

आयकर अपीलिय 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. 08/JP/2018
निर्धारण वर्ष / Assessment Year: 2013-14

Shri Sohan Nath, 84, Nath Gawadi, Vill.- Ladpura, Ajmer.	बनाम Vs.	I.T.O., Ward 1(3), Ajmer.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AFYPN 0276 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Mahendra Gargieya (Adv)
राजस्व की ओर से / Revenue by : Shri A.K. Mahla (JCIT)

सुनवाई की तारीख / Date of Hearing : 26/09/2019
उदघोषणा की तारीख / Date of Pronouncement : 27/09/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 16/10/2017 of Id. CIT(A), Ajmer for the A.Y. 2013-14. The assessee has raised following grounds of appeal:

- "1. The impugned additions and disallowances made in the order u/s 143(3) dated 14.03.2016 are bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be deleted.*
- 2. **Rs.6,34,212/-**: The Id. CIT(A) further erred in law as well as on the facts of the case in confirming the addition made by the AO by applying estimated NP rate @8% on the declared sales, as*

against the declared NP rate 3.40% only. The resultant addition of Rs.6,34,212/- made by the AO and confirmed by the Id. CIT(A), being contrary to the provision of law and facts, kindly be deleted in full.

- 3. Rs.1,59,500/-:** *The Id. CIT(A) further erred in law as well as on the facts of the case in confirming the addition made by the AO of Rs.1,59,500/- as "income from other sources" ignoring the contention that it was a typographical mistake only committed while filing the original return of income showing wrong agricultural income. The authorities below also erred in not considering the revised return showing the correct agricultural income and/or the information contained therein AO. The addition so made and confirmed by the Id. CIT(A) is being contrary to the provision of law and facts, kindly be deleted in full.*
- 4. Rs.1,35,000/-:** *The Id. CIT(A) further erred in law as well as on the facts of the case in confirming the action of the AO in estimating the income of plying of trucks at Rs.3,50,000/- as against the income of Rs.2,15,000/- declared by the appellant. The assessee had already shown the income of plying the trucks u/s 44AE hence addition of Rs.1,35,000/- made on the basis of estimation by the AO and confirmed by the CIT(A) is being contrary to the provision of law and facts, kindly be deleted in full.*
- 5. The appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing."**

2. At the time of hearing, the Id AR of the assessee has stated at bar that the assessee does not want to press ground No. 1 of the appeal and the same may be dismissed as not pressed. The Id DR has raised no objection if ground No. 1 of the assessee's appeal is

dismissed as not pressed. Accordingly, ground No. 1 of the assessee's appeal is dismissed being not pressed.

3. Ground No. 2 of the appeal is regarding trading addition made by the A.O. by applying N.P. rate at 8% of liquor sale. The assessee is an individual and proprietor of M/s of M/s Sohan Nath. The assessee was carrying on liquor and truck hiring business. During the year under consideration, he filed his return of income of 12/07/2013 declaring income from truck hiring business and agricultural income but no income was declared from liquor business. During the assessment year, the assessee filed revised return of income on 30/08/2015 declaring total income of Rs. 6,38,900/- which includes income from liquor business of Rs. 4,68,895/-. Since the assessee has not produced books of account for verification, therefore, the A.O. invoked provisions of Section 145(3) of the Income Tax Act, 1961 (in short, the Act) and rejected the so-called book results. Even otherwise when the assessee has not declared any income in the original return of income and the revised return of income was belated and invalid treated as nonest by the A.O. then the A.O. was having only option to estimate the income of the assessee from liquor business. The assessee offered the income from liquor business of Rs. 4,68,895/- to tax at the time of filing the

revised return which gives a net profit rate of 3.40%. The A.O. estimated the income of the assessee by applying 8% NP rate and thereby made addition of Rs. 11,03,107/-. On appeal, the Id. CIT(A) has, though, upheld the action of estimation of income by the A.O. by applying N.P. rate at 8%. However, the amount of Rs. 4,68,895/- which was already offered to tax by the assessee from the liquor business was reduced and the addition was sustained to Rs.6,34,212/-.

4. Before the Tribunal, the Id AR of the assessee has submitted that there is no basis of applying net profit at 8% for estimation of income by the A.O. which was confirmed by the Id. CIT(A). He has, thus, submitted that neither the A.O. nor the Id. CIT(A) has adopted any reasonable or proper criteria or cited any comparable case of net profit in the same trade while adopting the net profit at 8%. Thus, the Id AR has contended that the income estimated by the A.O. by applying the net profit at 8% is not justified and the income already offered by the assessee to tax is reasonable and proper income even by applying the net profit as prevailing in this trade. Thus, he has referred to a comparable case of Sohan Nath and Ram Chandra Mewara and submitted that the addition made by the A.O. may be deleted.

5. On the other hand, the Id. DR has submitted that the assessee is not maintaining any books of account and despite show cause notices issued by the A.O., the assessee failed to produce books of account in respect of liquor business. The A.O. has estimated the income by adopting N.P. rate at 8% as it is provided U/s 44AD of the Act which is a modified provision for estimation of income. He has relied upon the orders of the authorities below.

6. I have considered the rival submissions as well as relevant material on record. There is no dispute that the assessee has neither declared any income from liquor business in the original return of income filed on 12/07/2013 nor produced books of account before the A.O. despite the assessee was specifically asked. Though, during the assessment year, the assessee filed a revised return on 30/08/2015, however, the same was belated and not a valid revised return. The A.O. treated the same as nonest. Thus, the A.O. has proceeded to estimate the income of the assessee from liquor business by taking the turnover as shown in the alleged revised return. The dispute is limited regarding the reasonable and proper basis i.e. net profit for estimation of income of the assessee. The A.O. applied net profit at 8% in stead of 6% proposed in the show cause notice issued on 03/12/2015 and

16/12/2015. Thus when the A.O. proposed to estimate the income by applying net profit at 6% then adopting the net profit at 8% without giving the reasons for change of its stand and increasing the net profit percentage for estimation of the income is not justified. Hence, when the A.O. as well as the Id. CIT(A) has not given any reasonable and proper basis for adopting net profit at 8% to estimate the income of the assessee from liquor business then the original proposed net profit at 6% as shown in the show cause notice and confronted with the assessee ought to have applied for estimation of the income. Once the assessee was asked to show cause as to why 6% net profit should not be applied for estimation of income, the A.O. should not apply a higher rate until and unless some cogent and tangible reasons are shown for doing so. Accordingly, estimation of income from the liquor business is restricted to 6%.

7. Ground No. 3 of the appeal is regarding addition on account of agricultural income treated as income from other sources. In the original return of income, the assessee has declared agricultural income of Rs. 2,50,000/-. In the revised return of income, which was filed belatedly and treated as nonest by the A.O., the assessee

declared agricultural income of Rs. 90,500/-. The A.O. treated the differential amount of Rs. 1,59,500/- as income from other sources.

8. Before the Tribunal, the AR of the assessee has submitted that when the assessee has reduced its agricultural income from Rs. 2,50,000/- to Rs. 90,500/-, it cannot be a ground for making addition of the differential amount as income from other sources. He has further contended that normally the suspicion of the department is that the assessee used to show inflated agricultural income to claim exempt income but in the case of the assessee, the assessee has reduced agricultural income originally declared and therefore, there is no legal ground for making addition of the differential amount. Hence, he has pleaded that the addition made by the A.O. may be deleted.

9. On the other hand, the Id DR has submitted that the assessee cannot revise its income except by filing revised return of income. Once the A.O. has treated the revised return as invalid and nonest then the agricultural income shown in the original return of income at Rs. 2,50,000/- was the subject matter of verification. The assessee himself has admitted the correct agricultural income inflated in the return of income is required to assessee as income from other sources.

10. I have considered the rival submissions as well relevant material on record. The assessee declared agricultural income of Rs. 2,50,000/- in the original return of income filed on 12/07/2013. Subsequently, the assessee in the revised return of income as filed on 30/8/2015 reduced the agricultural income to Rs. 90,500/-. There is no dispute that if there is a mistake in the original return of income, the assessee can rectify it by filing revised return of income. However, the assessee has not filed valid revised return of income and therefore, the same was treated as nonest. Further, even if, a wrong income is offered to tax, the same can be rectified, however, it is not a case of wrong income offered to tax but the assessee claimed agricultural income which is exempt from tax at Rs. 2,50,000/- and subsequently come out with the plea that the actual agricultural income is only Rs. 90,500/-. Thus, the assessee was not able to substantiate the claim of agricultural income of Rs. 2,50,000/- declared in the original return of income. Once the assessment is framed based only on original return of income then the excess claim of agricultural income in the original return of income is a subject matter of scrutiny and enquiry. The assessee himself has admitted that actual agricultural income is only Rs. 90,500/-, therefore, the excess amount of agricultural income declared in the original return of income is liable to be added as income from undisclosed sources

under the head income from other sources. Hence, I do not find any error or illegality in the orders of the authorities below qua this issue.

11. Ground No. 4 of the appeal is regarding the addition made by the A.O. from the business of truck hiring. The assessee in the original return of income filed on 12/07/2013, has shown income from truck hiring at Rs. 2,15,000/-. Since the assessee has not maintained books of account and failed to furnish any record, bills and vouchers relating to truck hiring income as well as other relevant record, the A.O. proceeded to estimate the income of the assessee. In the revised return of income, the assessee declared income from truck hiring at Rs. 2,70,000/- as against Rs. 2,15,000/-. The A.O. estimated the income from the truck hiring business at Rs. 3,50,000/- as against the original income declared at Rs. 2,15,000/-.

12. Before the Tribunal, the Id AR of the assessee has submitted that the assessee has declared income from truck hiring business U/s 44AE of the Act. The relevant provisions application for the year under consideration provides that other than heavy goods vehicle, the income shall be an amount equivalent to Rs. 4,500/- for every month or part of the month per vehicle. He has further contended that the assessee owns five vehicles and applying the said provision of Section 44AE of

the Act, the presumptive income comes to Rs. 2,70,000/- thus, he has submitted that the assessee has rightly offered the income in the revised return at Rs. 2,70,000/-.

13. On the other hand, the Id DR has submitted that the assessee has not filed any record or books of account in support of the claim even the registration certificate regarding the number of vehicles owned by the assessee was not produced before the A.O., therefore, the A.O. after considering the receipts deposited in the bank account from the truck hiring business, has estimated the income at Rs. 3,50,000/- which is fair and reasonable. He has relied on the orders of the authorities below.

14. I have considered the rival submissions as well as relevant material on record. Though, the A.O. has not disputed that the assessee has offered income under the provisions of Section 44AE of the Act in respect of the truck hiring business, however, in the process of applying the presumptive provisions U/s 44AE of the Act, the A.O. has estimated the income without citing any basis or criteria. Therefore, in these facts and circumstances, the income of the assessee is required to be estimated as per the provisions of Section 44AE of the Act. From perusal of the relevant record and particularly

the registration certification of the vehicles, it is noted that all these vehicles owned by the assessee are heavy commercial goods vehicles, therefore, the income is required to be estimated @ Rs. 5,000/- per month per vehicle which comes to Rs. 3,00,000/-. Accordingly, the income of the assessee from truck hiring business is estimated at Rs. 3,00,000/- as against Rs. 3,50,000/- adopted by the A.O.

15. In the result, appeal of the assessee is allowed in part.

Order pronounced in the open court on 27th September, 2019

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

जयपुर / Jaipur

दिनांक / Dated:- 27th September, 2019

*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Sohan Nath, Ajmer.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward 1(3), Ajmer.
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. 08/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar