

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, "ए" चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'A', CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं डा. बी.आर.आर, कुमार, लेखा सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 7/CHD/2017

निर्धारण वर्ष / Assessment Year : 2013-14

The ACIT, Circle, Sangrur	बनाम	M/s Ganpati Foods, Bye Pass Road, Patran
स्थायी लेखा सं./PAN NO: AAHFG6152G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA No. 1405/CHD/2016

निर्धारण वर्ष / Assessment Year : 2013-14

M/s Ganpati Foods, Bye Pass Road, Patran	बनाम	The ACIT, Circle, Sangrur
स्थायी लेखा सं./PAN NO: AAHFG6152G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Smt.Chandrakanta, Sr.DR

राजस्व की ओर से/ Revenue by : Sh. Deepak Aggarwal, Advocate

सुनवाई की तारीख/Date of Hearing : 13.12.2018

उदघोषणा की तारीख/Date of Pronouncement : 13.12.2018

आदेश/Order

Per Sanjay Garg, Judicial Member:

The captioned are the cross appeals, one by the assessee and other by the Revenue against the order dated 26.10.2016 of the Commissioner of Income Tax (Appeals), Patiala [hereinafter referred to as 'CIT(A)'].

2. There is one common ground in both the appeals relating to estimation of Gross profit (GP) for the purpose of taxation from the business activity of the assessee. The Assessing officer rejected the books

of account of the assessee for the year under consideration observing that there was a variation in electric consumption viz a viz production of the assessee. There were some instances noticed by the Assessing officer of valuing the closing stock at a higher rate and further the Assessing officer also found discrepancy in relation to certain expenditure incurred by the assessee on purchase of certain items. Since the assessee could not furnish the reliable evidences and convincing explanation in this respect, he therefore, estimated the of GP rate of the assessee @ 16.62% of the turn over on the basis of GP rate as declared by the assessee in the subsequent assessment year.

3. Before the Ld. CIT(A), the assessee submitted that the GP ratio differs from year to year. The assessee gave explanation also regarding variation in the electricity consumption, valuation of the closing stock etc. The CIT(A) after considering the submissions of the assessee and also considering the past GP rate declared by the assessee estimated the GP at 12%. Now, both the assessee and Revenue have come up in appeal agitating the above findings of the CIT(A).

4. The plea of the Department is that the Ld. CIT(A) should not have disturbed / reduced the GP rate estimated by the Assessing officer at 16.62 % of the total turn over, whereas, the plea of the counsel for the assessee is that considering the submissions of the assessee, the Ld. CIT(A) should have estimated the GP at a much lower rate.

5. We have considered the rival submissions and have also gone through the record. We have gone through the GP rates of the assessee in the past

and subsequent years. In the immediately subsequent assessment year, GP rate shown by the assessee was at 14.23%, whereas, in the immediately preceding year, the GP rate was at Rs. 8.96%. During the year the assessee declared GP rate a 11.65% which was rejected by the Assessing officer. Considering the variation in the GP rate and the explanation of the assessee that production in a month cannot be entirely attributable to the consumption of the electricity but there are various other facts involved which have effect on the production and further that the assessee is not only engaged in the rice production milling of its own but also is involved in rice milling for the government agencies for which the electricity is also consumed and that all the rice production cannot be considered production of the assessee, but the assessee was only earning commission income there upon and further considering the overall facts and circumstances, we are of the view, that the interest of justice will be served if the GP rate for the year under consideration is directed to be taken at 12.50%. We order accordingly,

6. Apart from the above issue, the assessee has taken / agitated the confirmation on addition of Rs. 2,04,000/- on account of non-charging of interest from un-related parties. The Ld. Counsel for the assessee has demonstrated before us that the aforesaid meager amount of Rs. 2.04 lacs was advanced by the assessee out of his own funds and no interest bearing funds were used for the aforesaid advances. Hence, there was no justification for computing the notional interest by the Assessing officer. The Ld. DR has also not disputed that the assessee was possessed of own sufficient own funds to make the aforesaid advances. In view of this, we do not find any justification on the part of the lower authorities in making

the aforesaid disallowance of Rs. 2.04 lacs on account of disallowance of interest out of expenditure. This ground of the appeal of the assessee is hereby allowed. No other ground is pressed or argued.

7. In the result, both the appeals of the Revenue and assessee are treated as partly allowed.

Order dictated and pronounced in the Open Court immediately on completion of hearing on 13.12.2018.

Sd/-
(बी.आर.आर. कुमार / B.R.R. KUMAR)
लेखा सदस्य/ Accountant Member

Sd/-
(संजय गर्ग / SANJAY GARG)
न्यायिक सदस्य /Judicial Member

Dated : 13. 12.2018
“आर.के.”

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar