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IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'D' : NEW DELHI

BEFORE SHRI G.D.AGRAWAL, VICE PRESIDENT AND  
SHRI I.C.SUDHIR, JUDICIAL MEMBER

ITA No.3543/Del/2011  
Assessment Year : 2007-08

Income Tax Officer,  
Ward-1,  
Karnal.

Vs. Shri Krishan Kumar,  
Prop. M/s Mittal Timber Store,  
Timber Market,  
Karnal.  
PAN : AEXPK3283Q.

(Appellant)

(Respondent)

ITA No.3755/Del/2011  
Assessment Year : 2007-08

Shri Krishan Kumar,  
Prop. M/s Mittal Timber  
Store,  
Timber Market,  
Karnal.  
PAN : AEXPK3283Q.

Vs. Income Tax Officer,  
Ward-1,  
Karnal.

(Appellant)

(Respondent)

Revenue by  
Assessee by

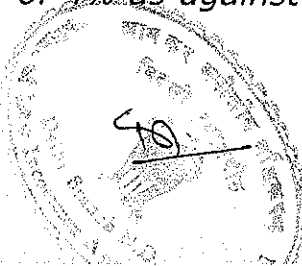
: Shri R.S.Negi, Sr.DR.  
: Shri Ved Jain & Ms.Rano Jain, CAs  
and Shri V.Mohan, Advocate.

ORDER

PER G.D.AGRAWAL, VP :

ITA No.3543/Del/2011 is the appeal by the Revenue in which following ground is raised:-

*"On the facts and in the circumstances of the case, the Id.CIT(A) has erred in directing to work out profit by applying a G.P. rate of 4% as against 4.9% applied by the*



*AO without appreciating that G.P. rate declared in the comparable cases of the line relied upon by the AO had shown better results and the account books maintained by the assessee suffered from defects so as to warrant invoking of section 145(3) of the I.T."*

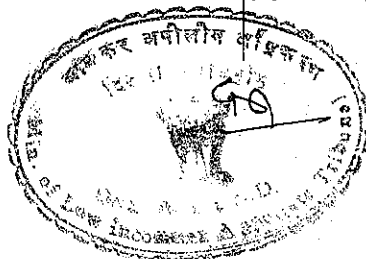
2. ITA No.3755/Del/2011 is the appeal by the assessee in which following grounds are raised:-

*"1. That on the facts & in the circumstances of the case, the Id.CIT(A) has erred on law & facts by confirming the imposition of section 145(3) and upholding rejection of books of accounts despite furnishing of requisite information & documents including stock register.*

*2. That on the facts & in the circumstances of the case the Id.CIT(A) has erred on law & facts by applying the Gross Profit rate @ 4% (from 4.90% assessed by the Id.AO) against 3.63% shown by the assessee, despite no defects has been found by the Id.AO in the books of accounts of the assessee."*

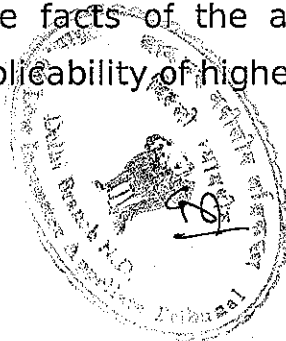
3. Since common issues are raised in these cross-appeals, they are heard and are being adjudicated upon together.

4. The assessee is an individual who derives income from purchase and sale of different kinds of timber. For the year under consideration, on the sale of ₹8,40,09,166/-, gross profit of ₹30,49,494/- was disclosed. The rate of gross profit was 3.63%. The Assessing Officer rejected the assessee's books of account and after considering the average of four comparable cases applied gross profit of 4.90%.



5. On appeal, learned CIT(A) upheld the rejection of books of account but he reduced the GP rate to 4% as against 4.90% applied by the Assessing Officer. Aggrieved with the order of learned CIT(A), both the parties are in appeal before us.

6. At the time of hearing before us, it was pointed out by the learned counsel that at page 7 of the assessment order, the Assessing Officer has given a comparative position of immediately preceding two years from which, it is evident that the GP rate of AY 2005-06 and 2006-07 was 2.37% and 2.65% respectively, which has been accepted by the Revenue as reasonable. In this regard, he referred to the assessment order placed at pages 57 to 59 of the paper book for AY 2006-07. He also referred the four comparable cases given by the Assessing Officer at page 6 of the assessment order and stated that only comparable case for AY 2007-08 is of Sat Paul & Sons wherein GP rate of 3.53% was disclosed. All other three cases were for earlier years. He stated that if earlier years are to be compared, then the assessee's own case is the best guide rather than other cases. If comparison is to be made with others, it should be for the same year. In either case, the GP disclosed by the assessee in the year under consideration is better. He further submitted that the rejection of books of account itself is unjustified because the assessee has maintained all the necessary details and the same were produced before the Assessing Officer also. However, since the assessee's GP is better than the earlier year and also better than the comparable case given by the Assessing Officer himself, he is resting his argument mainly on the applicability of the gross profit rate. Even if books are to be rejected, a reasonable rate of GP is to be applied. He, therefore, submitted that on the facts of the assessee's case, there was no justification for the applicability of higher rate of GP.



