IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "C", MUMBAI

BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER

ITA No.2493/M/2017
Assessment Year: 2012-13

Income Tax Officer-13(1)(3), 2nd Floor, Room No.225, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s. Placid Tradelinks Pvt. Ltd., Office No.36, Shrinaman Plaza, Behind Shoppers Stop, Kandivali (W), Mumbai – 400 067 **PAN: AACCP5025F**
(Appellant)		(Respondent)

Present for:
Assessee by : Shri Abhirama Kartikeyan, A.R.
Revenue by : Shri Ajay Singh, D.R.

Date of Hearing : 08.01.2019
Date of Pronouncement : 05.02.2019

O R D E R

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the Revenue against the order dated 23.01.2017 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 20112-13.

2. The ground raised by the Revenue is as under:

"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.9,94,22,286/- on account of suppressed Gross Profit not realizing that even forward contracts are governed_by the price band of commodities and are listed on the commodity Exchange. He ought to have compared the rates of forward contract shown by the assessee, with the one prevailing on the commodity Exchange, before determining the quantum of relief.

2. The appellant prays that the order of the CIT (A) on the grounds be set aside and that of the Assessing Officer be restored.

3. The appellant craves leave to add, amend or alter all or any of the grounds of appeal which may be necessary."

3. The only issue raised by the Revenue is against the deletion of addition of Rs.9,94,22,286/- by Ld. CIT(A) **as made by the AO on account of commodity exchange.**

4. The facts in brief are that the assessee is a trader dealing in edible oils. During the year assessee e-filed the return of income on 29.09.2012 declaring an income of Rs.9,86,050/- which was processed under section 143(1) of the Act. Thereafter, the case of the assessee was selected for scrutiny and a show cause notice was served on the assessee. During the year the assessee has registered a turnover of 745.37 crore with corresponding purchases of Rs. 744.88 Cr , other income of Rs.3,92,274/- and expenses claimed of Rs.43,80,697/-. The GP disclosed by the assessee during the year was 0.066% and NP was 0.0126%. On page No.2 of the assessment order the AO has appended a table listing therein various opportunities as were granted to the assessee but the assessee either did not comply or filed letter of adjournments or partly filed the details called for. Thereafter, the assessee was issued various show cause notices on various occasions as stated in para 4.2 of the assessment order. The assessee complied with the show cause notice by filing and furnishing details of sales/purchase agreements of high seas sales, bank statements, stock register and other details justifying the transactions. The AO after going through the details filed by the assessee came to the conclusion that there were major **differences** and unconfirmed transactions

in the books of accounts which has been listed by the AO in para 4.3(g) and finally the AO rejected the books of accounts on the ground that there were several defects in the books of accounts and same were not maintained properly and it is not possible to calculate the income of the assessee from the said accounts and finally estimated the income of the assessee by applying a GP rate of 1.40% to the total turnover of Rs.745,37,00,986/- which works out to Rs.10,43,51,814/- and after allowing the deduction of expenses as claimed by the assessee in the books of accounts of Rs.49,29,528/- made an addition of Rs.9,94,22,286/- by framing assessment vide order date 30.03.2015 passed under section 143(3) of the Act.

5. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee by observing and holding as under:

> "4.11. I have considered the submissions carefully. In view of the claim of the appellant that replies to notices u/s 133(6) were received by assessing officer and that to that extent the comment of the assessing officer is false, case records were called for and perused. The following replies to notices u/s 133(6) were found on the assessment records contrary to what is stated by the assessing officer which reflects poorly on the assessing officer.

	Name of party	Date of reply to notice u/s 133(6)
1.	Ruchi Offshore Marketing P. Ltd.	26.03.2015
2.	Raghunath (Agencies) P. Ltd.	17.2.2015
3.	Nova Trading Pvt. Ltd,	16.3.2015
4.	Stride MultitradePvt. Ltd.	25.3.2015
5.	Frame Impex Pvt. Ltd,	5.2.2015
6	Vishal Victory Oiltech P. Ltd.	19.3.2015
7.	Imperial Marktrade (I) P. Ltd,	Undated but cover of inward stamp dated 30.3.2015.

That even in remand proceedings, this has not been considered does raise legitimate grievance of lack of fairness of the assessment order. It is further seen that apart from the above, copy of reply of Ruchi Infrastructure Ltd. to the notice u/s 133(6) sent through postal authorities with date stamp 30.3.2015 was filed in the appellate proceedings but has not been considered in the remand report. In the additional evidence ledgers of parties under the head creditors, customers credit balances, loans and advances and debtors were filed stating that ,he same were not filed earlier as it was not called. Ledger accounts of assesse in books of parties along with their ITR were filed in respect of Ruchi Soya Industries Ltd,, High Tech Realities P. Ltd. and Soyumm Marketing P. Ltd. as well as parties already listed in the earlier table.

4.12. As per the appellant, it is only on 25.3.2015 that the assessing officer informed the appellant that replies to 133(6) notice were not received and so called discrepancies in respect of creditors and debtors and asked for compliance on 27.3.2015. The appellant found that in many cases the parties had already replied to the notices u/s 133(6). However, the assessing officer hurriedly passed the assessment order.

4.13. Now looking at the reasons for rejecting book results of the appellant, one of the reasons is that replies to notices u/s 133(6) were not received. While this, in my view, does not form a valid reason for rejection of books, the fact is that several replies to notices u/s 133(6) were received and are found in the case records. As regards the observation of the assessing officer that purchase and sale price of same item on same date is different, the appellant has explained that the same is based on the forward contracts entered into earlier and that the assessing officer has not appreciated the business. Details in respect of a few transactions are tabulated below.

	Party	Date of forward contract/ high seas sales bill	Contract detail	Price
1.	Ruchi Soya Ind. Ltd.	7.3.2011/31.5.2011	Purchase of crude palm oil 2999.287 MT for delivery upto May 2011	55610.50 +/-5% /MT
2.	Java Impex P. Ltd.	7.3.2011/31.5.2011	Sale of crude palm oil 2999.287 MT for delivery up to May 20 11	55611.00 +/-5% /MT
3.	Arcadia Trading P. Ltd.	8.4.2011/31.5.2011	Purchase of crude palm oil 2000 MT for delivery upto May 201 1	51606.25 +/-5% /MT
4.	Ruchi Soya Industries Ltd.	3.4.2011/31.5.2011	Sale of crude palm oil 2000 MT for delivery uptoMav2011	51608.00 +/-5% /MT

Similar details of all other contracts are also filed. I find that details of such forward contracts have been filed which supports the explanation of the appellant.
4.14. In the remand report the assessing officer has highlighted that the transaction rates are outside the rates quoted on NCDEX. The appellant has clarified that the NCDEX rates are quoted at two specific times of the day and are the spot prices. The rates can vary based on the period of delivery, and other contractual terms such as credit.

4.15. The appellant relied on several case laws such as

- MargabhaiKisanbhai Patel & Co vs CIT (1977) 108 ITR 54 (Guj) "Unless the transaction is proved to be sham or not bonafide , it is not open to the Tax authorities to disregard figures of transaction shown in the assessee's books of accounts."

- LalchandBhagatAmbica Ram v CIT (1959) 37 ITR 288 (SC) where it was held that correctness of accounts books cannot be doubted on suspicion and conjectures.

- Dhakeshwari Cotton Mill Ltd. v CIT (1954) 26 ITR 775 (SC) where it was held that the AO is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all.

4.16. Nature of business of forward contracts and high seas sales have been explained by the appellant which was not appreciated by the assessing officer. The appellant enters into forward contracts which specifies the quantity, rate and date of delivery. The transactions are squared up by entering into another forward contract which specifies the quantity rate and date of delivery. Sometimes profit is earned in this process and sometimes losses. The two corresponding purchase and sale forward contracts are ultimately settled by delivery as High Seas sale and purchase on the designated date which is a later date. The spot rate on the date on which delivery takes place as per the two cancelling forward contracts need not be similar or equal to the rates of the forward contracts. It is also possible that several forward contracts with very different rates at which contracts were entered are squared up on same date. This does not mean that the different rates on same date means that the transactions are not genuine or prices are hiked. Rates must be analyzed based on date on which the forward contracts are entered and not on the date on which the contracts are settled as has been done by the assessing officer. The assessing officer has not verified from the corresponding parties the genuineness of transactions. The parties are not related to appellant and are independently filing their tax returns. While the assessment order does not clearly list the discrepancy and amounts party wise that was unconfirmed, the appellant has given complete details party wise. The assessing officer has assumed and computed the profits on all trades at the average profit rate of top five most profitable trades at 1.40 %, an action that is not justifiable at all. The AO has in effect substituted a higher sale price than that as per books of the appellant for determining a higher profit without justifying the basis for taking such higher rate. The assumed notional profit cannot be sustained. In these facts, it is held that there is no basis for rejection of book results and books of accounts of the appellant u/s

145.The assumed notional profit cannot be sustained. Accordingly the addition of Rs.9,94,22,286/- is deleted and **ground of appeal no 2 is allowed.**"

6. The Ld. D.R. vehemently submitted before us that the books of accounts were not properly maintained by the assessee which has been proved by the AO by by pointing out several defects and discrepancies therein. The Ld. D.R. submitted that there were no details before the AO of forward contacts entered into by the assessee qua various transactions of sale and purchase in high seas. The Ld. D.R. further submitted that details of one to one purchase vis-à-vis sale was also not available before the AO and the books of accounts were rejected for various discrepancies as pointed out by the AO in para 4.3(g). The Ld. D.R. submitted that creditors, debtors, loan advances, purchase sand sales remained unverified , unvouched and unconfirmed and therefore the AO has no option but to reject the books of accounts and estimating the income of the assessee by applying GP to the total turnover and therefore the order of AO should be affirmed.

7. On the other hand, the Ld. A.R. while relying heavily on the order of Ld. CIT(A) submitted that the Ld. CIT(A) has allowed the appeal of the assessee after calling for remand report from the AO wherein the AO was allowed opportunity by Ld. CIT(A) to verify the various evidences submitted by the assessee as additional evidences under rule 46A of the Income Tax Rules such as ledger accounts in respect of Ruchi Soya Industries Ltd., Hightech Realties Pvt. Ltd., Soyumm Marketing Pvt. Ltd., Hariom Oil Industries, Raghunath Agencies Pvt. Ltd. Swastick International, Teej Impex Pvt. Ltd. & Cargo Clearing Agencies. The assessee also submitted ledger accounts of sundry debtor,

customer credit balances, loan advances and debtors which were not submitted before the AO in the original proceedings as the same were not called for by the AO. In the remand report submitted the AO stated that adequate opportunities had been given to the assessee in the assessment proceedings and only on account of non submission of details and discrepancies in the books of accounts, the resort to the provisions of section 145(3) of the Act was made. In the report also the AO reiterated what has been stated in the assessment order despite the fact that assessee filed all the bills, vouchers, contracts/agreements for high seas transactions with various parties and also the parties such as sundry creditors, debtors filed/responded to the notice issued under section 133(6) of the Act. The Ld. A.R. submitted that even the assessee filed a detailed reply to the remand report and finally the Ld. CIT(A) after considering all these aspects allowed the appeal of the assessee. Finally, the Ld. A.R. submitted before the Bench that in view of the said detailed findings and verification of records/evidences , the appeal was allowed by the Ld. CIT(A) after passing a very reasoned and speaking order which needs to be upheld by the Tribunal.

8. We have heard the rival submissions of both the parties and perused the material on record including the impugned order and decision cited by the Ld. A.R. The undisputed facts are that the assessee during the assessment proceedings could not file certain details/confirmation as stated by the AO in the assessment order which were filed by the assessee before the Ld. CIT(A) and Ld. CIT(A) called for remand report on the additional evidences filed by the assessee. In the remand report submitted by the AO ,he reiterated his stand in the remand report and

also stated that assessee has not complied with the various opportunities allowed during the course of remand proceedings and therefore justified the addition made in the assessment order. Thereafter, the assessee filed a reply to the remand report giving point by point rebuttal to what has been stated by the AO and it is only after considering the remand report, reply of the assessee and the facts on record, Ld. CIT(A) allowed the appeal of the assessee. From the records before us, we observe that the assessee has filed various details including copies of bills, vouchers, confirmations from the parties which the AO has not appreciated properly. Even the assessee has also tried to obtain the compliances to the notice issued by the AO under section 133(6) of the Act and in the process came to know that several parties have already replied to the notices issued under section 133(6) of the Act namely Frame Impex Pvt. Ltd., Nova Trading Pvt. Ltd., Stride Multitrade Pvt. Ltd., Ruchi Infrastructure Ltd., Ruchi Off-shore Marketing Pvt. Ltd., Imperial Marktrade (I) Pvt. Ltd., Vishal Victory Oiltech Pvt. Ltd. We further find that the AO has rejected the books of accounts due to differences and non non confirmation of transactions and estimated the income of the assessee by applying a GP rate of 1.4% on the total turnover. However, the ground raised by the Revenue is that the Ld. CIT(A) ought to have compared the rates of forward contracts with the prevailing rates in the commodity exchange before determining the quantum of relief. In view of these facts, we are of the view that Ld. CIT(A) has passed a very detailed and reasoned order after considering the remand report of the AO and assessee's submissions and facts on record. Therefore , we do not find any reason to deviate from the findings of the Ld. CIT(A) and accordingly order of Ld. CIT(A) is affirmed.

9. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 05.02.2019.

Sd/-
(Ram Lal Negi)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated: 05.02.2019.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.