

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES (SMC), JAIPUR

श्री भागचन्द, लेखा सदस्य के समक्ष
BEFORE: SHRI BHAGCHAND, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 661/JP/2016
निर्धारण वर्ष / Assessment Year : 2010-11

Shri Mangi Lal Sharma Prop. M/s. Jai Mata Di Energy System Laxmangarh , Sikar	बनाम Vs.	The DCIT Circle- Sikar Sikar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AZQPS 2615 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri S.R. Sharma &
Shri Rajni Kant Bhatra, CA
राजस्व की ओर से / Revenue by : Smt. Poonam Rai, DCIT- DR

सुनवाई की तारीख / Date of Hearing : 08/02/2017
घोषणा की तारीख / Date of Pronouncement : 09/02/2017

आदेश / ORDER

PER BHAGCHAND, AM

The assessee has filed an appeal against the order of the Id.
CIT(A)-35, New Delhi (Camp Office at Jaipur) dated 18-03-2016 for the
assessment year 2010-11 raising therein grounds of appeal as under:-

“1. That on the facts and in the circumstances of the case
the Id. CIT(A) is wrong, unjust and has erred in confirming
action of the Assessing Officer in:-

(i) rejection of books of account of the appellant by the
Assessing Officer u/s 145(3) of the I.T. Act, 1961 and

(ii) application of net profit rate of 11% on declared contract receipts of Rs. 4,51,07,789/- as against declared net profit rate of 7.32% resulting in confirmation of trading addition of Rs. 6,43,793/-.”

2.1 During the course of hearing of the appeal of the assessee, the ld. Id. AR of the assessee prayed for restoration of the appeal to the AO with following submissions as narrated in the written submission.

“...In this connection, assessee submits that on receipt of every notice from AO, he deputed his accountant alongwith all books of account with bills vouchers etc. to attend the proceedings before the AO. They always reported to assessee that proceedings before AO was attended and books of accounts, bills & vouchers etc. were produced. In fact counsel of assessee had written and filed a letter to AO on 18-03-2013 that he produced books of accounts etc. on 29-10-2012 before him which also ld. AO refuted in assessment order. The assessee only submits that invoking of Section 145(3) by AO has caused injustice to him though he never had deliberately avoided any notice and remained in bonafide belief that Accountant and counsel engaged by him are attending proceedings before the AO appropriately. The assessee thus prays your honour that if deem fit and in the interest of justice the case may be sent to AO and assessee sincerely assures to fully cooperate and attend the proceedings before AO appropriately.”

2.2 It is noted from the assessment order that the AO invoked the provisions of Section 145(3) of the Act and estimated the net profit rate at 11% which works out to Rs. 49,61,857/-(total contract receipts of Rs. 4,51,07,789/-) out of which the assessee had declared net profit of Rs.

33,18,064/-. Therefore, a sum of Rs. 16,43,793/- is added by the AO to the total income of the assessee. In first appeal, the Id. CIT(A) at para 5.7 of his order has confirmed the action of the AO.

2.3 During the course of hearing, the Id. DR relied on the order of authorities below.

2.4 I have heard the rival contentions and perused the materials available on record. It is not imperative to discuss the case of the assessee regarding invoking the provisions of Section 145(3) of the Act and confirming the addition of Rs. 16,43,793/- which has been elaborately discussed by the lower authorities. The issue in question is that the assessee could not contest the case before the AO on the belief that his accountant and counsel are appearing before the AO and producing all the bills, vouchers and relevant records as desired by the AO but it was not done so. Keeping in view of the prayer of the assessee (supra), it will be in the interest of equity and justice to restore the appeal of the assessee to the file of the AO to decide it afresh by providing reasonable opportunity of being heard to the assessee. The assessee is also directed to submit all the relevant records concerning the case before the AO and cooperate in the assessment proceedings. Thus the appeal of the assessee is allowed for statistical purposes.

3.0 In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 09-02-2017.

Sd/-

(भागचन्द)

(Bhagchand)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:-

09 /02/ 2017

*Mishra

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Mangi Lal Sharma, Sikar
2. प्रत्यर्थी / The Respondent- The DCIT, Circle- Sikar
3. आयकर आयुक्त(अपील) / CIT(A).
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 661/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar