

**Senzo Engineering (P) Ltd. Vs. Ito**

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**Court :** Income Tax Appellate Tribunal ITAT Mumbai

**Decided On :** Sep-28-2007

**Judge :** R Gupta, A Garodia

**Appellant :** Senzo Engineering (P) Ltd.

**Respondent :** ito

**Judgement :**

1. These are cross appeals directed against the order of learned Commissioner (Appeals)-XXIX, Mumbai dated 3-11-2006 for assessment year 2003-04 and for the sake of convenience, both these appeals are being disposed of by this common order.

2. Grounds raised by the assessee in ITA No. 1424/Mum./07 read as under: (1) The learned Commissioner (Appeals) (hereinafter referred to as 'the Commissioner (Appeals)') erred in law and on facts in upholding assessment order passed by the assessing officer which was in violation of the principles of natural justice.

(2) The learned Commissioner (Appeals) erred in upholding the rejection of books of account made by the assessing officer and further erred in upholding the order passed in the manner laid down under Section 144 by invoking the provisions of Section 145(3) of the Act.

(3) The learned Commissioner (Appeals) erred in upholding estimation of unaccounted purchases of the appellant at Rs. 5,07,19,567 restricting the profit on the same at 12.5 per cent instead of 20 per cent estimated by the assessing officer. The said upholding of 12.5 per cent is completely unjustified.

(4) The learned Commissioner (Appeals) erred in upholding the profit rate of 12.5 per cent and estimating unaccounted purchases of Rs. 5,07,19,567. Without appreciating the nature of transaction of accommodation of bill which is in the nature of financial accommodation, therefore, estimation of unaccounted purchases of Rs. 5,07,19,567. Without appreciating the nature of transaction of accommodation of bill which is in the nature of financial accommodation, therefore, estimation of unaccounted purchases and profit is completely unjustified.

(5) The learned Commissioner (Appeals) misdirected himself on facts in not considering the submission made by the appellant during the course of appeal hearing.

(6) Without prejudicing to the above and without admitting the estimation of profit determined by assessing officer it is submitted that not allowing interest, depreciation and other expenses against estimation of income is completely unjustified.

(i) On the facts and circumstances of the case and in law, learned Commissioner (Appeals) erred in restring the estimate of 20 per cent profit on amount of Rs. 5,07,19,567 being unaccounted purchases from M/s. Golden Tensile to 12.5 per cent without assigning any reason.

(ii) On the facts and circumstances of the case and in law, learned Commissioner (Appeals) erred in directing the assessing officer to give credit for TDS of Rs. 4,06,952 deducted by M/s. Ketan Construction Ltd., whereas the sale invoices were prepared in the name of P.T. Sumber Mitra Jaya, the main contractor.

(iii) The appellant prays that the order of learned Commissioner (Appeals) on the above grounds to be set aside and that of the Income Tax Officer/AC/DCIT be restored.

(iv) The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.

4. Briefly stated, the facts are that the assessee is a private limited company engaged in the business of manufacturing of engineering goods for road and civil contractors. Return of this assessment year was filed on 1-12-2003 declaring 'nil' income. According to the assessing officer, the assessee always adopted policy of non-compliance or partial compliance.

It is also observed by the assessing officer that the assessee was allowed several opportunities but it preferred not to disclose any details before Mm to avoid proper scrutiny in the case and for these reasons, it is stated by the assessing officer that he had no option and, therefore, he served a show-cause notice dated 17-2-2006 to the assessee for ex parte assessment. In response to the same, learned AR of the assessee attended before the assessing officer on 24-2-2006 and filed some preliminary details. It is also observed by the assessing officer that the assessee has not provided complete details deliberately such as books of account, bills, vouchers and purchase and sale documents in respect of M/s. Golden Tensil etc. In the assessment order, it is observed by the assessing officer that it can be seen from the details filed by the assessee that the assessee has made unaccounted purchase of Rs. 5,07,19,567 from M/s. Golden Tensil and sold it out of books. After making this observation, the assessing officer adopted 20 per cent rate to determine gross profit on this turnover of Rs. 5,07,19,567 and made an addition of Rs. 1,01,43,914.

The assessing officer rejected the books of account of the assessee under Section 145(3) and on account of declared sale turnover of Rs. 13,24,04,599, profit rate was determined by the assessing officer at 12.5 per cent. Profit on this account was worked out by the assessing officer at Rs. 1,65,50,574. On this basis, total income was computed by the assessing officer at Rs. 2,66,94,489. From the same, the assessing officer allowed set off of brought forward unabsorbed business loss and brought forward unabsorbed depreciation amounting to Rs. 1,44,84,870 and net income was computed at Rs. 1,22,09,620 as against 'nil' income as per return filed by the assessee.

The assessee carried the matter in appeal before learned Commissioner (Appeals). Learned Commissioner (Appeals) held that 20 per cent profit estimated on account of suppressed turnover in connection with the transaction with M/s. Golden Tensil be restricted to 12.5 per cent as against 20 per cent adopted by the assessing officer. He upheld the rejection of Books by the assessing officer under Section 145(3) and estimation of net profit on turnover as per books at 12.3 per cent.

Against this direction of learned Commissioner (Appeals), the assessee is in appeal for quantum addition sustained by learned Commissioner (Appeals) as well as regarding upholding of rejection of Books by the assessing officer under Section 145(3); whereas, revenue is in appeal for the relief granted by learned Commissioner (Appeals).

5. Regarding estimation of profit at the rate of 12.5 per cent on disclosed turnover, learned Commissioner (Appeals) decided the issue against the assessee and now, the assessee is in appeal against this decision of learned Commissioner (Appeals) also.

6. Another issue was raised before learned Commissioner (Appeals) in connection with credit for TDS amounting to Rs. 4,06,952. This issue has been decided by learned Commissioner (Appeals) in favour of the assessee and revenue is in appeal before us on this issue.

7. It is submitted by learned AR of the assessee that the main reason for which the assessing officer rejected the books of account of the assessee and proceeded to complete the assessment on the basis of estimation of profit is an allegation that the assessee has made unaccounted purchase of Rs. 5,07,19,567 from M/s. Golden Tensil and sold it out of books. In this connection, it is submitted by learned AR of the assessee that there is no purchase made by the assessee from M/s. Golden Tensil. Our attention was drawn to copy of ledger account of M/s. Golden Tensil as appearing on page No. 32 of the paper book. It is submitted that as per this ledger account, there is opening credit balance of Rs. 97.45 lakhs and there are seven credits during the present year for an amount of Rs. 5,07,19,567. It is submitted by him that this credit of Rs. 507.19 lakhs has been taken by the

assessing officer as unaccounted purchase but this fact has been ignored that all these credits are on account of receipt of cheques from this party and not on account of any purchase bill; and hence, there is no basis to hold that there was any unaccounted purchase from this party.

Regarding this credit in the account of M/s. Golden Tensil, it is submitted that the assessee was having shortage of funds because company's sanctioned bank limit was only of Rs. 2 crores, which was not adequate and the banker was not ready to increase the cash credit limit; and for this reason, the assessee-company resorted to discounting of bills through what is known in business terminology as "accommodation of bills" for raising finance. It is submitted that for obtaining finance through this route, the assessee-company has used four entities as intermediaries, i.e., Siby Engineering used as purchasers and M/s. Golden Tensil, Bhavesh Engineering and Sai International were used as Accommodating Seller (AS). It is submitted that the assessee-company and Siby Engineering (SE) have applied to their banker for opening inland irrevocable letter of credit in favour of beneficiary either M/s. Golden Tensil (GT), Bhavesh Engineering (BE) or Sai International (SI). These concerns, i.e., the assessee-company and SE have also given purchase order in favour of the GT, BE or SI. On the basis of the said application, Punjab & Maharashtra Co-operative bank Limited issued letter of credit in favour of either GT, BE or SI. GT, BE or SI as the case may be, applied to their banker Janakalyan Sahakari bank Limited to discount the letter of credit issued in their favour. Along with this application, they enclosed original letter of credit, bills of exchange accepted by the assessee or SE, two copies of invoices, delivery challans and debit note for debiting interest. GT, BE or SI on the basis of above application for discounting bill accepted by the assessee or SE, used to receive money from their banker. After receipt of money, the same is transferred to the assessee or SE. If the money was transferred to SE, SE used to transfer it again to the assessee. In the books of the assessee, account of GT, BE or SI or SE is credited for the amount received. It is submitted that in addition to the ledger account of GT as appearing on page No. 32 of the paper book; copy of ledger account of SI is appearing on page No. 33, and that of the BE is appearing on page No. 34 and that of SE is appearing on page No. 35. It is submitted that there are credit of Rs. 155.77 lakhs in the account of SI, credit of Rs. 358.32 lakhs in

account of BE and credit of Rs. 102.24 lakhs in account of SE; but no adverse inference is drawn by the assessing officer regarding these credits in these three accounts and adverse inference was drawn by the assessing officer only regarding credits in account of GT. It is also submitted that on the due date, the assessee or SE used to discharge their liability of bill by paying amount to the banker and in its books, such payment was debited to the account of GT, BE or SI. Our attention was again drawn to page No. 32 of the paper book; and it was pointed out that during this year, only one such payment was made to M/s. Golden Tensil on 31-3-2003 for an amount of Rs. 92,15,703 and the same is debited to the account of GT. It is submitted that similar payments were debited in the account of SI on 24-6-2002 and 27-9-2002; in the account of BI on 24-6-2002, 27-9-2002, 27-12-2002 and 31 -3-2003; and in the account of SE on 3 -4-2002,29-4-2002, 31 -3-2003.

It is submitted that these transactions are finance transactions and not a transaction of purchase and sale; and, therefore, there is no question of any income out of these transactions. It is submitted that in fact, the assessee has utilized the money of the bank in the process without paying any interest and interest has been borne by the intermediaries and no deduction on account of interest was claimed either by the assessee or by the intermediaries and hence, there is no reason to draw any adverse interference out of these transactions of the assessee with GT. It is submitted that there is closing outstanding balance of Rs. 5,12,48,864 payable by the assessee to GT and this credit balance was shown by the assessee under the head 'Creditors for goods' and for this reason, the assessing officer assumed that the whole of the amount outstanding represent creditors for purchase; and on this assumption, the assessing officer has estimated 20 per cent profit and made additions of 101.43 lakhs. It is submitted that in fact, there is no purchase from GT and hence, there is no question of any addition on this account.

Regarding the rejection of books of the assessee and estimation of profit at the rate of 12.5 per cent on the disclosed turnover, it is submitted that the main reason for which, the assessing officer invoked provisions of Section 145(3) was that this transaction with GT was considered by the assessing officer as purchase transaction, which was not disclosed. Once this allegation of the assessing officer

is rejected as submitted earlier, there is no other basis to uphold the action of the assessing officer regarding rejection of books under Section 145(3).

Second reason given by the assessing officer for rejection of books under Section 145(3) is that the assessee had capitalized part of interest incurred on loans obtained for plant, machinery and other equipments. In this regard, it is submitted by learned AR of the assessee that in the present year, the assessee had added certain assets; and as per the accounting practice, till date of putting the asset to use, interest can be capitalized; and accordingly, an estimated interest of about 16 lakhs was capitalized. It is submitted that even if, this treatment of the assessee regarding interest is not accepted, it cannot be the basis for rejecting the books of account of the assessee.

It is submitted that the third reason given by the assessing officer for rejection of books under Section 145(3) is that the assessee has debited interest and bank charges charged by the bank to the respective party's account instead of debiting it to interest/bank charges account. In this regard, it is submitted by learned AR of the assessee that it is a mistake and as per the same, profit of the assessee has gone up because expenses were wrongly debited to the party's account and for this reason also books of assessee cannot be rejected under Section 145(3).

Other reason given by the assessing officer for rejection of books under Section 145(3) is that the assessee has given interest-free loans and advances to two parties, i.e., Sai International, Rs. 17.63 lakhs and Shri Rama Tiwari Rs. 42 lakhs. It is submitted that even if the assessing officer establishes that borrowed funds were diverted for giving these interest free advances, interest expenses can be disallowed to that extent; but it cannot be the basis for rejecting books of account of the assessee. It is submitted that in the present case, there was sufficient interest-free funds available with the assessee to give these interest-free advances and hence there cannot be any disallowance of interest also on this account.

It is submitted that one more reason given by the assessing officer is that the assessee has claimed TDS credit of Rs. 4,06,952 on account of sub-contract payment receipt of Rs. 3,87,57,300 from M/s. Ketan Construction Ltd., but it is not

shown in the sales details. In this regard, it is submitted that sales represented by the TDS certificate has been duly recorded in the books of account and after verifying this aspect, learned Commissioner (Appeals) has allowed credit for TDS; and hence, this also cannot be the basis for rejecting books of account of the assessee.

It is submitted that other reason given by the assessing officer for rejection of books under Section 145(3) is that there is increase in the expenses on account of transport charges, repairs and maintenance charges, miscellaneous expenses, telephone expenses and travelling expenses. It is submitted that the increase in all these expenses are for valid reasons and this is again cannot be the basis for rejecting the books of the account of the assessee.

One more reason given by the assessing officer for rejection of books under Section 145(3) is regarding some discrepancies in quantitative details. Regarding this, it is submitted that the discrepancy found is in the statement furnished and it is not deficiency in the books of account. It is submitted that quantity is correct in the books but in Tax Audit Report, there is some typing mistake in quantity.

One more reason given by the assessing officer for rejection of books under Section 145(3) is that the valuation of closing stock was not done by the assessee in accordance with Section 145A. It is submitted that the valuation of stock is done in accordance with accepted accounting principles and as such, there is no deviation from Section 145A; and hence, it cannot be inferred that the books of account are not properly maintained.

One more reason given by the assessing officer for rejection of books under Section 145(3) is that as per notes to account, it is mentioned by the Auditor that purchase, sale and stock details are enclosed with balance sheet; but it has not been annexed. It is submitted that it can be the case of information not available with the financial statement filed along with return of income; but it cannot be said that it is a deficiency in the books of account.

It is submitted that having regard to the facts of the present case and under the circumstances as explained, it cannot be inferred that the books of account are not

properly maintained or were not proper or sufficient to ascertain book results. Regarding purchase and sale recorded in books, no deficiency was found and no adverse finding is given by the assessing officer. It is submitted that the assessing officer has not pointed out any instances, where the details submitted were not correct or fictitious or spurious entries were made or the accounting system was seriously defective; and hence, it cannot be said that the books do not disclose the correct result. It is submitted that the Assessing Officer has not pointed out any transaction that is not recorded or partially recorded or incorrectly recorded; and hence, there is no concrete evidence to show that the books do not reflect the true profit or income. It is submitted that under this situation, books of the assessee cannot be rejected and the book result should be accepted. It is also submitted that the gross profit as per books of account of the assessee is 27.82 per cent of sales before deducting administration, selling and other distribution expenses. After deducting these expenses, profit before interest and depreciation is 14.76 per cent, which is very much reasonable. After deducting interest and depreciation, net profit declared by the assessee is Rs. 19,45,991 which is 1.47 per cent of sales and hence, book result of the assessee should be accepted. It is also submitted that sales during this year is about double of the sales during the earlier year i.e., assessment year 2002-03; whereas, the expenses on account of manufacturing expenses as well as administration, selling and distributing and selling expenses is less than double of these expenses in the earlier year. It is submitted that cost of manufacturing expenses was Rs. 543.99 lakhs in the earlier year; whereas, it is Rs. 955.64 lakhs in the present year, which is less than double. Similarly, administration, selling and distributing expenses was Rs. 143.40 lakhs in the earlier year; whereas, the same is only Rs. 173.01 lakhs in the present year; and hence, increase in this year is only about 21 per cent as against increase in sales from Rs. 645.01 lakhs to Rs. 1301.84 lakhs, which amounts to increase of 101 per cent; and hence, increase in expenses is not unreasonable; and, therefore, no adverse inference can be drawn.

Income of the assessee has been accepted in the earlier year; and therefore, in the present year also, income declared by the assessee as per books of account of the assessee should be accepted. It is submitted that to avoid protected litigation and to buy peace, the assessee-company agrees that an estimated ad

hoc addition of Rs. 2 lakhs may be made in the declared profit to meet out the various shortcomings pointed out by the assessing officer.

8. As against this, learned Departmental Representative of the revenue supported the assessment order. With regard to estimation of profit at 20 per cent on suppressed sales, estimation of profit at 12.5 per cent of the declared sales and also regarding allowing of credit of TDS of Rs. 4,06,952. Regarding this TDS credit, it is submitted by learned Departmental Representative of the revenue that TDS was deducted by M/s. Ketan Constructions; whereas, sales invoices were prepared in the name of P.T. Sumber Mitra Jaya, the main contractor; and hence credit of this TDS should not be allowed to the assessee.

9. In the rejoinder, it is submitted by learned AR of the assessee that TDS certificate is in the name of the assessee and the receipt is duly accounted for in the books of the assessee and credited in the profit and loss account. This aspect may be verified by the assessing officer and if it found that the impugned receipt on which, TDS was deducted and TDS certificate was issued to the assessee is duly included in the sales of the assessee as per profit and loss account, TDS credit should be allowed to the assessee after making this factual verification.

10. We have considered the rival submissions, perused the materials on record and have gone through the orders of authorities below. We find that, we have to decide regarding mainly three aspects of the matter, which are as under: (a) Whether credit in the account of GT as appearing on page No. 32 of the paper book to the extent of Rs. 5,07,19,567 is on account of purchases from that party and whether there is any sale out of books (b) Whether rejection of books of account by the assessing officer- by invoking the provisions of Section 145(3) is justified and also whether income of the assessee should be determined as per book result or as per the estimate by invoking provisions of Section 145(3). If it is held that Section 145(3) has been rightly invoked, then what should be the quantum of income in the present case? (c) Whether credit should be allowed to the assessee on account of TDS of Rs. 4,06,952

11. First, we deal with the first aspect, i.e., regarding allegation of the assessing officer that the assessee has made unaccounted purchase from GT and corresponding sales has been made

outside books. The Assessing Officer- had come to the conclusion that there is purchase from GT on the basis of credit in this year in the account of GT. This ledger account of GT is appearing on page No. 32 of the paper book.

From the same, we find that there are seven credits in this ledger account and all these credits are on account of receipt of cheques drawn on Punjab & Maharashtra Cooperative bank Limited. We fail to understand how the credits on account of receipt of cheques can be said to be credits on account of purchase of goods merely on the basis that the credit balance at the year end is shown in the balance sheet under the heading 'Creditors for goods'. This transaction is duly explained by the assessee that the assessee resorted to obtain finance from the bank by resorting to the tool of accommodation bills. Similar credits are appearing in the ledger account of Sai International, Bhavesh Engineering and Siby Engineering. No adverse inference has been drawn by the assessing officer regarding these credits in these three accounts; although, nature of credit is similar. Nothing is brought on record to show that there was an actual purchase or there was any actual sale outside books. This practice of obtaining bank finance by resorting to the tool of accommodation bills is not new and in the book 'Banking Law and Practice' written by Shri R.K. Gupta, Deputy Legal Adviser, Reserve bank of India, Central Office Mumbai, on page No. 640 the terms 'trade bill and accommodation bill' are defined. This definition is reproduced below: Trade bill and accommodation bill? A bill drawn in relation to a genuine sale and purchase of goods transaction is known as trade bill, whereas in the accommodation bill, the accommodating party puts his name without consideration for the purpose of accommodating some other party who is to use it and is expected to pay it when due. A party who procures another to lend his acceptance thereby engages himself to take up the bill or else within a reasonable time before the bill becomes due to provide the accommodation acceptor with funds for so doing, or lastly, to indemnify the accommodation acceptor against the consequences of non-payment. An accommodation bill is known as "kite", "wind bill" or "fictitious bill" and the whole transaction kite flying.

12. From the above definition of accommodation bill as per Shri R.K Gupta, author, an accommodation bill is also known as "kite", "wind bill" or "fictitious bill"

and whole transaction is kite flying. In the facts and circumstances of the case, we are of the considered opinion that in the present case, it cannot be held that there was any actual purchase from GT. This inference has been drawn by the assessing officer on the basis that sale bills in favour of the assessee issued by various parties to its banker along with the documents submitted to the bank for discounting of the bills. This cannot be seen in isolation because if any body is resorting to the tool of finance through accommodation bills, sale bill has to be prepared and submitted to the bank. When this fact is seen in the light of this fact that after discounting the bills from the bank, the said seller has transferred the money by cheques to the assessee. If a person is selling goods to the assessee, that person is to receive payment from the assessee as against making payments to the assessee. When both these facts are appreciated together, we find force in the contention of the learned AR of the assessee that these are only accommodation bills and not actual purchase by the assessee. Once, we hold that these are only accommodation bills and not actual purchase bills, there cannot be sale outside books; and therefore, addition made by the assessing officer on account of sale outside books cannot be sustained and the same is deleted. Ground Nos. 3 and 4 of the assessee's appeal are allowed.

13. Now, we take up the second issue, i.e., rejection of books of the assessee by invoking provisions of Section 145(3) and estimating income of the assessee at the rate of 12.5 per cent of the disclosed turnover of Rs. 13,24,04,599. In this regard, we find that the main reason for which, the assessing officer rejected the books of the assessee by invoking provisions of Section 145(3) is the transaction with GT, which as per the Assessing Officer was actual purchase but was not so shown by the assessee in its books. The assessing officer was of the view that the assessee has made unaccounted purchase of Rs. 507.19 lakhs from GT and corresponding sales was made outside books. This issue is already decided by us in favour of the assessee as per Para No. 11 above. Once, it is held that there was no unaccounted purchase and there was no unaccounted sales, the main basis on which, the assessing officer invoked provisions of Section 145(3) do not survive.

14. The other reasons given by the assessing officer for rejecting books of the assessee have no merit. We discuss the same hereinafter.

15. Regarding capitalization of interest till date of putting the asset to use, we are in agreement with learned AR of the assessee. We find that proviso has been added in Section 36(1)(iii) by the Finance Act, 2003 with effect from 1-4-2004; and as per this proviso, amount of interest paid, in respect of capital borrowed for acquisition of an asset shall not be allowed as deduction till the date on which, such asset was first put to use. Although, this proviso is applicable from 1-4-2004, i.e., assessment year 2004-05; but even if the assessee has maintained its account in this year, on this basis, it cannot be said that the accounts are defective. As per provisions of Section 145(3), there should be satisfaction of the assessing officer that the accounts maintained by the assessee are not correct or complete. No such satisfaction of the assessing officer is there because capitalization of interest for the period when the assets were not out to use can render the accounts defective. Even after capitalizing the interest in books, deduction of interest can be claimed and allowed. We, therefore, are of the opinion that for this reason, the accounts cannot be held to be defective.

16. The third reason given by the assessing officer is debiting of interest and bank Charges to the account of party instead of respective expense account. We are of the opinion that for this reason also, the accounts cannot be held to be defective because, if the parties agree to bear these charges, the same is to be debited to the account of the parties and not to expenses. The assessee has not claimed deduction of these expenses, which are debited to the account of parties and this shows that there is no defect in the accounts.

17. The next reason mentioned by the assessing officer is giving of interest-free advances to two parties. We are of the opinion that for this reason also, the accounts cannot be held to be defective because even if interest bearing borrowed funds are used for giving such interest-free advances, only corresponding interest can be disallowed and the books cannot be held to be defective. In the present case, the assessee had sufficient interest-free funds available being the funds received from GT and other parties on account of accommodation bills and hence even no disallowance of interest is called for.

18. The next reason mentioned by the assessing officer is claim of credit for TDS of Rs. 4,06,952. We are of the opinion that for this reason also, the accounts cannot be held to be defective because even if credit for TDS is wrongly claimed, the claim can be rejected but the books cannot be held to be defective. In the present case, the assessing officer has not allowed the credit for TDS but learned Commissioner (Appeals) has allowed the same and the revenue is in appeal against the same. We will decide this issue while deciding that appeal of the revenue but for this reason, Section 145(3) cannot be invoked.

19. The next reason mentioned by the assessing officer is that some expenses such as Transportation charges, Repairs, Telephone charges and Misc. Expenses are very high as compared to the earlier year. We are of the opinion that for this reason also, the accounts cannot be held to be defective because even if some expenses are excessive and it is established that the same is not for business purposes, disallowance can be made to that extent but the books cannot be held to be defective. In the present case, the sales of the assessee-company in the present year has increased by more than 100 per cent because the sales in the present year is Rs. 1301.84 lakhs as against Rs. 645.01 lakhs in the preceding year. Cost of Manufacturing which includes Transportation Charges and repairs has gone up to Rs. 955.64 lakhs in the present year as against Rs. 544 lakhs in the preceding year. The increase is only 75.67 per cent. Increase in Repairs cannot be compared because it varies from year to year. Increase in Transportation charges cannot also be compared in isolation because it depends on so many factors. If the purchase price is inclusive of freight, freight expenses will be lesser. Similarly, if the sale price is inclusive of freight, freight expenses will be lesser in that case also. Even if freight charges are not included in sale price, amount of freight depends on the distance of the buying parties. If in one year, sales are to nearby parties and in the other year to far away parties, freight expenses will not be comparable. Books of the assessee are duly audited and overall increase in expenses is much less than increase in sales and under these facts, we feel that it cannot be said that the books are defective or any disallowance out of expenses is called for.

Increase in Administrative, Selling and Distribution Expenses is lesser than the increase in Cost of Manufacturing.

Administrative, Selling and Distribution Expenses has gone up to Rs. 173.01 lakhs in the present year as against Rs. 143.40 lakhs in the preceding year. The increase is only 20.65 per cent. In the light of these facts, we hold that for this reason of increase in some expenses, neither the books can be said to be defective calling for invoking of the provisions of Section 145(3) nor any disallowance is called for but in view of the fact that the assessee has not properly co-operated before the assessing officer in verification of all expenses, a disallowance of Rs. 5 lakhs out of Freight and Repairs will meet the ends of justice. Other reasons given by the assessing officer for invoking the provisions of Section 145(3) also have no merit because we find that regarding difference in quantity, it is explained by the assessee that it is a typing mistake in the Tax Audit Report and the book figures are correct. Regarding valuation of stock as per Section 145A, it is explained that the stock is valued after including taxes and duties. Non-enclosure of details regarding purchase, sales and stock does not constitute defect in books of account and hence we hold that invoking of the provisions of Section 145(3) in the present case is not justified. Ground Nos. 1 and 2 are partly allowed since we have upheld disallowance of Rs. 5 lakhs out of Freight and Repairs Expenses.

21. Now, we deal the third issue, which is the only issue raised in the appeal of the revenue.

22. Regarding this issue, we find that credit for TDS was not allowed by the assessing officer for the reason that sales has been shown in the name of M/s. P.T. Sumber Mitra Java but TDS certificate is issued by M/s. Ketan Construction Ltd. This issue is decided by the learned Commissioner (Appeals) in favour of the assessee on the basis that the assessing officer has not contested that income regarding this TDS certificate is duly accounted for. It is also observed by him that nothing has been brought on record by the assessing officer to show that this receipt of Rs. 3.87 crores have not been shown in sales details. It is also observed by him that if this has been the case, the assessing officer should have brought

this income to tax instead of denying credit for' TDS. Under these facts, we find no reason to interfere in the order of learned Commissioner (Appeals) on this issue.

23. In the result, the appeal of the assessee is partly allowed and the appeal of the revenue is dismissed.

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