

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

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 470/JP/2015  
निर्धारण वर्ष / Assessment Year : 2011-12

Income Tax officer, Bundi.	बनाम Vs.	Shri Rameshwar Meena, Prop. M/s Rajshree Goods Transport, By Pass Road, Bundi
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABUPM2238F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Shrawan Kumar Gupta (Adv.)  
राजस्व की ओर से / Revenue by : Shri Roshanta Meena (J.CIT)

सुनवाई की तारीख / Date of Hearing : 12/10/2017  
उदघोषणा की तारीख / Date of Pronouncement: 08/11/2017

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the Revenue is directed against the order of dated 10.03.2015 of CIT (A), Kota for A.Y. 2011-12. The Revenue has raised the following grounds as under:-

*"On the facts and in the circumstances of the case the Id. CIT(A), Kota has reed in :-*

*(i) deleting the disallowance of Rs. 23,98,756/- out of total disallowance of Rs. 34,00,2016 made by AO without giving any basis or citing any case law in support of his decision to apply net profit rate of 5% on transport receipts of the assessee.*

*(ii) deleting the disallowance of Rs. 8,91,071/- out of total disallowance of Rs. 16,97,753/- made by the AO without giving*

*any basis or citing any case law in support of his decision to apply net profit rate of 4% on liquor receipt of the assessee.*

*(iii) deleting the addition of Rs.1,09,01,000/- made by the AO u.s 68 of the IT Act on account of unexplained cash deposits in the bank account since no documentary evidence has been produced by the assessee either bore AO or even before Ld. CIT(A) to substantiate his explanation regarding nature and sources of cash deposit of Rs. 1,09,01,000/- in his bank account;*

*(iv) deleting the addition of Rs.14,00,000/- made by the AO u.s 68 of the IT Act on account of unexplained cash deposits in the bank account since no documentary evidence has been produced by the assessee either before AO or even before Ld. CIT(A) to substantiate his explanation regarding nature and sources of cash deposit of Rs. 14,00,000/- in his bank account;*

*(v) deleting the addition of Rs. 2,10,580/- made by the AO on account of unexplained loans given to various persons since the assessee never raised the contention before AO or even Ld. CIT(A) that he had given loans of Rs. 2,10,580/- out of his unaccounted income mentioned in the order of AO or Ld. CIT(A);*

2. Ground No. (i) regarding restricting the disallowance of expenses made by the AO in the transport business of the assessee by applying net profit of 5%. The assessee is engaged in the business of transportation in the name of M/s Raj Shree Goods Transport Corporation as well as having liquor business. The assessee filed his return of income declaring total income of Rs. 26,46,892/- and agriculture income of Rs. 50,42,500/-. The AO observed that the assessee has failed to produce the books of accounts, bills, vouchers and supporting documents in connection with the business of M/s Raj

Shree Goods Transport Corporation. The AO further noted that the assessee claimed transportation expenses of Rs. 2,93,97,730/-. Since the assessee has not produced the books of accounts and other supporting documents therefore, the AO was of the view that the above expenses were not incurred wholly and exclusively for the purpose of business. Accordingly, the AO disallowed 10% of transportation expenses amounting to Rs. 29,39,773/-. Apart from this AO has also disallowed the claim of expenses on account of conveyance, Petrol, telephone and mobile expenses of Rs. 55,787/- & Rs. 48,507/- respectively as well as depreciation of Rs. 3,11,182/- and vehicle loan interest of Rs. 32,413/-. The AO observed that the element of personal use cannot be ruled out, therefore, it cannot be said that the above expenses has been incurred wholly and exclusively for the purpose of business and accordingly disallowed 20% of the expenses amount to Rs. 1,44,975/-. The Assessing Officer further disallowed the salary claimed to have been paid to driver of Rs. 1,08,000/- and others Rs. 1,72,000/- as well as staff welfare expenses of Rs. 35,468/- total amounting to Rs. 3,15,468/- in toto. On the ground that the assessee has not furnished any evidence in support of this claim. Thus, the Assessing Officer disallowed a total amount of Rs. 34,00,216/- in

connection with the transportation business of the assessee. The assessee challenged the action of the AO before the Id. CIT(A) and contended that disallowance made by the AO has resulted a net profit of Rs. 39,57,985/- in the transport business which is equal 12.70% net profit rate which is impermissible in this line of business and further the Assessing Officer has made disallowance without invoking provisions of u/s 145(3). The Id. CIT(A) estimated income from the transportation business at 5% and accordingly restricted the disallowance/ addition made by the AO of Rs. 10,01,460 as against Rs. 34,00,216/- made by the AO. Thus the Id. CIT(A) has deleted the addition/ disallowance to the tune of Rs. 23,98,756/-. Aggrieved by the order of the Id. CIT(A), the Revenue of this appeal.

3. Before us, the Id. DR has submitted that when the assessee has not produced any books of account or any supporting documents then the claim of the assessee is not acceptable. The Assessing Officer has clearly stated in the assessment order that the assessee has failed to produce books of accounts as well as bills, vouchers in support of the expenditure. Hence, disallowance made by the AO at 10% of the transportation expenses, 20% of conveyance petrol, telephone, Mobile depreciation and vehicle loan expenses due to the personal use of the

telephone and mobile as well as vehicles is justified. Further, when the assessee has not produced any evidence then the claim of salary to driver and other staff including staff welfare expenses cannot be allowed and therefore, the Assessing Officer has disallowed the claim of the assessee in full. He has relied upon the order of the Assessing Officer. The Id. DR has further submitted that the Id. CIT(A) estimated income of the assessee without any basis and therefore the relief granted by the Id. CIT(A) without citing any instance or prevailing net profit in this business is based on assumption and not on the facts.

4. On the other hand, the Id. AR of the assessee has submitted that the estimation of the income @ of 5% as against the average net profit of the assessee in the past year at 1.5% is more than the reasonable accepted income and therefore, the income estimated by the Id. CIT(A) needs no interference. The Id. AR has referred the various decisions on the point and submitted that even the Tribunal has accepted the income @ of 6.5% GP and therefore, the net income estimated by the Id. CIT(A) at 5% is much higher than the GP rate at 6.5% accepted by the Tribunal. He has relied upon the following decisions as under:-

- R.B. Bansilal Abirchand Spinning & Weaving Mills 75 ITR 260.
- CIT vs. Maharaja Shree Umaid Mills Ltd. 162 ITR 565

- DCIT V Mewar Textile Mills Ltd. 21 Tax World 821
- Mohd. Umer v. CIT 101 ITR 525
- Ajanta Construction (P.) Ltd. Vs. ACIT XXII TW 606
- DCIT Vs. Associated Stone Industries XXII TW 155
- Ghewarchand Vs. ITO XXI TW 571
- Siddheshwari Cotton Mills P. Ltd. V. CIT 117 ITR 953
- Padampath Ramgopal 76 ITR 719
- Malt Bru Ltd. 34 TW 246
- Manohar Lal V. ITO 68 TTJ 27
- Shri Gautam Textile V. ITO 72TTJ 169

5. We have considered the rival submissions as well as relevant material on record. The assessee has not disputed the fact that it failed to produce any supporting evidence as well as on books of accounts to substantiate the claim of transportation expenses as well as other expenses in connection with the conveyance, Petrol, telephone, mobile, depreciation etc. The dispute is only regarding the quantum of disallowance made by the AO which has been restricted by the Id. CIT(A) by estimating the income of the assessee at 5% in the transport business. The assessee has contended that the net profit declared by the assessee in the earlier years 2008-09 to 2010-11 which was accepted by the AO is 1.5% however, we note that all the earlier

assessment years the return of income were processed u/s 143(1). There is no scrutiny assessment, therefore, the income declared by the assessee in the earlier assessment years cannot be taken as accepted net profit for the purpose of scrutiny assessment made by the AO in the year under consideration. The Assessing Officer has disallowed various expenses and some of the expenses were disallowed to the extent of 10% of total expenses and others were disallowed to the extent of 20% whereas some other expenses claimed on account of salary to the driver and other staff has been disallowed in toto. Though the assessee could not produced the supporting documents as well as books of accounts however, when the Assessing Officer has not invoked the provisions of section 145(3) then the decision relied upon by the assessee cannot applied in the case of the assessee. The AO was framed the order u/s 144 however, the Assessing Officer did not resort to the provisions of section 145(3). Therefore, there is no illegality in the action of the AO in disallowing the claim of expenditure under each head. The CIT(A) after considering the previous history of declared total income estimated the income @ 5%. We find that the estimation of income may be adopted in the case when the assessee has not produced any supporting evidence and to bring the controversy to an

end. There is no dispute that the income of the assessee was assessed to tax as a result of disallowance made by the AO is equal to 12.70% of the turnover which is on the higher side in transport business and therefore a reasonable and proper estimate was required to be made in this case of the assessee. The Id. CIT(A) has estimated the income of the assessee at 5% thereby restricted the disallowance of Rs. 10,01,460/- as against the total disallowance made by the AO of Rs. 34,00,216. Having regard to the facts and circumstances of the case where the assessee has failed to produce any supporting evidence as well as proper books of accounts in support of the claim we are of the considered view that the proper and just estimation of the income. The impugned order is accordingly modified. Accordingly this ground of the Revenue is partly allowed.

6. Ground No. (ii) is regarding disallowance expenditure in the liquor expenses. We have heard the Id. DR as well as AR and considered the relevant material on record. The assessing Officer made a total disallowance of Rs. 16,97,753/- due to the reason that the assessee failed to produce any supporting evidence as well as books of accounts. The Id. CIT(A) restricted the disallowance by estimating the net profit of the assessee at 4% in the liquor business. This issue is identical as

raised in the ground no. (i), therefore, having regard to the facts and circumstances of the case and our finding in respect of the ground no. (i). We think it proper and reasonable to estimate the income in the liquor business @ 5%. The impugned order of the Id CIT(A) is accordingly modified. This ground is Revenue is party allowed.

7. Ground No. (iii) is regarding cash deposit of Rs. 1,09,01,901/- added by the AO under section 68 which was deleted by the Id. CIT(A). During the scrutiny proceedings the AO noted from the AIR Information of the assessee that it has deposited a sum of Rs. 97 lacs in the IDBI Bank and further Rs. 12.01 lacs total amounting to Rs. 1,09,01,000/-. The AO asked the assessee to show cause as to why this deposit should not be treated as unexplained cash credit. The AO observed that the assessee has failed to furnish any reply. Further except the submissions that cash are from receipt of wine, transport business and agriculture income, no supportive evidence or books of accounts were produced. Accordingly the AO made an addition of Rs. 1,09,01,000/-. The Id. CIT(A) accepted the explanation of the assessee that a sum of Rs. 34 lacs deposited in cash was shown with a description sale proceeds of food soyabean. Further, the Id. CIT(A) has noted that the estimated cash turnover of the assessee was around to

Rs. 8.22 crores and therefore, it can be reasonably presumed that the balance amount of Rs. 63 lacs were deposited out of agriculture produced sale, cash receipts from wine and transport business. Accordingly, the Id. CIT(A) directed the AO to delete the addition of Rs. 97 lacs. As regards the deposit of Rs. 12.01 lacs the Id. CIT(A) given the benefit of a telescopic as it had sustained the addition to the tune of Rs. 18,08,142/-.

8. Ground No. (iv) regarding disallowance made by the AO on account of unexplained cash deposit in the bank of Rs. 1,4,00,000/- which was deleted by the Id. CIT(A). The Id. DR has submitted that during the assessment proceedings the AO found from the CBDT information of the assessee that a cash of Rs. 14 lacs has been deposited in the bank account during the year. The AO asked the assessee to explain the sources of these deposits and in the absence of any explanation or evidence why the same should not be treated as unexplained cash credit. The assessee explained the sources of the deposit as the receipt from wine and transport business as well as agricultural income. The AO did not accept the explanation of the assessee and made the addition of Rs. 14,00,000/-. The Id. CIT(A) has

deleted this addition by granting telescopic benefit as the other addition sustained by the CIT(A) would be treated as the source of deposit.

9. We have heard the Id. DR as well as AR and considering the relevant material on record. We find that when the Assessing Officer has made the addition on various heads and part of which was sustained by the CIT(A) amounting to many times more than this deposit made in the bank account then the assessee is entitled for the benefit of telescopic to the extent of the other addition sustained by that appeal. Hence, we do not find any error or illegality in the order of the Id. CIT(A) qua this issue.

10. Ground No. (v) is regarding the addition made by the AO of Rs. 2,10,580/- on account of unexplained loan account to various persons which was deleted by the Id. CIT(A) by giving the benefit of telescopic.

11. We have heard the Id. DR as well as AR and considered the relevant material on record. We find that the addition sustained by the Id. CIT(A) is more than the amount of Rs. 14,00,000/- as deposited in the bank as well as this amount of Rs. 2,10,580/-. Once the addition sustained by the Id. CIT(A) is more than the cumulative amounts of bank deposited of Rs. 14 lacs and loan advance of Rs. 2,10,580/- then,

we do not find any error or illegality in the order of Id. CIT(A) applying the telescopic evidence.

12. We have heard the Id. DR as well as AR and considered the relevant material on record. The Id. DR has submitted that the assessee has not produced any books of accounts to substantiate the claim that deposit was shown in the books of accounts from agriculture produce as well as receipts from the wine and transport business. He has relied upon the order of the Assessing Officer.

13. Having considered the rival submissions as well as relevant material on record we note that the assessee has declared agriculture income of Rs. 50,42,500/- from the agricultural land taken on lease. The Assessing Officer has accepted the said claim of agricultural income. Thus once the Assessing Officer has accepted the agricultural income of more than Rs. 50 lacs then accepting the claim by the Id. CIT(A) to the tune of Rs. 34 lacs in bank deposit which is specifically shown as sale proceed of food soyabin cannot be found fault with. Hence, to the extent of sources of deposit of Rs. 34 lacs we do not find any error or illegality in the order of the Id. CIT(A). As regards the balance amount of Rs. 63 lacs the Id. CIT(A) has deleted the said addition by considering the fact that the turnover of assessee from the

transport and liquor business is Rs. 8.22 crores, therefore, the said amount of Rs. 63 lacs can be sourced from the receipt of wine and transport business. He further noted that the closing balance in the account of the assessee was only Rs. 3,13,001/- and therefore the deposit were made by the assessee throughout the year under consideration. Since this deposit was not in lump sum but spread over during the year therefore, we do not find any reason to interfere with the order of the Id. CIT(A) by accepting the source of the deposit as receipt from the wine and transport business. As regards the benefit of telescopic of Rs. 12,01,000/- when the addition sustained by the Id. CIT(A) exceeds the cumulative amount of deposits in the bank and advance given to the party then we do not find any error or illegality in granting the said benefit of telescopic.

In the result, the appeal of the Revenue is partly allowed.

Order pronounced in the open court on 08/11/2017

Sd/-

(विक्रम सिंह यादव)

(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 08/11/2017.

\*Santosh.

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

Sd/-

(विजय पाल राव)

(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

1. अपीलार्थी / The Appellant- ITO, Bundi.
2. प्रत्यर्थी / The Respondent- Shri Rameshwar Meena, Prop. M/s Rajshree Goods Transport, By Pass Road, Bundi
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 470/JP/2015}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar