

आयकर अपीलीय 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. 973/JP/2016
निर्धारण वर्ष/Assessment Year : 2010-11

Late Shri Laxmi Narayan Himmatramka Th.L/h Shri Jhandi Prasad Himmatramka P.O. Chirawa -333 026	बनाम Vs.	The ITO Ward- 2, Jhunjhunu
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACPH 7931 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Manish Agarwal, CA
राजस्व की ओर से / Revenue by : Smt. Poonam Rai, DCIT-. DR

सुनवाई की तारीख / Date of Hearing : 13/04/2017
घोषणा की तारीख / Date of Pronouncement : 18 /04/2017

आदेश / ORDER

PER BHAGCHAND, AM

The assessee has filed an appeal against the order of the ld.
CIT(A)-35, New Delhi (Camp Office at Jaipur), dated 29-09-2016 for the
assessment year 2010-11 raising therein following grounds:-

1. On the facts and in the circumstances of the case the ld. CIT(A) erred in upholding the rejection of books of account by AO by invoking provisions of Section 145(3) of the I.T. Act, 1961. Appellant prays the rejection of books of account may please be held bad in law.

1.1 That the ld. CIT(A) has erred in upholding the trading addition of Rs. 83,689/- made by AO by applying gross profit rate of 4% as against gross profit rate of 3.73%% declared by assessee by ignoring the past history which is favourable to assessee . Appellant prays addition so made may please be deleted.

2. On the facts and in the circumstances of the case the ld. CIT(A) erred in confirming the ad hoc disallowance of Rs. 46,080/- made by AO out of wages, general expenses and salary being 20% of total expenses. Appellant prays addition so made may please be deleted.

2.1 Apropos Ground No. 1 and 1.1 of the assessee, brief facts of the case are that during the year under consideration the assessee is engaged in the business of trading of Kirana goods on wholesale basis in the name and style of M/s. Chirangi Lal Laxmin Narayan at Chirawa. The AO on perusal of the books of account of the assessee noticed that the assessee during the year under consideration had declared the gross profit of Rs. 11,60,840/- on declared total sales of Rs. 3,11,13,214/- in trading account by showing a gross profit rate of 3.73% which is very low in this line of business. The AO on scrutiny of books of account noticed various defects that the assessee had not maintained day to day stock register and quantity-wise details of items. The AO further noted that the assessee had not furnished complete bills and vouchers regarding purchase expenses in trading account. The AO noted that the auditor in audit report had

commented that expenses debited are partly vouched and the assessee had not provided the quantity details. The AO observed that in the absence of these defects, trading results declared by the assessee cannot be ascertained and true gross profit and closing stock cannot be deduced. In such a situation, the assessee was offered opportunity by the AO to show cause as to why provisions of Section 145(3) of the Act may not be invoked and gross profit @ 4% may not be applied on declared turnover of Rs. 3,11,13,214/-. The assessee submitted the reply before the who observed the reply of the assessee as routine reply and it had no force. The AO also noted that the assessee had neither produced the day to day stock register nor quantitative details of the commodities. In such a situation, the AO had invoked the provisions of Section 145(3) of the Act and applied the gross profit rate @ 4% on total turnover of Rs. 3,11,13,214/-. The AO thus worked out the gross profit at Rs. 12,44,529/- instead of Rs. 11,60,840/- declared by the assessee. The AO thus added the difference amount of Rs. 83,689/- to the total income of the assessee.

2.2 Being aggrieved, the assessee carried the matter before the Id. CIT(A) who has confirmed the action of the AO by observing as under:-

“4.8 In the present case justification for G.P. rate has not been provided. Moreover, the appellant company has not maintained bills/vouchers, stock register which can

substantiate its various claims. In the circumstances AO has no option but to estimate the trading account. Moreover, the AO has estimated G.P. of 4% considering the nature of trade. I find the action of the AO as reasonable. In view of the above discussion Ground No. 2 is dismissed.”

2.3 During the course of hearing, the Id. AR of the assessee submitted that the AO has wrongly applied the provisions of Section 145(3) of the Act as the assessee vide his letter dated 22-07-201 had submitted the final quantitative tally in respect of the items dealt with by him giving complete quantitative details of the goods involved. The Id. AR further submitted that AO while rejecting the plea of the assessee had neither pointed out a specific discrepancy in the quantitative details so submitted nor he had given any comparable case wherein a higher gross profit rate than the assessee had been shown. The Id. AR of the assessee relied on the decision of Hon'ble Jurisdictional High Court in the case Bhawani Silicate Industries , 236 Taxman 596. The Id. AR of the assessee submitted the gross profit rate chart for the last three years as under:-

A.Y.	Sales	G.P.	G.P. %
2010-11	3,11,13,214.00	1,16,084.00	3.73
2009-10	3,51,65,882.00	9,64,532.00	2.74
2008-09	3,05,87,851.00	21,855.00	0.71

The ld. AR of the assessee relied on following case laws:-

1. Malani Ramjivan Jagannath Vs.Asst. CIT (Raj.), 316 ITR 120
2. Haridas Parikh V ITO [2009] 29 SOT 13 (JODH.)(URO)
3. Ashok Kumar & Co. v. ITO [2004] 2 SOT 518 (Asr.) (SMC)
4. CM. Francis & Co. (P.) Ltd. v. CIT [77 ITR 449] (Kerala)
5. Asstt. CIT v. L.M.P. Tractors (P.) Ltd. [2005] 148 Taxman 52 (Mag.) (Ahmedabad)
6. ACIT vs. Kanhaiyalal Choudhary [ITAT Jaipur Bench]:

The accepted past history is the best guide and when the assessee has declared better results, the declared results to be accepted and no addition can be made therein.

7. CIT Vs. Jaimal Ram Kasturimal [Raj]:

Where the books of accounts are rejected,the NP rate should have been applied after taking into consideration the past history of the case, which is the best guide to pass a best judgement order.

8. ACIT Vs. Shri Laxmi Narain Agarwal (ITAT Jaipur)- [ITA No. 44/JP/2014- Assessment Year : 2008-09, dated: 26/10/2015]:

“We have heard the rival contentions and perused the materials available on record. The findings of the ld. CIT(A) are that defects in the books of account are general in nature which could not be controverted by the ld. DR . There is no specific defect as pointed out by the AO. In case of estimation of profit, Hon’ble Rajasthan High Court in the case of CIT vs. Gotan Lime Khanij Udyog (supra) has held that past history of the assessee is a best source for estimation. It is a settled law that an estimate arrived at by the lower authorities cannot be interfered with unless the estimate is demonstrated to be arbitrary or unjustified. The ld. DR could not demonstrate this aspect. In view thereof and respectfully the decision of Hon’ble Rajasthan High Court in the case of CIT vs. Gotan Lime Khanij Udyog (supra) and also ITAT Jodhpur decision in the case of Ajay Goyal vs. ITO, 99 TTJ 164, the order of the ld. CIT(A) on the issue of estimation is upheld. Thus the appeal of the Revenue is dismissed.”

Conclusively, the Id. AR of the assessee prayed that the lower authorities have wrongly invoked the provisions of Section 145(3) of the Act. He further submitted that the results declared by the assessee may be accepted and the trading addition made by the AO by estimating the gross profit rate at 4% as against 3.73% as declared by the assessee may be directed to be deleted.

2.4 On the other hand, the Id. DR relied on the orders of the lower authorities.

2.5 I have heard the rival contentions and perused the materials available on record. It is noted from the records that the assessee had not maintained the day to day stock register or quantitative details of commodities. It is also noted from the assessment order that the auditor in the audit report had commented that the expenses debited by the assessee are partly vouched and the assessee had not provided the quantitative details. It is also noted that the assessee had not furnished complete bills and vouchers regarding purchases claimed in trading account. The AO thus invoked the provisions of Section 145(3) of the Act and applied the gross profit rate of 4% on total turnover of Rs. 3,11,13,214/- declared by the assessee on which gross profit comes to Rs. 12,44,529/-. However,

the assessee had declared the gross profit rate at 3.73% on which gross profit comes to Rs. 11,60,840/-. The AO thus added a difference of Rs.83,689/- (Rs. 12,44,529 minus Rs. 11,60,840/-) which in first appeal has been confirmed by the Id. CIT(A). In appeal before the Tribunal, it is observed from the facts available on records that the lower authorities have rightly invoked the provisions Section 145(3) of the Act. As regards the sustenance of addition of Rs. 83,689/-, it is noted that the gross profit rate of the assessee for the last three years i.e. 2008-09-, 2009-10 and 2010-11 are at 0.71%, 2.74% and 3.73% respectively. Thus looking to the past history of the assessee and assessee being engaged in the trading of Kirana goods, the addition is sustained to the extent of Rs. 15,000/-. Thus the assessee will get the partial relief of Rs. 68,689/-.

3.1 Apropos Ground No. 2, brief facts of the case are that the AO during the year under consideration had observed that the assessee had debited a sum of Rs. 22,702/- on account of wages payment, debited a sum of Rs. 14,700/- on account of general expenses and debited a sum of Rs. 1,93,000/- on account of salary payment to staff in the profit and loss account. The AO asked the assessee to submit the complete details / documents and vouchers in respect of these expenses but the assessee could not furnish complete bill, details/ vouchers/documents in support of

these expenses claimed by him in the profit and loss account. The AO observed that there are chances of inflating the expenses by the assessee and in order to cover up any possible leakage on this account, he disallowed 20% out of the above expenses i.e. Rs. 46,080/- (20% of Rs. 2,30,402/-, [22702+14700+193000] and added the same to the total income of the assessee which in first appeal has been confirmed by the Id. CIT(A) by observing as under:-

“4.11 Ground No. 5: is with respect to disallowance on account of expenses out of wage payment, general expenses, salary payment to staff (Office expenses). From the assessment order, it is observed that the AO has made such adhoc additions to cover up the element of personal uses of such assets and facilities. Regarding these additions, it is a common belief that, in absence of proper records, the possibility of involvement of personal usage in such type of expense cannot be ruled out. The Hon'ble Rajasthan High Court in the case of Shri Kanhailal Jangid (217 CTR 354) also approved the concept of adhoc addition on lump sum basis, if the relevant details are not found available to support of the expenses claimed by the assessee. In view of the same, I find the disallowances which is only 20% of these expenses as justified. Consequently, Ground No. 3 of appeal is dismissed.”

3.2 During the course of hearing, the ld. AR of the assessee prayed for deletion of adhoc disallowance of Rs. 46,080/- confirmed by the ld. CIT(A). The ld. AR of the submitted that during the course of assessment proceedings, the books of account were submitted before the AO who had not pointed out any specific defect and generalized the same by disallowing the expenses. The expenses were incurred wholly and exclusively for the purpose of business and under the business expediency. The ld. AR of the assessee further submitted that the proportion of expenses to the total turnover declared and accepted also reveals that the same are quite reasonable and there is no room for any personal expenses being included in the same for which he submitted the details as under:-

Name of Expenses	Amount claimed	% of Turnover Rs. 3,11,13,214/-
Wages	14,700.00	0.047%
General expenses	22,702.00	0.073%
Salary to staff	1,93,000.00	0.62%

3.3 On the other hand, the ld. DR relied on the orders of the lower authorities.

3.4 I have heard the rival contentions and perused the materials available on record. It is noted from the assessment records that the assessee during the year under consideration had debited a sum of Rs. 22,702/- on account of wages payment, debited a sum of Rs. 14,700/- on account of general expenses and debited a sum of Rs. 1,93,000/- on account of salary payment to staff in the profit and loss account. The AO for want of complete bills, details/ vouchers, documents and considering the nature of these expenses disallowed 20% of the total expenses of Rs. 2,30,402/ which comes to Rs. 46,080/- and in first appeal the Id. CIT(A) has confirmed the action of the AO. In appeal before the Tribunal, it is noted that since the books of account of the assessee has been rejected, therefore, the estimated addition has been made. It is also noted that the Id. AR of the assessee to this effect relied on the decision of Hon'ble Supreme Court in the case of S.A. Builders vs. CIT , 288 ITR 1 and Empire Jute Co. Ltd. vs. CIT,124 1. Therefore, In view of above decisions and various others decisions of Hon'ble High Court, no separate adhoc disallowance out of the expenses debited in the profit and loss account under the heads wages, general expenses and salary to staff is not justified. Hence, looking to the present facts and circumstances of the

case, I direct to delete the adhoc disallowance of Rs. 46,080/- confirmed by the Id. CIT(A). Thus Ground No. 2 of the assessee is allowed.

4.0 In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 18 /04/2017.

Sd/-

(भागचन्द)

(Bhagchand)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:-

18 /04/ 2017

*Mishra

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

1. अपीलार्थी / The Appellant- Late Shri Laxmi Narayan Himmatramka through L/h Shri Jhandi Prasad Himatramka
2. प्रत्यर्थी / The Respondent- The ITO, Ward- 2, Jhunjhunu
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. 973/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar