

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCHE, INDORE**

श्री चन्द्रमोहन गर्ग, न्यायिक सदस्य

तथा

श्री ओ.पी.मीना, लेखा सदस्य के समक्ष

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI O.P.MEENA, ACCOUNTANT MEMBER**

**ITA No.1039/Ind/2016
Assessment Year: 2011-12**

ACIT- 2(1), Indore	ब नाम/ V	Shri Rajendra Saraf, Prop. Modern Agriculture Implements, Industrial Area, Runija Road, Barnagar
(Revenue)	s.	(Respondent)
PAN No.AUSPS4670G		

Revenue by	Shri Lalchand, CIT (DR))
Appellant by	Shri Anil Garg & Arpit Gaud, CAs (AR)
Date of Hearing:	25.09.2017
Date of Pronouncement:	28.09.2017

आदेश / O R D E R

PER CHANDRAMOHAN GARG, J.M:

This appeal has been filed by the Revenue against the order of
Ld. Commissioner of Income Tax(Appeals), Ujjain (in short 'CIT'),

dated 15.07.2016 for the Assessment Year 2011-12. The ground raised by the revenue read as follows;

“1. On the facts and circumstances of the case the Ld.CIT(A) has erred in allowing relief of Rs.29,04,394/- out of total addition of Rs.39,93,496/- by applying gross profit rate of 12% without any basis.

2. On the facts and in the circumstances of the case the Ld.CIT(A) has erred in allowing relief of Rs.5,27,704/- out of total addition of Rs.5,99,664/- on account of shortage of cash found during survey.

3. On the facts and in the circumstances of the case the Ld.CIT(A) has erred in deletion of the addition made by the AO of Rs.7,92,046/- on account of bogus liabilities.”

2. Briefly stated the facts giving rise to the appeal is that the Assessing Officer took up the case for scrutiny and assessment order u/s 143(3) of the Income Tax Act, 1961 (for short Act) was framed by making three additions i.e. estimation of gross profit, unexplained cash credit u/s 68 of the Act, and disallowance on account of bogus liability. The aggrieved assessee carried the matter before CIT(A), Ujjain wherein the CIT(A), Ujjain partly allowed the appeal of the assessee on all 3 counts. Now the aggrieved revenue is before this Tribunal in the second appeal with the grounds as referred to herein above.

Ground No.1

3. We have heard the arguments of both the sides and carefully perused the material placed on the records of Tribunal interalia

impugned assessment and first appellate order, documents placed by the parties on the record of the Tribunal and paper book filed by the assessee spread over 221 pages.

4. The Ld. Departmental Representative (DR) supporting the action of the AO submitted that non maintenance of the stock register can justify the rejection of accounts and the assessee failed to submit the stock register and details of the opening and closing inventory and in absence of stock register quantity tally of the stock, correctness and completeness of the accounts could not be verified and hence the AO was right in rejecting the books of accounts u/s145(3) of the Act. The Ld. DR vehemently pointed out that the AO was correct in rejecting the books of accounts and applying GP rates and CIT(A) also confirmed the action of AO recorded in the assessment order in para 8.10 wherein he (the A.O) held that considering the defects and incorrectness as pointed out in the preceding paras the book results shown by the assessee are not reliable and the same have been rejected. The Ld. DR submitted that consequently, addition was rightly made by the AO by applying GP rate of 16% of turnover. The Ld.DR strenuously contended that the CIT(A) was not correct in deleting the part addition without any justified reasoning by applying GP rate of 12%, therefore the impugned order may kindly be set aside by restoring that of the AO.

5. Replying to the above, the Ld.assessee representative (AR) strongly supported the first appellate order by drawing our

attention towards relevant operative para 4.1 of the order of the CIT(A) and submitted that the CIT(A) has rightly held that in the case where provision of 145(3) of the Act are invoked the profit should be estimated and determined at reasonable figure. The Ld. AR submitted that the appellant has shown net profit, which is comparable from the preceding assessment year results, which has been accepted by the department. The Ld. AR submitted that applying of GP rate of 16% was not reasonable and proper and considering the declared GP rate of 10.5% on turnover by the assessee the CIT(A) and by taking a balancing approach estimated, the GP rate of 12% on turnover out of total receipts for granting part relief to the assessee and confirmed another part of addition of Rs.10,89,102/-. The Ld.AR also placed his reliance on the decision of Hon'ble Allahabad High Court in the case of Shyam Biri Works Ltd (2013) 38 Taxmann 228 (Allahabad) and decision of Hon'ble High Court of Madhya Pradesh in the case of Suresh Chand Talera (2005) 152 Taxmann 348 (MP).

6. Placing rejoinder to the above contentions of the Ldr.AR, the Ld.DR submitted that the assessee has not challenged the rejection of books u/s 143(3) of the Act before the Tribunal either by the way of cross object or by the way of appeal and CIT(A) has granted relief to the assessee without any basis by applying GP rate of 12% therefore the order of the AO may kindly be upheld in toto.

7. On careful consideration of relevant records and above noted rival submission, first of all, from the first appellate order we

observe that CIT(A) granted relief to the assessee with following observations and conclusions:

“4.1 Ground No.1,2,3,4,5&6: Through these grounds of appeal the appellant has challenged the addition of Rs.39,93,496/- on account of low GP after rejecting books u/s 145 of the Act and estimation of gross profit. In the assessment, disallowance of Rs.39,93,496/- was made after adopting 16% of gross profit of the total turnover which is very high and unreasonable in this line of business. It is submitted that as held by various courts that if the AO is not satisfied about the correctness of the expenditure claimed by the appellant, he should invoke the provisions of section 145 which is as under:

“Section 145(3) Where the Assessing Officer is not satisfied about the correctness of completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) or accounting standards as notified under sub-section (2), have not been regularly followed by the assessee, the Assessing Officer may make an assessment in the manner provided in section 144.

Thus, it is clear that if the AO has any doubt about any expenditure claimed by the appellant, the provisions of section 145 should be applied and profit should be determined at reasonable figure. The appellant has shown the net profit which is comparable from the previous years trading results which has been accepted by the department. In any business earning profit margin of 16% is unthinkable. The actual document found during the course of survey suggests that the appellant is manufacturing agriculture implements. The only thing objected by the AO was claim of higher expenses. Even AO went on making addition largely on the basis of assumption and to some extent on the basis of deliberation of facts gathered. The AO while working out the gross profit on the

basis of loose papers impounded during the survey, LPS-7/pages-49, 50 & 51 taken into consideration material and labour only. He has not included the cost of account of electricity, freight, interest tax etc. The AO should have included above items for arriving correct GP estimate. He cannot proceed to make an arbitrary addition and base his conclusion purely on guesswork. He ought to have related his estimate to some evidence or material on the record as it is now well settled that if the profits shown by the assessee in his return are not accepted, it is for the taxing authorities to prove that the assessee has made more profits than returned. I find that both the AO and appellant were not correct in so far as appellant offered income of only Rs.76,24,083/- from the total receipt of Rs.7,26,09,871/- which is only 10.50% gross profit and on the other hand AO estimated a much higher gross income from at Rs.1,16,17,579/- which comes to whopping 16% of gross profit. Considering both of the gross profit of appellant at 12% of the total receipt i.e. Rs.7,26,09,871/- which comes to Rs.87,13,185/-. As a result out of the total addition of Rs.10,89,102/- (Rs.87,13,185/- - Rs.76,24,083/-) is sustained and the appellant will get the **relief of Rs.29,04,394/-**. On this issue reliance is placed on the decision in case of Shyam Biri Works Ltd (2013) 38 taxmann 228 (Allahabad) and Suresh Chand Talera (2005) 152 Taxmann 348 (M.P). In case of Joginder Singh & Co Ftab ITAT 2013 held in similar situation that CIT(A) was correct in applying suitable NP rate instead of disallowances of 50% of expenses. In case of M/s. Choudhary and Brothers, Jaipur, ITAT Bench A, Jaipur in ITA No.879/JP/2011 vide order dated 25.05.2012 held that the AO was not justified in making separate additions on different heads, under deemed rejection of books of a/Commissioner u/s 145(3). It is rather felt that he should have made a composite/common addition towards the lower net profit shown by the appellant. The Hon'ble ITAT, Indore while deciding the

*case of S.K. Jain v. Dy. CIT (2016) 27 ITJ 113 (Trib-Indore) in ITAT Nos.21/Ind/2013 and 604/Ind/2012 and appeal no. (2016) 28 ITJ (Trib. Indore) estimated the net profit @ 6.25% in the civil construction business. The hon'ble ITAT, Indore while deciding the ITA No.265/Ind/2014, dated 30.09.2015 for the A.Y. 2010-11 in the case of Rajendra Khandelwal adopted 8% net profit on the total contract receipt. Therefore the addition made by the AO amounting to Rs.10,89,102/- (Rs.87,13,185/- - Rs.76,24,083/-) is **confirmed** and the appellant will get the **relief of Rs.29,04,394/-**. Therefore, the appeal on this ground is **Partly Allowed.**"*

8. In view of above, at the very outset, we observe that the AO has rejected books of accounts u/s 145(3) of the Act and the action of AO was confirmed by the CIT(A) and no cross appeal or cross objection has been filed by the assessee challenging the rejection of books of accounts and results hence, the rejection of books by AO has accepted by the assessee without any further agitation.

9. However, dispute remains regarding application of GP rates on the total receipts/turnover of the assessee. The AO estimated the GP rate of 16% on total receipts whereas the CIT(A) considered the totality of the facts and circumstances of the case, GP rate declared by the assessee i.e. 10.50% of total receipts estimated the gross total receipts @ 12% of total receipts. The comparative chart (available at 189 of APB) shows total receipts as well as GP, GP rates, NP and NP rate of the assessee from Assessment Year 2006-07 to present assessment year 2011-12, which has not been confronted either by the AO or Ld.DR during the arguments before us. We further observe that the GP rates of immediately preceding three

assessment years was 10.27%, 10% and 10.55% and in the present assessment year 2011-12 GP rate was 10.50%. From the said chart we also observed that the NP accepted by the department for immediately preceding three years was 1.49%, 1.30% and 1.29% whereas in the present assessment year GP rate was substantially increased to 1.91%. Therefore the GP rate and NP rate declared by the assessee accepted by the department in the immediately preceding three years is reasonable and comparable with the GP rate and NP rate of present assessment Year 2011-12 which is on the higher side.

10. In the back drop of our above facts, when we analyse the action of AO as well as part relief granted by the CIT(A), we find that the AO estimate the GP rate by taking 16% of turnover whereas the CIT(A) after considering the entire facts and circumstances of the case and financial results of immediately preceding years estimated the GP rate of 12% as against 10.50% declared by the assessee, therefore the conclusion drawn by the CIT(A) is quite correct and reasonable and justifiable which more favourable to the department, hence, we are unable to see any valid reason to interfere with the conclusion drawn by the CIT(A) in this regard. Consequently, the first appellate order on this count by which partial relief was granted to the assessee and the addition of Rs.10,89,102/- was confirmed is held to be correct, justified and sustainable. Accordingly, the ground No.1 of the revenue being devoid of merits is dismissed.

Ground No.2

11. The Ld.DR submitted that the AO was correct in making addition on account of cash found short by Rs.9,49,644/- at on the date of survey by making addition of Rs.5,99,664/- . The Ld. DR submitted that the AO accepted the contention of the assessee that cash pertaining to business amounting to Rs.3,50,000/- as lying at his home and thereafter he made the addition of remaining short cash. The Ld.DR submitted that the CIT(A) granted relief to the assessee without any basis and by wrong application of facts, therefore the first appellate order may kindly be set aside and by restoring that of the AO.

12. The Ld.AR replying to the above submissions, contended that during the course of survey proceedings cash of Rs.2,97,662/- was found and the assessee furnished evidences regarding cash of Rs.3,50,000/-, which was lying at the home of the assessee and the AO made the addition on account of the shortage in cash about the remaining amount of Rs.5,99,664/- which was not correct and justified. The CIT(A) was right in deleting the major part of addition and confirming 12% of total cash short as per G.P rate adopted for estimation of income.

13. On careful consideration of above submissions on the issue of deletion of addition of Rs.5,99,664/- on account of shortage of cash found during the survey from the assessment order it is clear that the Assessing Officer noted that a shortage of cash of Rs.9,49,664/- was found during the survey and he accepted the evidence of the assessee regarding cash of Rs.3,50,000/- which was lying at home

of the assessee and the AO made the addition of Rs.5,99,664/- by arriving the conclusion that actual cash shortage was of said amount. In the first appellate order, the CIT(A) find it appropriate to adopt 12% of Gross Profit on the shortage of cash and he confirmed part addition amounting to Rs.71,960/- granting relief of Rs.5,27,704/- to the assessee. In our humble understanding the entire short cash cannot be added as income of assessee in a peculiar situation when addition of Rs.10,89,102/- has been made and confirmed by the CIT(A) on account of estimation of GP rate @12%, therefore the conclusion drawn by the CIT(A) on the issue of shortage of cash is quite justified and well founded and thus we are unable to see any valid reason to interfere with the same. Accordingly Ground No.2 of the revenue having no substance is dismissed.

Ground No.3

14. We have heard the arguments of both the sides. The Ld. DR supporting the assessment order submitted that the assessee has shown bogus liability of Rs.7,92,046/- which was shown as sundry creditors. The Ld. DR further submitted that out of alleged parties 4 parties were not found at the addresses given by the assessee and returned the notices received/returned back/unserved by the Postal Department. The Ld.DR further submitted that another two parties i.e. Mrs. Hemlata Jhanjhri, Barnagar only confirmed the outstanding amount of Rs.75,000/- as against Rs.1,75,000/- shown by the assessee and another creditor M/s. Marathwada

Krishi Udhog, Parbhani denied having any outstanding amount against the assessee, therefore addition made on account of above facts was correct and sustainable. The Ld. DR vehemently, pointed out that the CIT(A) granted relief to the assessee without any reasonable cause therefore, the first appellate order may kindly be set aside by restoring that of the A.O.

15. Replying to the above, the Ld. AR drew our attention towards relevant para 4.3 at page 40 of the first appellate order and submitted that the appellant has furnished complete details like PAN no, addresses, details of transaction, payment received through bank before the AO, which was also verifiable from the bank statement of the assessee. Therefore, in view of the ratio of the order of ITAT, Kolkata in the case of Ramsesh Singh v/s ITO, ITA No.2254/Kol/2013, the AO was not justified in making addition in respect of outstanding balance which does not belong to the year under consideration and verifiable from the record. The Ld.AR submitted that the CIT(A) has deleted the addition on justified basis therefore the first appellate order may kindly be upheld.

16. On careful consideration of rival submissions, we are of the view that the assessee furnished complete details like PAN, addresses, details of transactions, original purchased bills, evidence of payment made through bank alongwith copy of bank statement for verification pertaining to all 6 alleged parties and AO made the addition in respect of outstanding balance which does not belong to the year under consideration, Assessment Year 2011-12 and these

facts are also verifiable from the record. In the backdrop of above facts and circumstances, we are inclined to hold that the CIT(A) is right in deleting the addition by holding ratio of order of ITAT, Kolkatta in the case of Ramsesh Singh v/s ITO (Supra), wherein it was held that the genuineness of credit entry did not arise in the current year when the outstanding balances reflected as payable to the sundry creditors where the opening balances which had been carried forward from the previous year. On the basis of forgoing discussions we reached to the logical conclusion that when the department has accepted the balance outstanding at the end of the previous year then it was not open to the AO to make addition on the ground that the assessee could not prove the genuineness of said transactions which were not undertaken and do not belong to the year under consideration. Accordingly, Ground No.3 of the revenue being devoid of merits is also dismissed.

17. In the result, appeal of the revenue is dismissed by upholding the order of CIT(A), wherein part relief was granted to the assessee.

The order pronounced in the open court on 28.9.2017.

Sd/-

Sd/-

(O.P. MEENA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

(CHANDRA MOHAN GARG)

न्यायिक सदस्य / **JUDICIAL MEMBER**

Indore; दिनांक Dated : 28/09/2017

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Assistant Registrar, Indore