IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “E”, MUMBAI

Before Shri Mahavir Singh(JUDICIAL MEMBER)
AND
Shri G Manjunatha (ACCOUNTANT MEMBER)

I.T.A No.5010/Mum/2016
(Assessment year: 2012-13)

ACIT-Circle 6(3)(2), Mumbai	vs	M/s Kamani Oil Industries Ltd 317, Pooran Asha Bldg Narsi Natha Street, Masjid Bunder Mumbai 400 009 PAN : AACCK4395B
APPELLANT		**RESPONDENT**

I.T.A No.5010/Mum/2016
(Assessment year: 2012-13)

M/s Kamani Oil Industries Ltd 317, Pooran Asha Bldg Narsi Natha Street, Masjid Bunder Mumbai 400 009	vs	Dy.CIT 6(3)(1), Mumbai
APPELLANT		**RESPONDENT**

Revenue by	Shri D.G. Pansari
Assessee by	Shri Jitendra Jain

Date of hearing	31-07-2018
Date of pronouncement	10-10-2018

O R D E R

Per G Manjunatha, AM :

These cross appeals filed by the revenue as well as the assessee are directed against the order of the CIT(A)-12, Mumbai dated 06-05-2016 and they pertain to QY 2012-13. Since facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are disposed of by this common order.

2. The revenue has raised the following grounds of appeal:-

"1. "On facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition on account of estimations of the Gross Profit @ 9% and rejection of books u /s. 145"
2. "On facts and in the circumstances of the case and in law, the Ld. CIT(A) failed to appreciate the fact that the ssessee did not provide to the AO. the details of consumption of raw material (seeds) vis-à-vis yields, separately in respect of different types oils (cotton, mustard and ground nut, etc.) extracted from different seeds, when there is huge variation in the market price of these oils, and this being one of the major reasons for rejection of book result u/s 145 "

2. The assessee has raised the following grounds of appeal:-

"1. The Commissioner of Income Tax (Appeals) - 12, Mumbai, [hereinafter referred to as CIT(A)] erred in confirming the adhoc disallowance of Rs. 1,00,00,0007- following the predecessor's order.
The Appellant submits that on the facts and circumstances of the case of the Appellant there is no non correlation or leakage of consumption material and hence, no adhoc disallowance of Rs. 1,00,00,0007- is called for in its case and addition confirmed by the CIT(A) shall be deleted."

3. The brief facts of the case are that the assessee is a private limited company engaged in the business of manufacturing, refining and trading in edible oils and vanaspati. The assessee has filed its return of income for AY 2012-13 on 28-09-2012 declaring total loss at Rs.1,26,72,255. The case was selected for scrutiny and statutory notices u/s 143(2) and 142(1) of the Act dated 24-07-2014 alongwith questionnaire was issued. In response to the notices, the authorised representative of the assessee appeared from time to time and filed various details, as called for including audited financial statements. During the course of assessment proceedings, the AO noticed that there is a decrease in gross profit declared by the assessee when compared to gross profit declared for AY 2011-12, -Therefore, called upon to justify decline in gross profit with necessary explanation. In response to show cause notice, assessee has filed a detailed reply alongwith reconciliation of gross profit declared for the assessment year 2011-12 and for the year under consideration and explained reasons for fall in gross profit. According to the assessee, the main reason for decline in gross profit. Second reason for decline in gross profit is that is increase in raw material cost which fluctuates according to the international market because of which there was an

increase in cost of oil which is one of the reasons for decline in gross profit. The second reason for decline in gross profit is grouping / rearranging of certain expenses from consumption of raw materials to manufacturing cost which resulted in enhanced consumption of raw materials. Another reason for decline in gross profit is that in the previous financial year, the assessee has included freight, transportation, coolie and cartage expenses and consignment expenses under the head 'selling and distribution expenses' whereas during the year under consideration, the said expenses has been included in manufacturing cost. This resulted in sharp decline in gross profit ratio when compared to previous financial year. If freight, transportation expenses, etc. are excluded from manufacturing cost, then the gross profit ratio works out to 5.68% as against reported gross profit ratio of 3.55% in the financial statement. If correct gross profit is compared with the gross profit declared for AY 2011-12, then there is a difference of 1.12% which is on account of increase in oil prices. Therefore, without any discrepancies noticed in the books of account, merely for the reason of minor difference in gross profit, the books of account cannot be rejected and gross profit cannot be estimated.

4. The AO, after considering relevant submissions of the assessee held that though there is a difference in gross profit declared for the year under consideration, when compared to previous financial year, the assessee failed to explain such difference with plausible reasons. The AO further observed that the assessee company has been consistently showing gross profit about 10% over the period and the sudden decline from 6.8% to 3.55% is not explained satisfactorily. The stock details and analysis submitted in support of the claim that the increase in input cost has eroded the gross profit margin is not satisfactorily established by the assessee. In view of the factual circumstances of the case and the peculiarities arising as a result of nature of business, the book results are not found acceptable and accordingly, rejected books of account u/s 145(3) of the Income-tax Act, 1961 and the income is determined on the basis of gross profit estimation. The AO further observed that in the last assessment year (AY 2011-12), the books of account of the assessee were rejected on account of defects found in the books of account and gross profit was estimated at 9% of the total sales / turnover. Similarly, during the year under consideration, various defects were found in terms of reasonable and determinable co-relation of the output vice versa the input.

Since, the sales are the only reasonable point of reference of the rejection of book results, the gross profit is worked out at 9% after duly weighing various factors as adduced by the assessee company. Accordingly, he estimated gross profit of 9% on sales turnover and made addition of Rs.48,97,12,103 towards difference in gross profit estimated on total sales and gross profit declared in books of account.

5. Aggrieved by the assessment order, assessee preferred appeal before the Ld.CIT(A). Before the Ld.CIT(A), assessee has reiterated its submissions made before the AO to argue that mere fall in rate of gross profit may not be a reason for estimation of gross profit when assessee has substantiated fall in gross profit with necessary evidence. The assessee further submitted that the gross profit ratio cannot be expected to be at same rate when the assessee has procured raw materials from various sources. The assessee is in the business of manufacturing and sale of edible oils and vanaspati, purchased raw materials, and the price of which is dependent upon international market rates, therefore, there is a sharp rise in price of raw materials which resulted in decline in gross profit ratio for the year under consideration. The assessee further submitted that another reason for fall in gross profit is on account of regrouping /

re-arranging certain expenses from P&L Account to trading account which resulted in lesser gross profit. All these factors have been explained before the AO with necessary evidence, but the AO has ignored explanation furnished by the assessee and estimated gross profit only on the basis of gross profit rate declared for AY 2010-11 without assigning any reason as to how books of account maintained by the assessee are inconsistent with accounting principles / method of

6. The Ld.CIT(A), after considering relevant submissions of the assessee and also by following his predecessor's appellate order for AY 2011-12, partly allowed appeal filed by the assessee wherein he has sustained lump sum addition of Rs.1 crore in respect of gross profit estimation and the balance amount has been directed to be deleted. Aggrieved by the order of Ld.CIT(A), assessee is in appeal.

7. The Ld.AR for the assessee, at the time of hearing, submitted that the issue is squarely covered in favour of the assessee by the decision of ITAT, Mumbai Bench "E" in assessee's own case for AY 2011-12 in ITA No.3151/Mum/2015, where under similar set of facts, the ITAT has deleted addition made by the AO towards estimation of gross profit. The Ld.AR further submitted that the AO has made similar addition towards estimation of gross profit for similar

reasoning which has already been considered by the ITAT, therefore, for similar reasons, addition made by the AO should be deleted. The Ld.AR, further referring to the paper book filed, submitted that the assessee has explained reasons for fall in gross profit ratio when compared to previous financial year by filing a reconciliation statement and the AO has ignored complete evidences filed by the assessee merely for the reason that a similar addition has been made in the preceding financial year. The Ld.AR further submitted that the assessee has maintained books of account and such books of account were audited u/s 44AB of the IT. Act, 1961 and the tax auditor has issued a clean report without any adverse comments on books of account or stock registers. Therefore, there is no reason for the AO to reject books of account u/s 145(3) and estimate gross profit by adopting gross profit of earlier year which has been knocked down by the ITAT.

8. The Ld.AR further submitted that the assessee has given two reasons for fall in gross profit rate, one reason for decline in GP rate is increase in cost of raw materials due to the fluctuation in prices of edible oil in the international market and another reason for decline in gross profit is regrouping / re-arranging of certain expenses from P&L Account to trading account. The Ld.AR referring to paper book

pages 57 & 58 submitted that the assessee has filed a comparative chart of gross profit ratio for AY 2011-12 and AY 2012-13 and also corrected gross profit of AY 2012-13 as per which the correct gross profit after regrouping of expenses works out to 5.68% as against 3.55% declared in the books of account. If correct gross profit of 5.68% is considered to the gross profit declared for AY 2011-12 of 6.8%, then there is a marginal difference of 1.12% which is on account of increase in cost of raw materials. Therefore, there is no reason for the AO to estimate gross profit. The Ld.AR further submitted that although the Ld.CIT(A) has accepted the contention of the assessee, still sustained adhoc disallowance of Rs.1 crore by following his predecessor's appellate order without assigning any reasons. But fact remains that on further appeal, the ITAT has deleted the addition sustained by the Ld.CIT(A). Therefore, for similar reasons, this year also the addition made by the AO should be completely deleted.

9. On the other hand, the Ld.DR submitted that the AO has brought out clear facts to the effect that the books of account maintained by the assessee are inconsistent for various reasons, but the Ld.CIT(A) without assigning any reasons, negated observations made by the AO for rejection of books of account. The

Ld.DR further submitted that the Ld.CIT(A) erred in confirming adhoc disallowance of Rs.1 crore by following his predecessor's order without discussing the facts and circumstances as to how the gross profit estimated by the AO is incorrect. Although, the ITAT has knocked out the addition made by the AO in the earlier year, but fact remains that there is no res judicata in income-tax proceedings and each assessment has to be examined in the light of facts brought out for the year under consideration. The AO in his assessment order has detailed the reasons for rejection of books of account and estimation of gross profit and hence, the addition made by the AO should be upheld.

10. We have heard both the parties, perused the material available on record and gone through the orders of authorities below. The AO has rejected books of account u/s 145(3) of the Act, and estimated gross profit at 9% on total sales turnover and determined difference of Rs.45,97,12,103. The AO has given reasons for estimation of gross profit as per which, the books of account maintained by the assessee are not reliable as the assessee failed to explain fall in gross profit with plausible reasons. The AO has taken 9% gross profit which is based on gross profit declared for AY 2010-11 and then compared such gross profit rate

to the gross profit declared for the year under consideration which is at 3.55%. According to the AO, the assessee has declared over and above 10% G.P. over the years, but there is a sudden decline in gross profit ratio to 3.55% for the year under consideration for which the assessee has not offered any proper reasons. It is the contention of the assessee that the gross profit ratio cannot be intact from year to year which is dependent upon various factors including cost of raw materials, overhead expenses and the manufacturing process. The assessee further contended that the first reason for fall in gross profit rate for the *4* year under consideration is due to sharp increase in cost of raw materials based on international rates. Another reason for fall in profit rate is on account of regrouping of certain expenses including freight, transportation, coolie and cartages which have been grouped under the head, 'selling & distribution expenses' for the previous financial year, whereas during the year under consideration, the said expenditure have been grouped under the head 'manufacturing cost[1]. If the above expense of Rs. 17,90,84,942 is excluded from the manufacturing expenses, then the correct gross profit rate for the year under consideration works out to 5.68% and the correct gross profit rate of 5.68% is compared to gross profit declared for AY 2011-12, i.e. 6.8%, then, -

there is a minor difference of 1.12% which is purely on account of increase in cost of raw materials which is beyond the control of the assessee. Though, the assessee has explained all these factors with necessary evidence, the AO has ignored complete details filed by the assessee and made addition by taking gross profit rate of 9% without making any adverse comments on books of account maintained by the assessee. On the other hand, the assessee had filed complete details to justify gross profit declared in its books of account and also reconciled gross profit ratios between AYs 2011-12 and 2012-13. Therefore, the AO was incorrect in rejection of books of account and estimation of y gross profit.

11. Having considered both the sides, we find that a similar issue arose for consideration before ITAT, Mumbai Bench "E" for AY 2011-12 in assessee's own case in ITA No.3151/Mum/2015. The co-ordinate bench of ITAT under similar set of facts, has deleted addition made by the AO towards estimation of gross profit. The relevant observations of the Tribunal are extracted below:-

> "9. We heard the parties and perused the record. We have noticed that the AO has rejected the books of accounts mainly for the reason that there was fall in the G.P rate. However the contentions put forth by the assessee as well as M/s Kamani Oil Indsustries Private Limited the details furnished before the tax authorities would show that the assessee has given proper reason for the fall in the G.P rate, i.e., there was increase in the raw material cost and

the assessee could not make corresponding increase in the selling price due to acute competition. The above said submission of the assessee is corroborated by the fact that the sales turnover of the assessee has increased by about 40% during the year under consideration. We notice thai the assessee has given detailed notes to the AO explaining the reasons for the fall in the G.P rate. We notice that the assessee has also substantiated the explanations by furnishing the copies of purchase invoices to prove that the raw material cost has increased during the year under consideration vis-a-vis in the immediately preceding year.

10. We further notice that the assessee has given an additional "Note on Gross profit" before the AO and the same is placed at pages 127-128 of the paper book. A perusal of the same would show that the average cost of raw material has increased from Rs.40 932/- per MT to Rs.56,535/- per MT resulting in an average net increase of Rs. 15,6037- per MT. However, the average selling price has increased from Rs.52,9607- per MT to Rs.67,1537- per MT resulting in a net increase of Rs. 14,1927- per MT. Thus there is mismatch of Rs. 1,4117-(Rs. 156037- less Rs. 14,1927-) between the net increase in purchase rate and selling rate. This difference of Rs.1,4117- on the purchase of 1,04,952 MT of raw material has dented the Gross profit by Rs 14 80 crores. The assessee has further submitted that other direct costs and depreciation have also increased during the year to the tune of Rs. 1.96 crores. Thus, we notice that the assessee has reconciled the fall in gross profit rate with facts and figures. However, we notice that the AO has simply rejected the same without finding fault with the explanations so given by the assessee.

1 1 . In view of the foregoing discussions, we are of the view that the Ld CIT(A) was justified in holding that the AO has not made out a proper case for rejecting the books of accounts. On the contrary, we notice that the assessee M /s.KamaniOilIndustriesPrivateLimited has convincingly explained the reasons for the fall in G.P rate. Accordingly we uphold the order of Ld CIT(A) in setting aside the order of rejection of books of account.

> 12. Since the assessee has explained the reasons for the fall in G.P rate and since the normal loss declared by the assessee is much lower than earlier years, we are of the view that the non-maintenance of inter process record has not impacted the profit of the year. We notice that the assessee has been maintaining same set of books of accounts and stock register year after year and they have been accepted by the AO in the past. Even otherwise, the assessee has reconciled the quantity details of raw materials and finished goods category wise. Under these set of facts, we are of the view that the Ld CIT(A) was not justified in making adhoc addition of Rs. 1.00 crore. Accordingly we set aside the order of Ld CIT(A) in confirming the addition of Rs. 1.00 crore."

12. In this view of the matter and consistent with the view taken by the co-ordinate bench in assessee's own case for AY 201 1-12, we are of the considered view that the AO was erred in rejection of books of account u/s 145(3) without recording any reasons as to how books of account maintained by the assessee are inconsistent with regular method of accounting fattened- and accounting standards. In absence of any finding as to incorrectness in books of account or stock details, merely for the reason that there is fall in gross profit ratio, the books of account cannot be rejected u/s 145(3), more particularly, when the assessee has reconciled difference in gross profit ratio with necessary evidences. Therefore, we are of the considered view that the AO was erred in estimating gross profit on total sales to make additions. We further notice that although the CIT(A) has accepted the contentions putforth by the assessee to delete addition made by the AO towards estimation of gross profit, yet, he has sustained adhoc disallowance of Rs.1 crore by following his predecessor's order. But fact remains that the addition sustained by Ld.CIT(A) was deleted by ITAT, on further appeal by the assessee. Accordingly, we set aside the order of Ld.CIT(A) in confirming the adhoc addition of Rs.1 crore and direct the AO to delete addition made towards estimation of gross profit in total.

13. In the result, the appeal filed by the revenue in ITA No.5010/Mum/2016 is dismissed and appeal filed by the assessee in ITA No.4964/Mum/2016 is allowed.

Order pronounced in the open court on 10th October, 2018.

Sd/- sd/-

(Mahavir Singh)	(G Manjunatha)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 10th October, 2018
Pk/-
Copy to :
1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

/True copy/ By order

Sr.PS, ITAT, Mumbai