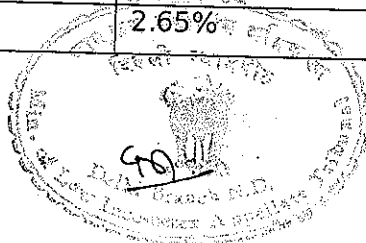
7. The learned DR, on the other hand, relied upon the orders of authorities below and stated that the applicability of GP rate of 4.90% by the Assessing Officer is quite reasonable and the same should be sustained.

8. We have carefully considered the arguments of both the sides and perused the material placed before us. The Assessing Officer has given four comparable cases on page 6 of the assessment order. For ready reference, the same is reproduced below:-

Name of Assessee	Asstt. Year	% Gross Profit
Jai Parkash M/s Narwana Timber Store, Karnal	2004-05	6.00%
Jai Parkash M/s Narwana Timber Store, Karnal	2005-06	4.34%
Neeraj Jain Prop. Jagdama Timber Store, Karnal	2006-07	5.66%
Sat Paul & Sons, M/s Kaithal Timber Store, Karnal	2007-08	3.53%
	Total	19.53%
Average Rate	$19.53/4 =$	4.90%

9. At page 7 of the assessment order, the Assessing Officer has given the comparative position of sale and gross profit in the case of the assessee. The same is also reproduced herein below for ready reference:-

Particulars/AY	2005-06	2006-07	2007-08
Sales	73194816.00	58871050.00	84009166.00
GP	1737528.00	1560090.00	3049494.00
NP	232204.29	239771.82	367238.40
GP Ratio	2.37%	2.65%	3.63%



10. The assessment year under appeal is 2007-08. The comparable cases of other assessees are for AY 2004-05 to 2007-08. If we take the comparable cases of AY 2007-08, then we find that the GP rate for the comparable cases quoted by the Assessing Officer himself is 3.53% whereas in the case of the assessee, the GP rate is 3.63%. If we compare the trading result of the year under consideration as compared to earlier year in assessee's own case, we find that in AY 2006-07, the GP rate was 2.65% which is accepted by the Revenue in the order passed under Section 143(3) wherein the Assessing Officer held as under:-

*"Purchases and sales shown have been verified from the books of account. During the course of asstt. proceedings it was noticed that the assessee had shown gross turnover of Rs.58871050/- and G.P. of Rs.1560090/- and G.P. rate of 2.65% against gross turnover of Rs.73194816/-, G.P. of Rs.1737528/- and G.P. rate of 2.37% of immediately preceding year. The G.P. rate is on higher side, whereas gross profit rate in this line of trade shown 2.85% in the case of M/s Janta Timber Store, Timber Market, Karnal."*

11. From the above, it is evident that the Assessing Officer himself considered the GP rate of 2.65% in AY 2006-07 to be reasonable. In AY 2005-06, in assessee's own case, the GP rate of 2.37% was accepted by the Revenue. In view of the totality of above facts, we do not find any justification for applicability of GP rate of 4.90%. The gross profit rate disclosed by the assessee at 3.63% is better as compared to earlier two years of assessee's case and also better than the comparable case of Sat Paul & Sons quoted by the Assessing Officer for AY 2007-08. In view of the above, we do not find any justification



for sustaining the part of the trading addition by applying GP rate of 4%. The same is deleted.

12. In the result, the appeal of the assessee is allowed while the appeal of the Revenue is dismissed.

Decision pronounced in the open Court on 6th July, 2012.

Sd/-  
(I.C.SUDHIR)  
JUDICIAL MEMBER

Dated : 6.07.2012  
VK.

Sd/-  
(G.D.AGRAWAL)  
VICE PRESIDENT

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Copy forwarded to: -

1. Revenue : Income Tax Officer,  
Ward-1,  
Karnal.
2. Assessee : Shri Krishan Kumar,  
Prop. M/s Mittal Timber Store, By hand  
Timber Market,  
Karnal.
3. CIT
4. CIT(A)
5. DR, ITAT



Assistant Registrar  
सहायक पंजीकार

Assistant Registrar,  
आयकर अपीलार्थी अधिकरण

Income tax Appellate Tribunal  
दिल्ली पीठ, नई दिल्ली

Delhi Benches, New Delhi.