

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. 140/JP/2017
निर्धारण वर्ष / Assessment Year : 2010-11

Shri Pradeep Kumar Himatramka P.O. Chirawa -333 026	बनाम Vs.	The ITO Ward- 2, Jhunjhunu
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACPH 7933 D		
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 Id. CIT(A)-35, New Delhi (Camp Office at Jaipur), dated 13-10-2016 for the assessment year 2010-11 raising therein following grounds:-

1. On the facts and in the circumstances of the case the Id. 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 further erred in not appreciating the fact that assessee has maintained day today stock records which were produced before AO and no defect whatsoever was pointed out in the same, thus the observation of the AO and ld. CIT(A) that the assessee has not maintained stock records deserves to be excluded and ignored

1.2 That the ld. CIT(A) has erred in upholding the trading addition of Rs. 2,22,042/- made by AO by applying gross profit rate of 3.52% instead of 2.56% declared by 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. 43,321/- made by AO out of telephone and car expenses (including depreciation) being 20% of total expenses i.e. telephone expenses Rs. 48,683/, traveling expenses Rs. 27,852/- and depreciation Rs. 64,158/-). Appellant prays addition so made may please be deleted.

2.1 That the ld. CIT(A) has further erred in confirming disallowance out of depreciation claimed on car which is a legal disallowance and thus could not be disallowed.

3. On the facts and in the circumstances of the case the ld. CIT(A) has grossly erred in not allowing the necessary credit u/s 54B and upheld the capital gains of Rs. 49,574/- as assessed by the AO, arbitrarily.

2.1 Apropos Ground No. 1 to 1.2 of the assessee, brief facts of the case are that the during the year under consideration the assessee is engaged in the business of trading of sugar, building material and arrangement of vehicles in the name and style of M/s. Pradeep Kumar Bansal Traders and

M/s. Shyam Marbles 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. 5,93,203/- on declared total sales of Rs. 2,31,60,371/- in M/s. Pradeep Kumar Bansal Traders trading account by showing a gross profit rate of 2.56%% which is very low as compared to last year's declared gross profit rate @ 3.52%. The AO on scrutiny of books of account noticed various defects that the assessee had not maintained day to day stock register. 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 no internal vouchers had been maintained for cash expenses. 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 @ 3.52% as declared in last year may not be applied on declared turnover of Rs. 2,31,60,371/-. The assessee submitted the reply before the AO 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 @ 3.52% on declared turnover of Rs. 2,31,60,371/-. The AO thus worked out the gross profit at Rs. 8,15,245/- instead of Rs. 5,93,203/- declared by the assessee. The AO thus added the difference amount of Rs. 2,22,042/- (Rs. 8,15,245 minus Rs. 5,93,203) to the total income of the assessee which in first appeal the Id. CIT(A) has confirmed the action of the AO.

2.2 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 . The Id. AR of the assessee submitted that the assessee is engaged in the trading of sugar for the last 15 years. The books of account are audited and the auditors have not made any adverse remark in particular nor have they questioned the reliability of the books of account of the assessee. He submitted that though no separate stock register was maintained yet a complete stock tally was available and the same was duly filed before both the AO and the Id. CIT(A) (APB 22 and 25). The Id. AR further submitted that the AO while rejecting the plea of the assessee has 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 ld. AR of the assessee relied on the decision of Hon'ble Jurisdictional High Court in the case Bhawani Silicate Industries , 236 Taxman 596. The ld. AR of the assessee submitted the gross profit rate chart for the last three years as under:-

Particulars	A.Y. 2008-09	A.Y. 2009-10	A.Y. 2010-11
Sales	2,09,02,160	69,97,165	2,31,60,371
Gross profit	3,33,478	2,46,345	5,93,203
G.P. Rate	1.59%	3.52%	2.56%

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

1. Malani Ramjivan Jagannath Vs.Asst. CIT (Raj.) (2009)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] (Ker)
5. Asstt. CIT v. L.M.P. Tractors (P.) Ltd. [2005] 148 Taxman 52 (Mag.) (Ahemdabad)

Conclusively, the ld. 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 of Rs. 2,22,042/- made by the AO by

estimating the gross profit rate at 3.52% as against 2.56% as declared by the assessee may be directed to be deleted.

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

2.4 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. It is also noted from the assessment order that the auditor in the audit report had commented that no internal vouchers had been maintained for cash expenses. 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 3.52% on total turnover of Rs. 2,31,60,371/- declared by the assessee on which gross profit comes to Rs. 8,15,245/-. However, the assessee had declared the gross profit rate at 2.56% on which gross profit comes to Rs. 5,93,203/-. The AO thus added a difference of Rs.2,22,042/- (Rs. 8,15,245 minus Rs. 5,93,203) which in first appeal has been confirmed by the ld. 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. 2,22,042/-, 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 1.59%, 3.52% and 2.56% respectively. Thus looking to the past history of the assessee and assessee being engaged in the trading of sugar, building materials and arrangement of vehicles, the addition is sustained to the extent of Rs. 50,000/- only. Thus the assessee will get the partial relief of Rs. 1,72,042/-.

3.1 Apropos Ground No. 2 and 2.1, brief facts of the case are that AO during the year under consideration had observed that the assessee had debited a sum of Rs. 48,683/- on account of telephone expenses, debited Rs. 27,852/- on account of traveling expenses, claimed Rs. 64,158/- on account of depreciation of two cars and motor cycle and claimed Rs. 75,910/- on account of vehicle expenses. The AO observed that the assessee had neither maintained the call register in respect of telephone nor maintained the log book for running of cars. The AO further noted that the assessee had not furnished complete bills, vouchers and documents in support of claim of these expenses and thus the use of telephone, cars & motor cycle and vehicle and traveling expenses exclusively for business purposes could not ascertained.. 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 further observed that in the absence of complete details/ vouchers and considering the nature of these expenses, personal usage of the same cannot be ruled out and thus 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. 43,321/- (20% of Rs. 2,16,603/-, [48683+27852+64158+75910] 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:-

“5.6 Ground No. 3: is with respect to adhoc disallowance of Rs. 43,321/- on account of personal use. The appellant has submitted that: “Standard of living is simple. There is no place at Chirawa where expenses can be incurred. Expenses are not excessive as compared to last year. During this year volume of business was increased 324% hence expenses are reasonable.” Regarding these disallowances, it is a common belief that, in absence of proper records, the possibility of involvement of personal usage in such type of expenses cannot be ruled out. The Hon'ble Rajasthan High Court in the case of Shri Kanhiya Lal Jangid (217 CTR 354) also approved the concept of adhoc disallowance on lump sum basis, if the relevant details are not found available to support of the expenses claimed by the assessee. 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. 43,321/- 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. 2,31,60,371/-
Telephone expenses	48,683/-	0.00002%
Depreciation on car and motorcycle	64,158/-	0.00002%
Travelling expenses	27,852/-	0.00001%

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

1. ITO vs. Triveni Farma, 35 TW 64 (Jaipur Bench)
2. Mukesh K Shah vs. ITO, 92 TTJ 1060 (Mumbai Bench)

3. S.A. Builders Ltd. vs. CIT , 288 ITR 1 (SC)
4. Empire Jute Co. Ltd. vs. CIT , 124 ITR 1 (SC)

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. 48,683/- on account of telephone expenses, debited a sum of Rs. 27,852/- on account of traveling expenses, claimed a sum of Rs. 64,158/- on account of depreciation on two cars and motor cycle and claimed a sum of Rs. 75,910/- on account of vehicle expenses. 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. 2,16,603/- which comes to Rs. 43,321/- and in first appeal the ld. 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 ld. AR of the assessee to this effect relied on various case laws including 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 telephone expenses, depreciation on car and motorcycle, traveling expenses and vehicle expenses is not justified.. Hence, looking to the present facts and circumstances of the case, I direct to delete the adhoc disallowance of Rs. 43,321/- confirmed by the Id. CIT(A). Thus Ground No. 2 and 2.1 of the assessee are allowed.

4.1 Apropos Ground No. 3 of the assessee, it is noted that the Id. CIT(A) has dismissed this ground of the assessee raised before him by observing as under:-

“5.9. Ground No. 6: The order of the AO does not speak of any acceptance of rebate of capital gain of Rs. 49,674/- u/s 54 of the Act. Hence, this ground is dismissed.
“

4.2 During the course of hearing, the Id. AR of the assessee prayed that the Id. CIT(A) has grossly erred in not allowing the necessary credit claimed u/s 54 of the Act and upheld the capital gains of Rs. 49,574/- as assessed by the AO. The Id. AR of the assessee filed the following written submission which has been taken into consideration.

“Brief fact of the matter is that the appellant had shown a Long term capital gain of Rs. 49,674/- on sale of land in his return of income. The said LTCG was inadvertently taxed @ 20%, without claiming the eligible exemption u/s 54B of the Act, available due to an agricultural land purchased by the appellant from the sale of the above land. Therefore during the assessment proceedings, the said claim of exemption u/s 54B was made vide an undated letter, duly filed before the Id. AO [APB 23-24]. However, in the assessment order, no reference was made by the Id. AO regarding the claim made by the appellant. Also further that, while computing the assessed income, the LTCG was wrongly included in the returned total income taxable at normal rates (i.e.30%). Aggrieved, the appellant raised the issue before the Ld. CIT(A), which was again not adjudicated, by referring to its omission in the assessment order. In this regard, it is humbly prayed that the issue may kindly be restored back to the file of the Id. AO for proper adjudication.”

4.3 On the other hand, the Id. DR relied on the order of the Id. CIT(A).

4.4 I have heard the rival contentions and perused the materials available on record. It is noted from the order of the Id. CIT(A) that the AO did not speak of any acceptance of rebate of capital gain of Rs. 49,674/- u/s 54 of the Act and thus the Id. CIT(A) dismissed the above ground of the assessee. However, in the interest of equity and justice the issue in question is restored to the file of the AO to decide it afresh by providing reasonable opportunity of being heard to the assessee. If the claim of the assessee appears genuine at the level of the AO on verification of the relevant records/ documents then the benefit of Section 54 of the Act may be extended to the assessee by the AO. Thus Ground No. 3 of the assessee is allowed for statistical purposes.

5.0 In the result, the appeal of the assessee is partly allowed for statistical purposes.

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- Shri Pradeep Kumar 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. 140/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar