

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

श्री विजय पाल राव, न्यायिक सदस्य एव श्री भागचन्द, लेखा सदस्य सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 993/JP/2017
निर्धारण वर्ष/Assessment Year: 2012-13

Shri Santosh Kumar Tambi Prop: M/s. Kalu Ram Rakesh Kumar 56, New Grain Mandi, Chomu, Distt. Jaipur	बनाम Vs.	The ITO Ward- 7(3) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAVPT 6020 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri C.M. Batwara, Advocate
राजस्व की ओर से / Revenue by: Shri P.P. Meena, JCIT - DR

सुनवाई की तारीख / Date of Hearing : 17/07/2018
घोषणा की तारीख / Date of Pronouncement : 20 /07/2018

आदेश / ORDER

PER BHAGCHAND, AM

The appeal filed by the assessee emanates from the order of the
ld. CIT(A)-3, Jaipur dated 03-10-2017 for the Assessment Year 2012-13
raising therein following grounds of appeal.

1. That the impugned order passed by the ld. CIT(A)-III,
Jaipur against law and facts of the case.

2. That the ld. CIT(A) erred in confirming addition in
income Rs. 3,00,000/- out of salary paid to relatives u/s 40A(2)(b) of
the I.T. Act, 1961 whereas the four employees (two relatives and two
others) and gross remuneration Rs. 1,56,000/- were reduced in

comparison to previous year while turnover was increased by Rs. 4,65,40,071/- approx 15% in comparison to previous year (As per Annexure A filed alongwith appeal before CIT (Appeals)).

3. That the Id. CIT(A) erred in confirming the addition of Rs. 61,258/- without considering the fact that it was done in furtherance of business and to resolve dispute the liability of freight and arrange on the goods was debited and consequential credit entry were also passed in account of the relevant person.

4. That the Id. CIT(A) erred in confirming the whimsical and arbitrary addition of 20% of expenses amount debited in Profit & Loss A/c as under:

Travelling Expenses	Rs. 79200/-
Shop Expenses	Rs. 49720/-
Telephone Expenses	Rs. 32081/-
Car Expenses	<u>Rs. 209146/-</u>
Total	Rs. 3,70147/-

Without considering nature of business results and statutory provisions in regard to expenses.”

2.1 The Ground No. 1 raised by the Id.AR of the assessee is general in nature which needs no adjudication.

3.1 Apropos Ground No. 2, the Id.AR of the assessee submitted that the similar issue was decided by the Id. CIT(A) vide his order dated 01-02-2018 in the case of the same assessee for the Assessment Year 2013-14 by observing as under:-

“5.3 I have carefully considered the material before me. I find that Assessing Officer made the disallowance out of salary making the observation that maximum salary has been paid in cash to the family members and relatives and services provided by them according to the payments according to the payments are not justifiable. The A/R of the

appellant submitted that the every business is increased the turnover in this year is Rs. 38,58,28,784/- as against Rs. 37,17,99,099/- in last year. Further he submitted that the assessee reduced two employees out of six employees section 40(A)(2)(b) of I.T. Act and consequential salary was also reduced Rs. 2,55,000/- in comparison to previous year. He further argued that learned Assessing Officer himself allowed the salary paid to the relative Rs. 90,000/- in the Assessment Year 2014-15 and assessment completed u/s 143(3) of the I.T. Act. He also submitted that the salary was agreed, decided and paid according to the period of services, sincerity for job with responsibility as office superintendent-cum-clerk. All relative employees are commerce graduate (B.Com) and having experience more than five years. They all are regularly working 12 to 16 hours and the ld. AO had not called them personally. The ld AO failed in discharging his burden to prove that the salary is paid to anyone more than consideration for services done by him.

I pursued the record and I find that there is no force in the submission of the A/R of the appellant that the turnover in this year increase, the salary paid to person u/s 40A(2)(b) is also reduced in this year. The Assessing Officer failed to prove that how the unreasonable salary was paid to person u/s 40A(2)(b) of the person. The person covered u/s 40A(2)(b) were working for 12 to 16 hours in a day. Therefore, the observation made by the Assessing Officer that the salary paid to the person u/s 40A(2)(b) were excessive is not correct. Hence, I direct the Assessing Officer to delete the addition made out of salary of Rs. 2,50,000/-. This ground is allowed.

3.2 After hearing both the parties and perusing the order of the ld. CIT(A)-3, Jaipur dated 01-02-2018, it is noted that ld. CIT(A) has disposed off the similar ground in assessee's own case for the Assessment

Year 2013-14 and thus deleted the addition made out of salary paid to the relatives. Hence, on the similar facts and circumstances of the case, the issue is restored to the file of the Id. CIT(A) to decide it afresh in view of his decision taken in assessee's own case for the Assessment Year 2013-14. Thus Ground No. 2 of the assessee is allowed for Statistical purposes.

4.1 In Ground No. 3, the assessee is aggrieved that the Id. CIT(A) has erred in confirming the addition of Rs. 61,258/- without considering the fact that it was done in furtherance of business and to resolve the dispute of liability of freight.

4.2 After hearing both the parties, it is noted that this grounds pertains to not furnishing supporting original debit note before the lower authorities and this ground has not been raised before the Id. CIT(A). In the interest of equity and justice, the Ground No. 2 of the assessee is restored to the file of the Id. CIT(A) for afresh consideration by providing adequate opportunity of being heard to the assessee. The assessee is also directed to submit the relevant before the Id. CIT(A) concerning the issue in question for adjudication before him. Thus Ground No. 2 of the assessee is allowed for Statistical purposes.

5.1 Apropos Ground No. 4, the Id.AR of the assessee submitted that the similar issue was decided by the Id. CIT(A) vide his order dated 01-02-2018 in the case of the same assessee for the Assessment Year 2013-14 by observing as under:-

“6.3 I have carefully considered the material before me. I find that Assessing Officer treated 20% of the following expenses conveyance expenses ,shop expenses, telephone expenses, travelling expenses and depreciation on car as unvouched and non-business purposes and made the disallowance of Rs. 98,866/-.

The A/R of the appellant failed to file any evidence which prove that the expenses are not fully vouched and for business purposes. Therefore, I am of the view that the Assessing Officer rightly made the observation that all the above expenses are not fully vouched and non-business purposes. The Assessing Officer treated 20% of the above expenses without any basis and unreasonable. Hence, I treat 10% of the above expenses as non-business purpose and unvouched. Accordingly, I confirm the addition as under:-

S.N.	Name of expenses	Confirm
1.	Out of conveyance expenses	18,419
2.	Out of shop expenses	5,928
3.	Out of telephone expenses	1,807
4.	Out of travellingn expenses	3,070

The addition made out of depreciation on car is mandatory deduction. Therefore, the depreciation on car disallow for personal use is not as per law as held by the Hon'ble ITAT in various cases. Hence, I direct the Assessing Officer to delete the depreciation on car of Rs. 40,418/-. This ground is partly allowed.”

5.2 After hearing both the parties and perusing the order of the Id. CIT(A)-3, Jaipur dated 01-02-2018, it is noted that Id. CIT(A) has disposed off the similar ground in assessee's own case for the Assessment Year 2013-14 and reduced the non-business expenses to the extent of

10% of the addition and also deleted the expenses on depreciation of car .Hence, on the similar facts and circumstances of the case, the issue is restored to the file of the ld. CIT(A) to decide it afresh in view of his decision taken in assessee's own case for the 2013-14. Thus Ground No. 4 of the assessee is allowed for Statistical purposes.

6.0 In the result, the appeal of the assessee is allowed for Statistical purposes as indicated above.

Order pronounced in the open Court on 20 -07-2018.

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य /Judicial Member

Sd/-
(भागचन्द)
(Bhagchand)
लेखा सदस्य/Accountant Member

जयपुर /Jaipur

दिनांक /Dated:- 20/07/ 2018

*Mishra

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

1. अपीलार्थी /The Appellant- Shri Santosh Kumar Tambi, Jaipur
2. प्रत्यर्थी /The Respondent- The ITO, Ward- 7(3), Jaipur
3. आयकर आयुक्त(अपील) / CIT(A).
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर /DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.993 /JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar