

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

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

आयकर अपील सं./ ITA. No. 981/JP/2016
निर्धारण वर्ष/ Assessment Years : 2013-14

Kumawat Contractors, 48, Ram Nagar, Kalwar Road, Jhotwara, Jaipur	बनाम Vs.	Deputy Commissioner of Income Tax, Circle-03, Jaipur
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AABFK8231C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.L. Jain (Advocate)
राजस्व की ओर से / Revenue by : Shri A.S.Nehara(JCIT)

सुनवाई की तारीख / Date of Hearing : 14/12/2017
उदघोषणा की तारीख / Date of Pronouncement : 18 /12/2017

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Ld. CIT(A), Jaipur dated 06.09.2016 for Assessment Year 2013-14 wherein the assessee has taken the following grounds of appeal:-

"1. That the Id. Appellate authority was not justified in disallowing the interest of Rs. 24,47,674 paid to third parties and adopting the rate of Profit higher @ 6% before allowing partner's Salary, Interest and Depreciation.

2. *That Rs. 279,662/- wrongly added in Income instead of allowing set off from the Interest payment.*
3. *That Rs. 354,118/- wrongly confirmation of disallowance u/s 40(a)(ia) of the I.T. Act."*

2. In the Ground No. 1 of appeal, the assessee has challenged disallowance of interest paid to 3rd parties amounting to Rs. 24,47,674/- and also adoption of the net profit rate of 6% as against 5.26% declared by the assessee.

3. Briefly stated, the facts of the case are that the appellant is a civil Contractor carrying out construction work for Rajasthan Housing Board. During the year under consideration, the appellant has declared a turnover of Rs. 21,93,09,335/- and Net Profit of Rs. 1,15,51,587/- before allowance of interest, depreciation and remuneration to partners determining the NP rate of 5.26% as compared to 5.20% in immediately preceding year.

4. The AO rejected the books of accounts u/s 145(3) and applied NP rate of 8% subject to allowance of depreciation, interest to partners, and remuneration to partners and interest to banks and others. During the appellate proceedings before Id. CIT(A), it was admitted by the appellant that it was not maintaining stock register and has thus has not challenged the rejection of books of accounts which was confirmed by the Id. CIT(A) and is not therefore not under challenge before us.

5. Following the earlier orders of the Co-ordinate Bench for AY 2008-09 and 2009-10, the Id. CIT(A) estimated the N.P rate of 6%

before interest, depreciation and remuneration as against 5.26% declared by the appellant.

6. During the course of hearing, the Id. AR submitted that there is increase in turnover from the previous year and which has resulted in slight reduction in N.P rate as compared to previous years but at the same time, the same is better than the N.P rate declared in the immediate preceding year. Hence, the N.P rate declared by the assessee should be confirmed.

7. We have heard the rival contentions, perused the material available on record and given a careful consideration to the factual matrix of the case. We find that in the past years, the Coordinate Benches have been taken a consistent view of determining the N.P rate of 6% in assessee's own case. During the appellate proceedings, the assessee has himself submitted before the Id CIT(A) that the previous year order may be followed. Following the past history of the assessee and consistent position taken by the Co-ordinate Benches, we upheld the NP rate of 6% before depreciation, interest and remuneration.

8. Regarding further allowance of Rs. 24,47,674/- paid to banks and others by the assessee from the N.P rate so determined, the Id. CIT(A) has denied the said claim following earlier orders of the Co-ordinate Bench. In this regard, the contention of the Id. AR is that in the earlier years, the assessee had not claimed any interest payment to third parties, hence, there was no occasion for the Tribunal to consider any allowance in respect of such third party interest. It was accordingly submitted that the Id. CIT(A) was not correct in rejecting the claim of interest paid to third parties. We find that the said contention by the Id

AR need further examination and in absence of sufficient evidence on record in terms of past returns of income as well as the orders of the Co-ordinate Benches, we set aside this matter to the file of Id. CIT(A) to verify the said contention of the Id.AR and decide the same afresh as per law.

9. Regarding the 2nd ground of appeal, the Id. CIT(A) has held that the earning of interest income on income tax refund and sales tax refund has nothing to do with the business of the appellant. Further, the appellant has not placed on record any material to suggest that interest on bank deposit was linked to its business activities and thus it is held that the AO has rightly treated Rs. 2,79,662/- as non operating income and adding the same separately to the income of the appellant. We do not see any infirmity in the said findings of the Id CIT(A) and the same is hereby confirmed.

10. Regarding the 3rd ground of appeal, during the year under consideration, the appellant had not deducted TDS on interest of Rs. 3,54,118/- paid to Religare Finvest Ltd. which was disallowed by the AO invoking section 40(a)(ia) of the Act. The Id CIT(A) upheld the disallowance following the decision of Hon'ble Punjab and Haryana High Court in the case of P.M.S. Diesels Vs. CIT (2015) 277 CTR 0491 (P&H). The said decision has since been affirmed by the Hon'ble Supreme Court in case of Palam Gas Services (civil appeal no. 5512 of 2017) dated 3.5.2017. Hence, respectfully following the same, the AO is held justified in making disallowance of Rs. 3,54,118/- u/s 40(a)(ia) of the Act.

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

Order pronounced in the open court on 18/12/2017

Sd/-
(विजय पॉल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 18/12/2017.

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Kumawat Contractors, Jaipur
2. प्रत्यर्थी / The Respondent- DCIT, Circle-3, Jaipur
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. 981/JP/2016 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar