

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

श्री कुल भारत, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI KUL BHARAT, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 136/JP/2016  
निर्धारण वर्ष/Assessment Year : 2010-11.

M/s Rajendra Singh Bhamboo, D-30, Indra Singh, Jhunjhunu.	बनाम Vs.	DCIT, Central Circle-2, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AACFR 3438 H		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri K.L. Moolchandani (Advocate)  
राजस्व की ओर से/ Revenue by : Smt. Rolly Agarwal. (CIT)

सुनवाई की तारीख/ Date of Hearing : 24.10.2017.  
घोषणा की तारीख/ Date of Pronouncement : 10/11/2017.

आदेश/ ORDER

**PER SHRI KUL BHARAT, JM.**

This appeal by the Assessee pertaining to Assessment Year 2010-11 is directed against the order of Ld. CIT(A)-4 Kota, dated 22.12.2015.

The assessee has raised the following grounds of appeal:-

- "1. On the facts and in the circumstances of the case, the learned Authorities below have legally and factually erred in making and confirming the '**trading addition**' by applying NP rate in the assessment proceedings completed **u/s 153A read with section 143(3)** of the Act. Legally no valid addition of regular assessment can be made within the meaning of section 153A of the Act as envisaged and interpreted by number of judicial authorities on the point; particularly in absence of any incriminating material detected during the course of search operations. In the circumstances, no addition is called for u/s 153A of the Act and entire addition deserves to be deleted solely on this ground alone.

2 Without prejudice to the above objection, on merits also no addition is called for in the case and is objected to on the following grounds:

(a) On the facts and in the circumstances of the case, the learned CIT(A) has legally and factually erred in confirming the AO's action of invoking provisions of Section 145 of the I.T. Act, 1961 without pointing out any specific defect in the maintenance of books of account, particularly when no incriminating material indicating under-statement of income what-so-ever could be found during the course of search operations. In absence of any specific defect or discrepancy, the provisions of section 145 of the Act cannot be invoked. Thus the addition so made by invoking such section and confirmed by the Ld. CIT (A) is bad in law and deserves to be deleted.

(b) On the facts and in the circumstances of the case, the learned CIT(A) has legally and factually erred in confirming AO's working of the addition by applying net profit rate of 8.5%, ignoring the fact that the actual interest payments of Rs. **1,46,22,346/-** as shown and claimed by the appellant were incorrectly taken at Rs. **72,08,314/-** without assigning any reason. In the circumstances, the income of the appellant has been over-computed by Rs. **74,14,034/-**. In the appeal order, the Ld. CIT (Appeal) has confirmed the working of the AO without addressing this fact. In the circumstances, the working as confirmed by the Ld. CIT (A) is factually incorrect and deserved to be modified by allowing the correct interest payments of Rs. **1,46,22,346/-**.

3. The appellant craves the right to add, amend and alter the grounds on or before the hearing."

2. Briefly stated the facts are that, a search & seizure action u/s 132 of the Act, 1961(hereinafter referred to as the Act) was carried out on the members of Bhamboo Group on 15.03.2012 of which the Assessee is one of the members. It is observed by the Assessing Officer that during the course of search action the cash, jewellery, valuables, stock-in-trade, documents, books of account and/or loose papers were found and seized from the premises of the members of the Bhamboo

Group. Subsequently, a notice u/s 153(A) was issued and served upon the assessee, in response thereto the assessee filed a return declaring an income of Rs. 5,19,62,170/-. The Assessing Officer framed assessment u/s 143(3) r.w.s. 153A of the Act. Thereby, the Assessing Officer made addition by rejecting the books of accounts and adopting net profit rate of 8.50% on gross of Rs. 987819443/-. Aggrieved by this, the assessee preferred an appeal before Ld. CIT(A), who after considering the submissions, dismissed the appeal. Now, the assessee is in further appeal before this Tribunal.

3. **Ground no. 1** is against making confirmation of adopting NP rate without appreciating the fact that no incriminating material was detected during the course of search operation.

3.1 Ld. Counsel for the assessee vehemently argued that the authorities below were not justified in framing the assessment as there was no material. Ld. Counsel reiterated the submissions as made in the written submissions. The submissions of the Ld. Counsel are reproduced as under:-

*"It is a search case. In this case search operations were carried out on 15.3.2012. Consequent upon the search operations, the assessment proceedings u/s 153A of the Act for the block period including this year were initiated as mentioned in the body of the assessment order itself. In compliance to such notice u/s 153A of the Act, Return of Income was filed showing therein the same income of **Rs.5,19,62,170/-** as declared in the original return filed on **11.10.2010**. As no incriminating material pertaining to this year was found and seized in the search operations so **no undisclosed income pertaining to this year was declared by the assessee as mentioned in para 5 of the assessment order itself.***

2. During the course of assessment proceedings, the learned AO had observed that the NP results shown for the year were slightly low. Accordingly it was proposed to make trading additions on estimate basis after rejecting the book results u/s 145(3) of the Act for certain **'routine and general deficiencies like:** (i) non-maintenance of the stock register (ii) no record of the consumption of material on day to day basis (iii) non-maintenance of site wise accounts and (iv) unvouched and unverifiable purchases of some items like sand, stones, greet, earth work etc. (Kindly refer to para 8 of the assessment order). The proposed addition was vehemently objected on legal grounds detailed as under:

"From the search proceedings, it would be noted that **no incriminating material what-so-ever** pertaining to the A.Y. 2010-13 was found and seized. In the circumstances, **no valid addition can be made within the meaning of section 153C read with section 153A of the Act as interpreted in the following judicial judgments:**

- (i) *Suncity Alloys (P) Ltd. Vs. ACIT (2009) 124 TTJ (Jd) 674 - Scope of Section 153A*
- (ii) *Anil KUndiliihatia & Ors Vs. ACIT (2010) 1 ITR (Trib) 484 (Del.) - Scope of Section 153A*
- (iii) *H.C. Chandna (P) Ltd. Vs. DCIT (2004) 91 TTJ (Del.) 243 - Scope of Section 153A*
- (iv) *CIT vs. Chandra Chemoux (2008) 215 CTR (Raj.) 43 - Scope of Section 153A*
- (v) *CIT vs. Harish Boob (2008) 215 .CTR (Raj.) 30 -Scope of Section 153A*
- (vi) *Vinod Kumar Jain vs. ACTT (2004) 91 TTJ (Del.) 134 Scope of Section 153A*
- (vii) *ACIT vs. SRJ Peety Steels (P) Ltd. 53 DTR 347 (Pune B ) — Scope of Section 153A*
- (viii) *LMJ International Ltd. vs. DCIT 22 SOT 315 (Cal.) - Scope of Section 15A- Held that 'Items of regular assessment cannot be added back in the*

*proceedings u/s.153C when no incriminating documents were found in respect of the disallowed amounts in the search proceeding. Thus, the additions made by the AO, being all relating to regular assessment were deleted.'*

- (ix) *Anil P. Khimani vs. DCIT 2010-TIOL-177-ITAT-MUM - Scope of Section 153A- Held that 'Assessee argued before he Tribunal that since no material is found as a result of search no addition could be made. It was held that the power given by the Proviso to "assess" income for six assessment years has to be confined to the undisclosed income unearthed during search and cannot include items which are disclosed in the original proceedings. Since, the additions made by the AO was not based on the material found as a result of search, the same was deleted.*
- (x) *ACIT vs. Kamal Kumar S. 'Agrawal (Indl.) .& Ors. 41 DTR 105(Nag)(Trib) - Scope of Section 153A- Held that 'Following some enquiries in proceedings u/s.153A, the A.O. formed an opinion that the transactions were not genuine and taxed the sale proceeds of shares as income from undisclosed sources u/s.68. Not justified.*
- (xi) *Jagdish Duggal vs. ACIT 24 DTR 174 (Chd.)(Trib) - Scope of Section 153A- Held that 'Not justified. Reasons advanced by the AO are quite general in nature as such articles are a normal occurrence in urban households. In the absence of any adverse material found during search, no addition could be made on estimate basis.*
- (x) *ACIT vs. M/s. Rochem Separation Systems (I) Pvt. Ltd. 2011-TIOL-334-ITAT-MUM - Scope of Section 153A- It was held that when no incriminating documents are found in a search neither proceeding nor summons are issued by the AO for any specific document, commission expenses incurred for business purpose cannot be disallowed only on the basis of assumptions and presumptions.*

2. Besides the above legal objection, the proposal of the Id. AO to reject the book results u/s 145 of the Act and making trading addition on estimate basis was also objected on various counts from time to time as no specific **discrepancy or any mistake was pointed out so the book results could not be rejected on the basis of general observations of non-maintenance of the stocks and day to day consumption of the material etc.** The Ld. AO had however completed the assessment without addressing the legal objections and also without considering the objections made regarding invoking of the provisions of section 145(3) of the Act and to estimate the income etc. Again while making trading addition of Rs.44,93,431/- , the Ld. AO had proceeded to compare the 'trading **results**' on the basis of past history of the appellant by referring irrelevant figures of the NP results to arrive at the findings that during the year NP results were **'low'**. Accordingly, he had proceeded to work out the trading addition of Rs.44,93,431/- by applying NP Rate of 8.5%, subject to interest, depreciation and remunerations to the partners. While computing the income in this manner, the Ld. AO had incorrectly taken the figures of interest payments at Rs.72,08,314/- as against actual interest payments of Rs. 1,46,22,346/- and made trading addition of Rs.44,93,431/- . Again in such working, he had omitted the interest of Rs.74,14,038/- earned on the FDRs pledged with the departments; duly accounted for in the P&L A/c. for the reasons known to him. Such faulty working resulted in over-assessment of income by Rs.44,93,431/-. In fact, during this year, the NP declared by the appellant was 9.25% (including interest income earned on the FDRs pledged with the Govt. Departments). Due to exclusion of such interest income while computing the income by the Ld. AO, the NP..."

3.2 On the contrary, Ld. CIT(DR) opposed the submissions and stated that during the course of search proceeding a paper was recovered. Ld. CIT(DR) also supported the order of the authorities below.

3.3 We have heard the rival contentions, perused the material available on record. During the course of hearing, Ld. D/R has placed on record a photocopy of paper where certain figures were written. Ld. AR could not controvert that paper. Therefore, we are of the considered view that authorities below were justified in invoking the provisions of section 153A of the Act. Therefore, Ground No. 1 is dismissed.

4. **Ground no. 2** is against rejection of books of account and adopting the net profit.

4.1 Ld. Counsel for the assessee reiterated the submissions as made in the written submissions and contended that the rejections of books of accounts were not justified in respect of Ground no. 2(b). He submitted that the NP works out at 9.25%. He submitted that addition whatsoever is called for on the basis of NP of 8.5% as applied by the AO. He submitted that the Assessing Officer has incorrectly taken the figures of Rs. 72,08,314/- as against actual figure of Rs. 1,46,22,346/-. He further contended that the Assessing Officer has excluded the interest receipts on FDRs pledged with the Government Department to secure the contracts.

4.2 On the contrary, Ld. D/R opposed the submissions, and submitted that the authorities below have rightly excluded the interest receipts on FDRs as the issue has been decided against the assessee by the Hon'ble Jurisdictional High Court in

the case of Commissioner of Income Tax vs. Bhawal Synthetics (India), Udaipur [2017] 81 taxmann.com 478 (Rajasthan).

4.3 We have heard the rival contentions. It is contended by the Ld. Counsel for the assessee that the Assessing Officer has not taken the correct figure of the interest paid despite the facts that Profit and Loss Account was before the Assessing Officer. He submitted that as per the Profit and Loss Account bank interest and other charges was Rs. 1,46,22,348/- however, the Assessing Officer has taken Rs. 74,14,038/-. He further submitted that no specific defects have been pointed out by the Assessing Officer. He drew our attention to the Paper Book Page No. 2 i.e profit and loss accounts, as per the profit and loss account furnished by the assessee the bank interest and other charges are reflected as Rs. 1,46,22,348.16/-. Therefore, after considering the totality of the fact, we deem it proper that this issue requires fresh decision by the AO. Accordingly, we set aside this issue of estimation of profit to the file of the AO to be decided afresh. Needless to say, that AO would provide sufficient opportunity to the assessee and make fresh assessment expeditiously.

5. In the result, appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on Friday, the 10<sup>th</sup> day of November 2017.

Sd/-  
(विक्रम सिंह यादव)  
(VIKRAM SINGH YADAV)  
लेखा सदस्य/Accountant Member

Sd/-  
( कुल भारत)  
( KUL BHARAT )  
न्यायिक सदस्य/Judicial Member

Jaipur

Dated:- 10 /11/2017.

Pooja/

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

1. The Appellant- M/s Rajendra Singh Bhamboo, Jhunjhunu.
2. The Respondent- DCIT, Central Circle-2, Jaipur.
3. The CIT,
4. The CIT (A)
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 136/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar