



①

\$~25, 29

\*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 476/2019

THE PR. COMMISSIONER OF INCOME TAX-3 ..... Appellant

Through: Mr. Ruchir Bhatia, Advocate.

versus

DR. OETKER INDIA PVT. LTD. (FORMERLY KNOWN AS VRB  
FOODS (P) LTD.) ..... Respondent

Through:

ITA 480/2019

+

THE PR. COMMISSIONER OF INCOME TAX-3 ..... Appellant

Through: Mr. Ruchir Bhatia, Advocate.

versus

DR. OETKER INDIA PVT. LTD. (FORMERLY KNOWN AS VRB  
FOODS (P) LTD) ..... Respondent

Through:

**CORAM:**  
**JUSTICE S.MURALIDHAR**  
**JUSTICE I.S.MEHTA**

**ORDER**  
**10.05.2019**

%

**CM APPL. 22333/2019 (for exemption) in ITA 480/2019**

1. Allowed, subject to all just exceptions.

**ITA 476/2019 & CM APPL. 22332/2019 (for delay)**

**ITA 480/2019 & CM APPL. 22334/2019 (for delay)**

2. The present appeal is directed against an order dated 29<sup>th</sup> December 2017



②

passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 2291/DEL/2015 for the assessment year 2010-11 and 2011-12.

3. The question sought to be urged by the Revenue is whether the ITAT erred in deleting the additions made by the Assessing Officer ('AO') in the AYs in question on account of alleged decline in gross profit /net profit under Section 145 of the Income Tax Act, 1961 ('Act').
4. The Assessee is engaged in the business of manufacturing and sale of processed foods products. It filed its return of income on 29<sup>th</sup> September 2010 declaring income of Rs. 3,57,13,770/-. This was processed under Section 143 (1) of the Act. It was picked up for scrutiny and a notice under Section 143 (2) was issued. According to the Revenue, during the course of assessment the AO perused the report of the Statutory Auditor with the comment that the accuracy of valuation of inventories of finished goods could not be commented upon. Their net profit ratio was found to be 10.72% as compared to 15.19% in the earlier AY. Likewise, the explanation offered for AY 2011-12 was also not believed and a similar addition was deleted.
5. The AO rejected the explanation offered by the Assessee stating that it maintained excise records and that the note of the auditor was only in respect of valuation. Invoking Section 145 of the Act, the AO applied the net profit ratio of the earlier AY and made the aforementioned addition.
6. After the Commissioner of Income Tax CIT (A) affirmed the AO's order by dismissing the Assessee's appeal on 3<sup>rd</sup> February 2015, the Assessee went before the ITAT.



3


7. The ITAT having perused the auditor's report noticed that a company's inventory was valued at lower cost or net reliable value and included cost of bringing the goods in the present location and other conditions. The Auditor had stated that the valuation adopted that is based on the retail method could be used when the actual cost of production was approximated. With the nature of business activity carried on by the Assessee, it was not possible to keep the production cost of each and every finished product, it could be, therefore, on an approximate basis, it could be spread over the goods produced.

8. The ITAT has also referred to the accounting standards and come to the conclusion that there was a valid explanation for the drop in the net profit ratio.

9. Having perused the impugned order of the ITAT, the Court finds that it deals essentially with the factual aspects after having perused the Auditor's report. It does not give rise to any substantial question of law.

10. The appeal is accordingly dismissed. The pending applications are also dismissed.

  
S. MURALIDHAR, J.

  
I.S. MEHTA, J.

**MAY 10, 2019<sup>d</sup>**