

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

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

आयकर अपील सं./ITA No. 438/JP/2016
निर्धारण वर्ष/Assessment Year : 2011-12

Bharat Chawla, E-7, New Sabji Mandi, Alwar (Raj)	बनाम Vs.	I.T.O., Ward- 2(3), Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AEGPC 5528 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rajiv Sogani (CA)
राजस्व की ओर से / Revenue by : Smt. Poonam Roy (DCIT)

सुनवाई की तारीख / Date of Hearing : 29/08/2017
उद्घोषणा की तारीख / Date of Pronouncement : 08/09/2017

आदेश / ORDER

PER: BHAGCHAND, A.M.

This is an appeal filed by the assessee emanates from the order of the Id. CIT(A), Alwar dated 05/02/2016 for the A.Y. 2011-12.

2. The assessee is engaged in Adhat of fruits and vegetables and earned commission income. The Assessing Officer made various additions. The Id. CIT(A) partly confirmed the additions. Now the assessee is in appeal before the ITAT by taking following grounds of appeal:

- “1. In the facts and circumstances of the case and in law, the Id. CIT (A) has erred in confirming the disallowance of the adhoc expenses amounting to INR 1, 70,322. The action of Id. CIT (A) is illegal, unjustified, arbitrary and against the facts of the case, Relief may please be granted by quashing the said disallowance.*
- 2. In the facts and circumstances of the case and in law, the Id. CIT (A) has erred in confirming the disallowance of cash discount given to the customers amounting to INR 2, 00,000.*
- 3. In the facts and circumstances of the case and in law, the Id. CIT (A) has erred in confirming the addition of Rs. 4,105 being physical cash, Rs. 9,562 being debtors and Rs. 32,063 being purchase on account of undisclosed source.*
- 4. In the facts and circumstances of the case and in law, the Id. CIT (A) has erred in confirming the addition of INR 1,38,035 out of total addition of INR 5, 06,142 being business income.*
- 5. In the facts and circumstances of the case and in law, the Id. CIT (A) has erred in confirming the addition of INR 5,660 out of total addition of INR 94,331 Being undisclosed sales.*
- 6. The assessee reserves his right to add, amend or alter any of the grounds of appeal on or before the hearing.”*

3. Grounds No. 3 and 5 of the appeal were not pressed at the time of hearing, therefore, the same stand dismissed as not pressed.

4. Ground No. 6 is general in nature, hence, does not require any adjudication.

5. In the grounds No. 1 and 2 of the appeal, the issue involved is against confirming the disallowance out of expenses on ad hoc basis of Rs. 1,70,322/- and disallowance out of cash discount to the customers at

Rs. 2.00 lacs respectively. In the ground No. 4 of the appeal, the issue involved is against confirming the addition of Rs. 1,38,035/- out of the addition made being business income of the assessee.

6. The Id. CIT(A)'s findings on disallowance of Rs. 1,70,322/- raised in the ground No. 1 of the appeal are as under:-

"7.5 I have perused the assessment order, remand report of the AO, submissions and cross reply of the appellant and find that the disallowance of expenses claimed under the following heads have been made by the AO on the ground that supporting vouchers and other documentary evidence for these expenses could not be produced:-

- (i) Petrol, Depreciation on Car and Insurance - a disallowance of Rs. 20,000 out of the total expenses of Rs. 96650 has been made by the AO. Considering the fact that no controverting evidence could be filed by the appellant, the disallowance made by the AO is confirmed as being reasonable.*
- (ii) Vehicle Repair and Maintenance - a disallowance of Rs. 9,000 out of the total expenses of Rs. 44,054 has been made by the AO. Considering the fact that no controverting evidence could be filed by the appellant, the disallowance made by the AO is confirmed.*
- (iii) Wages - a disallowance of Rs. 57,000 out of the total expenses of Rs. 2,53,735 has been made by the AO on the ground that complete addresses of the workers employed and the work done by them could not be filed. Considering the fact that no controverting evidence could be filed by the appellant, the disallowance made by the AO is confirmed.*

- (iv) *Travelling Expenses - a disallowance of Rs. 13,000 out of the total expenses of Rs. 66,806 has been made by the AO. Considering the fact that no controverting evidence could be filed by the appellant, the disallowance made by the AO being reasonable is confirmed.*
- (v) *Printing and Stationary - a disallowance of Rs. 3,000 out of the total expenses of Rs. 15,250 has been made by the AO. Considering the fact that no controverting evidence could be filed by the appellant, the disallowance made by the AO is confirmed.*
- (vi) *Mobile Expenses - a disallowance of Rs. 3,500 out of the total expenses of Rs. 16,924 has been made by the AO. Considering the fact that no controverting evidence could be filed by the appellant, the disallowance made by the AO is confirmed.*
- (vii) *Staff Welfare - a disallowance of Rs. 7,000 out of the total expenses of Rs. 34,103 has been made by the AO. Considering the fact that no controverting evidence or any voucher could be filed by the appellant and the disallowance made by the AO being reasonable is confirmed.*
- (viii) *Tea, Food and Beverage - a disallowance of Rs. 23,000 out of the total expenses of Rs. 1,13,009 has been made by the AO. Considering the fact that no controverting evidence could be filed by the appellant and the disallowance made by the AO being reasonable is confirmed.*
- (ix) *Shop Expenses - a disallowance of Rs. 1,300 out of the total expenses of Rs. 6,418 has been made by the AO. Considering the*

fact that no controverting evidence could be filed by the appellant, the disallowance made by the AO is confirmed.

- (x) *Local Conveyance - a disallowance of Rs. 8,000 out of the total expenses of Rs. 37,880 has been made by the AO. Considering the fact that no controverting evidence could be filed by the appellant, the disallowance made by the AO is confirmed.*
- (xi) *Business promotion expenses - a disallowance of Rs. 6,500 out of the total expenses of Rs. 32,840 has been made by the AO. Considering the fact that no controverting evidence could be filed by the appellant, the disallowance made by the AO is confirmed.*
- (xii) *Interest on car loan - a disallowance of total expenses of Rs. 19,022 has been made by the AO on the ground that interest free loans have been given to related persons. Therefore, there is no justification in obtaining funds at higher cost. Considering the fact that no controverting evidence could be filed by the appellant to justify the payment of interest, the disallowance made by the AO is confirmed.”*

6.1 The Id. CIT(A)'s finding on ground No. 2 for sustaining the disallowance of Rs. 2.00 lacs are as under:-

“8.5 I have perused the assessment order, remand report of the AO, submissions and cross reply of the appellant and find that a disallowance of Rs. 2 lacs out of the total expenses of Rs. 7,89,526 claimed under this head has been made by the AO. The appellant has claimed a cash discount of Rs. 1,61,090 on sales of other items and of Rs. 6,28,436 on sales of onions. The addition was made on the ground that no details with regard to the parties have been maintained to whom cash discount

was given. Further, no other evidence with regard to the claim of cash discount could be filed. The appellant has stated that giving discount to customers is customary in this trade and this practice was confirmed by the Krishi Upaj Mandi also.

8.6 In the absence of any such evidence and still considering the claim of the expenses being prevalent in this nature of trade, only a disallowance of Rs. 2 lacs was made by the AO out of the total expenses claimed under this head. The appellant has reiterated the submissions made before the AO and has stated that confirmation of four parties was also filed in the course of remand proceedings before the AO. AO in the remand report has stated that appellant has not maintained any person/firm wise and date wise details of discount given and also failed to produce any supporting vouchers for the amount of discount given to various persons. The appellant was unable to produce their books of accounts or other supporting documents. Further, it is stated that the confirmations filed by the appellant with regard to the cash discount from four parties are amounting to Rs. 1,34,137 out of the total claim of Rs. 7,89,526 as expenses under this head.

8.7 Considering the facts stated above, I do not find any justification in interfering with the disallowance made by the AO and hold the same to be justified and fair in the circumstances. Accordingly, I confirm the disallowance of Rs. 2 lacs made by the AO under this head.”

The issue raised in both these grounds are disallowance out of various expenses debited by the assessee under various heads in his P&L account.

6.2 Regarding ground No. 4 of the appeal, the Id. CIT(A) has also sustained part disallowance on the basis of estimating the profit on the gross receipts of the assessee. The relevant findings of the Id. CIT(A) is as under:-

“12.5 I have perused the assessment order, remand report of the AO, submissions and cross reply of the appellant and find that an addition of Rs. 5,06,142 has been made on account of business income of other adhatiyas transacted through appellant’s bank account. During the course of assessment proceedings, it was found that an amount of Rs. 92,02,360 has been deposited in the bank account of the appellant, which was stated to be the collection of proceeds for other adhatiyas. AO has treated the commission of 6% on such receipts as the income of the appellant at Rs. 5,52,142 and after allowing deduction of bank collection charges of Rs. 46,000 made an addition of Rs. 5,06,142 to the income of the appellant.

12.6 The appellant has stated that commission on gross basis accrues to the dealer @ 6% and in this case all the proceeds deposited in the bank account were on behalf of another party M/s Surendra & Co. A copy of the agreement duly executed with that party has been filed on record. It is stated that profit of 25% of the gross commission earned on sales @ 6% of sales, is earned by the appellant. It is submitted that out of gross commission - 6% of sales of Rs. 5,52,142, after meeting expenses a net profit of 25% of this commission amount which comes to 1,38,035, is the income of the appellant. The collection charges of bank have to be allowed against this income of Rs. 1,38,035 to arrive at the net income.

- 12.7 *The detailed submissions made by the appellant were forwarded to the AO for examination. AO in his report has reiterated the reasons given in the assessment order and stated that addition of Rs. 5,06,142 made in the order is justified.*
- 12.8 *Having considered the evidence available on record, I find that there is no dispute that gross commission of 6% on sales is earned by the party. This issue of sales made on behalf of the other adhatiya has been considered by the AO in the case of the appellant in the preceding year and in the order passed u/s 143(3)/147 dated 28-03-2013, has assessed the net profit at 25% of the gross commission which is 6% of the total deposits in the bank account. Thus, I hold that in this year also, the income of the appellant would be computed at 6% of 92,02,360 - Rs. 5,52,142 and 25% net profit of Rs. 5,52,142 would be Rs.1,38,035. Further, I hold that no further deduction for any other expenses would be given against the income as computed.*
- 12.9 *In view of the above facts, I confirm an addition of Rs. 1,38,035 as against the total addition of Rs. 5,06,142 made by the AO under this head."*

7. Before the ITAT, it was pleaded that once the addition has been made by estimating the income then ad hoc disallowance out of various expenses claimed in the P&L account should not have been made or sustained by the Id. CIT(A). I do agree with the contention of the Id AR that where income has been estimated after rejecting the books of account then no further disallowance is required to be made out of various expenses claimed in the P&L account. However, the facts of this

case are completely different. The Id CIT(A) has sustained the net profit of 25% of the gross commission earned @ 6% on the sales which were not reflected in the assessee's books of account and these sales were made for the other Adathiyas. The Id. CIT(A) sustained net profit @ 25% of gross commission. The revenue is not in appeal on relief granted by the Id. CIT(A). In view of these facts, I find no reason but to agree with the order of the Id. CIT(A) for estimating net profit @ 25% of gross commission. Hence ground No. 4 of the appeal stands dismissed. As far as other disallowances made on which the assessee is in appeal in ground No. 1 and 2, I found that these disallowances are out of the various expenses debited in the P&L account against the declared turnover by the assessee in its books of account. These disallowances are made for lack of supporting vouchers and documentary evidences and where no details were submitted with regard to the cash discount. Since the Id. CIT(A) has estimated net profit @ 25% of the commission @ 6% on the sales of Rs. 92,02,368/-, therefore, in the interest of justice I direct to estimate net profit as 1.5% of declared sales of Rs. 5.00 crores, thus part addition sustained. The declared turnover was of around Rs. 5.00 crores. Hence the estimated income on this turnover comes at Rs. 7.5 lacs. Instead of net income declared in the return of income, the income from declared

turnover shall be at Rs. 7.5 lacs. Thus, the total income from the business of Adathiya is estimated at Rs. 8,88,035/- (7,50,000/- + 1,38,035/-). Accordingly grounds No. 1 and 2 are partly allowed and ground No. 4 of the appeal is dismissed.

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

Order pronounced in the open court on 08/09/2017.

Sd/-
(भागचंद)
(BHAGCHAND)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 08th September, 2017

*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Bharat Chawla, Alwar.
2. प्रत्यर्थी / The Respondent- The ITO, Ward 2(3), Alwar.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 438/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar