

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

श्री भागचंद, लेखा सदस्य एवं श्री कुल भारत, न्यायिक सदस्य के समक्ष
BEFORE: SHRI BHAGCHAND, AM & SHRI KUL BHARAT, JM

आयकर अपील सं./ITA No. 724/JP/2017
निर्धारण वर्ष / Assessment Year : 2012-13

Hari Prakash Gokulka, Prop.- M/s Hari Om Enterprises, Anaj Mandi, Srimadhapur, Sikar (Raj)	बनाम Vs.	Income Tax Officer, Ward- Neem Ka Thana.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACFPG 0451 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Shri Satish Kumar Gupta, (CA)
राजस्व की ओर से / Revenue by : Smt. Poonam Roy (DCIT)

सुनवाई की तारीख / Date of Hearing : 09/04/2018
उदघोषणा की तारीख / Date of Pronouncement : 10/04/2018

आदेश / ORDER

PER: KUL BHARAT, J.M.

This is an appeal filed by the assessee against the order dated 07/08/2017 passed by the Id. CIT(A)-3, Jaipur for the A.Y. 2012-13. The grounds taken by the assessee in appeal are as under:-

- "1. On the facts and circumstances of the case and law, Id. lower authorities grossly erred in rejecting the books of account by invoking the provisions of section 145(3) of the Income Tax Act, 1961.*
- 2. On the facts and circumstances of the case, Id. CIT(A) grossly erred in applying G.P. rate of @ 1.40% as against declared G.P.*

rate of 1.13% and thereby making and confirming addition of Rs. 6,31,040/- in the trading results.

3. *On the facts and circumstances of the case, Id. lower authorities grossly erred in making and confirming lump sum disallowance of 10% in Paldari expenses, car expenses, telephone expenses, travelling expenses and shop expenses without specifying any unvouched/personal expenses."*

2. Briefly stated facts of the case are that the case of the assessee was picked up for scrutiny assessment and the assessment U/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as the Act) was framed vide order dated 04/12/2014. While framing the assessment, the A.O. rejected the books of account of the assessee and estimated the G.P. rate @ 1.50% thereby he made addition of Rs. 8,50,071/-. The Assessing Officer also further made other ad hoc disallowances in respect of car expenses, telephone expenses, travelling expenses and shop expenses.

3. Being aggrieved by the order of the Assessing Officer, the assessee preferred appeal before the Id. CIT(A), who after considering the submissions, restricted the G.P. rate @ 1.40% and also confirmed the disallowances related to the other expenses @ 10%. Thus, the Id. CIT(A) partly allowed the appeal of the assessee.

4. Aggrieved by the order of the Id. CIT(A), the assessee is in appeal before the ITAT. Grounds No. 1 and 2 of the appeal are against restricting

the G.P. rate @ 1.40% and rejection of books of account. The Id AR of the assessee vehemently argued that the authorities below were not justified in rejecting the books of account. The books of account have been rejected on the basis of whims and fancies. The Id AR further submitted that the assessee had furnished all details required by the Assessing Officer. Therefore, he prayed to allow the appeal.

5. On the contrary, the Id DR has opposed the submissions made by the assessee. She has submitted that the Assessing Officer has noticed that the assessee was not maintaining stock register and quality wise details. Further it was noticed by the Assessing Officer that the G.P. of the assessee has gone down in comparison to the last year. So these were the sufficient ground for rejection of books of account.

6. We have heard the rival contentions of both the parties, perused the material available on the record and also gone through the orders of the authorities below. After considering the totality of the facts and material placed before the Bench, we are of the considered view that the Id. CIT(A) has erred in adopting the G.P. rate @ 1.40%. The law is well settled by the decision of the Hon'ble Jurisdictional High Court that the past history is the best indicator where the books of account are rejected and the profit is required to be estimated by the Assessing Officer. It is

contended by the Id. counsel for the assessee that if the past history of the last four years is adopted, the average of the same would be lesser than what the assessee has declared, therefore, we deem it proper to adopt the G.P. rate @ 1.20% and we direct accordingly to the Assessing Officer. Hence, grounds No. 1 and 2 of the appeal are disposed off in terms of the finding hereinabove.

7. Ground No. 3 of the appeal is against confirming lump sum disallowance of 10% in various expenses. We have heard both the sides on this issue and find that the Id. CIT(A) has rightly restricted the disallowances @ 10% of the expenses under the various heads which does not require any interference. Hence, this ground of assessee's appeal is dismissed.

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

Order pronounced in the open court on 10/04/2018.

Sd/-
(भागचंद)
(BHAGCHAND)

लेखा सदस्य / Accountant Member
जयपुर / Jaipur

दिनांक / Dated:- 10th April, 2018

*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Hari Prakash Gokulka, Sikar.
2. प्रत्यर्थी / The Respondent- The ITO, Ward- Neem Ka Thana

Sd/-
(कुल भारत)
(Kul Bharat)
न्यायिक सदस्य / Judicial Member

3. आयकर आयुक्त/ CIT.
4. आयकर आयुक्त(अपील)/The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 724/JP/2017)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar