

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHE 'B' JAIPUR

श्री विजय पाल 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. 544/JP/2018
निर्धारण वर्ष/Assessment Year :2013-14

M/s Goodwill Impex Limited, G-1/95-96, Sitapura Industrial Area, Sanganer, Jaipur	बनाम Vs.	The Deputy Commissioner of Income Tax Circle-07, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACG5831A		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से/ Assessee by : Shri Rajeev Gupta (CA)
राजस्व की ओर से/ Revenue by : Shri Ran Singh (Addl.CIT)

सुनवाई की तारीख/ Date of Hearing : 17/01/2019
उदघोषणा की तारीख/Date of Pronouncement: 18/03/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-3, Jaipur dated 09.02.2018 wherein the assessee has taken the following grounds of appeal:-

- "1. That the learned Commissioner of Income Tax (Appeals) has erred in law and in facts in confirming rejection of books of account of appellant and making trading addition of Rs. 2,00,000/-.*
- 2. That the learned Commissioner of Income Tax (Appeals) has erred in law and in facts confirming disallowance to the extent of 10% of telephone expenses, Conveyance expenses, Car maintenance expenses totaling Rs. 65,448/-.*

3. That the learned Commissioner of Income Tax (Appeals) has erred in law and in facts confirming disallowance to the extent of Rs 99608, being 10% of total expenses on labour, staff welfare and office expenses."

2. Regarding Ground No. 1, briefly stated, the facts of the case are that the assessee is engaged in the business of manufacture and export of garments. During the course of assessment proceedings, the Assessing Officer noted that the assessee has reported a gross profit rate of 16.38% on turnover of Rs. 22,87,79,964/- and examined its books of accounts. In view of non-maintenance of stock register and quantity wise details of opening and closing stock and work in progress, the fact that design charges and wages were claimed on self-made vouchers and some of payments to transporters having been made in cash, the books of accounts were rejected by invoking of provisions of section 145(3) of the Act. Regarding the estimation of gross profit rate, the Assessing Officer stated that even though the assessee has declared better GP rate in comparison to the previous years but looking at the discrepancies in the books of accounts, it will be fair and reasonable to make a lump sum addition of Rs. 2,00,000/- on this account to prevent any possible leakage of revenue. On appeal, the Id. CIT(A) confirmed the rejection of books of accounts as well as the trading addition of Rs. 2,00,000/-. Now the assessee is in appeal before us against the said findings of the Id CIT(A).

3. During the course of hearing, the Id AR submitted that there is an overall increase in turnover and gross profit rate declared by the assessee as compared to earlier years as detailed below:

A.Y	Gross Turnover/Receipts	Gross Profit	G.P. rate
2013-14	22,87,79,964/-	3,74,89,232/-	16.38%
2012-13	21,94,42,178/-	3,10,21,762/-	14.14%

2011-12	18,23,14,671/-	2,19,60,696/-	12.05%
2010-11	10,81,70,678/-	12,95,33,64/-	11.97%

It was further submitted that the books have been prepared on mercantile system of accounting, all accounting standards are followed and the inventory has been valued as per consisting accounting policy followed by the assessee. It was submitted that no specific defects has been pointed out by the Assessing Officer in maintenance of books of account and all allegations are vague and not based on any specific finding. The assessee maintains sector wise stock inventory and keeps day to day record thereof. The company has bio-metric attendance machine and a monthly attendance register is drawn therefrom. The wage payments are made through attendance sheet & payroll. The wage payments are made either through department head or through labour contractor. Further it was submitted that total cash payment for carriage & cartage is Rs. 1,48,628/- against total expenses of Rs. 9,62,847/- and even for cash payment, the appellant has maintained proper vouchers containing details of expenses and signature of recipient. It was further submitted that non-maintenance of stock register cannot be a solitary reason for rejection of books of account. It was accordingly submitted that there is basis for rejection of books of accounts and trading addition of Rs 2 lacs and the addition so made may be directed to be deleted.

4. The Id. DR is heard who has relied on the finding of the lower authorities which we have already noted above and not been repeated for the sake of brevity.

5. We have heard the rival contentions and perused the material available on record. The Assessing officer has rejected the books of accounts by invoking the provisions of section 145(3) and the same has been sustained by the Id CIT(A). Once the books of accounts are rejected, only course of action left

with the Assessing officer is to assess the income of the assessee on the basis of best judgement. Where the assessee has a settled past history, in such cases, accepted G.P rate for the past years in assessee's own case has been held by the Rajasthan High Court as proper and reasonable basis for estimation of G.P rate for the current year. In the instant case, the AO has made an adhoc trading addition of Rs 2 lacs and in the process, has estimated the G.P rate of 16.47% on the declared turnover of the assessee and which has been upheld by the Id CIT(A). There is no basis which has been specified by the AO while making the addition of Rs 2 lacs and we also find that the assessee's own past history has also not being taken into consideration. Once the books of accounts have been rejected due to non-maintenance of stock register, qualitative records, etc and provisions of section 145(3) have been invoked, the authorities cannot resort to make addition on an adhoc basis to prevent leakage of revenue as so stated by the AO. Only course left with the authorities is to estimate the gross profit rate based on best judgement and the past results of the assessee provides a reasonable basis for such estimation. For the year under consideration, the assessee has declared G.P rate of 16.38% as against 14.14 % in AY 2012-13, 12.05% in AY 2011-12 and 11.97% in AY 2010-11 and has thus declared a better G.P rate for the year under consideration as compared to average G.P rate for the past three years. Even where the books of accounts are rejected, there is thus no basis for making the addition in the hands of the assessee company. It is a settled legal proposition that mere rejection of books of accounts are not sufficient to hold that the trading additions have to be necessarily made in the hands of the assessee company. Where the assessee company has declared a better trading results as compared to previous years, such results provide a reasonable basis to hold that there should not be any addition in the hands of the assessee company. In light of above discussions and in the entirety of facts and circumstances of the cases, the trading addition so made by the AO and so confirmed by the Id

CIT(A) are hereby directed to be deleted and the trading results so declared by the assessee are directed to be accepted. The issue regarding rejection of books of accounts so raised by the assessee thus becomes academic and we do not deem it appropriate to adjudicate the same on merits.

6. In Ground No. 2, the assessee has challenged the sustenance of 10% of telephone, conveyance & car maintenance expenses amounting to Rs. 65,448/-. As per Assessing Officer, the expenses in the profit & loss account are related to such facilities which are certainly proved to be used for other than business purposes. The Id. CIT(A) confirmed the addition so made (except the addition on account of depreciation) holding that the assessee has failed to file any evidence which established that the observation made by the Assessing Officer are not correct. In our view, these are purely adhoc addition made by the Assessing Officer which cannot be sustained in eyes of law. It is not the case of the Revenue that these are bogus expenditure or the expenditure has not been incurred for the purposes of business. A mere suspicion that given the nature of expenses, it is likely that incurrence of such expenditure is for non-business purposes, in our view, cannot be a basis for making the addition in the hands of the assessee. Accordingly, the adhoc addition so made is hereby directed to be deleted.

7. In Ground No. 3, the assessee has challenged the sustenance of disallowance of 10% of the labour and staff welfare expenses amounting to Rs. 99,608/-. As per Assessing Officer, the assessee has debited labour and staff welfare expense to the tune of Rs. 9,11,545/- and office expenses of Rs. 84,542/- totaling to Rs. 99,60,87/- and these expenses are not fully supported by the proper bills/evidences and payments in some cases were made in cash on self made vouchers due to which these expenses could not be verified completely and 10% of such expenses were disallowed which was sustained by

the Id CIT(A). In our view, the addition is again adhoc in nature and the same cannot be sustained in the eyes of law and is hereby directed to be deleted.

In the result, appeal of the assessee is allowed.

Pronounced in the Open Court on 18/03/2019.

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

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

जयपुर / Jaipur

दिनांक / Dated:- 18/03/2019

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- M/s Goodwill Impex Ltd., Jaipur
2. प्रत्यर्थी / The Respondent- The DCIT, Circle-07, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 544/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

