

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

श्री विजय पाल राव, न्यायिक सदस्य एव श्री भागचन्द, लेखा सदस्य सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 23/JP/2017
निर्धारण वर्ष/Assessment Year: 2012-13

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| M/s. Ratan Papers Pvt. Ltd 50-54, Ramanuj Colony, Sanganer, Jaipur | बनाम Vs. | The ITO Ward- 7(2) Jaipur |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACR 8589 E | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

आयकर अपील सं./ITA No. 11/JP/2017
निर्धारण वर्ष/Assessment Year: 2012-13

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| The ITO Ward- 7(2) Jaipur | बनाम Vs. | M/s. Ratan Papers Pvt. Ltd 50-54, Ramanuj Colony, Sanganer, Jaipur |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACR 8589 E | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारिती की ओर से / Assessee by: Shri Manish Agarwal, CA
राजस्व की ओर से / Revenue by: Smt. Neena Jeph, JCIT - DR

सुनवाई की तारीख / Date of Hearing : 19/02/2018
घोषणा की तारीख / Date of Pronouncement : 27/02/2018

आदेश / ORDER

PER BHAGCHAND, AM

Both these appeals are the cross appeals filed against the order of the Id. CIT(A)-III, Jaipur dated 28-10-2016 for the Assessment Year 2012-13 raising therein following grounds of appeal.

ITA No. 23/JP/2017 – Assessee

“1. On the facts and in the circumstances of the case, the Id. CIT(A) has grossly erred in confirming the action of the invocation of section 145(3) of the I.T. Act, arbitrarily. Assessee prayed that rejection of books of account by AO being without pointing out any specific defects in books and closely based on alleged so called surrender made by Shri Gaurav Jain, Director of assessee via statements recorded during survey proceedings u/s 133A, which stood retracted, thus have no evidentiary value. Assessee prayed that rejection of books by AO be held bad in law.

1.1 That the Id. CIT(A) has further erred in confirming the addition to the extent of Rs. 19,35,591/- out of addition of Rs. 51,72,923/- made by AO alleging the same as excess stock by ignoring the explanation furnished by assessee substantiating the difference between stock declared by the assessee and computed by AO on the basis of inventory prepared during survey, thus the entire addition deserves to be deleted.

ITA No.11/JP/2017 –Revenue

(i) On the facts and in the circumstances of the case, the Id. CIT(A) erred in deleting the addition of Rs. 32,37,314/- (Rs. 23,27,679+Rs. 9,09,635) as against trading addition of Rs. 51,72,923/- (Rs. 50,01,026+1,71,897) made by the AO on account of excess stock surrendered by Director himself in his statement dated 4-08-2011 recorded during survey.

(ii) On the facts and in the circumstances of the case, the Id. CIT(A) erred in deleting Rs. 9,09,635/- out of total trading addition made by the AO (Rs. 50,01,026+Rs. 1,71,897) on the ground that g.p. rate of 22.64% should have been applied on the trading account prepared during survey as against the g.p. rate 18.79% applied by the survey team.

2.1 Apropos Ground No. 1 and 1.1 of the assessee and Ground No. (i) and (ii) of the Revenue, the facts as emerges from the order of the Id. CIT(A) are as under:-

“4.3 I have carefully considered the facts of the case, finding of the AO and submission of the appellant. The AO made the addition on the basis of trading account prepared at the time of survey and surrender made by the Director. As per trading account, the stock as on the date of survey works out to Rs. 5,78,921/- as against physical stock of Rs. 55,79,947/- leaving a difference of Rs. 50,01,026/-. Further addition of Rs. 1,71,879/- was also made by AO on basis of separate statement as per reply to Question No. 35. In appellate proceedings, the Id.AR argued that there are various defects in trading / P&L account prepared at the time of survey proceedings. Major defect pointed out by A/R are:-

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| Value of stock ascertained by the I.T. Officials during the course of survey | Rs. 5,78,921/- |
| Add:- Difference in opening stock (Rs. 69,67,131- Rs. 26,39,452) | Rs. 23,27,679/- |
| Add: Purchases considered by short amount by survey team Rs. 81,08,657 – Rs. 79,62,913) | Rs. 1,46,044/- |
| Add: Gross Profit difference due to lower g.p. rate taken by the Survey Team (22.64% - 18.79%) | Rs. 9,09,635/- |
| Add: Invoice value of goods (stock) which were physically received In the factory premises but the accounting entry of these Purchase invoices were pending as on date of survey (Rs. 14,61,869+Rs. 4,62,508 – Rs. 8,15,914) | Rs. 11,08,463/- |
| Add: Direct expenses not considered by the I.T. Officials | Rs. 11,48,367/- |
| Less: Exchange rate difference entry not accounted for as on the Date of survey | Rs. 4,04,113/- |

On perusal of the assessment order and A/R submission, I find that the contention of A/R in respect of difference in opening stock by Rs. 23,27,679/- and difference in gross profit due to lower g.p. rate taken by Rs. 9,09,635/- appears to be correct. The survey team took opening stock at Rs. 46,39,452/- though audited accounts shows opening stock at Rs. 69,67,131/-. Thus the opening stock was considered short at the time of survey by Rs. 23,27,679/- which is fully verifiable from audited accounts and same is therefore, accepted.

In respect of g.p. rate difference, it is seen that survey team prepared trading account by applying g.p. rate of 18.79% whereas correct average g.p. rate of assessee for last three years works out at 22.64% resulting in difference of Rs. 9,09,635/-. This is duly verifiable from audited accounts and thus contention of appellant is accepted.

In respect of other claims made by appellant, same appears to be an afterthought and not supported by proper evidence therefore, same are rejected.

In the result, appellant gets relief of Rs. 32,37,314/- (2327679+909635) and balance addition is confirmed. “

2.2 During the course of hearing, the ld. DR supported the order of the AO.

2.3 On the other hand, the ld.AR of the assessee submitted that the ld. CIT(A) has erred in confirming the action of the AO in invoking the provisions of section 145(3) of the Act and also erred in confirming the addition of Rs. 19,35,591/- out of addition of Rs. 51,72,923/- made by the AO.

2.4 We have heard the rival contentions and perused the materials available on record. Brief facts of the case are that assessee is a private limited company engaged in manufacturing of handmade paper products and handicrafts items. A survey u/s 133A of the Act was carried out at the premises of the assessee company and other associate business concerns on 4-08-2011. During the course of survey operations, statement of Shri Gaurav Jain, Director of assessee company and various other employees were recorded wherein a surrender of income of Rs. 51,72,923/- was obtained from him on account of alleged excess stock found during

survey. Thereafter vide affidavit dated 14-09-2011, Shri Gaurav Jain had made retraction. The return of income was filed declaring total income at Rs. 24,14,770/-. Assessment was completed by the AO wherein provisions of sec 145(3) were invoked and additions of Rs. 51,72,923/- were made being the difference in stock as per trading account prepared on the date of survey and that physically found. The additions were made on the basis of discrepancies found in survey and statement recorded. The relevant para as to making the addition of Rs. 50,01,026/-and Rs. 1,71,897/- by the AO is as under:-

“the assessee through its Director Shri Gaurav Jain surrendered the excess stock of Rs. 50,01,026/- as on 04-08-2011 as per answer of question no. 25 of the statements recorded during the course of survey proceedings. The assessee's director Shri Gaurav Jain again surrendered the stock of Rs. 1,71,897/- as per answer of question no. 35 of the statements. The assessee's director stated in his statements that the raw material was sent for job work which was extra stock from the above stock of Rs. 50,01,026/- already surrendered for taxation under the Income Tax Act, 1961 but the assessee in its reply said that the stock of Rs. 1,71,897/- was also mixed up while the director of the assessee Shri Gaurav Jain surrendered separately as per answer of question no. 35 of the statements. Considering the facts of the case, the assessee does not maintain the books of accounts and other relevant documents properly and the same are hereby rejected by invoking the provisions of section 145(3) of the Income Tax Act, 1961 . Therefore,

the excess stock of Rs. 50,01,026/- and Rs. 1,71,897/-surrendered during the course of survey proceedings u/s 133A of the Income Tax Act, 1961.’’

In first appeal, the ld. CIT(A) has partly allowed the relief of Rs. 32,37,314/-. The AO has invoked the provisions of section 145(3) of the I.T. Act, 1961 and made the addition on account of excess stock. The ld. CIT(A) after considering the reconciliation had accepted the contention in part. The difference on account of opening stock and G.P. rate difference were allowed resulting into the deletion of addition to be extent of Rs. 32,37,314/- and for the remaining amount of Rs. 19,35,591/-, it was observed by ld. CIT(A) that the same is an afterthought. After going through the factual details filed and considering the pleadings of both sides, we hold the ld. CIT(A) has considered all genuine pleadings and reconciliation in right perspective and allowed part relief. The other grounds of reconciliation are bald assertion not supported by any independent and positive evidence. These are simply afterthought which have no weightage in the eyes of law. It is undisputed fact that the books of accounts of the assessee were incomplete as on the date of survey, therefore the same cannot be accepted as such. In our considered view, the provisions of section 145(3) of the Act were rightly invoked by the

AO. Further, the details with evidences filed by assessee were considered by the Id. CIT(A) and partly accepted. The genuine claims of the assessee as made in reconciliation were accepted and those which were afterthought and unsupported by any positive evidence were rejected. Under these circumstances, in our considered view the part addition so sustained by Id. CIT(A) was justified.

3.0 In the result, the appeals of the assessee as well as of the Revenue are dismissed.

Order pronounced in the open Court on 27 -02-2018.

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

Sd/-
(भागचन्द)
(Bhagchand)
लेखा सदस्य /Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 27 /02/ 2018

*Mishra

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

1. अपीलार्थी / The Appellant- M/s. Ratan Papers Pvt. Ltd., Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward- 7(2), Jaipur
3. आयकर आयुक्त(अपील) / CIT(A).
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.23/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar