

आयकर अपीलीय अधिकरण पुणे न्यायपीठ एक-सदस्य मामला पुणे में

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य एवं, श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA No.49/PUN/2017

निर्धारण वर्ष / Assessment Year : 2010-11

Pragat Agro Products Pvt. Ltd.,
C/o Sanjeevkumar Kabra,
20, 1st Floor, Ambika Market,
Jalna – 431203

.... अपीलार्थी/Appellant

PAN: AAFCP2227E

Vs.

The Income Tax Officer,
Ward 2, Jalna

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Sanjeevkumar Kabra
प्रत्यर्थी की ओर से / Respondent by : Shri Anil Kumar Chaware

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| सुनवाई की तारीख / Date of Hearing : 22.03.2018 | घोषणा की तारीख / Date of Pronouncement: 26.03.2018 |
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by assessee is against order of CIT(A)-1, Aurangabad, dated 28.10.2016 relating to assessment year 2010-11 against order passed under section 144 r.w.s. 147 of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following ground of appeal:-

1. **Addition of Rs.2366735/- by disallowing expenses such as discounts allowed, forwarding expenses and quality difference.**

The learned Assessing Officer is not justified in making addition at Rs.3532831/- by disallowing expenses such as discounts allowed, forwarding expenses & quality difference and the learned CIT(A) is also not justified in confirming the addition at Rs.2366735/-. The appellant has maintained regular books of accounts duly audited under Sec.44AB of I.T. Act, 1961.

The addition made by the learned Assessing Officer and confirmed by the learned CIT(A) may kindly be deleted.

3. The issue raised in the present appeal is against disallowance of ₹ 35,32,831/- by the Assessing Officer which was restricted to ₹ 23,66,735/- by the CIT(A).

4. Briefly, in the facts of the case, the assessee was engaged in trading activities of grains, pulses and allied agricultural activities. The assessee was a Private Limited Company, which comprised of four Directors. For the year under consideration, the assessee had furnished return of income declaring loss of (-) ₹ 15,32,732/-. The Assessing Officer however, in the assessment order mentions that the assessee had not filed any return of income and has taken the net profit at Nil. The case of assessee was selected for scrutiny. However, during the course of assessment proceedings, the Assessing Officer noted that books of account had defects. Further, the Assessing Officer also observes that no circumstantial evidence for movement of goods with regard to purchase and sales was available. Further, the assessee did not produce purchase and sale bills for verification. However, it may be pointed out that no addition has been made on account of purchases or sales. The Assessing Officer further noted that the assessee had debited expenses under the head 'Toor Trading Account' i.e. in Profit and Loss Account, the assessee had claimed discount and batav to the extent of ₹ 16,92,273/-; freight and forwarding expenses of ₹ 14,16,543/- and Tur claim expenses of ₹ 4,24,015/-. The assessee was specifically asked to explain the nature of expenditure along

with evidences. The assessee could not produce the evidences. Hence, the said expenses totaling ₹ 35,32,831/- were disallowed by the Assessing Officer.

5. The CIT(A) notes that the assessee had shown gross loss of ₹ 13,12,385/- in the trading of agricultural products / food grains against turnover of ₹ 11,83,36,799/-. The assessee before the CIT(A) cited a comparable case vis-à-vis rate of profit. The CIT(A) was of the view that onus was upon the assessee to produce evidence and he has failed to produce the same with regard to freight and forwarding expenses, discount and batav and Tur claim expenses. In the absence of the same, the CIT(A) observed that the Assessing Officer was compelled to disallow said expenses. However, in the final analysis, he held that application of GP rate @ 2% on total turnover of ₹ 11.83 crores amounting to ₹ 23,66,735/- would meet the ends of justice. He thus, restricted addition to ₹ 23,66,735/-.

6. The assessee is in appeal against the order of CIT(A).

7. The learned Authorized Representative for the assessee pointed out that this was the first year of operations of assessee and because of non-experience, there was loss in the case of assessee. He further pointed out that the accounts of assessee were audited and the audit report was filed during the course of assessment proceedings. Our attention was drawn to the Profit and Loss Account placed at page 18 of Paper Book. He further invited attention to the expenses claimed and stressed that the perusal of the same would reflect that major expenditure was on account of raw material consumed / purchased for re-sale. In this regard, he stated that head-wise details were filed of Toor expenses which are placed at pages 37 to 42 of Paper Book and the same should be allowed in entirety.

8. The learned Departmental Representative for the Revenue strongly objected to the same and pointed out that the assessee had failed to produce the books of account before the Assessing Officer and even supporting vouchers were not produced. Hence, there is no merit in the claim of assessee.

9. We have heard the rival contentions and perused the record. The assessee during the year under consideration claims to have maintained regular books of account, which according to him, were audited under section 44AB of the Act. The assessee in the statement of facts filed before the Tribunal has stated that it had incurred loss of 15,32,732/- and hence, the return of income was not filed. The assessee has in the Paper Book filed, copy of audit report for assessment year 2010-11 which is dated 28.09.2012 and in the statement of facts, it is also mentioned that the management of the company was managed by the staff who appointed Mr. Ajeet Golecha, Chartered Accountant for audit, as all the Directors were having their own business. The assessee had maintained computerized books of account, which were corrupted. The assessee further claims that this fact was not disclosed by staff of the company and also the auditor. It came to the knowledge of the Directors in September, 2012. Thereafter, the company had again completed computerized books of account from purchase, sale bills, vouchers, bank statement and appointed CA Chetan Gattani for audit of books of account and obtained audit report. All these facts are mentioned in the statement of facts. Further, during the course of assessment proceedings, the Assessing Officer notes that the assessee had attended the hearing on 20.02.2015 along with the Accountant of assessee and produced incomplete books of account. Further, the Assessing Officer notes that no circumstantial

evidence for movement of goods in regard to purchase and sale was available and also no purchase and sale bills were produced for verification. The assessee was also asked to give preliminary evidences of two trading accounts in which substantial expenses were debited. The assessee failed to furnish even an *iota* of evidence for above expenses incurred and debited and hence, the same were disallowed totaling ₹ 35,32,831/-.

10. The CIT(A) after taking note of the facts and circumstances of case held that there was no tenable explanation in respect of gross loss of ₹ 13,12,385/- in the trading of agricultural trading / food grains. He was of the view that it would be appropriate to apply GP on total turnover, in view of the provisions of section 145 of the Act. He accordingly, applied GP rate @ 2% on the total turnover of ₹ 11.83 crores and restricted addition to ₹ 23,66,735/-.

11. The assessee is aggrieved by the aforesaid addition in its hands and has pleaded that because of mis-management, the business of assessee has been closed down and there are no funds and the assessee is handicapped. The learned Authorized Representative for the assessee before us pointed out that there were losses in the business and because of aforesaid addition, substantial demand has been raised against the assessee. In the facts and circumstances of the present case, where the assessee had not originally filed its return of loss, then the plea of assessee that it had incurred losses is not backed by any evidence whatsoever. The year under appeal is assessment year 2010-11 i.e. financial year 2009-10 and the assessee has not filed any evidence of the loss of the year at ₹ 15,32,732/- as mentioned in the statement of facts. Even the books of account evidencing the same were not available with the assessee. On the other hand, the assessee had admittedly computerized books of account in September, 2012 in which the loss has been

worked out to ₹ 15,32,732/-. The auditor has signed the said accounts on 28.09.2012 i.e. much after the due date of signing and filing the audit report for the year ending 31.03.2010. Such book results shown by the assessee cannot be relied to compute the income in the hands of assessee. Accordingly, we uphold the order of CIT(A) in applying the GP rate to determine the income in the hands of assessee. The provisions of section 145 of the Act are squarely attracted. However, we direct the Assessing Officer to apply GP rate at 1% on the total turnover of ₹ 11.83 crores in order to determine the income in the hands of assessee. The grounds of appeal raised by the assessee are thus, partly allowed.

12. In the result, the appeal of assessee is partly allowed.

Order pronounced on this 26th day of March, 2018.

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| Sd/- (D.KARUNAKARA RAO) | Sd/- (SUSHMA CHOWLA) |
| लेखा सदस्य / ACCOUNTANT MEMBER | न्यायिक सदस्य / JUDICIAL MEMBER |
| पुणे / Pune; दिनांक Dated : 26 th March, 2018. | |
| GCVSR | |

आदेश की प्रतिलिपि अद्योषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-1, Aurangabad;
4. The Pr.CIT-1, Aurangabad;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे, एक-सदस्य मामला / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune