

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE HON'BLE V. DURGA RAO, JUDICIAL MEMBER
AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER

ITA No.690/Ind/2018

Assessment Year: 2015-16

Kalpna Jhawar Prop. M/s. Jhawar Kota Saree Emporium, 61-62, Bharat Marg, Naliya Bakhal, Indore	Vs	DCIT 2(1), Indore
(Appellant)		(Respondent)
PAN No.AEDPJ9297B		

Assessee by	Shri Rajesh Mehta CA
Revenue by	Shri K.G. Goyal, Sr. DR
Date of Hearing	27.02.2019
Date of Pronouncement	28.02.2019

ORDER

PER MANISH BORAD, AM:

This appeal by Assessee pertaining to A.Y. 2015-16 is directed against the order of Ld. Commissioner of Income Tax(Appeals)-I Indore, (in short 'CIT(A)'), dated 30.07.2018 which is arising out of the order u/s 143(3) of the Income Tax Act 1961(hereinafter called

as the 'Act') framed on 21.12.2017 by DCIT-2(1), Indore. The assessee has raised following grounds of appeal:

“1. Addition on Rs.50,93,610/- on account of N.P. rate applied to the turnover & income surrendered during the survey is wrong:- That the Ld. Assessing officer erred in making addition of Rs.86,03,097/- and Hon'ble CIT(A) erred in confirming the addition of Rs.50,93,610/- on account of N.P. rate applied to the turnover & income surrendered during the survey to the income by rejecting books of accounts u/s 45 of the act without any basis and without looking at the law and facts of the case & without affording an opportunity of hearing. Addition of Rs.50,93,610/- to the income is illegal, wrong & unlawful. Hence needs to be deleted.

That the assessment order is arbitrary, illegal, wrong, unlawful, bad in law and on the facts of the case & therefore additions of Rs.86,03,097/- needs to be deleted. ”

2. Brief facts as culled out from the records are that the assessee is an individual running sole proprietorship concern in the name of M/s Jhawar Kota Saree Emporium engaged in the wholesale business of garments. Survey u/s 133A of the Act was carried out at the business premises of the assessee on 08.12.2014.

Unaccounted income of Rs.1,50,14,992/- was surrendered on account of the following:

i. Excess Cash	Rs.8,14,960/-
ii. Loans and advances against hundies	Rs.44,00,000/-
ii. Excess stock	<u>Rs.98,00,032/-</u>
Total	<u>Rs.1,50,14,992/-</u>

Subsequently, assessee filed return of income on 05.10.2015 declaring income of Rs.86,15,730/- *interalia* including the unaccounted income surrendered during the course of survey. Notices u/s 143(2) & 142(1) of the Act were served upon the assessee. During the assessment proceedings Ld. Assessing Officer (AO) observed that in the immediately preceding assessment year net profit rate of 2.64% was declared whereas in the year under assessment loss of Rs.56,02,618/- has been shown. As the gross profit rate was better during the year under assessment. Ld. AO examined the profit and loss account and observed that various indirect expenditure have increased abnormally. The assessee also failed to produce necessary documents in support of the some expenses including salary expenses which were claimed at Rs.52,79,217/-. The Ld. AO was also not satisfied with the

commission expenses. On finding such abnormalities, Ld. AO opted to reject books of account u/s 145 of the Act and applied the net profit rate of the preceding year i.e. 2.64% on the turnover disclosed by the assessee thereby making addition of Rs.86,03,097/-.

3. Aggrieved assessee preferred an appeal before Ld.CIT(A) and partly succeeded, as Ld. CIT(A) deleted the addition of Rs.35,09,487/- by deleting the disallowance of commission expenses of Rs.23,09,487/- and also deleting disallowance of godown rent of Rs.12,00,000/-.

4. Now the assessee is in appeal before the Tribunal challenging the addition confirmed by the ld. CIT(A).

5. We have heard the rival contentions and perused the record placed before us. From bare perusal of assessment order, we find that Ld. AO has rejected book results and applied the net profit rate of 2.64% on the turnover disclosed by the assessee. The Ld. AO has nowhere disallowed the expenses claimed by the assessee. Ld. AO has only raised objections on the genuineness of the expenditure thereby coming to a conclusion that books of accounts are liable to

be rejected and accordingly made the addition of Rs.83,03,097/- by applying net profit rate of 2.64%.

6. Assessee preferred an appeal before the ld. CIT(A), however, the ld. CIT(A) has granted the relief by discussing about the nature of expenses, commission and godown rent and has deleted the disallowance of commission and godown rent.

7. We are surprised to observe that when the assessing officer has not disallowed the expenditure but has made addition applying net profit rate post rejecting books of account then how come the Ld. CIT(A) has deleted the disallowance of commission and godown rent expenses. There seems to be a serious defect in the finding of ld. CIT(A) from the face of appellate order itself.

8. In these given facts and circumstances it will be justified that the issues raised in this appeal before us needs to be set aside to the file of Ld. CIT(A) for afresh adjudication and ld. CIT(A) should re-adjudicate the issues raised by the assessee against the addition made by the Ld. AO and decide accordingly by way of a speaking order. Needless to mention that proper opportunity of being heard should be provided to the assessee.

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

The order pronounced in the open Court on 28.02.2019.

Sd/-

Sd/-

(V. DURGA RAO)
JUDICIAL MEMBER

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 28.02.2019

Patel/PS

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore