

AO couldn't make addition on estimated basis without rejecting books of account

Summary – The Jodhpur ITAT in a recent case of Ercon Composites, (the Assessee) held that without rejecting books of account addition on estimate basis was not justified.

Facts

- The assessee was engaged in manufacturing of FRP/GRP section, cable trays, fiber production, etc., and one of the units unit-II was an Export Oriented Unit (EOU).
- During the assessment proceedings, the Assessing Officer noted that the assessee had shown less GP rate as compared to last year for its non-EOU Unit-I, whereas it had shown better GP rate for its EOU unit-II. The assessee explained before the Assessing Officer that the GP rate for the EOU unit was higher as it was exempted from VAT, CST, excise duty and customs duty. However, the Assessing Officer was not satisfied and concluded that the assessee was debiting maximum purchases and manufacturing expenses to EOU unit, so as to reduce the profit of other unit. Accordingly, the Assessing Officer applied the GP rate of 35.54 per cent for unit-I, which resulted in certain addition.
- On appeal, the Commissioner (Appeals) deleted the addition observing that the Assessing Officer had neither rejected the books of account of unit-I nor had mentioned any specific defects in its maintenance; and that the Assessing Officer was not justified in comparing the results of both the concerns as both the units were different in the sense that one was non-export-oriented and other was export oriented.
- On revenue's appeal:-

Held

- It is an admitted fact that the Assessing Officer made the addition by estimating the GP rate of non-EOU unit by comparing the same with the GP rate of EOU unit, but ignored this vital fact that the raw material consumed in the case of EOU unit and non-EOU unit was not the same. The Assessing Officer presumed that maximum of purchases and manufacturing expenses were debited to the EOU unit so as to reduce the profit of other units. The presumption of the Assessing Officer is wrong because had it been the case, then the GP rate of the other units would have been on higher side. Further, it is an admitted fact that the Assessing Officer had not invoked the provisions of section 145(3).
- Therefore, the addition on estimate basis without rejecting the books of account was not justified.