

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH, AGRA**

**BEFORE SHRI A.D. JAIN, JUDICIAL MEMBER AND
DR. MITHA LAL MEENA, ACCOUNTANT MEMBER**

ITA No. 261 /AGR/2014
Assessment Year: 2011-12

Rajesh Kumar Jain, Subhash Ganj, Ashok Nagar, (M.P.)	Vs.	Asstt. Commissioner of Income tax, Circle3, Gwalior
PAN: AAXPJ 3861 H		

ITA No. 277/AGR/2014
Assessment Year: 2011-12

Asstt. Commissioner of Income tax, Circle3, Gwalior	Vs.	Rajesh Kumar Jain, Subhash Ganj, Ashok Nagar, (M.P.)
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APPELLANT	RESPONDENT
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Assessee by:	Shri Rajendra Sharma, Advocate
Revenue by:	Shri Washim Arshad, Sr. DR

Date of hearing:	07/11/2017
Date of Pronouncement:	07/12/2017

ORDER

PER BENCH:

These cross appeals are preferred by the assessee and Revenue against the order of the Ld. CIT(A), Gwalior for AY 2011-12.

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2. The assessee has raised the following grounds:

- “1. *On the facts & in the circumstances of the case the learned CIT(A) was not justified in upholding rejection of accounts & adopting a gross profit rate of 3% on the turnover. The accounts of the appellant may kindly be accepted.*
2. *That without prejudice to ground no.1 above, the gross profit rate adopted by the learned CIT(A) may kindly be suitably reduced. “*

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3. The Revenue has taken up the following grounds: -

- “1. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in holding that provisions of section 145(3) of the income tax Act, 1961 are not applicable to the present case despite the fact that the assessee had not maintained proper books of accounts and could not produce the supporting bills and vouchers for verification.*
2. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in applying the GP rate of 3% instead of 6% of total sales applied by the Assessing Officer, for estimating the income of the assessee. “*

4. The issue involved in the cross appeals are identical in facts and in law and therefore, adjudicated together.

5. The brief facts of the case are that the assessee is an individual and engaged in trading of food grains besides deriving commission income on sale of food grains. The assessee filed return of income on 30.09.2011, declaring an income of Rs.13,54,020/-. During the scrutiny

assessment, the Assessing Officer noted discrepancy in the sales rate of his own sales turn over and commission sales, warehouse rent, house stock register and purchase vouchers which were not containing full name of farmers and their signature were fade and not fully legible. For these reasons, the AO rejected the accounts u/s. 145(3) and applied GP rate of 6% on the total turnover.

6. The Id. CIT(A) while not sustaining rejection of books of account for trivial and minor deficiencies, has applied 3% gross profit rate on the total turnover as against 6% applied by the Assessing Officer, by observed as under:

“4.4 I have perused the assessment order, written submission, oral arguments put forth during course of hearing, legal provisions referred by the AO as well as Ld. AR of the appellant and decisions relied upon. In this the appellant is an individual engaged in trading as well as adat of food grains. The appellant has declared sales of Rs. 35,71,15,680/- including adat sales and declared trading results with gross profit rate of 1.91%. The ACT! has completed the assessment after making addition of Rs. 1,40,73,563/- applying gross profit rate of 6% cm sales of Rs. 34,79,79,385/- (gross safes 35,71,15,680 - adat sales of Rs. 91,36,295/-). The ACT has applied the higher gross profit rate for the reasons mentioned in the assessment order, which may be summarized as, the appellant had effected the sales during trading activities at the -.rate lower than the adat sales, godown rent was paid in cash, sale vouchers after 08.03.2011 were not produced, complete purchase bills were not produced, purchase vouchers not containing full name of farmers, farmers signature were not legible, discrepancy in warehouse stock, The auditor has also mentioned in the audit report that stock register was not produced during course of audit, The appellant had shown

gross profit rate of 3.72% and 2.97% during assessment year 2009-10 and 2010-11 respectively. On the other hand, the Ld. AR of the appellant vehemently contested that once, the Assessing Officer has accepted the turnover declared by the appellant, then the rejection of trading result with application of higher gross profit rate is not justified. The trading results may be rejected only where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee or where the method of accounting has not been regularly followed. The Assessing Officer has nowhere pointed out the incorrectness or incompleteness of the accounts of the appellant. The Assessing Officer has also not pointed out that, the method of accounting has not been regularly followed. The consistency in the gross profit is not the ground to apply higher gross profit rate. The gross profit rate cannot be static. He has furnished the details of comparable cases where the Assessing Officer has accepted the gross profit rate of ranging between 1.29% to 1.58%. The Ld. AR of the appellant has also submitted that the when purchases / sales are made in cash, then the appellant is not required to keep records of the purchasers / sellers. So far difference in rate of transaction of chana on 07.04.2010 is concerned, the transactions with different rates were of different quality. The Assessing Officer has not considered this aspect, he also submitted that there was no variation in the stock of chana stored in vaibhav warehouse on behalf of Surya Vinayak Industries Ltd. for whom the chana was sold. He has submitted the details with reference to quantity, date of transaction. The Ld. AR of the appellant also submitted that, the appellant has maintained the quantitative details in the books of account i.e. ledger also. Each and every transaction with reference to quantity as well as amount is verifiable. The Assessing Officer has ignored the fact that the books of account were audited. Although the auditor has reported in the audit report that the stock register was not produced during course of audit, but the auditor has categorically mentioned in the audit report itself that the quantity in respect of trading and dealing item has been checked from details available on ledger account itself. The Ld. AR of the appellant submitted that in view of all these factual situations the application of higher gross profit rate after rejection of trading results invoking provision of section 145(3) of the Act is not justified. I have perused the factual position of the case and find that the Assessing Officer had

accepted the sales declared by the appellant. The Assessing Officer has nowhere pointed out that the accounts of the appellant were incorrect or incomplete. He has also not pointed out that the appellant has not followed the method of accounting regularly. Therefore, in view of this, the invoking of provision of section 145(3) of the Act is not sustainable. The next issue is application of higher gross profit rate. The Assessing Officer has applied the gross profit rate for the reasons that the sale were effected at varied rates, complete name and addresses were not appearing on the bills and tax auditor has mentioned the fact of not producing the stock register. Although, the stock register was not produced but the auditor has verified the quantitative details from the ledger and mentioned in the tax audit report. This fact is born out from the assessment order also. Meaning thereby, the appellant has maintained the quantitative details which were verified by the tax auditor also. The Assessing Officer has applied the higher gross profit rate of 6% without supporting and giving any comparable cases also. Whereas, the appellant has given the instances of comparable cases declaring gross profit rate of ranging between 1.29% to 1.58% as against the gross profit rate of 1.91% declared by the appellant. The Assessing Officer has also not pointed out any specific instance of inflation of purchase and suppression of sales. Therefore, after considering all these facts, I am of the considered opinion that the Assessing Officer has wrongly invoked the provision of section 145(3) of the Act and rejected the trading results. The application of higher gross profit rate is not dependent upon the application of provision of section 145(3) of the Act. So far, the application of higher gross profit is concerned, since the Assessing Officer has not pointed out any specific instance of inflation of purchase and suppression of sales, no comparable case has been applied, the quantitative details" are verifiable with the ledger itself as mentioned in the tax audit report as well as assessment order also, hence the application of higher gross profit rate is not sustainable. However, the appellant could not produce the sale vouchers after 08.03.2011 and also could not produce some purchase bills. The complete name and address is not appearing on the bills. Therefore, the possibility of leakage in the trading results could not be ruled out, Therefore, after considering all these circumstances, I am of the considered opinion that it would met end of justice with the application of gross profit rate of 3% as

against gross profit rate of 6% applied by the Assessing Officer and gross profit rate of 1.91% declared by the appellant. According the Assessing Officer is directed to compute taxable income by applying GP rate of 3%.”

7. Ld. Counsel for the assessee submitted that the assessee maintains complete books of account which are audited u/s 44AB of the Act. The assessee has also maintained quantitative details of various commodities as recorded in the ledger account of the commodities and also produced stock register before the AO along with the written submissions dated 20.03.2014. During the year, the turnover of the assessee was Rs.35,71,15,680/- including sales on commission basis and shown a GP rate of 1.91%. The purchase and sale price are noted on the bills as per prevailing market rate and fully recorded in the ledger. He argued that the lower authorities were not justified in estimating the gross profit at higher rates

8. Ld. DR supported the assessment order contending that Id. CIT(A) has erred in holding that the provisions of Section 145(3) is not applicable to the assessee case. Despite the fact that the assessee had not maintained proper books of account and could not produce the supporting bills/vouchers for verification. He further contended that Id. CIT(A) was not justified in applying the G.P. rate of 3% instead of 6% on

the total sales as applied by the Assessing Officer for estimation of the income of the assessee.

9. We have heard the rival submissions and have perused the material on records of the case. It is not disputed that the assessee has maintained books of account duly audited u/s 44AB of the Act. It is found that the Assessing Officer without considering the plea of the assessee has rejected the books of account in arbitrary and mechanical manner and exaggerated gross profit rate to 6% on the declared turnover without looking into the assessee's own past history and comparable cases.

10. The Assessing Officer has nowhere pointed out that the account of the assessee were incorrect or incomplete. He has also not pointed out that the assessee has not followed method of accounting regularly. Further, he has not pointed any discrepancy in the books of account which are audited u/s 44AB of the Act. The Assessing Officer has not pointed out any specific instance of inflation of purchase and suppression of sales. Therefore, the Assessing Officer was not justified in invoking the provisions of Section 145(3) of the Act. The decision of the CIT(A) on this issue is justified and therefore, no interference is required in the order of the Id. CIT(A) on this issue. Thus, Ground No.1 of the Department is dismissed.

11. It is fact on record that the Assessing Officer has applied gross profit rate of 6% without supporting corroborative evidences and quoting any instances of comparable case. Ld. CIT(A) has noted in its order that the assessee has given instances of comparable cases declaring gross profit rate ranging from 1.29% to 1.58% as against the gross profit rate of 1.91% declared by the assessee. The Id. CIT(A) has also noted in its order that the application of higher gross profit rate by the Id. Assessing Officer is not justified as he has not pointed out any specific instance of inflation of purchase or suppression of sales and no comparable case has been applied. He further noted that quantitative details were verifiable from the ledger itself as mentioned in the tax audit report as well as assessment order also. It is discussed by the Id CIT(A) that the assessee could not produce the sale and purchase bills/vouchers after 08.3.2011 and the complete name and address were not appearing on the bills and therefore, the possibility of leakages in the trading result could not be ruled out. The Id. DR supported the assessment order contending that there was inconsistency in G.P. rate shown by the assessee as evident from the past history as he has shown GP of 3.72%, 2.97% and 1.91% for assessment years 2009-10, 2010-11 and 2011-12 respectively.

12. Estimation of profit is purely a question of fact, meaning thereby that no rate of profit has universal application and depending upon the facts and circumstances of each case the rate of profit varies. It is therefore implying that either the past history of the assessee's own case or the comparable case is the best guide for estimation of profit where book profit is unbelievable. In support, we rely on the decision of Hon'ble M.P. High Court in the case of 'Vraj Lal Mani Lal & Co. Vs. CIT', (1973) 92 ITR 287 (MP).

13. In view of above and factual matrix of the case, we are of the considered opinion that it would be fair and reasonable to apply a G.P. rate of 2.25% as against 3% applied by the Id. CIT(A). Thus, this ground of appeal of the assessee is partly allowed and that of the Department is dismissed.

14. In the result, appeal of the assessee is partly allowed and the appeal of the Department is dismissed.

Order pronounced in the open Court on 07/12/2017.

Sd/-

**(A. D. JAIN)
JUDICIAL MEMBER**

Sd/-

**(DR. MITHA LAL MEENA)
ACCOUNTANT MEMBER**

Aks/-

Dated: 07/12/2017

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR