

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

श्री संजय गर्ग, न्यायिक सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA Nos. 1202 & 1203/CHD/2017

निर्धारण वर्ष / Assessment Years : 2001-02 & 2002-03

Sh. Ved Parkash S/o Sh. Dewan Chand, 788-I, BRS Nagar, Ludhiana	बनाम	The DCIT, Central Circle-II, Ludhiana
स्थायी लेखा सं./PAN No: AIAPP7775R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Deepak Aggarwal, Advocate
राजस्व की ओर से/ Revenue by : Smt. Mona Mohanty, CIT DR

सुनवाई की तारीख/Date of Hearing : 20.02.2019
उद्घोषणा की तारीख/Date of Pronouncement : 20.02.2019

आदेश/Order

Per Sanjay Garg, Judicial Member:

The present appeals have been preferred by the assessee against the separate orders of the Commissioner of Income Tax (Appeals)-5, Ludhiana [hereinafter referred to as CIT(A)] dated 08.05.2017.

2. First, we shall take assessee's appeal for assessment year 2001-02 (ITA No. 1202/Chd/2017), wherein, following grounds have been raised:-

1. That the Ld. CIT(A) has erred in confirming the action of the Ld. A.O. in making an addition of Rs.51,497/- towards Gross Profit on trading items @ 3.5%, on the ground that the assessee failed to produce the supporting vouchers, whereas as per the assessee the Gross Profit rate applied is exorbitantly high without taking into consideration any comparable case, past or future history of the assessee himself therefore, it is prayed that the addition may kindly be deleted.

- 2. That the Ld. CIT(A) has erred in not adjudicating the ground arrayed as ground no. 5(ii) in the grounds of appeal that the Ld. A.O. was not justified in not providing the credit amounting to Rs.785200/- received on sale of opening stock of wheat as on 01.04.2000, wherein the document recording the said transaction is forming part of seized record, it is therefore prayed that decision may kindly be taken in accordance with law.*
 - 3. That the assessee prays for any consequential relief and/or legal claim arising out of this appeal before the disposal of the same.*
 - 4. That the assessee prays for any addition, deletion, amendment and modification in the grounds of appeal before the disposal of the same in the interest of substantial justice to the assessee.*
3. The assessee in this appeal has taken four grounds of appeal. However, **Ground Nos. 3 & 4** are general in nature and do not require any specific adjudication, hence, dismissed.
4. At the outset, Ld. Counsel for the assessee has stated at Bar that as per instructions of his client he does not press **ground No. 2**, hence, this ground is dismissed as 'not pressed'.
5. So far as the **ground No.1** is concerned, the issue raised by the assessee in this ground is regarding estimation of gross profit (GP). It has been stated that in the original assessment proceedings carried out u/s 143(3) of the Income-tax Act, 1961 (in short 'the Act'), the Assessing officer estimated the GP @ 2% of the turnover as trading items. Thereafter, the Commissioner of Income Tax exercising his revision jurisdiction u/s 263 of the Act set aside the order of the Assessing officer for making a fresh assessment on merits, inter alia on the issue of estimation of GP.
6. The Ld. Counsel for the assessee has stated that in the set aside proceedings, in compliance of the section 263 order of the Commissioner

of Income Tax, the Ld. Assessing officer has estimated the GP rate @ 3.5% of the turn over as against 2% estimated in the original assessment proceedings. The Ld. Counsel has further submitted that no new material or evidence had come to the knowledge of the Assessing officer prompting him to enhance the GP rate.

7. The Ld. DR, on the other hand, has invited our attention to the impugned order of the Assessing officer and has submitted that the Assessing officer has compared the GP rate with the sister concern of the assessee namely 'Sharma Enterprises', wherein, a much higher GP rate has been returned by the assessee. Further, the Assessing officer has observed the even u/s 44AF of the Act, it is assumed that in the retail business there is normally 5% Net Profit ratio of the turnover. She, therefore, has submitted that the Ld. assessing officer has rightly estimated the GP rate @ 3.5% in this case.

8. In rebuttal, the Ld. Counsel for the assessee has submitted that M/s Sharma Enterprises was in the whole sale business, whereas, the assessee was in the retail trading and that the GP rate of assessee cannot be compared with that of Sharma Enterprises.

9. We have considered the rival submissions. Taking into consideration the fact and circumstances of the case, since it is pure case of estimation of GP, and there is marginal difference of the rate which has been applied by the Revenue as against which has been contended by the assessee and since the Ld. Counsel for the assessee has fairly agreed in the Court that his client will be satisfied, if GP rate is applied at 3%, in our view, that is a fair enough after on the part of the assessee and even the Ld. DR has not

objected to the same. We, accordingly direct that the GP rate for the year under consideration be estimated at 3% of the turn over on trading items. It is made clear that our above findings or any admission of the Ld. representatives of the parties for agreeing to the gross profit rate for the year under consideration will not be taken as precedent or otherwise binding for other assessment years.

With the above observations, this appeal of the assessee is treated as partly allowed.

ITA No. 1203/Chd/2017 (A.Y. 2002-03)

10. Now coming to the assessee appeal for the assessment year 2002-03 (ITA No. 1203/Chd/2017), wherein, the assessee has raised the following grounds:-

11. The assessee has taken five grounds of appeal:-

1. *That the Ld. CIT(A) has erred in confirming the action of the Ld. A.O, in making an addition of Rs. 3,50,000/- towards capital introduction in Sharma Enterprises, found recorded in regular books of accounts, on the ground that the assessee failed to give plausible explanation, whereas as per the assessee the capital contribution is backed by sale of wheat stock during the financial year 2000-01 which forms part of seized material i.e. document A-13/1-81 therefore, it is prayed that the addition may kindly be deleted.*
2. *That the Ld. CIT(A) has erred in confirming the action of the Ld. A.O. in making an addition of Rs. 3,32,418/- towards Gross Profit on trading items @ 3.5%, on the ground that the assessee failed to produce the supporting vouchers, whereas as per the assessee the Gross Profit rate applied is exorbitantly high without taking into consideration any comparable case, past or future history of the assessee therefore, it is prayed that the addition may kindly be deleted.*
3. *That the Ld. CIT(A) has erred in not adjudicating the ground arrayed as ground no. 5(ii) in the grounds of appeal that the Ld. A.O. was not justified in not providing the credit amounting to Rs. 785200/- received on sale of opening stock of wheat as on 01.04.2000, wherein the document recording the said transaction is forming part of seized*

record, it is therefore prayed that decision may kindly be taken in accordance with law.

- 4. That the assessee prays for any consequential relief and / or legal claim arising out of this appeal before the disposal of the same.*
- 5. That the assessee prays for any addition, deletion, amendment and modification in the grounds of appeal before the disposal of the same in the interest of substantial justice to the assessee.*

12. **Ground Nos. 4 & 5** are general and nature and do not require any specific adjudication, hence, dismissed.

13. **Vide ground No. 3**, the Ld. Counsel for the assessee has stated at Bar that as per the instructions of the client, he does not press ground. Ground No.3, is therefore, dismissed as 'not pressed'.

14. Now, we left with only two grounds of appeal. The assessee vide **Ground No.1** of the appeal has agitated the addition of Rs. 3.5 lacs towards capital introduction in 'Sharma Enterprises', the sister concern of the assessee. The lower authorities have made the impugned addition on the ground that assessee could not divulge the source of the aforesaid capital introduction. The Ld. Counsel for the assessee has submitted that during the search action it was found that he assessee had sold wheat during previous year on account of which the assessee had received sale consideration comprised of investment and profits thereupon. That out of the aforesaid amount received by the assessee, the amount of Rs. 3.5 lacs was introduced as capital in Sharma Enterprises.

In view of the above submissions, we restore this matter to the file of the Assessing officer to verify the aforesaid contention of the assessee and if it is found that the assessee had the source of the amount out of the

sale of wheat, as has been contended, then to give relief to the assessee in accordance with law.

15. So far as **Ground No.2** is concerned, the issue herein raised is in respect to estimation of GP. The facts and circumstances are identical to that for the assessment year 2001-02 and both the parties have agreed that since it is pure case of estimation of income, estimation of GP @ 3% will be justified, which is acceptable to both the parties.

16. In view of this, GP for the year under consideration on the trading items is directed to be estimated at the rate of 3% of the turnover. Our findings given will not have any bearing or otherwise binding effect in estimation and even otherwise determining of the profits of the assessee for any other assessment year.

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

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

Sd/-
(अन्नपूर्णा गुप्ता / ANNAPURNA GUPTA)
लेखा सदस्य/ Accountant Member

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

Dated : 20.02.2019

“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