

**IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH KOLKATA**

**BEFORE SHRI A.T.VARKEY, JM &DR. A.L.SAINI, AM**

**आयकरअपीलसं./ITA No.956/Kol/2017**

**(निर्धारणवर्ष / Assessment Year:2011-12)**

<b>Royal Seeds &amp; Fertilizers Pvt. Ltd.</b>  181/35, Dakshin Dhari Road, 1 <sup>st</sup> Floor, Kolkata-700048.	<b>Vs.</b>	<b>ITO, Ward-10(1), Kolkata</b>
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AACCR 1808 C</b>		
<b>(Assessee)</b>	<b>..</b>	<b>(Revenue)</b>

Assessee by : Shri Subash Agarwal, Advocate

Respondent by : Shri Robin Choudhury, Addl. CIT Sr. DR

**सुनवाईकीतारीख/ Date of Hearing : 31/12/2018**

**घोषणाकीतारीख/Date of Pronouncement : 29/03/2019**

**आदेश / ORDER**

**Per Dr. A. L. Saini:**

The captioned appeal filed by the Assessee, pertaining to assessment year 2011-12, is directed against an order passed by the learned Commissioner of Income Tax (Appeals)-15, Kolkata (in short the ld. 'CIT(A)'], which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 ( in short the 'Act'), dated 17.02.2014.

2. The grievance raised by the assessee are as follows:

*i. For that on the facts and in the circumstances of the case, ld. CIT(A) ought to have allowed the administrative expenses claimed by the assessee amounting to Rs. 31,84,849/-.*

*ii. For that on the facts and in the circumstances of the case, ld. CIT(A) was not justified in rejecting the book results and estimating net profit @ 5% of sales amounting to Rs. 1,27,29,801/-.*

*iii. For that the enhancement of income made by the ld. CIT(A) is liable to be quashed in the absence of any show-cause notice before making enhancement of income.*

*iv. That the appellant craves leave to add, alter or delete all or any of the grounds of appeal.*

3. Ground no. 1 raised by the assessee relates to disallowance of administrative expenses of Rs. 31,84,849/- and ground no. 2 raised by the assessee is in respect of rejection of books of accounts and estimating net profit @ 5% of sales of Rs. 25,45,96,029/-, which came to the tune of Rs. 1,27,29,801/- (that is, 5% of Rs. 25,45,96,029). Since these two grounds are common and interlinked therefore, we adjudicate them together.

4. Brief facts qua the issue are that the assessee filed its return of income showing total income of Rs. 6,20,570/-. During the previous year, the assessee had earned interest on fixed deposits of Rs. 63,73,967/- and interest paid on loans at Rs. 31,27,341/-. Thus, there was net interest income of Rs. 32,46,626/- (that is, Rs. 63,73,967- Rs. 31,27,341). The assessee has claimed to be a dealer in agricultural seeds and has also indulged in fertilizer trading on a small scale basis. The assessee has made fertilizer sales of Rs. 54,23,161/-, against purchases of Rs. 49,14,255/-. In respect of seeds and agro products, assessee has shown sales of Rs. 24,91,72,868/- against the purchases of Rs. 24,91,54,837/-. The assessee has incurred administrative expenses of Rs. 31,84,849/-. Thus, assessing officer noted

that assessee has incurred losses in trading of seeds and fertilizers which has impacted the net interest income.

Therefore, to examine the genuineness of assessee's trading business, the A.O. had issued notices u/s 133(6) to many parties. Out of these parties, following eleven(11) parties did not respond to assessing officer:

- i) Orisa Consumers
- ii) Gouri Sheeds
- iii) Sansar Agro Poly Pvt. Ltd.
- iv) Goluneha Fiscal Services
- v) Tirupati Realtors
- vi) Loukik Sheeds Corporation
- vii) Rajdhani Trading Corporation
- viii) Linkmann Commotrade
- ix) Labh In trade Pvt. Ltd.
- x) Intellectual Securities Pvt. Ltd.
- xi) Gangadhar Agarwalla

The assessing officer also deputed the Inspector to make field inquiries. It was reported by the Inspector that assessee maintains a small office with very few staff. Under the circumstances, the assessing officer concluded that assessee was not conducting any genuine business but had created the façade of business to reduce its income from interest on fixed deposits(FDs). Hence, assessing officer has disallowed administrative expenses of Rs.31,84,849/-.

5. Aggrieved by the addition made by the assessing officer, the assessee carried the matter in appeal before the Id CIT(A) but without any success. The Ld. CIT(A) has enhanced the assessment by rejecting the books of accounts of the assessee and estimated the profit @5% on sales of Rs.24,91,72,868/- which came to Rs.1,27,29,801/-. The Id CIT(A) also held that interest on FDs should be assessable as 'Income from Other Sources'.

6. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

7. We have heard both the parties and perused the material available on record. Before us, the Id. Counsel for the assessee, Mr. Subhash Agarwal, begins by pointing out that assessee had purchased the goods worth Rs.25,40,49,157/- during the previous year (Pb-28). The assessee sold the goods during the previous year to the tune of Rs. 25,45,96,029/- (PB-41). The Id. Counsel pointed out that out of total sales of Rs. 25,45,96,029/-, the assessee sold the goods to the government organization to the tune of Rs. 25,07,16,983/- which comes at 98% of the total sales. We note that 98% sales were made to government organizations, therefore, sales of the assessee should not be doubted. Since the assessee sold 98% of the goods to the government departments and the government departments acknowledged the goods sold by the assessee, therefore the purchases which were made by the assessee to sale the goods should also not be doubted. Out of total goods sold by assessee, only 2% of goods was sold to the private sector which comes to the tune of Rs. 38,79,046/- only. Therefore, by and large, the assessee's purchases and sales are genuine and books of accounts of the assessee are audited and the Ld. CIT(A) failed to point out any specific defects in the audited books of accounts of the assessee. Therefore, the rejection of books of accounts by the Ld. CIT(A) is not acceptable.

8. We note that in assessee's case under consideration the assessment was carried out under section 143(3) of the Act (not U/s 144 of the Act) and Id CIT(A) has not found out any specific defects in the audited books of accounts of the assessee. Therefore, Id CIT(A) should not have ventured into estimation of profits. While scrutinizing the purchases, if the purchases claimed are not having any nexus to the sales invoices of the assessee or if there is deficiency in the purchase bills or there is no purchase bills supporting the incurrance of an purchase expenditure, at the most purchase expenses to the extent that are not supported by the purchase bills, can be held to be non-genuine and therefore entire purchases and sales should not be disallowed by Ld CIT(A). Therefore, Ld CIT(A) could have disallowed, item-wise, purchase bills and sales invoices rather than going for estimation of profits on sales. As the assessee's books of accounts are audited by a

chartered accountant and Id CIT(A) has failed to point out any specific defects in the books of accounts of the assessee therefore, estimation of profit @5% is arbitrary in nature and cannot be sustained. Therefore, the assessment enhanced by the Id CIT(A) by rejecting books of account of the assessee, is not acceptable.

9. On the other hand, Shri Robin Choudhury, Addl. CIT Sr. DR for the Revenue submitted before us that the assessee is having very small office and a little infrastructure, therefore, the assessee cannot achieve big volume of sales to the tune of Rs. 25,45,96,029/-. The Ld DR further pointed out that the assessing officer disallowed the administrative expenses to the tune of Rs.31,84,849/- on the reason that the assessee's business set up is very small and having small office and thin staff to do huge transaction at mass level, which is not possible and therefore, AO has rightly disallowed the administrative expenses.

10. In a rejoinder, the Id Counsel submitted before the Bench that the assessee's most of the goods are sold to the Government Department and acknowledged by the Government Department therefore, administrative expenses disallowed by the Assessing Officer is not justified. Apart from this, neither the Assessing Officer nor the Ld. CIT(A) find any mistake in the books of accounts of the assessee therefore, rejection of books of accounts without bringing any evidence on record and without pointing out the specific defects in books of accounts, as per section 145(3), is void in law and not acceptable.

11. We note that the Ld. CIT(A) observed as follows:

*“Assessing Officer has held that assessee has not carried on any business. This gets support from the fact that assessee does not have proper office space and staff. Its fixed assets (gross block) is only of Rs. 6,62,019/- and would consist of 1 table, few chairs, 1 fax, 1 xerox machine, 1 computer and 1 air conditioner. Hence Assessing Officer is justified in mentioning that assessee does not have the infrastructure to carry on business activities on such a large scale spread over a vast geographical area. But assessee claims that 98% of its sale receipts are from government agencies. Hence, assessee is definitely involved in business activities of seed trading.”*

From the above observation of the Id CIT(A), we note that assessee is definitely involved in business activities of seed trading as affirmed by the Id CIT(A) in his order. Another observation of Id CIT(A) is given below:

*“ But it is not acceptable that assessee would incur losses in a business which otherwise very profitable. Hence in view of the discrepancies pointed out above and the fact that assessee is showing losses in a profitable business, its book results are rejected.”*

We note that Id CIT(A) has compared assessee's business with other business enterprises and came to the conclusion that since other business enterprises are earning profits therefore assessee should also earn profit. We note that Income Tax Department or Assessing Officer cannot compel the assessee company to earn profit or maximize profits. Earning of profit depends on many factors like geographical area in which business enterprise is situated, cheap labour cost, availability of material at low price, available of buyers, demand and supply position of the goods, and so many other factors. We note that Id CIT(A) has not examined these factors and rejected the books of accounts of the assessee based on the reason that assessee is showing losses in a profitable business, which is not acceptable.

12. We note that where the books of accounts are audited by Chartered Accountant, the book results cannot be rejected merely because the assessee was having small office and thin staff with a few infrastructure facility. We note that the most of the parties responded and confirmed the transactions with the assessee company. We note that the assessee sold 98% goods to the government department therefore genuineness of the sales cannot be doubted and if the sales are not doubted then the purchases made by the assessee against the sales, cannot be disallowed. It is a common knowledge that without purchases there cannot be sales. The other drawback noted by the Ld. CIT(A) in assessee's books of accounts, is that the sundry creditors of the assessee had not been paid since a long period and balances were outstanding for a long time period. We note that this is not a valid reason to reject the books of accounts by suspecting that sundry creditors were not paid since a long period. At the cost of repetition, we would like to mention here that in order to reject the books of accounts, the Ld. CIT(A) should have pointed out the specific defects in the books of accounts. As no specific defects was pointed out by the Ld. CIT(A) during the appellate proceedings and the books of accounts of the assessee are audited therefore order

of Ld. CIT(A) to reject the books of accounts is not acceptable and for that we rely on the following judgments:

i) *St. Teresa's Oil Mills vs. State of Kerala* 76 ITR 365 (Kerala)

ii) *Md. Umer vs. Commissioner of Income Tax [1975]* 101 ITR 525 (Pat)

Therefore, in the light of the discussions made (supra) and considering the totality of the facts and circumstances and the fact that neither the Assessing Officer nor the Ld. CIT(A) has noticed any specific defects in the books of accounts of the assessee therefore, rejection of books of accounts by the Ld. CIT(A) is not in accordance with law and hence we delete the addition on account of 5% estimation of income on sales.

13. We note that assessee has incurred administrative expenses for the purpose of business; to the tune of Rs. 31,84,849/- therefore, the expenses should be allowed. We note that in the case of *Newtone Studios Ltd.* (28 ITR 378), the Hon'ble Madras High Court has held as under:

*“..... In order that an expenditure may be one incurred wholly and exclusively for the purpose of earning, it is sufficient if it was incurred voluntarily and on the ground of commercial expediency and in order indirectly to facilitate the carrying on of the business.....”*

The Hon'ble Madhya Pradesh High Court in the case of *J.K. Agents P Ltd.* (142 ITR 126) has held that in deciding whether an expenditure is for the purposes of the business, the test applied is of commercial expediency and principles of ordinary commercial trading, that if the expenditure is incurred to facilitate the carrying on the business of the assessee and is supported by commercial expediency, it does not matter that the payment is voluntary or not necessary or that it also ensures to the benefit of a third party, that if the object is business promotion, the expenditure would still be wholly and exclusively for the purposes of the assessee's business even though some other object necessarily results, being inherent in the nature and quality of the expenditure.

We note that neither Id AO nor Id CIT(A) pointed out that assessee has inflated administration expenses. These expenses are related to the business of the

assessee. Therefore, we also delete the disallowance made by the Assessing Officer to the tune of Rs. 31,84,849/- on account of administration expenses.

14. In the result, the appeal filed by the assessee is allowed.

**Order pronounced in the Court on 29.03.2019**

Sd/-  
**(A.T.VARKEY)**  
न्यायिकसदस्य / JUDICIAL MEMBER

Sd/-  
**(A.L.SAINI)**  
लेखासदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 29/03/2019

(SB, Sr.PS)

Copy of the order forwarded to:

1. Royal Seeds &Fertilisers Pvt. Ltd.
2. ITO, Ward-10(1)), Kolkata
3. C.I.T(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

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By Order

Assistant Registrar  
ITAT, Kolkata Benches