

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES (SMC), JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 656/JP/2018
निर्धारण वर्ष / Assessment Year: 2014-15

M/s Kumar & Brothers, 179-Kothi, Nihalganj, Hanuman Tiraha, Dholpur (Raj).	बनाम Vs.	I.T.O. Ward-4, Bharatpur.
स्थायी लेखा सं./जीआईआर सं./ PAN/GIR No.: AABFK 3192 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Manish Agarwal (CA)
राजस्व की ओर से / Revenue by : Shri J.C. Kulhari (JCIT)

सुनवाई की तारीख / Date of Hearing : 17/09/2019
उदघोषणा की तारीख / Date of Pronouncement : 19/09/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 23/03/2018 of Id. CIT(A), Alwar for the A.Y. 2014-15. The assessee has raised following grounds of appeal:

- "1. On the facts and in the circumstances of the case, Id. CIT(A) erred in upholding the action of Id. AO in making ad hoc trading addition of Rs. 1,50,000/- arbitrarily without invoking provisions of Section 145(3) of the Income Tax Act, 1961. Appellant prays that ad hoc addition so made is not in accordance with law and deserves to be deleted.*

- 1.1. *That, Id. CIT(A) erred in confirming the action of Id. A.O. in making ad hoc addition without pointing out any single instant where the expenses claimed were in excessive or nor for the purposes of business.*
2. *That the appellant craves the right to add, delete, amend or abandon any of the grounds of appeal either before or at the time of hearing of appeal.”*

2. The assessee is a partnership firm and engaged in the business of wholesales cum retails in the trade of fertilizers. The assessee filed its return of income U/s 139(1) of the Income Tax Act, 1961 (in short, the Act) on 28/11/2014 declaring total income of Rs. 2,74,260/-. During the scrutiny assessment, the A.O. has made trading addition of Rs. 1,50,000/- on account of certain expenses due to non-production of complete details/papers in support of the claim. On appeal, the Id. CIT(A) has confirmed the addition but on account of claim of expenses instead of trading addition.

3. Before the Tribunal, the Id AR of the assessee has submitted that the only defect pointed out by the A.O. was that the freight expenses of Rs. 5,06,360/- on pesticides, seeds and Urea were not fully supported by bills/vouchers and part of them were claimed to have been incurred in cash. Consequently, the A.O. has made ad hoc disallowance of Rs. 1.50 lacs. The Id. CIT(A) has confirmed such disallowance made by the A.O.,

however, ignoring the fact that no trading addition can be made without invoking the provisions of Section 145(3) of the Act. The Id AR has pointed out that when the claim of expenditure is not found to be excessive and it is an essential expenditure in the trading activity of the assessee then merely because some of the vouchers were not found to be proper and ad hoc addition is not justified. He has referred to the details of the turnover, gross profit, G.P. and N.P. of the year under consideration as well as preceding year and submitted that the assessee's turnover has increased from 6.29 crores to 7.31 crores. Similarly, the N.P. of the assessee is also increased from .15% to .31% during the year under consideration, therefore, merely because G.P. is reduced due to increase in the turnover. Once the N.P. is higher than the preceding year, the ad hoc disallowance is called for.

4. On the other hand, the Id DR has relied upon the orders of the authorities below and submitted that when the assessee has failed to produce supporting evidence of expenditure then the disallowance made by the A.O. of Rs. 1.50 lacs is reasonable and proper.

5. I have considered the rival submissions as well as relevant material on record. The A.O. has given reasons for making ad hoc disallowance of Rs. 1.50 lacs that too as a lump sum trading addition as the freight

expenses were not fully supported by proper bills and vouchers. Though the term used by the A.O. in the assessment order being the trading addition is not justified when there is no rejection of books of account U/s 145(3) of the Act. However, in substance, the A.O. has made this addition on account of claim of expenses not verifiable. The A.O. has not given the finding that the claim of expenditure is either excessive or bogus having regard to the facts of turnover during the year under consideration and nature of business of the assessee. There is no dispute that in the business of the assessee, the freight expenses are inevitable and therefore, if the claim is not found to be excessive or bogus then merely because of the some of the expenses are not supported by proper vouchers, no ad hoc disallowance is called for. The Id. CIT(A) has confirmed the disallowance in para 5.4 and 5.5 of the impugned order as under:

“5.4 I have considered the above mentioned facts of the case. Any expenditure of the nature mentioned above is claimed under section 37 of the Act. In order to get the deduction under section 37 of the Act, primary onus lies on the assessee to prove that such expenditure are incurred wholly and exclusively for the purpose of business or profession.

5.5 In the instant case, the assessee has failed to provide supporting documents to prove that such expenditures are incurred wholly and

exclusively for the purpose of business or profession. Therefore, in my considered view a disallowance of Rs. 1,50,000/- out of the expenses claimed on the above mentioned expenditure is reasonable to cover the discrepancies mentioned by the A.O. in the assessment order. Accordingly, the ground of appeal on this issue is dismissed.”

If certain claim of expenditure is not found to be incurred wholly and exclusively for the business purpose of the assessee then the same is liable to be disallowed. However, if the expenditure incurred by the assessee is found for the business purpose of the assessee then due to certain irregularity in maintaining the supporting evidence an ad hoc disallowance is not called for. Accordingly, without specifying the instance of the expenditure, which is either excessive or found not incurred for the business of the assessee, the action of the A.O. in making ad hoc disallowance and confirmed by the Id. CIT(A) is not justified. Hence, ad hoc disallowance of Rs. 1.50 lacs is deleted.

6. In the result, appeal of the assessee is allowed

Order pronounced in the open court on 19th September, 2019

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 19th September, 2019

***Ranjan**

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

1. अपीलार्थी / The Appellant- M/s Kumar & Brothers, Dholpur.
2. प्रत्यर्थी / The Respondent- The I.T.O. Ward-4, Bharatpur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 656/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar