

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

श्री विजय पॉल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA. No. 910/JP/2017  
निर्धारण वर्ष/ Assessment Years : 2012-13

Babu Lal Gupta C/o Ram Swaroop Jajoo, D-42, Ambabari, Jaipur	बनाम Vs.	ITO Ward 3(3), Jaipur
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: ACIPG3949E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Ram Swaroop Jajoo  
राजस्व की ओर से / Revenue by : Shri J. C. Kulhari (JCIT)

सुनवाई की तारीख / Date of Hearing : 08/03/2018  
उदघोषणा की तारीख / Date of Pronouncement : 19/03/2018

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-1, Jaipur dated 10.08.2017 for Assessment Year 2012-13 wherein the assessee has challenged the action of Id. CIT(A) in confirming the action of the AO in rejecting the books results and estimating the income by applying adhoc GP rate of 6% as against 4.46% offered by the assessee in his return of income.

2. Briefly stated, the facts of case are that the assessee is engaged in trading of Spices/Pan masala and manufacturing of Sing Dana from

groundnut. The Assessing Officer rejected the books of accounts u/s 145(3) of the Act holding that the assessee has not maintained any stock register, proper records regarding direct expenses debited to Manufacturing & Trading account and no record of packing material purchased, consumed or remaining as closing stock. Further, freight and other expenses could also not be fully substantiated and the vouchers relating to wages were internally supported only with incomplete details which are not subject to verification and no proper explanation has been submitted by the assessee for increase in wages. Under these circumstances, the correct profits cannot be deduced from the books of accounts and he accordingly rejected the books of accounts u/s 145(3) of the Act. The AO, thereafter observing that the assessee has disclosed GP rate of 4.47% during the year under consideration and 4.73% in AY 2010-11, estimated GP rate of 6% and applied the same to the declared turnover of Rs. 13,38,63,166/- and trading addition of Rs. 2,05,09,33/- was made in the hands of the assessee.

3. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A). The Id. CIT(A) confirmed the action of the AO in rejecting the books of accounts u/s 145(3) of the Act firstly, holding that the assessee has not stated anything about the rejection of its books of accounts u/s 145 (3) of the Act and the assessee has submitted only the reasons for decrease in the GP rate as well as comparative cases where G.P. rate was much lower as compared with the GP rate declared by the assessee company. The Id. CIT(A) further observed that in most of the months, the yield from manufacturing

activity was 75% whereas in the month of March, 2012, the yield was shown at 63.5% without any justification. It was further observed by the Id. CIT(A) that the assessee company has claimed reduction in the stock of groundnut at 406 quintals each in the month of February and March, 2012 on account of moisture. The Id. CIT(A) observed that how there can be shortage due to moisture in two consecutive months and in not in any of the earlier months. The Id. CIT(A) was therefore of the view that the assessee has sold 406 quintals of groundnut outside his books of accounts or the corresponding Sing Dana produced on account of consumption of 406 quintals of groundnut has not been disclosed in the books of accounts. Accordingly, Id. CIT(A) observed that the assessee has suppressed his production and the books of accounts including the stock records are manipulated and the same does not reveal the true state of affairs and he accordingly confirmed the AO's action of rejection of books of accounts u/s 145(3) of the Act as well as GP rate of 6% as against GP rate of 4.47% declared by the assessee.

4. Being aggrieved, the assessee is in appeal before us. The Id AR submitted that complete books of accounts have been maintained and duly audited u/s 44AB of the Act and the trading results of the assessee should be accepted. It was submitted that the GP rate declared by the assessee is better than other comparative cases involved in the same line of business which has been totally ignored by the lower authorities. It was further submitted that fall in the GP rate is in account of increase in competition as well as increase in the salary and wages which is on account of hiring of city based workers who demand higher wages as against workers from villages who were hired in the earlier years. It

was further submitted that 406 quintal of groundnut as observed by the Id. CIT(A) is on account of shortage on account of moisture, soil, blank groundnut etc. which is reasonable in this line of business.

5. The Id. DR is heard who has submitted that the assessee has not challenged the rejection of books of accounts and regarding estimation of GP rate, given the discrepancies so observed by the lower authorities, the estimation so made by the AO was just and reasonable and which has been rightly confirmed by the Id CIT(A). The Id DR further relied on the findings of the lower authorities.

6. We have heard the rival contentions and perused the material available on record. The rejection of books of accounts u/s 145(3) is not disputed by the assessee. The limited issue under consideration relates to what should be the reasonable gross profit rate once the books of accounts have been rejected. The AO has estimated GP rate of 6% which has been confirmed by the Id CIT(A) as against 4.47% declared by the assessee. We however find that there is no basis which has been specified by the AO while estimating the G.P rate. Similarly, the Id CIT(A) has merely confirmed the said estimation without specifying how the same is found reasonable in the instant case. The Id AR has submitted that the assessee has declared a G.P of 4.73% in AY 2009-10 and G.P of 4.26% in AY 2010-11 and considering the past history, the G.P of 4.47% declared for the impugned assessment year should be accepted. The Hon'ble Rajasthan High Court in case of CIT vs Gupta K.N Construction Co. 116 DTR 377 as well as other recent decisions in similar cases has held that the best guide in case of fair estimation is

past history of the assessee and has directed to apply last five years average for the purposes of determination of fair estimation of profits. Applying the same in the instant case, average of last five years G.P rate which has attained finality should be considered for determining the average G.P. Where the declared G.P rate of 4.47% is higher than the average G.P so determined, no further adjustment will be required to the declared profits even where the book results of the assessee have been rejected. Given that only G.P of last two years are available on record, the matter is set-aside to the file of the AO to determine the average G.P of last five years, compare it with declared G.P and determine the adjustment, if so required, taking into considerations above discussions.

In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 19/03/2018.

Sd/-

(विजय पॉल राव)  
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)  
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 19/03/2018.

\*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Shri Babulal Gupta, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward 3(3), Jaipur
3. आयकर आयुक्त / CIT

4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 910/JP/2017 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar