/remand report/13-14/133 dated 22.05.2015 submitted by the A.O.

Vide summon F.No. ACIT/CC-12/13-14/1456 dated 10.02.2014, the assessee Sh. Ravi Kant Jaipuria (Director) was given *an opportunity to attend the office and to produce the evidence/explain the nature of transaction, source of cash and to get the seized documents verified/reconciled from the books of accounts. The information called for vide his notice was comprehensive and detailed one. Stateement of Sh. R.K. Jaipuria and Sh. Kamlesh Jain were recorded during the assessment proceedings and the discrepancies were duly confronted to them in these statements. The assessee was specifically asked to produce the books of account vide questionnaire dated 23.10.2013.*

It is pertinent to mention here that vide letter F.No.ACIT/CC-12/13-14/551 dated 21.02.2014, the assessee was given an opportunity/required to show cause as *why books of account should not be rejected under the income Tax Act and profit be estimated on the basis of seized material and other relevant fact of the case. The reply of the assessee is also on record dated wherein the assessee had admitted that the details as required in questionnaire as 23.10.2013 would be filed meaning thereby the details had not been produced. Further, the assessee has also stated that there was no occasion to reject the books of account. So, the issue of rejection of the books of account was duly confronted by the Assessee.*

So, it is clear from the records and the discussion in the Assessment order that the assessee was given adequate opportunity to present his case. Keeping in view the above facts, the additions made *by the AO are reasonable and may kindly be confirmed.*

4.1.7. In the background of the AO's remand report the basis for rejection for books of accounts does not survive. I agree with the comment of the JCIT in his forwarding letter to the extent that the AO had duly confronted the assessee with the proposal to reject the books of accounts. As noted earlier it was however incumbent upon the AO to have intimated the assessee about adopting particular rate of NP. The show cause issued as to why books of accounts should not be rejected. Does not disclosed the AO's intention of adopting a particular NP rate. In fact in the said letter AO has stated that he would be estimating the profits based on seized material and other relevant facts. Further it also not as if the appellant did not explain the reasons for falling NP. The following paragraphs would show that the appellant had made submissions on the reasons for *fall in GP which have not been cited in the assessment order.*

4.1.8. AO has not considered the submissions of the appellant made vide their letters dated 03/03/2014 in response to the AO's show-cause letter dated 21.02.2014. Firstly, the relevant paras of letter of AO dated 21/02/2014 are reproduced below for ready reference :

> *Please refer to the search & seizure assessment proceeding u/s 153A in your case. On perusal of seized material and evidences collected during the search, a questionnaire dated 23.10.2013 was issued to you. But till date you have only furnish part details.*
>
> *Despite the various opportunities given to you, you have not submitted the complete details.*

In view of the above, you are required to show cause as to why your books of account should not be rejected under the Income Tax Act and profit be estimated on basis of seized material and other relevant facts of the case.

Your reply to this show cause should reach this office on or before 03.03.2014 at 11:30 P.M. failing which it shall be presumed that you have availed ample opportunities and have nothing to offer as explanation and addition will be made without any further notice to you on the basis of material available.

4.1.9. It is evident from the above that the AO has proposed to reject the books of account for non-submission of complete details as required by a questionnaire. To this show-cause, the appellant has submitted its reply vide their letter dated 03/03/2014 which is reproduced below for ready *reference: (This reply has not been considered in the assessment order)*

This is with reference to your Notice No. ACIT/CC-12/2013-14/1551 dated 21.02.2014 wherein your honour has observed as under :-

"Please refer to the search & seizure assessment proceedings u/s 153A in your case. On perusal of seized and evidences collected during the search, a questionnaire dated 23.10.2013 was issued to you. But till date you have only furnish party details.

Despite the various opportunities given to you, you have not submitted the complete details.

In view of the above, you are required to show cause as to why your books of account should not be rejected under the Income Tax Act and profit be *estimated on the basis of seized material and other relevant fact of the case."*

In this regard it is very humbly submitted that questionnaire dated 23.10.2013 was issued by your honour in the aforesaid case. In the aforesaid questionnaire, queries were raised as contained in 51 points. The reply to aforesaid queries required voluminous data to be processed and lot of documents to be compiled and in certain cases the matter pertains to records for more than 7 years old. The assessee company time and again has filed various details before your honour and letters dated 18.11.2012, 11.12.2012, 10.02.2014, 24.01.2014, 20.02.2014 have already been filed before your honour containing reply to most of the details required by your honour vide questionnaire dated 23.10.2013. The balance details are under compilation and shall be filed before your honour very shortly.

In this regard it is further submitted that your honour in addition to the questionnaire dated 23.10.2013, has also issued Summons u/s 131 and notice u/s 142(1) and/or 133(6) of the Income Tax Act in various cases of the Ravi Kant Jaipuria Group and the necessary replies have been duly filed before your honour as required in the aforesaid notices.

Therefore your honour will observe that the assessee company has been cooperating with the Income Tax Department and filing the necessary details before your honour.

Your honour's contention regarding rejection of books of account of the assessee company, it is very humbly submitted that the books of account of the assessee company i.e. M/s Varun Beverages Ltd, for the Financial Year 2005-06 to Financial Year 2011-12 have been duly audited by the Statutory Auditors as per the provisions *of Companies Act, 1956. Further the books of accounts of the assessee company have also been audited u/s 44AB of the Income Tax Act by the qualified Chartered Accountants. The above Chartered Accountants in their audit report have not given any negative remark which required or demands rejection of the books of accounts of the assessee company.*

It is further submitted that the assessee company is co-operating with the Income Tax Department by surrender of Income in the respective companies/individuals in respective assessment years and payment of tax thereon. Further the necessary details are being complied on a war-footing and keeping in mind the huge magnitude of work, the details are being filed on a regular basis and shortly all the details as required in the questionnaire dated 23.10.2013 shall be filed before your honour *and therefore there is no occasion to reject the books of account of the assessee company.*

4.1.10. In the above said letter it has been submitted by the appellant that the reply to questionnaire involved voluminous data covering 7 years and that it has furnished most of the details already and that the balance replies are under compilation. Hence, it denied that appellant was not co-operating in assessment proceedings.

4.1.11. In the above letter, it has been further submitted that books of accounts have been duly audited and Auditors have not given any negative remark which warranted rejection of books of accounts. The AO has not made any mention about the above referred letter of 03/03/2014.

4.1.12. A.O. has also not considered (and also not mentioned in the order) the appellant's another letter filed on 26/03/2014 addressed to the AO but *supposed to have been filed before Addl. CIT on 26/03/2014. In the said letter, the appellant has made submissions on two issues, namely (i) reasons for increase in depreciation claimed from Rs. 71.52 crore in A.Y. 2011-12 to Rs. 129.34 crore for A.Y. 2012-13. (ii) Reasons for fall in NP ratio. The AO has accepted the claim of depreciation (as noted by him in the assessment order in the para just below point (h) on page 28, but did not accept the justification given by the appellant on fall in NP ratio. The relevant portion of appellant's submission in the said letter dated Nil submitted before Addl. CIT is reproduced below for ready reference :*

> *2(i) On going through Profit & Loss Account, the ratio of net profit are as under :-*

	Y.E. 31.03.2012	Y.E. 31.03.2011
Net profit	36,79,10,942	42,40,56,355
Turnover	13,46,86,49,804	10,71,13,17,456
% of Net Profit	2.73	3.96

During the year the Net Profit is less by 1% as compared to last year.

(ii) The finance cost has incurred from Rs.52.60 Crore to Rs.79.53 Crore which is mainly on account of new expansions undertaken by the company and the comparative figures are as under :-

	Y.E. 31.03.2012	*Y.E. 31.03.2011*
Finance Cost	*79,53,47,642*	*52,65,74,651*
Turnover	*13,46,86,49,804*	*10,71,13,17,456*
% of Finance cost of sales	*5.91*	*4.91*

Thus there is direct hike of 1% towards finance cost during year ended 31.03.2011.

(ii) On going through Schedule - 4 of the Balance Sheet 'Long Term Borrowings' your honour will find that the total borrowings for year ended 31.03.2012 is 1016.43 Crores (including 250 Crores interest free CCD's) as

against Rs.474.36 Crores in year ended 31.03.2011. The other ratios i.e. GP Ratio, Raw Material consumed Ratio are more or less the same as can be verified from the Tax Audit Report enclosed in para 32. However due to 1% overall increase in finance cost, the overall Net Profit has decreased by 1%.

4. Advertisement Expenses: The comparative details of advertisement and sales promotion expenses is as under :-

	Y.E. 31.03.2012	*Y.E.31.03.2011*
Advertisement Expenses	*11,58,67,944*	*15,40,05,448*

On going through the above your honour will find that the advertisement expenses has substantially decreased during the year. Complete details of advertisement expenses has already been filed and copy again enclosed.

4.1.13. In the above letter it has been submitted that the appellant had incurred higher financial cost which increased from 4.91% of Turnover in A.Y. 2011-12 to 5.91% of Turnover in A.Y. 2012-13. The Long Term borrowings had shot up from Rs. 474.36 crore to Rs.1016.43 crores. In the said letter it has also been stated that, the consumption ratio otherwise is more or less same.

4.1.14. Further AO has also not taken into consideration another letter dated 28/03/2014 addressed to AO (Page 93-94 of Paper Book). The relevant letter is reproduced below for ready reference :

Your honour has raised a query regarding fall in N.P. Ratio during i.e. 31.03.2012 as compared to i.e. 31.03.2011. In this regard it is very humbly submitted that the reason for fall in Net Profit Ratio during the i.e. 31.03.2012 is as under :-

	Y.E. 31.03.2012
Net Profit as per Profit & Loss A/c	367910942
Less: Additional Income declared at the time of Search	345000000
Adjusted Net Profit	22910942

Adjusted Net Profit Ratio for Financial Year 2011-12	0.17%
Add: Increase in Finance Cost	1.00%
Add: Fall in GP Ratio	3.08%
	4.25%
Less: Decrease in Depreciation	(-)0.04%
Less: Decrease in Other Expenses	(-)0.25%
Net Profit Ratio in Y.E. 31.03.2011	3.96%

The finance cost has increase from Rs. 52.60 Crore to Rs.79.53 Crore which is mainly on account of new expansions undertaken by the company and the comparative figures are as under :

	Y.E. 31.03.2012	Y.E. 31.03.2011
Finance Cost	79,53,47,642	52,65,74,651
Turnover	13,46,86,49,804	10,71,13,17,456
% of finance cost of sales.	5.91.	4.91

Thus there is direct hike of 1% towards cost during year ended 31.03.2012.

The fall in G.P. Ratio is attributable to the fact due to inflationary pressures and increase in international prices of certain items, the cost of raw material consumed has increased without a corresponding increase in selling price. Due to the above G.P. Ratio for Y.E. 31.03.2012 works out to 23.66% as against the comparable G.P. Ratio for Y.E. 31.03.2011 at 26.74%. The major increase in raw material cost has been suffered due to increase in price of PET RESIN which is used for manufacturing PET bottles in which the soft drinks is filled and also increase in prices of Mango Pulp which is used for manufacturing Soft Drink under the brand name 'Slice'. The necessary chart showing impact in cost of PVC Resin and Mango Pulp is enclosed herewith and the impact of increase in these 2 items only account for 2.55% fall in GP and the balance 0.53% is attributable to the increase in price of other raw materials.

Therefore the reasons for fall in Net Profits Ratio during year ended 31.03.2012 as compared to Net Profit Ratio in year ended 31.03.2011 stands duly explained.

4.1.15. It is evident from the above letters that the appellant had did explain the fall in NP ratio on account of fall in GP ratio and increase in finance cost. Further, justifying the fall in GP, appellant had stated that the same was due to increase in the cost-of-raw-material-consumed. It has also been sated that the increase in cost of PET Resin (Plastic material used for manufacturing bottles) and mango pulp (for Slice soft drink) together accounted for fall in GP by 2.55%. The rest of fall in GP of 0.53% was, stated to be, accountable by other raw materials. The appellant also gave the necessary chart giving detailed break up of increase in cost of raw material & working of GP rate. The said details are as under :

VARUN BEVERAGES LTD.
INCREASE IN COST OF RAW MATERIAL DURING FY 2011-12 2010-11.

ITEM	Sum of QTY	Sum of AMOUNT	AV. RATE
PULP MANGO TOTAPURI	31,42,228	2376,85,456	75.64
PULP MANGO ALPHANSO	4,41,139	316,77,939	71.81
	35,83,367	2693.63.394	
RESIN PET 5761	6,91,442	492,40,881	
RESIN PET 5821	71,39,448	5072,48,284	
RESIN PET 7761	10,54,975	740,91,725	
RESIN PET 5841	19,86,559	919,74,434	
	108,72,425	7225,55,325	66.46
Grand Total		9919,18,719	

2011-12

ITEM	SUM OF QTY	Sum of Amount	AV. RATE
PULP MANGO TOTAPURI	30,68,837	2771,16,504	90.30
PULP MANGO ALPHANSO	4,41,232	335,04,764	75.93
	35,10,070	3106,21,268	
RESIN PET 5761	11,22,394	1004,65,300	
RESIN PET 5821	102,89,618	9381,53,405	
RESIN PET 7761	7,45,933	657,34,618	
	121,57,944	11043,53,322	90.83
Grand Total		14149,74,590	

COST OF RAW MATERIAL IN FY 2011-12 AT FY 2010-11 PRICES

ITEM	QTY	RATE	AMOUNT
PULP MANGO TOTAPURI	30,68,837	75.64	2321,33,998
PULP MANGO ALPHANSO	4,41,232	71.81	316,84,621
RESING PET	121,57,944	66.46	8079,87,871
			10718,06,489
ACTUAL TOTAL COST IN FY 2011-12			14149,74,101
Impact of Price Increase			**3431,68,101**
Total Sales in FY 2011-12			**134686,49,804**

Impact of Price Increase in % **2.55**

VARUN BEVERAGES LIMITED

PARTICULARS	YEAR ENDED 31/03/11 Rs.
SALES	107113,17,456
INCREASE (DECREASE) IN STOCKS	2401,89,874
PURCAHSES	-4175,00,160
RAW MATERIAL CONSUMED	-57245,79,385
STORES CONSUMED	-801,28,114
EXCISE DUTY	-8532,12,744
POWER, FUEL & WATER CHARGES	-3976,64,475
SALARIES, WAGES & AMENITIES	-6338,00,953
REPAIR & MAINTENANCE	-2359,77,969
G.P.	2608643530
TURNOVER	107,113,17,456
%	24.35
GROSS PROFIT	26086,43,530
ADD	
Transportation Charges Recovered	26086,43,530
Realisation on Sale of Scrap	745,89,287
Job Work Charges Received	193,88,775
GROSS PROFIT REVISED	29572,46,406
ADJUSTMENTS TO TURNOVER	
SALES	107113,17, 456
Transportation Charges Recovered	2546,24,814
Realisation on Sale of Scrap	745,89,287
Job Work Charges Received	193,88,775
TURNOVER REVISED	110599,20,332
REVISED GP RATIO	**26.74**

VARUN BEVERAGES LIMITED
COMPARATIVE GP CAHRT
YEAR ENDED 31ST March, 2012

PARTICUALRS	YEAR ENDED 31/03/2012 Rs.	YEAR ENDED 31/03/2011 Rs.
INCOME		
SALES	134686,49,804	110599,20,332
OTHER INCOME	3870,91,415	37,820,010

INCREASE/(DECREASE) IN STOCKS	105,634,769	240,189,874
TOTAL	13,961,375,988	11,337,930,216
EXPENDITURE		
PURCHASES	429,697,007	417,500,160
RAW MATERIAL CONSUMED	7,177,911,557	5,724,579,385
STORES CONSUMED	135,413,815	80,128,114
EXCISE DUTY	10,78,989,050	853,212,744
POWER, FUEL & WATER CAHRGES	479,030,570	397,664,475
SALARIES, WAGES & AMENITIES	793,493,694	633,800,953
REPAIR & MAINTENANCE	293,201,036	235,977,969
ADMINISTRATIVE EXPENSES	455,649,287	393,040,283
TRANSPORATION, HANDLING & DISTRIBUTION COSTS	1,137,129,867	906,168,821
BREAKAGE LEAKAGE & BURST ETC.	25,217,595	29,672,896
SELLING & OTHER EXPENSES	169,047,174	194,819,232
DEPRECIATION	620,324,371	513,405,501
LOSS ON SALE OF FIXED ASSETS	1,862,811	3,518,387
PROVISION FOR DOBTFUL DEBTS	1,149,555	3,810,291
FINANCIAL CHARGES	795,347,642	526,574,651
	13,593,465,031	10,913,873,861
NET PROFIT BEFORE TAX	367,910,957	424,056,355
SALES	13,468,649,804	11,059,920,332
INCREASE (DECREASE) IN STOCKS	105,634,769	240,189,874
PURCAHSES	-429,697,007	-417,500,160
RAW MATERIAL CONSUMED	-7,177,911,557	-5,724,579,385
STORES CONSUMED	-135,413,815	-80,128,114
EXCISE DUTY	-1,078,989,050	-853,212,744
POWER, FUEL & WATER CHARGES	-479,030,570	-397,664,475
SALARIES, WAGES & AMENITITES	-793,493,694	-633,800,953
REPAIR & MAINTENANCE	-293,201,036	-235,977,969
G.P.	3,186,547,844	2,957,246,406
TURNOVER	13,468,649,804	11,059,920,332
%	23.66	26.74

4.1.16. From the facts noted at para 4.1.9 to 4.1.12 above, it is evident that the appellant has been able to justify in its own way the fall in GP and fall in NP during the year. All these submissions have been omitted to be considered and dealt with by AO. Had he considered the above facts, the result might have been different.

4.1.17. The appellant's financial cost has substantially increased from 4.9% to 5.91% which straight away accounted for fall in NP by one percent. Further the increase in cost of major raw materials (PET Resin & Mango pulp) has been shown to be responsible for fall in GP by 2.55%. Thus if one takes into account these facts the fall in GP stands explained. No doubt, the appellant has attempted to cover up the fall in NP by crediting the undisclosed income to P&L account. However, crediting undisclosed income to P&L account does not resulting neutralizing the surrender itself as filed and expressed by the AO in the order. Further there is no requirement under law that there could be no *decrease in profits. It is acceptable as long as it is justifiable with facts and figures.*

4.1.18. Even though the justification has been filed before the AO & Addl. CIT, it is evident that the AO has not considered any of the above, relevant details before estimating Net Profit. He has not dealt with these submissions at all. AO has not issued any communication indicating the quantum of profit he was proposing to estimate. Hence, the AO's action in making huge addition on adhoc basis without even considering the justification/explanation given by the assessee during assessment proceeding cannot be sustained. In the remand proceedings AO has considered the written arguments filed during the appeal proceedings which also refer to all the letters mentioned in the previous paragraphs. In the remand report no specific contra arguments have been raised. No discrepancies have been noted in the books of accounts and bills and vouchers. In this background the AO's action in rejection of books of accounts and estimating the profit from the *business at Rs. 56,81,31,074/- is hereby rejected. The addition of Rs. 56,81,31,074/- is deleted. The grounds on the issue are allowed to the extent as above."*

4. The Ld. D.R. relied upon the Order of the A.O. and submitted that at the original assessment stage assessee has not produced books of account. There was a fall in N.P. rate in assessment year under appeal as compared to earlier year. Seized material was found during the course of search which clearly indicated that assessee has undisclosed income. Therefore, books have been rightly rejected in the case of assessee. The Ld. CIT(A) without considering the findings of the A.O. wrongly deleted the addition. Ld. D.R. submitted that the additional income of Rs.34.50 crores surrendered during the course of search have been rightly assessed separately which cannot be included in the P & L Account. The Ld. D.R, therefore, submitted that Order of the Ld. CIT(A) may be reversed and Departmental Appeal may be allowed.

5. On the other hand, Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that assessee has made surrender based on the seized paper and apart from that there was no material with the A.O. to make any addition against the assessee. The A.O. never asked for the production of the books of account and applied higher G.P. rate without calling for explanation of assessee. This contention was duly noted by the Ld. CIT(A) and matter was remanded to the A.O. The A.O. in the remand report confirmed that assessee was never asked for production of the books of account at original assessment stage and even in the statement recorded of the Director, the A.O. never asked for production of the books of account. The books of account were called for at the remand proceedings, which were duly produced by the assessee, in which, no specific defects have been pointed-out. In fact the books tallies with the financial results. The A.O. in the remand report also accepted the fact that assessee produced the books of account along with necessary documents which have been

verified by the A.O. The fall in N.P. rate was on account of increase in financial costs for new expansion and cost of material which is accepted by the Ld. CIT(A) based on the material on record. The assessee explained before the A.O. at the remand proceedings also that there was increase in price of raw material such as Pet, Resin and Mango Pulp etc. Therefore, there was no basis for the A.O. to make any addition. The A.O. verified all these facts and did not find any false explanation of assessee. Learned Counsel for the Assessee referred to PB-32 which is P & L A/c in which additional income have been shown on account of business because assessee has no other business other than disclosed in the return of income. The additional income pertain to the business only which is based on seized material found during the course of search as per Annexure-A1 referred to by the A.O. in the assessment order. The details like nature of transaction, observation and explanation of assessee was called for. The assessee filed explanation to some extent which have been accepted by the A.O. also. All the transactions are related to business of assessee which were on account of Annexure-A seized from Corporate Office of the assessee at Gurgaon containing notings made by the staff such as names, contract number, salary, in the matter of day-to-day working and payment made through banks etc. Since supporting documents could not be produced by the assessee, therefore, assessee agreed for the addition. Therefore, there was no justification for the A.O. to consider the additional income so surrendered as income from other sources because it was income relating to business only. Learned Counsel for the Assessee, therefore, submitted that since principles of natural justice have been violated at the original assessment stage and A.O. in the remand report confirmed the stand of the assessee, therefore, the Ld. CIT(A) on proper appreciation of facts and material on record, deleted the addition.

6. We have considered the rival submissions and do not find any justification to interfere with the Order of the Ld. CIT(A) in deleting the addition. The assessee has specifically taken a stand that at the original assessment stage the A.O. never asked for production of the books of

account. Even in the statement of Director recorded, the A.O. never asked for production of the books of account and never asked for taking proposed action for estimating the income by applying higher profit rate. This fact is confirmed by the A.O. in the remand report. The assessee produced the complete books of account supported by bills and vouchers at remand proceedings. The A.O. verified the books of account of the same and do not find any defect thereon. Thus the books of account of the assessee did not contain any discrepancy and the book results were acceptable. The assessee further explained that A.O. never asked for any question regarding any infirmity in the maintenance of the books of account. The A.O. at the remand proceedings was satisfied with the book results. The assessee further explained that fall in N.P. rate was on account of increase in the financial costs as well as increase in the price of raw material. The Ld. CIT(A) specifically dealt with the issue in the appellate order and found the contention of assessee to be correct. No material have been produced by the Revenue before us to rebut the findings of fact recorded by the Ld. CIT(A). Since no specific defects have been pointed-out in the books of account of the assessee, therefore, there was no reason to apply higher N.P. rate against the assessee. The Revenue to some extent may be justified in contending that since assessee made surrender of additional income based on Annexure-A1 found during the course of search which assessee failed to explain may be the reason for rejection of the books of account, but, whether such reason would be justified in making further addition by applying the higher N.P. rate against the assessee. The Hon'ble Rajasthan High Court in the case of CIT vs., Gotan Lime Khanij Udyog [2002] 256 ITR 247 (Raj.) held that *"mere rejection of the books of account does not mean addition is to be necessarily made."* The Hon'ble Punjab & Haryana High Court in the case of K.S. Bhatia 269 ITR 577 held that *"low profit is no ground to reject the books of account under section 145(1) of the I.T. Act".*

6.1. Considering the above, it is clear that even if on technical reasons books of account may be rejected because assessee surrendered additional income, but, there were no justification to apply higher N.P. rate for making further addition against the assessee. Whatever material was found during the course of search was considered in detail by the A.O. and assessee made surrender accordingly which is accepted by the A.O. Thus, there was no reason to make further addition against the assessee which was based on no material on record. The A.O. in the remand report accepted that no direction was given to assessee to produce the books of account and no explanation of assessee was called, for any discrepancy in the books of account during the statement recorded of the Director. The A.O, however, asked for production of the books of account by the assessee at the remand proceedings which have been verified and no defect whatsoever have been noted. It would clearly prove it is a case of violation of principles of natural justice because the A.O. without giving opportunity to the assessee and without any justification made the addition by enhancing the net profit rate. Therefore, on this reason alone the Departmental Appeal is liable to be dismissed.

6.2. There is no requirement under the Law that the trading result should be constant or should keep going–up always even if there justification for the same to vary. The Ld. CIT(A) at the appellate stage forwarded all the documents to the A.O. for examining and filing remand report. The A.O. examined the same and found the contention of assessee to be correct. Thus, assessee produced the books of account when called for by the A.O. and explanation of assessee was found to be correct for fall in N.P. rate which was on account of increase in financial cost and increase in cost of raw material consumed. Since no discrepancy was found in the maintenance of the books of account, therefore, the Ld. CIT(A) correctly deleted the addition. The decisions noted above clearly apply to the facts and circumstances of the case.

6.3. As regards the additional income of Rs.34.50 crores declared by the assessee, the A.O. has specifically noted in the assessment order that assessee made declaration of additional income which is based upon Annexure-A1 seized during the course of search. It is connected with the business activity of the assessee. Whatever discrepancy was explained by assessee have been accepted and whatever discrepancy assessee could not explain as per seized paper, assessee offered the same for taxation. Therefore, it is clearly business income in nature and assessee has rightly taken it into P & L A/c. The A.O. has not brought any material on record if assessee doing any other business so as to link the surrender to any other income earned by the assessee. Therefore, there is no infirmity in the Order of the Ld. CIT(A) in deciding this issue in favour of the assessee. Considering the totality of the facts and circumstances of the case, we are of the view that there was no justification to make the addition by enhancing the N.P. rate. The Ld. CIT(A) on correct reasoning has correctly deleted the addition. The Departmental Appeal fails and is accordingly dismissed.

7. In the result, appeal of the Department dismissed.

Order pronounced in the open Court.

Sd/- Sd/-
(PRASHANT MAHARISHI) (BHAVNESH SAINI)
ACCOUNTANT MEMBER JUDICIAL MEMBER

Delhi, Dated 26th February, 2020

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT “E” Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches :
Delhi.