

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "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. 479/JP/2018
निर्धारण वर्ष/Assessment Year : 2012-13

Shri Mukesh Yadav C-25, Vijay Vihar Colony, Naya Khera, Ambabari, Jaipur.	बनाम Vs.	The ITO, Ward-3(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AARPY 4343F		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by : Shri Rajeev Sogani (C.A.)
राजस्व की ओर से / Revenue by : Smt. Neena Jeph (JCIT)

सुनवाई की तारीख / Date of Hearing : 29/04/2019
उद्घोषणा की तारीख / Date of Pronouncement : 03/05/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), Jaipur dated 19.09.2016 for the Assessment Year 2012-13 wherein the assessee has taken the following grounds of appeal:-

"1. In the facts and circumstances of the case and in law, the Id. CIT(A) has erred in confirming the action of Id. AO in rejecting trading results of the assessee and making addition of Rs. 23,03,773/- on the basis of estimated gross profit by invoking the provisions of section 145(3) of the Income Tax Act, 1961. The action of the Id. CIT(A) is illegal, unjustified, arbitrary

and against the facts of the case. Relief may please be granted by deleting the said addition of Rs. 23,03,773/-.

2. In the facts and circumstances of the case and in law, the Id. CIT(A) has erred in confirming the action of the Id. AO, in making disallowance of salary and wages amounting to Rs. 36,83,887/-. The action of Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the disallowance of Rs. 36,83,887/-."

2. Briefly the facts of the case are that the assessee filed his return of income on 30.09.2012 declaring total income of Rs. 6,79,080/- which was selected for scrutiny by issuance of notice u/s 143(2) by the Assessing officer. During the course of assessment proceeding, the books of accounts were called for necessary verification by the Assessing officer however, the Assessing Officer found out that most of the sales were made in cash and opening closing stock as well as sales during the year are not subject to verification and accordingly, the books of accounts were rejected invoking the provisions of Section 145(3) of the Act and the GP rate of 0.15% was applied as against 0.11% declared by the assessee which has resulted in trading addition of Rs. 23,03,773/-. Further, salary expenses amounting to Rs. 36,83,887/- were disallowed and the assessment was completed at an assessed income of 66,66,740/-.

3. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) who has sustained the additions so made by the Assessing Officer and now the assessee is in appeal before us.

4. During the course of hearing, the Id. AR drawn our attention to the findings of the Id. CIT(A) where at para 3.1.1.(iv), the Id. CIT(A) has held that one of the proprietorship concerns of the assessee i.e. M/s OM Sales Corporation is a paper concern and further, at para (v), where the Id CIT(A) has upheld the GP rate of 0.15% applied by the Assessing Officer who has in turned placed reliance on a decision relied upon by the assessee during the assessment proceedings. It was submitted by the Id. AR that when the assessee concern has been held to be a paper concern/entry provider, in that case, GP rate as applicable to a person who is actually involved in a bullion business cannot be applied. It was submitted that the AO has applied GP rate of 0.15% by comparing the assessee's case with that of M/s Mohan Lal Mahendra Kumar Jeweller who is the bullion trader. As against that, as per the finding of the Id. CIT(A) wherein he has held that one of the concerns of the assessee is a paper concern/entry provider, in such a scenario, profit rate as applicable to an entry provider for bullion business should be considered. In this regard, the Id. AR has submitted that in case of Mahesh Khandelwal who was an entry provider for gemstones business, the Coordinate Bench (*in ITA No. 296 to 299/JP/2007 dated 24.10.2008*) has applied the NP rate of 0.10%. It was submitted that the gemstones business is a high margin business as compared to bullion business and therefore, entry provider in bullion business is accordingly rewarded very less in comparison to gemstones business. It was accordingly submitted that the NP rate of 0.10% applied by the Coordinate Bench in case of Mahesh Khandelwal may be appropriately scaled down and applied in the case of the assessee who has been held by the Id CIT(A) as an entry provider for bullion business. It was further

submitted that the lower authorities have applied NP rate of 18 paise per hundred if the real business yields NP of 18 paise per hundred, definitely an entry provider cannot earn 10 paise per hundred just for providing accommodation entries. It was further submitted that the gains of doing real trading cannot just be incremental 8 paise per hundred as compared to an entry provider who assumes no risk nor invests any capital. It was accordingly submitted that NP 0.01% as declared by the assessee may be upheld when the business has held to be only accommodation entry provider.

5. Per contra, the Id. DR took up through the finding of the Assessing Officer as well as that Id. CIT(A). It was submitted that the majority of the sales made by the assessee were in cash and in the absence of proper verification, the books of accounts were rejected. Regarding the estimation of GP rate, it was submitted by the Id DR that the AO has applied the comparable case of M/s Mohan Lal Mahendra Kumar Jeweller which were brought to the notice of the Assessing Officer by the assessee himself and therefore, in the present proceedings, the assessee cannot be allowed to plead that the gross profit rate has been wrongly applied by the AO. It was further submitted that the Id CIT(A) while upholding the findings of the AO has also noticed that one of the concerns of the assessee is a paper concern which further substantiate the reasoning of the AO in rejecting the books of accounts and estimating the gross profit rate. It was further submitted that besides the trading addition, the AO has made specific disallowance of the salary expenses amounting to Rs. 36,83,887/- in respect of which the Id. AR has not any specific submission.

6. We have heard the rival contentions and perused the material available on record. The assessee is a proprietor of two concerns namely M/s OM Sales Corporation and M/s SS Enterprises. Both these concerns are stated to be involved in bullion business by the assessee and the same has been accepted by the Assessing officer, however, the book results so declared have been rejected and profit has been estimated. During the appellate proceedings, the Id CIT(A), referring to another case of Guru Kripa Trade Mart Pvt Ltd, has held that in that case, matter relating to M/s OM Sales Corporation had come up for consideration and therein he has held that the said concern is a paper concern and accordingly, following the same, he has held that one of the concerns of the assessee is a paper concern and has thus upheld the findings of the Assessing officer.

7. The contention of the Id AR is that where one of its concerns has been held to be a paper concern, how the profit can be estimated relying on a case of a person who is actually involved in bullion business as has been done by the AO and which has been affirmed by the Id CIT(A) as against that, the comparison should be made with another paper concern/entry provider. We agree with the said contention as commission income of an entry provider cannot be equated with the trading results of businessman who is actually carrying out bullion business and the right comparison would have been of another entry provider involved in bullion business.

8. For the purposes, the Id. AR has submitted that in case of Mahesh Khandelwal who was an entry provider for gemstones business,

the Coordinate Bench (*supra*) has upheld the NP rate of 0.10% i.e, the estimate of net income @ 10 paise per hundred. It was submitted that the gemstones business is a high margin business as compared to bullion business and therefore, entry provider in bullion business is accordingly rewarded very less in comparison to gemstones business. It was accordingly submitted that the NP rate of 0.10% applied by the Coordinate Bench in case of Mahesh Khandelwal may be appropriately scaled down and applied in the case of the assessee who has been held by the Id CIT(A) as an entry provider for bullion business. Firstly, we note that the Id CIT(A) has held one of the assessee's concern to be a paper concern, however, going by the submission of the Id AR on behalf of the assessee, we find that he has no objection where even the second concern is held to be a paper concern. Therefore, in absence of any objection by the Id AR on behalf of the assessee, we proceed with the fact that the findings of the Id CIT(A) are equally applicable to both of the assessee's concerns which are held to be paper concerns which are involved in providing the accommodation entries and are not involved in actual bullion business.

9. Now coming to the commission income which can be brought to tax in hands of the assessee in relation to its two paper concerns which are involved in providing the accommodation entries, it may be true that the margins in gemstones business may vary with that of the bullion business but the same cannot be a basis to hold that an entry provider in gemstones and an entry provider in bullion business is to be treated differently so far as determination of their commission income is concerned. No empirical data has been submitted to support the

aforesaid contention and in absence thereof and given the fact that in both businesses, the role of the entry provider is largely similar in terms of providing accommodation entries in lieu of commission, we are unable to accept the aforesaid contention of the Id AR regarding scaling down or determining the commission income differently.

10. In the instant case, if we look at the net income so determined by the AO after making trading addition and disallowance of salary expense, it comes to Rs 66,31,966 which gives a net profit rate of 0.12% which is comparable to another case of the entry provider, Mahesh Khandelwal wherein the Co-ordinate Bench has upheld estimate of net profit @ 0.10%. Besides, there is other income of Rs 127,776 which has to be brought to tax separately.

11. In light of the same, we donot see any infirmity in the order of the lower authorities and the same are hereby confirmed and the grounds of appeal are accordingly dismissed.

In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open Court on 03/05/2019.

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:- 03/05/2019.

*Santosh

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

1. अपीलार्थी / The Appellant- Shri Mukesh Yadav, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-3(1), 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. 479/JP/2018 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar