

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" NEW DELHI**

**SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No. 6573/Del/2018
Assessment Year:2014-15

Sri Raghunathji and Sons, 2046 Katra Tobacco, Khari Baoli, Delhi-110006	Vs.	Income Tax Officer, Ward-47(1), New Delhi
TAN/PAN: ABPFS2204Q (Appellant)		(Respondent)

Appellant by:	Sh. K.R.Manjani, Adv		
Respondent by:	Sh. B.S. Raj Purohit, Sr. DR		
Date of hearing:	20	08	2019
Date of pronouncement:	22	08	2019

ORDER

PER PAVAN KUMAR GADALE, J.M.:

The assessee has filed an appeal against the order of CIT(A)-16, New Delhi passed under section 143(3) and 250 of the Income Tax Act. The assessee has raised the following grounds of appeal.

1. The Learned CIT(A) has erred on facts as well as in law in sustaining the trading addition of Rs. 49,21,901/-, which is against the history of the case, no defects having been found by the Learned A.O. in the Books, the Appellant has quantitative tally and reliance on CIT(A)'s Orders for Asst. Year 2011-12 and 2012-13, which is no longer in existence, having been set aside by the Hon'ble Tribunal vide Orders approximately ten -' months before, and order is against law, the Judgments of Hon'ble Delhi High Court and Delhi Tribunals, have not been

deliberated and rather ignored.

2. The Learned CIT(A) has erred on facts and in law in sustaining the disallowance of salary to partners by relying on Partnership Deed of 12.06.2009 even though the Partnership for the year under consideration was dated 12.4.2010 in which in Clause 7, it is stated that salary will be given to all the three partners, being working partners.

3. The Learned CIT(A) has erred on facts as well as in law in sustaining the addition of expenses of rebate, discount and sales promotion without pointing out any defect or any expenditure of disallowable nature inspite of the fact that this is allowable as per judgment quoted in Written Arguments.

4. The Ld. CIT(A) has erred on facts as well as in law in sustaining the addition of sales tax even though it is legally allowable, the expenditure being on additional sales tax paid due to non receipt of C form and not any penalty.

5. The order of the Ld. CCIT(A) is bad in law, being without application of mind, failing to follow the legal position and is based merely on surmises.

2. The Brief facts of the case are that the assessee firm is engaged in the Business of import of Hing, dry fruits etc. and filed the Return of income electronically disclosing total income of Rs. 43,810/- on 10.11.2014 and the Return of income was processed under section 143(1) of the Act. Subsequently under the CASS, case was selected for limited scrutiny and notice under section 143(2) & under section 142(1) and alongwith questionnaire were issued. In compliance, Ld. AR of the assessee appeared from time to time and furnished the details. The AO on perusal of the financial statements called for certain clarifications in respect of purchase, sale and gross profit and AO considering the turnover of three assessment years, found that the net profit ratio for the present assessment year is very

low compared to earlier years. Further the AO found that the assessee has claimed loss of Rs. 63,56,346/- being the foreign exchange rate fluctuation. Finally Assessing Officer considered G.P. rate @ 15% as against 8.72% disclosed by the assessee. Further clarifications were sought and assessee filed a letter on 6.9.2016 referred at para 4.4 of the assessment order. Whereas the Assessing Officer considered all the parameters and in the absence of proper accounting, the Books of accounts of the assessee were Rejected under the provisions of section 145 of the Act. The AO considering the increase in the volume of the assessee's business and profit of similar organizations in the same trade adopted 15% G.P. rate and made the addition of difference in gross profit of Rs. 49,21,901/-. Further AO on perusal of the profit and loss appropriation found that the assessee firm has claimed salary of three partners aggregating to Rs. 2,90,709/- and the assessee has filed the copy partnership deed, whereas AO after verifying the clause 7 of partnership deed found that the assessee has not quantified the salary allowable to the partners and referred to the CBDT Circular No. 739 dated 25.03.1996 for the claim of remuneration under section 40(b)(v) of the Act and made disallowance of Rs. 2,90,709/-.

3. Further on perusal of the profit and loss account, the AO found that the assessee has claimed expenditure of Rs. 1,71,588/- on account of rebate and discounts and Rs. 1,42,268/- towards the sale promotion. Whereas the assessee has filed the copy of ledger account but no documentary

evidence was filed in support of the claim. Therefore, the Assessing Officer disallowed 50% of Rebate and discounts and sale promotion and made addition of Rs. 1,56,928/-. Further the assessee has claimed expenses of Rs. 27,639/- on account of additional sales tax. Since no documentary evidence was filed in respect payments, the AO considered the additional sales tax payment as penalty and made disallowance of Rs. 27,639/- and assessed the total income of Rs. 54,90,987/- and passed the order under section 143(3) of the Act.

4. Aggrieved by the order, the assessee has filed an appeal with the CIT(A) whereas ld. CIT(A) considering the grounds of appeal, submissions of assessee upheld the action of the AO and dismissed the assessee's appeal. Aggrieved by the order of CIT(A), assessee has filed an appeal with Tribunal.

5. Before us, the ld. AR argued that the ld. CIT(A) erred in confirming the additions without considering the material facts and information. On the first disputed issue of addition on account of gross profit, the ld. AR submitted that the assessee has been maintaining the G.P. ratios from the earlier assessment years and referred to the chart at page 2 of the assessment order. The contention of the ld. AR is that the G.P. ratio at 15% cannot be a benchmark as is not properly supported by the Revenue and further the G.P. rate has been affected due to claim of loss being difference in foreign exchange fluctuations.

6. On the second disputed issue of disallowance of salary to partners, the assessee has filed partnership deed and is required to pay salaries to partners as per the provisions of section 40(b)(v) of the Act and CBDT Circular. Whereas on the disallowance of claim of rebate and discounts and sales promotion. The contention of the ld. AR is that these are the expenses incurred wholly and exclusively for the purpose of business and are to be allowed and finally on the disallowance of additional sales tax, the AR argued that the sales tax liability is allowable expenditure and is not penal in nature and supported his arguments with paper book and prayed for allowing the appeal. Contra the ld. DR supported the orders of the CIT(A).

7. We have heard the rival submissions and perused the material on record. The contention of the ld. AR on the first disputed issue of addition on account of difference in gross profit that the assessee has been maintaining consistency in gross profit ratio and made submissions in the Assessment proceedings. We find the Assessing Officer has adopted the gross profit rate 15% referred at para 4.7 of the assessment order. But AO could not support with any comparable case or a benchmark or an industry average index. Further we find that the assessee firm has been disclosing gross profit ratio for the assessment year 2012-13 @ 4.39% and assessment year 2013-14 @ 4.5% and in the present assessment year 2014-15 @ 8.72%. The AO has referred to loss of Rs. 63,53,346/- being the difference in foreign exchange. The ld. AR submitted that

the said loss was allowed by the AO. We, considering the allowability of foreign exchange fluctuation loss are of the opinion that the AO having accepted the foreign exchange loss cannot expect Higher G.P. ratio and the adoption of G.P. rate @ 15% cannot be sustained. Accordingly, we considering the material facts and foreign exchange fluctuation loss and consistency of G.P. ratio maintained by the assessee from the earlier assessment years, direct the AO to delete the addition and allow the ground of appeal of the assessee.

8. On the second disputed issue of disallowance of partner's salaries. The ld. AR submitted that the assessee is entitled for deduction of salaries paid to partners as per the provisions of section 40(b)(v) of the Income Tax Act. The ld. AR referred to partnership deed at page 22 to 24 of paper book and in particular clause 7 of partnership deed and submitted that the assessee has incorporated the clause required by the CBDT for claim under section 40(b)(v) of the Act. We on perusal of the assessment order at para 5 clause 7 of partnership deed where the assessee has submitted a copy of the partnership deed assessment proceedings. On comparison of clause 7 at para 5 of the assessment order with clause 7 of partnership deed dated 12th August, 2010 the name of the incoming partner Mr. Kunal Bhatia was not reflected. When a query was raised to the ld. AR to explain the discrepancy in the partnership deed dated 12th April 2010 and the partnership deed submitted before the Assessing Officer on 30.06.2016, the explanations of the ld. AR are not satisfactory and prayed for an opportunity to explain

the discrepancy before the assessing authorities. We find that the partnership deed executed in April, 2010 is applicable from assessment year 2011-12. Therefore, considering the facts and circumstances and to meet ends of justice, we restore the disputed issue for limited purpose to the file of the Assessing Officer to verify the correctness of the partnership deed and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information and ground of appeal of the assessee is allowed for statistical purposes.

9. The third disputed issue argued by the ld. AR in respect of restriction of claim of expenses on account of Rebate, discount and sales promotion. The Assessing Officer has restricted the claim to 50% as no evidence was filed in respect of the claim. Even before the ld. CIT(A) the assessee could not substantiate with the documentary evidence. When a query was raised, the ld. AR submitted that the expenses are in the nature of rebates discounts and said expenses are incurred for the smooth running of the business with the customers. We considering the facts of the turnover nature of Business, going concern and income percentage of the assessee over a period referred in the assessment order are of the opinion that the disallowance, expenditure @ 50% is slightly on the High side and accordingly we Restrict the disallowance to 10% instead of 50% and modify the order of the ld. CIT(A) accordingly on this issue and partly allow ground of appeal of the assessee.

10. The last disputed issue envisaged by the ld. AR in respect of disallowance of payment additional sales tax. The ld.

AR vehemently argued that the assessee has paid the additional sales tax and which is allowable business expenditure and supported with copy of ledger account and challan copies for payment of additional sales tax at page 10 to 21 of the paper book. The contention of the ld. AR is that the assessee has paid additional sales tax levied by State sales tax authorities and are not penal in nature. We considering the facts and the nature of the payment is compensatory are of the view that the claim has to be allowed subject to verification by the Assessing Officer. The ld. DR raised objections that the AO was deprived to verify the evidence filed. We are of the substantive opinion that the matter need to be verified accordingly remit this disputed issue to the file of the Assessing Officer for the examination and allow the ground of appeal of assessee for statistical purposes.

11. In the result, assessee's appeal is partly allowed for statistical purposes.

Order pronounced in the open court on 22nd August, 2019.

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(P.K.GADALE)
JUDICIAL MEMBER

DATED: 22nd Aug, 2019
SH

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

Assistant Registrar

		Date
1.	Draft dictated on	20.08.2019
2.	Draft placed before author	
3.	Draft proposed & placed before the second member	
4.	Draft discussed/approved by Second Member.	
5.	Approved Draft comes to the Sr.PS/PS	
6.	Kept for pronouncement on	
7.	File comes back to PS/Sr. PS	
8.	Uploaded on	23.08.2019
9.	File sent to the Bench Clerk	
10.	Date on which file goes to the AR	
11.	Date on which file goes to the Head Clerk.	
12.	Date of dispatch of Order.	