

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.372/Ind/2017
Assessment Year: 2010-11**

DCIT-2(1) Indore (Appellant)	बनाम/ Vs.	M/s. Jajoo Surgicals Pvt. Ltd. 8, Mansarovar Park, Indore (Revenue)
P.A. No.AAACJ7196E		

Appellant by	Shri K.G. Goyal, Sr. D.R.
Respondent by	Shri K.C. Agrawal, C.A. & Shri Prakash Gupta, C.A.
Date of Hearing:	16.04.2019
Date of Pronouncement:	13.05.2019

आदेश / O R D E R

PER KUL BHARAT, J.M:

This appeal filed by the revenue against order of the CIT(A)-1, Indore dated 28.2.2017 pertaining to the assessment year 2010-11.

2. The facts in brief are that case of the assessee was selected for scrutiny assessment and the assessment u/s 143(3) of the Income Tax Act, 1961 (hereinafter called as 'the Act') was framed vide order dated 21.3.2013. While framing the assessment, the assessing officer observed that assessee is manufacturing and trading in absorbent cotton and gauge and also trading in medicines. Turnover during the year is Rs.7,04,16,818/-. It was further observed that sales during the year was Rs.7,04,16,818/- and profit before tax was declared at Rs.17,22,229/-. However, turnover in the immediate previous financial year was Rs.6,96,06,648/- and profit before tax was declared at Rs.18,13,435/-. The A.O. noticed that there was increase in salary expenses by 268% as compared to the last year. On the contrary, the turnover has increased marginally to 6.96%. The A.O. rejecting the explanation offered by the assessee estimated gross profit and made addition of

Rs.93,35,000/- . The A.O. also made addition out of salary expenses of Rs.9,74,000/- and out of travelling expenses of Rs.3 lakhs. Aggrieved by this, the assessee preferred an appeal before the Ld. CIT(A), who after considering the submissions partly allowed the appeal. Thereby, the Ld. CIT(A) deleted the addition made on account of estimation of profit of Rs.93,35,000/- and also the other additions from the salary was restricted to Rs.3 lakhs. Against this order of the Ld. CIT(A), revenue has preferred the present appeal.

3. Ground No.1 of the revenue's appeal reads as under:

"1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law by restricting the addition of Rs.9,74,000/- to Rs.3,00,000/- made by the A.O. on account of disallowance of salary expenses by ignoring the finding of the A.O."

4. Ld. D.R. vehemently argued that the Ld. CIT(A) was not justified in restricting the addition made by the A.O. to Rs.3 lakhs in respect of the disallowance of salary expenses. Ld. D.R. supported the order of the A.O. and

submitted that the assessee failed to demonstrate as what work was assigned to the newly employed employees.

5. On the contrary, Ld. Counsel for the assessee supported the order of the A.O. and submitted that all evidences were placed before the A.O. in support of the expenses incurred by the assessee. He submitted that Ld. CIT(A) has thoroughly examined this issued.

6. We have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. Ld. CIT(A) has decided this issue by giving finding on fact as under:

“5.1 As stated in the assessment order A.O. noticed that salary expenses had gone up by 268% as compared to last year while turn over showed only marginal increase from Rs.6.96 Crores to Rs.7.04 Crores. A.O. also took an adverse view on excessive salary paid to family members of director. From the material placed on record it is seen that salary has been paid to 7 persons out of which 4 persons are newly employed during the year. The 3 persons to whom salary was being paid last year also are Shri S.B. Jajoo in whose case salary has been increased by Rs.5,000/- per month. Shri S.B. Jajoo has more than 34 years of experience of running of industry and business. The increase in his salary is by Rs.5,000/- only and looking to his profile/experience such increase cannot be adversely viewed and no disallowance of salary paid to Shri S.B. Jajoo is warranted.

5.2 In the case of Smt. Santosh Jajoo the increase in salary is of Rs.10000/- per month. She has been with the company since 2007-08. No special qualification of Smt. Santosh Jajoo or her work experience to justify the

increase in her salary of Rs.10000/- as against that of Rs.5000/- in the case of Shri S.B. Jajoo and Shri Pankaj Jajoo has been placed on record. In view of the above and the fact that she is one of the family members of the director the increased payment of salary by Rs.5000/- per month is considered to be excessive and the disallowance of salary in her case to the above extent is confirmed which works out to Rs.60000/-.

5.3 *In the case of Shri Pankaj Jajoo it has been explained that comparison with last year is not justified as last year salary for two months was paid it was also pointed out that increase in salary is of Rs.5000/- per month only which looking to the qualification of Shri Pankaj Jajoo who as an engineer was looking after the production was justified. Considering the above the salary paid to Shri Pankaj Jajoo cannot be held as excessive or unreasonable hence no disallowance is called for.*

5.4 *Coming to the salary payment to newly employed personnel, it is seen that salary is paid to Shri V.S. Gaud at the rate of Rs.12000/- per month as Accounts Officer and to Shri Sanjay Dixit at the rate of Rs.10000/- per month as Accountant. As against this salary at the rate of Rs.25000/- per month has been paid to Smt. Richa Jajoo and Smt. Divya Jajoo employed as office in charge and factory supervisor. No special qualification/experience of Smt. Richa Jajoo and Smt. Divya Jajoo have been placed on record to justify the higher salary paid to them except stating that being family members they were responsible for overall administration etc. and were more trustworthy and dependable. It is seen that, even Smt. Santosh Jajoo was being paid salary of Rs.15000/- per month from A.Y. 2007-08 before her salary was increased in this year. Considering that both Smt. Richa Jajoo and Smt. Divya Jajoo do not have any other special qualification Rs.10000/- is considered to be excessive and hence the disallowance to the above extent is confirmed.*

5.5. *In view of the above discussion the disallowance of Rs.974000/- is restricted to Rs.300000/-. This ground of the appellant is therefore partly allowed.”*

7. The above finding on fact is not controverted by the revenue by placing any contrary material on record. Therefore, we affirm the decision taken by the Ld. CIT(A) on

the facts of the present case. The ground of the appeal by the revenue is thus dismissed.

8. Ground No.2 of the revenue's appeal reads as under:

"2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law by deleting the addition of Rs.3,00,000/- made by the A.O. on account of disallowance of travelling expenses by ignoring the finding of the A.O."

9. Ld. D.R. supported the order of the A.O. and submitted that the assessee failed to support that the expenditure was incurred for business purposes. He submitted that the A.O. has arrived at conclusion that the expenditure is personal in nature.

10. On the contrary, Ld. Counsel for the assessee submitted that the A.O. without giving any specific finding on this allowability of the expenditure, made addition.

11. We have heard the rival contentions, perused the materials available on record and gone through the orders of the authorities below. We find that the A.O. in para-5 of the assessment order has made addition merely on

estimate basis. The A.O. has not given any reasoning as to why the expenditure is being disallowed. Therefore, we do not see any infirmity into the order of the Ld. CIT(A) and the same is affirmed. Ground raised in this appeal is dismissed.

12. Ground No.3 of the revenue's appeal reads as under:

“3. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law by deleting the addition of Rs.93,35,000/- made by the A.O. on account of suppression of sales by ignoring the finding of the A.O.”

13. Ld. D.R. supported the order of the A.O. and submitted that the A.O. has thoroughly examined the facts and hence the addition is justified. He submitted that Ld. CIT(A) has wrongly deleted the addition.

14. On the contrary, Ld. Counsel for the assessee submitted that before the Ld. CIT(A), discrepancy was reconciled. He submitted that the turnover has increased to Rs.86.65 lakhs as against Rs.32.84 lakhs last year.

Therefore, the Ld. CIT(A) was justified in deleting the addition.

15. We have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. The Ld. CIT(A) has decided this issue in para 7.1 by giving finding on fact, which reads as under:

“7.1 From the assessment order it is seen that the addition is primarily based on the fact that the gross profit showed decrease of 127.34 percent as compared to last year in respect of trading goods. During the course of assessment proceedings as well as appellate proceedings appellant has pointed out that in respect of trading goods for A.Y. 2009-10 the turnover of Rs.3284698/- included turnover of Rs.1483939/- pertaining to manufactured goods which was wrongly booked as turnover of traded goods and hence the profit percentage was showing major variation. Appellant filed complete details of the traded goods for the year under consideration and also the comparative details for the previous year. From the above the contention of the appellant, which was also made by the appellant before the A.O. is found to be verifiable. Apart from that the appellant has also pointed out that for the year under consideration the trading goods were different from the trading goods in the preceding year and hence the gross profit percentages were not comparable. Appellant also filed complete details of the goods traded, both purchase and sale, in support of the claim of gross profit. From the submission it is seen that gross profit for the year is 10.60% as against 23.60% shown by the appellant in the preceding year. The turnover for the year has increased to Rs.86.65 Lacs as against Rs.32.84 lacs last year. In view of the above and the fact no defects have been pointed out in the books account and the books of accounts are duly audited the addition of Rs.93.35 lacs cannot be sustained in appeal. This ground of the appellant is therefore allowed.”

Rs.9335000/- deleted

16. From the above it is evident that the Ld. CIT(A) has noted the fact that during the course of assessment proceedings as well as appellate proceedings, appellant had pointed out that in respect of trading goods for the assessment year 2009-10, the turnover of Rs.32,84,698/- was included the turnover of Rs.14,83,939/- pertaining to the manufactured goods, which was wrongly booked as turnover of the traded goods and hence the profit percentage was showing major variation. Further, the Ld. CIT(A) has given a finding that the assessee has filed complete details of traded goods for the year under consideration and also the comparative details for the previous year. It is observed by the Ld. CIT(A) that the contention of the assessee was found to be verifiable. The revenue has not rebutted these observations by placing any other material on record. Therefore, we do not see any

infirmity in the findings of the Ld. CIT(A) and the same is hereby affirmed. Hence, this ground is dismissed.

17. In the result, the appeal filed by the revenue is dismissed.

Order was pronounced in the open court on 13.05.2019.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIALMEMBER

Indore; दिनांक Dated : 13/05/2019
VG/SPS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Assistant Registrar, Indore