

आयकर अपीलीय 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. 644/JP/2018
निर्धारण वर्ष / Assessment Year : 2011-12

Shri Ramesh Kumar Gupta E-410A, Road No. 14, VKI Area, Jaipur	बनाम Vs.	Deputy Commissioner of Income Tax, Circle-4, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACIPG4500D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S. L. Poddar &
Shri Isha Kanoongo (Adv)
राजस्व की ओर से / Revenue by : Shri J. C. Kulhari (JCIT)

सुनवाई की तारीख / Date of Hearing : 13/08/2018
उदघोषणा की तारीख / Date of Pronouncement: 21/08/2018

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-2, Jaipur dated 12.03.2018 for Assessment Year 2011-12 wherein the assessee has raised following grounds of appeal:-

"1. In the facts and in the circumstances of the Learned CIT(A) has erred in confirming the invocation of provision of section 145(3) of the Income Tax Act 1961 by rejecting the books of accounts of the assessee.

2. In the facts and in the circumstances of the case the Learned CIT(A) has erred in confirming the addition of Rs. 9,79,510/- by

estimating the business profit at Rs. 1,36,300/- applying np rate @ 0.90% on total turnover against declare net loss of Rs. 8,43,210/-.

3. In the facts and in the circumstances of the case the Learned CIT(A) has erred in confirming the addition of Rs. 2,30,946/- towards notional interest on alleged debit balances.”

2. In ground Nos. 1 and 2, the assessee has challenged the rejection of books of accounts u/s 145(3) of the Act and estimating NP rate @ 0.90% as against loss of 5.57%.

3. Briefly stated, the facts of the case are that the during the course of assessment proceedings, the AO issued a show cause to the assessee wherein the assessee was asked to explain the reasons for sharp decline in the net profit in spite of the fact that sales have decreased. The assessee was also asked to explain as to why production should not be estimated on the basis of wages since wages are the most reliable factor to determine the production. The assessee was also asked to justify expenses on account of wages and other expenses claimed in the P & L account and its comparison with previous year and to produce the books of accounts, bills and vouchers. The reply filed by the assessee was considered but not found acceptable to the AO and he invoked the provisions of section 145(3) and on the declared turnover, he estimated NP rate @ 0.90% following the preceding year and net profit was determined at Rs. 1,36,300/- as against declared net loss of Rs. 8,43,210/-.

4. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) and submitted its explanation. The assessee submitted the comparative chart of the expenses over the preceding year and it was submitted that there is no increase in the expenditure as compared to preceding year except sales commission and freight and cartage. Regarding sales commission, it was submitted that the assessee has paid commission of Rs. 591,870/- for services rendered in connection with procuring orders from

Govt. Departments and payments have been made by way of account payee cheques after deducting TDS and the copy of ledger account of commission and personal account of the parties to whom the commission was paid was submitted. Regarding freight and cartage of Rs. 5,47,461/-, it was submitted that the same has been paid on behalf of the certain customers as per the agreed terms and conditions, and the same has been recovered and shown as part of sales price including in the total sales declared in the return of income. It was further submitted that due to fall in the turnover during year, the GP rate in percentage terms has increased. However, in absolute terms, the GP has declined by Rs. 811,168/- and which has not been disputed by the Assessing Officer. It was further submitted that if the fall in the gross profit in absolute terms is taken into consideration, there is increase of fixed/ semi fixed expenses amounting to Rs. 253,775/- during the year which has resulted in overall loss of Rs. 10,64,943/- as against preceding year. The submission of the assessee were considered and were not found acceptable by the Id. CIT(A) and findings are contained at Para 2.3 which is reproduced as under:-

"2.3 I have perused the facts of the case, the assessment order and the submissions of the appellant. A perusal of the chart as reproduced below, for 3 years of the appellant shows that turnover in the current year is similar to turnover in the assessment year 2009-10 and in that year, the G.P. & N.P. was 10.32% and 2.30% respectively, in the immediately preceeding year the turnover is almost double at Rs 2.4 crore and G.P. at 9.55% and N.P. at 0.90%.

