

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. 01/Jab/2016

निर्धारण वर्ष/ Assessment Year : 2008-09

M/s. Rambilas Gattani, Mohta Plot, Tilak Ward, Pipariya, Dist. Hoshangabad PAN : AABFR 5331 G	Vs	Income Tax Officer, Ward 1, Itarsi, Dist: Hoshangabad
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri L.L. Sharma, Adv.
Revenue by :		Shri PD Chougule, DR

सुनवाई की तारीख/Date of Hearing : 14/03/2018

घोषणा की तारीख /Date of Pronouncement: 16/03/2018

आदेश/ORDER

PER KUL BHARAT, JUDICIAL MEMBER:-

This appeal filed by the assessee is directed against the order of the learned Commissioner of Income-tax (Appeals)-31, New Delhi (Camp Bhopal) dated 24.11.2015 pertaining to Assessment Year 2008-09.

2. The assessee has raised following grounds of appeal:-

"1. Keeping in view the facts and circumstances of the case, the Hon'ble Commissioner of Income Tax (Appeals) is not justified in law in confirming the addition of Rs. 1,24, 518/- made on account of the difference in weight of Gram Account.

At any rate the addition sustained is highly excessive and unwarranted in the facts and circumstances of the case.

2. Keeping in view the facts and circumstances of the case, the Hon'ble Commissioner of Income Tax (Appeals) is not justified in law in confirming the addition of Rs. 30,000/- made on account of the difference in valuation of closing stock of gram and soyabean account.

At any rate the addition sustained is highly excessive and unwarranted in the facts and circumstances of the case.

3. Keeping in view the facts and circumstances of the case, the Commissioner of Income Tax (Appeals) is not justified in law in directing

the learned Assessing Officer to disallow 1/5th out of Bardana Purchase Account as against 1/4th disallowed by the learned Assessing Officer.

4. *Keeping in view the facts and circumstances of the case, the Hon'ble Commissioner of Income Tax (Appeals) is not justified in directing the learned Assessing Officer to allow interest @ 15 % as against 18 % claimed by the appellant.*

At any rate the addition sustained is highly excessive and unwarranted in the facts and circumstances of the case.

5. *Keeping in view the facts and circumstances of the case the appellant respectfully prays that if any addition is confirmed in appeal, appropriate set off may kindly be allowed in respect any other addition made by the learned Assessing Officer.*

6. *That the order passed under section 143(3) of the Income Tax, 1961 on 28/09/2010 as well as the order passed by the Learned Commissioner of Income Tax (Appeals), Jabalpur under section 250 of the Income Tax Act, 1961 is illegal and void."*

3. Briefly stated facts of the case are that assessee is a partnership firm derives income from grain and pulses. It is regularly assessed to tax since long. For the year under consideration, the assessee has filed return of income declaring income of Rs.17,760/-. The case of the assessee was picked up for scrutiny assessment and assessment under Section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") was framed vide order dated 28.09.2010, assessing total income of the assessee at Rs.5,24,480/-. While framing the assessment, the Assessing Officer made various additions viz. (1) Rs. 24,531/- for use of bardana out of books, (2) Rs. 1,66,024/- being difference in weight of Gram, (3) Rs.3,213/- being difference in weight of wheat, (4) Rs.5,967/- being difference in weight of tuar dal, (5) Rs. 15,646/- difference in weight of masur dal, (6) Rs. 50,000/- being difference in valuation of closing stock of gram and soyabeen, (7) Rs.25,000/- under the head hammali expenses, (8) Rs. 79,579/- being 1/4th out of total purchase of bardana, (9)Rs.1,34,864/- being estimation of

3

interest on unsecured loan @12% instead of 18% as claimed and (10) Rs.1,900/- being difference in the balance of sundry creditor. Aggrieved by the order of the Assessing Officer, assessee preferred appeal before the Id. CIT(A) who, after considering the submissions of the assessee, partly allowed the appeal. Further aggrieved, the assessee is now in appeal before us.

4. At the outset, learned Counsel for the assessee submitted that he is not pressing ground no.3; hence, the same is dismissed as not pressed.

5. Apropos ground no.1, which relates to the addition of Rs.1,24,518/- made on account of the difference in weight of Gram Account, we find that the assessee's books of accounts are audited under Section 44AB of the Act and assessee maintains all the bills for purchase and sales. No discrepancy has been pointed out by the auditors. The assessee also submitted that when weighing of the material is done, then one piece of bardana either of 50 kg or 100 kg is kept at the side along with the weight which is the normal practice adopted in this line of business followed by every trader. Assessee is also consistently following this system. Assessee has produced the bills for sale of 'chana' and 'wheat' which does not in any way suggest that the weight mentioned in the sale bills are inclusive of weight of Bardana. We are of the view that learned Assessing Officer as well as learned CIT(A) wrongly presumed that the quantity mentioned in the sale bills of 'chana' and 'wheat' is inclusive of weight of Bardana. We, therefore, in the given facts and circumstances of the case, are of the considered opinion that the addition of Rs.1,24,518/- needs to be deleted as the same is purely based on presumption and assumption. We accordingly delete the addition of Rs.1,24,518/- and allow ground no.1 of assessee's appeal.

6. Apropos ground no.2 relating to addition of Rs.30,000/- made on account of difference in valuation of closing stock of gram and soyabean account, we find that the Assessing Officer has observed that the closing stock of 'Gram' and 'Soyabean' has been valued as per the 'market rate' as mentioned in the audit report. Since the market rate of 'gram' and 'soyabean' has been valued at less than the market rate, learned Assessing Officer has made an estimated addition of Rs.50,000/-, which was scaled down to Rs.20,000/- by learned CIT(A). We further observe from the information furnished by Mandi Samiti vide letter dated 18.09.2010 placed in paper-book that the average rate per quintal of chana is Rs.2484/- and soyabean at Rs.1965/-. As against this rate, the assessee has valued chana at Rs.2480/quintal and soyabean at Rs.2040/quintal. It is clearly visible that there is hardly any difference in the valuation of closing stock of chana and soyabean as made by the assessee in its books of accounts looking to the rates provided by the Mandi Samiti. In view of these facts stated above, we find no reason to sustain the addition of Rs. 30,000/-. We, accordingly, delete the same and thereby allow ground no.2 of assessee's appeal.

7. Apropos ground no.4 which relates to disallowance of interest expenditure, which in view of Assessing Officer, was paid in excess on the unsecured loans taken. Learned Assessing Officer took the basis of the rate of interest of 12% payable to the bank and concluded that the assessee has claimed excess expenditure. Learned CIT(A) gave part relief to the assessee by allowing the interest on unsecured loans at 15%. We find that the Assessing Officer even though has not mentioned section 40A(2)(b) of the Act, but has actually made the disallowance under this section which is applicable to such expenditure paid/payable to the relatives of the assessee. We observe that learned Assessing Officer has merely taken the basis of the

bank interest rate but has not carried out any investigation nor has come out with any explanation with regard to the fair market value of such services. Learned Assessing Officer should have compared the interest rates paid by the assessee on unsecured loans with the general market rate of interest chargeable on the unsecured loans. It is well established fact that the interest rates on unsecured loan tend to be higher than the interest rate of bank because they are not secured. We, therefore, in the given facts and circumstances of the case, are of the view that the learned Assessing Officer could not fulfill the conditions laid down in Section 40A(2)(a) read with Section 40A(2)(b) to make the disallowance of interest expenditure paid to relatives. We find no justification in the addition so made. We, therefore, delete the same and allow ground no.4 of assessee's appeal.

8. In the result, assessee's appeal is partly allowed.

Order pronounced in the Court on 16th March, 2018 at Jabalpur.

Sd/-

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

(KUL BHARAT)
JUDICIAL MEMBER

Jabalpur; Dated 16/03/ 2018

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, / DR, ITAT, Jabalpur
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

TRUE COPY

उप/सहायक पंजीकार (Dy./ Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Jabalpur