

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH; AMRITSAR.**

BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER
AND SH. N. K. CHOUDHRY, JUDICIAL MEMBER

I.T.A. No. 507/(Asr)/2016

Assessment Year: 2012-13

Jasbir Singh
Prop. Khalsa Jewellery House,
4335 Kot Baba Deep Singh,
Amritsar
[PAN: ABTPS 2800C]

(Appellant)

Vs. Income Tax Officer
Ward 3(2)-Amritsar

(Respondent)

Appellant by : Sh. P. N. Arora (Adv.)

Respondent by: Sh. Charan Dass (D.R.)

Date of Hearing: 22.03.2018

Date of Pronouncement: 28.03.2018

ORDER

Per Sanjay Arora, AM:

This is an Appeal by the Assessee agitating the Order by the Commissioner of Income Tax (Appeals)-1, Amritsar ('CIT(A)', for short) dated 23.08.2016, partly allowing the assessee's appeal contesting his assessment u/s. 144 of the Income Tax Act, 1961 ('the Act' hereinafter) dated 26.03.2015 for Assessment Year (AY) 2012-13.

2. The appeal concerns the estimation of the assessee's - an individual, in the business of manufacture and trading of gold jewellery and silver utensils, business income, pursuant to a best judgment assessment.

3. During hearing, at the very outset, it was clarified by the Id. Authorized Representative (AR), the assessee's counsel, that neither the invocation of section 144 of the Act, nor the non-grant of reasonable opportunity by the Assessing Officer (AO) - raised before the first appellate authority, are under challenge. The only issue, he would continue, is the reasonability of the net profit rate, which has been, adopting the net profit rate for AY 2011-12, the immediately preceding year, been directed by the Id. CIT(A) at 5.48% (of sales), as against 8% applied by the AO. The Id. CIT(A) has failed to consider the fact that there has been a multifold increase in the turnover for the current year, i.e., at Rs.229.82 lacs, as against at Rs.74.04 lacs for AY 2011-12. In fact, the assessee stands assessed at a net profit rate of 4.91% for AY 2014-15 vide order u/s. 143(3) dated 26.12.2016 (PB pgs. 15-17), which ought to have also been considered by the Id. CIT(A). He would further furnish the following charts reflecting the Sales, GP and NP rates from AY 2011-12 to AY 2014-15, as under:

| Asst. Year | Sales (Rs. in lacs) | Gross Profit (Rs.) | GP Rate (%) | Net Profit (Rs.) | NP Rate (%) |
|------------|------------------------|-----------------------|----------------|---------------------|----------------|
| 2011-12 | 74,04,392/- | 9,81,324/- | 13.25 | 4,05,458/- | 5.48 |
| 2012-13 | 2,29,81,723/- | 25,19,806/- | 10.96 | 5,88,189/- | 2.56 |
| 2013-14 | 1,59,64,897/- | 19,60,027/- | 12.28 | 4,91,138/- | 3.08 |
| 2014-15 | 100.69 | 13,91,575/- | 11.33 | 6,02,028/- | 4.91 |

The Id. Departmental Representative (DR) would, placing reliance on *Kachwala Gems v. Jt. CIT* [2007] 288 ITR 10 (SC), submit that a certain degree of guesswork is always involved in a best judgment assessment, and where the same is an honest and fair estimate of the income by the authority concerned, no interference is called for.

4. We have heard the parties, and perused the material on record.

The assessee's contention that his books of account have not been rejected, so that no estimate (of his business profit) could be attempted by the Revenue, falls flat in the face of non-production of his books of account by the assessee during the assessment proceedings, marked by non-cooperation by the assessee. The assessee failing to explain the decline in his trading results, i.e., vis-à-vis the earlier year, as well as substantiate certain expenses *qua* which the AO observed spike, further observing the assessee to have raised unsecured loans at Rs.31.67 lacs during the year for which even no confirmation/s was filed, he was constrained to proceed to make a best judgment assessment, estimating the assessee's business income (refer paras 3 and 4 of the assessment order). Section 144, invocation of which is not under challenge, empowers the AO to frame a best judgment assessment taking the relevant material into account. This is also precisely the mandate of section 145(3), which gets attracted where the conditions specified therein are satisfied. The assessee's objection as to non-rejection of the books of account by the AO, i.e., issue of a finding as to the same being not reliable, is without merit. The reliance on the decision in *CIT v. K.S. Bhatia* [2004] 269 ITR 577 (P&H), rendered u/s. 145 (and, further, as it stood prior to its substitution by Finance Act, 1995, w.e.f. 01/4/1997), is misplaced and, in any case, of little assistance to the assessee.

The second objection, also raised during hearing, that the books of account could not be rejected merely on account of decline in the GP rate, valid in principle, again does not hold in the instant case as section 144 stands invoked not for the reasons specified u/s. 145(3), but on account of the satisfaction of the conditions u/s. 144(1). As afore-noted, the books of account were never produced for his examination and verification before the assessing authority.

We, next, consider the validity of the best judgment exercised by the AO, as modified by the Id. CIT(A) in-as-much as the Revenue is not in appeal. The same is based on the assessee's declared results for AY 2011-12, the immediately preceding year. The assessee's own past history is normally a very valuable guide. The reliance thereon by the Id. CIT(A) thereon therefore cannot be faulted. The assessment order for AY 2014-15 (or any other subsequent year) was not; rather, could not be, before the AO and, therefore, could not be considered by him and, nor consequently, by an appellate authority while deciding on a best judgment assessment. Placing reliance on the material not before the AO, would amount to, as explained in *CIT vs. Rayala Corporation Pvt. Ltd.* [1995] 215 ITR 883 (Mad), converting a section 144 assessment into a section 143(3) assessment, and which is clearly not permissible. It is, after all, in law, his best judgment assessment and not of any other. His action in adopting an arbitrary rate of 8% stands already modified by the first appellate authority by taking into consideration the disclosed result for AY 2011-12. The only objection by the assessee that therefore survives is that in doing so the Id. CIT(A) has not taken into account the three-fold increase in the turnover for the current year over that year. GP rates are subject to variation from year to year. The assessee selling gold and silver products, the prices of which commodities are largely market driven; with the manufacturer/trader standing to gain for the value addition, and which should be fairly constant across different years, there does not appear to be any correlation between the volume of turnover and the gross profit rate. Further, even considering that the quantum increase in the turnover may result in a decline in the gross profit ratio, its extent cannot be assessed on the scanty material available. Also, the overhead expenses, at 7.77% of the turnover for AY 2011-12, should normally witness a decline with the increase in turnover in-as-much as the administration expenses are fairly fixed or semi-fixed in nature, while in the present case the same stand increased to 8.40%! That is,

from Rs.5.76 lacs (or Rs.0.48 lacs per month) to Rs.19.32 lacs (or Rs.1.61 lacs p.m.) (being the difference between the gross and net profit), or an increase of Rs.13.56 lacs, which works to an increase by 235%, a stupendous increase by any standard, particularly considering the nature of the expenditure, which has little or no correlation with turnover, even as, without doubt, some increase is inevitable. In fact, even an increase of 100% would escalate the expenditure level to Rs. 11.50 lacs, i.e., in the range of Rs.12 lacs, which works to a little over 5% of the turnover. It needs to be appreciated that such expenditure cannot be estimated in percentage terms as, as afore-noted, it is largely fixed or semi-fixed in nature. Even if therefore the GP rate was to be regarded at the disclosed rate of about 11%, it would result in a net profit of Rs.13.28 lacs (i.e., at 5.78% of the turnover). The estimated profit of Rs.5.48% (of the turnover) is thus justified. This is particularly relevant in view of the large unexplained increase in the administration (over-head) expenditure. It also cannot be lost sight of that the assessee has unconfirmed/unverified unsecured loans for Rs. 31.67 lacs during the year. Reference in this regard be made to the decision in *CIT v. Devi Prasad Vishwanath Prasad* [1969] 72 ITR 194 (SC).

Under the circumstances, we decline interference. Though largely irrelevant in-as-much as reference to the same could not be possibly be made by the AO and, therefore, by the appellate authorities, we may in passing mention that the adopted rate is also in sync with that assessed for AY 2014-15, i.e., when considered at inclusive of the accepted addition of Rs.50,000/- on account of revenue leakage (i.e., per order u/s. 143(3) dated 26/12/2016), resulting in the profit percentage at 5.31% of the turnover, which is in agreement with that assessed for the current year. We decide accordingly.

5. In the result, the assessee's appeal is dismissed.

Order pronounced in the open court on March 28, 2018

Sd/-
(N. K. Choudhry)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Date: 28.03.2018

/GP/Sr. Ps.

Copy of the order forwarded to:

- (1) The Appellant: Jasbir Singh, Prop. Khalsa Jewellery House, 4335-Kot Baba Deep Singh, Amritsar
- (2) The Respondent: ITO Ward 3(2), Amritsar
- (3) The CIT(Appeals)-1, Amritsar
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T

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By Order