A.Y.	Sales	Gross Profit	GP rate	Net Profit	NP rate
2009-10	1,66,50,879/-	17,18,544/-	10.32%	3,82,914/-	2.30%
2010-11	2,47,25,087/-	23,62,154/-	9.55%	2,21,732/-	.90%
2011-12	1,51,44,506/-	15,50,986/-	10.24%	(-)843210/-	(-)5.57%

Thus, the Authorized Representative's explanation for reduced N.P. being due to only reduced turnover cannot be accepted as in 2009-10 on

*similar turnover the N.P. was 2.30%. Further, the expenditure has increased even when the turnover has decreased. The Authorized Representative's submissions that expenditure remains fixed is not in order when the turnover reduces to half, the expenditure is bound to decrease and the same is evident as in A.Y. 2009-10 the N.P. rate is 2.32%. **The increase in sales commission and freight and cartage has not been explained satisfactorily while in the case of sales commission a general reply has been given that commission bearing sales have increased, freight and cartage is claimed to be reimbursed in which case it should not affect the profit. In view of the discussion as above, the rejection of books and estimation of NP at previous year percentage is upheld.***"

5. During the course of hearing, the Id. AR reiterated the submissions made before the lower authorities and it was submitted that the assessee has maintained its complete books of account which have been duly audited and audit report u/s 44AB have been furnished along with return of income and the auditors have not given any adverse report regarding the maintenance of books of accounts. It was further submitted that the Assessing Officer has not pointed out any specific vouchers or any specific expenditure in respect of which assessee has not submitted appropriate explanation and it was submitted that each and every expenditure of the assessee is fully vouched and verifiable, sale of the assessee are to government agency. It was further submitted that the assessee has maintained its stock register and personal record prescribed by excise authority and it was submitted the stock register amply disclose position of day to day opening stock, purchase, material consumed and closing stock both in terms of quantity and value. It was further submitted that the excise records kept in form no. RG-1 and form IV also display day to day position of production of finished goods. Regarding salaries and wages, the assessee has submitted that it has maintained

complete records regarding payment of commission. It was submitted that the same has been paid to four parties mainly in respect of order of sale obtained from Gujarat Electric & Water Supply and Sewage board and it was accordingly submitted that the Assessing Officer was not correct in rejecting the books of accounts maintained by the assessee and invoking the provisions of section 145(3) of the Act. It was further submitted that the NP during the year has declined on account of freight and cartage, commission expenditure, depreciation and interest on sales tax demand. Regarding freight and cartage of Rs. 547,461/-, it was submitted that the same is incurred in respect of supplies made to GWSSB and the same has been reimbursed to the extent of Rs. 5,40,661/- which has been accounted in the trading account of the assessee. Regarding commission expenditure of Rs. 578,355/-, it was submitted that full detail of parties to whom commission has been paid, their confirmations, details of work done by them and TDS made on payment of commission through cheque is available in the assessee's paper book. It was accordingly submitted that the commission expansion should have been treated as genuine and no adverse view should have been taken by the Assessing Officer.

6. The Id. DR is heard who has relied on the findings of the lower authorities.

7. We have heard the rival contentions and perused the material available on record. We find that the assessee has maintained complete books of accounts which have been duly audited. Further, the excise records are maintained which reflect clearly the position regarding the stock and the production which have been carried out by the assessee during the year under consideration. Further, the Assessing Officer has not challenged and has not specifically disputed the stock in terms of opening stock, purchase, closing stock and sales which have been accounted for during the year. There is no finding regarding any out of books sales made by the assessee.

Regarding expenses, it is noted that in comparison to the preceding year, there is an increase in absolute terms of expenditure in the nature of interest paid to banks, salaries, sales commission, freight and cartage, sales tax interest. There cannot be any dispute as regards the liability towards the bank and the sales tax authority is concerned. Regarding increase in salary, the assessee has submitted that the salary records are properly maintained and TDS has been done on the salary. Regarding commission, it has been submitted that the commission has been paid to obtain orders from certain state government authorities and the necessary details in terms of nature of work, the payment which has been made during year through the account payee cheque, the TDS on such payment and the confirmation on the parties have been duly submitted before the lower authorities which has not been disputed. Regarding freight and cartage, it has been submitted that the same has been incurred on the specific directions of certain parties and the same has been reimbursed and shown as a part of its sales. Further, merely a fall in the NP rate during the year cannot be a basis for rejection of books of accounts and estimating the NP hands of the assessee especially where the assessee has provided the suitable explanation regarding extra-ordinary items which has resulted in fall in the net profit. In the result, the ground Nos. 1 and 2 of the assessee's appeal are allowed and the addition made is hereby deleted.

8. Regarding Ground No. 3, the relevant facts and findings of the Id. CIT(A) are contained at para 3.3 which is reproduced as under:-

"3.3 I have perused the facts of the case, the assessment order and the submissions of the appellant. The AO noted that there was a debit balance of Rs. 19,24,550/- in the balance sheet of M/s Gupta Enterprises and no interest had been charged on this amount, the appellant had contended that the amount was transferred to M/s Radha Rani Wire Products in which the appellant is a partner. The AO disallowed interest at

12% on the debit balance of Rs.1924550 at Rs.230946. In the present proceedings it was submitted that the amount withdrawn from M/s Gupta Enterprises on different dates except withdrawals of nominal amount for personal purposes have been introduced in M/s Radha Rani Wire Products resulting in the opening debit balance of Rs.1924550, it was claimed that in consideration of business expediency the amount withdrawn from M/s Gupta Enterprises have been used for capital introduction in M/s Radha Rani Wire Products and interest is received on the capital as well as partners remuneration from M/s Radha Rani Wire Products. Since the appellant has utilized the funds of the firm for both personal purposes as well as for investment, the interest accruing on the same is rightly disallowed by the AO. The ground of appeal is dismissed."

9. During the course of hearing, the Id. AR submitted that the Assessing Officer has made an addition of Rs. 2,30,946/- on account of notional interest on debit balance in M/s Gupta Enterprises. The assessee is proprietor of M/s Gupta Enterprises. This is a running account of the assessee. The closing balance was of Rs. 429,861/- only as on 31.03.2011. During the year under consideration, the assessee debited amount in the capital account for withdrawal required for investment in partnership firm M/s Radha Rani Wire Products. A copy of ledger account with M/s Radha Rani Wire Products is available on additional paper book page number 99 to 101. This facts has been admitted by the Learned CIT(A) as mentioned in the appellate order. It is further submitted that assessee has disclosed receipt of interest of Rs. 8,99,507/- from partnership firm M/s Radha Rani Wire Products. Since interest has been received on funds invested there, there was no case left for making addition on account of debit balance in the proprietary concern. The Learned Assessing Officer was not justified in making addition on account of charging notional interest and the

Learned CIT(A) has also erred in disallowing interest to the same extent of Rs. 2,30,946/-. It is submitted that receipt of interest is of Rs. 8,99,507/- from partnership firm M/s Radharani Wire Products and Rs. 89392/- on FDRs as accounted for in the P&L A/c. The total receipt of interest was Rs. 988,899/ whereas payment of interest to bank is Rs. 242,242/- and to private parties of Rs. 5,16,959/- totaling to Rs. 7,59,201/-. Thus the receipts exceed the payment. There is no case for any disallowance of interest. Both the Learned Assessing Officer as well as the Learned CIT(A) erred in making addition on account of interest just because of non-appreciation of the facts in totality. The addition deserves to be deleted.

10. We have heard the rival contentions and perused the material available on record. The assessee has submitted that the amount withdrawn from his proprietorship M/s Gupta Enterprises has been invested in the partnership firm M/s Radha Rani Wire Products and on such investment, he has earned interest amounting to Rs 899,507 which has been duly offered and disclosed in the return of income. In view of the same, there is no basis for making notional interest addition in the hands of the assessee. The ground of appeal is thus allowed.

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

Order pronounced in the open Court on 21/08/2018.

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

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य/Accountant Member

Jaipur

Dated:- 21/08/2018

*Ganesh Kr

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

1. अपीलार्थी / The Appellant- Shri Ramesh Kumar Gupta, Jaipur
2. प्रत्यर्थी / The Respondent- DCIT, Circle-4, Jaipur
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. 644/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar.