

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH 'SMC', JAIPUR

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

आयकर अपील सं./ITA No. 1171 & 1172/JP/2018
निर्धारण वर्ष/Assessment Year : 2009-10 & 10-11.

Shri Radha Mohan Vijay B-268, Janta Colony, Jaipur.	बनाम Vs.	The ACIT, Circle-5, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AAIPV 2573 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.R. Sharma (CA) &
Shri R.K. Bhatra (CA)

राजस्व की ओर से / Revenue by: Shri A.K. Mahela (JCIT)

सुनवाई की तारीख / Date of Hearing : 27.09.2019.
घोषणा की तारीख / Date of Pronouncement : 03/10/2019.

आदेश / ORDER

PER VIJAY PAL RAO, JM :

These two appeals by the assessee are directed against two separate orders of Id. CIT (A)-2, Jaipur both dated 16.07.2018 for the assessment years 2009-10 & 10-11 respectively. The assessee has raised common grounds in both the appeals except the quantum of addition. The grounds raised for the assessment year 2009-10 are as under :-

1. That on the facts and in the circumstances of the case the CIT (A) is wrong, unjust and has erred in law in confirming rejection of books of accounts of the appellant by the assessing officer u/s 145(3) of the I.T. Act, 1961 on the ground that purchase to the extent of Rs. 53,36,995/- allegedly not genuine and not verifiable.

2. That the Id. CIT (A) is further wrong and has erred in law in directing application of G.P. rate of 20% as against declared G.P. rate of 14.74% resulting in confirming trading addition to the extent of Rs. 5,82,245/- on account of alleged unverifiable purchases referred to in ground no. (1) above.
3. The assessee craves permission to add to or amend to any of grounds of appeal or to withdraw any of them."

2. The assessee is an Individual and carrying on the business of export of precious and semi precious gems and stones in his proprietorship concern M/s. Giriraj Enterprises. The assessee filed his return of income under section 139(1) on 30.09.2009 declaring total income of Rs. 10,49,320/- which was processed under section 143(1) on 09.05.2011. Subsequently, the AO reopened the assessment by issuing notice under section 148 on 22nd March, 2016. The reassessment was completed after rejection of books of account for an addition equivalent to 25% of the purchases made by the assessee from some of the entities allegedly controlled and managed by Shri Rajendra Jain Group, Sanjay Chaudhary Group and Dharmichand Jain Group, Mumbai in providing the accommodation entries of bogus sale bills etc. Consequently, the AO made the additions of Rs. 13,34,249/- for the assessment year 2009-10 and Rs. 7,94,481/- for the assessment year 2010-11. On appeal, the Id. CIT (A) has restricted the addition by estimating the income of the assessee at 20% GP for both the assessment years. Aggrieved by the impugned order of Id. CIT (A), the assessee filed these appeals.

3. I have heard the Id. A/R as well as the Id. D/R and considered the relevant material on record. The facts and issue involved in these appeals are identical to the facts and issue involved in the case of Shri Hari Prasad Vijay vs. ACIT in ITA Nos.

1046 & 1047/JP/2018, a sister concern of the assessee, wherein the Tribunal has decided this issue vide even date order as under :-

"5. *I have considered the rival submissions as well as the relevant material on record. The AO has rejected the books of account by invoking the provisions of section 145(3) of the IT Act on the ground that some of the purchases were made by the assessee from Sun Diam of Rs. 36,12,484/- which was managed by Shri Rajendra S. Jain and Shri Dharmichand Jain Group who are found to be indulging in providing accommodation entries in the nature of bogus sales etc. The AO after rejection of books of account, disallowed 25% of those purchases made from M/s. Sun Diam and consequently an addition of Rs. 9,03,121/- was made for the assessment year 2009-10 and similarly 25% of the purchases made from two concerns managed by the same group of persons was disallowed for the assessment year 2010-11 and consequently an addition of Rs. 10,33,021/- was made. On appeal, the Id. CIT (A) found that after rejection of books of account, the income of the assessee is required to be estimated by considering GP rate. The Id. CIT (A) has applied the GP rate at 19% after rejecting the contention of the assessee regarding the past history of GP declared by the assessee. The Id. CIT (A) has specifically observed that even for the assessment years 2007-08 and 08-09 the assessments were reopened on the similar grounds and the assessee approached to Settlement Commission for settlement of the matter. Thus the Id. CIT (A) has rejected the GP declared by the assessee of preceding years.*

6. *There is no dispute that after rejection of books of account, the AO is required to estimate the income on the best judgment and consequently some reasonable and proper basis should have been applied for estimation of the income after rejection of books of account. The Id. CIT (A) has rightly modified the order of the AO by*

estimating the income. However, the estimation has been made by applying a GP rate at 19%. It is pertinent to note that the past history of the assessee for the assessment years 2006-07 to 2008-09 declaring the GP rate is as under :-

A.Y.	Turnover	Gross Profit	Gross Profit rate
2006-07	1,78,11,666/-	28,20,480.00	15.83%
2007-08	1,51,41,518/-	20,69,175.00	13.66%
2008-09	1,06,59,507/-	17,33,545.56	16.26%

Though the GP declared for the assessment years 2007-08 and 08-09 was not accepted by the revenue and even the matter was settled before the Settlement Commission, therefore, in such circumstances the GP declared by the assessee for those assessment years i.e. 2007-08 and 08-09 cannot be considered as a proper basis for estimation of the current year's income. However, when there is no dispute regarding GP declared by the assessee for the assessment year 2006-07, then the GP for that year should have been taken as a reasonable and proper basis for estimation of income of the assessee for the year under consideration. The assessee has declared the GP for the year under consideration at 16.11% which is more than the GP declared for the assessment year 2006-07. Similarly the GP declared by the assessment year 2010-11 is 16.03% which is also in line with the GP declared for the assessment year 2006-07 at 15.83%. Thus despite the rejection of books of account as the GP declared by the assessee for the year under consideration is in line with or more than the normal GP declared in the preceding years or the profit prevailing in the trade, then no addition is called for. Rejection of books of account would not ipso facto lead to the addition if the GP declared by the assessee is higher or in line with the reasonable basis to be applied for estimation of income. Hence, in view of the facts and circumstances of the case,

the addition sustained by the Id. CIT (A) is not justified and the same is deleted."

In the case of the assessee the GP declared for the assessment years 2009-10 and 10-11 are at 14.74% and 15.64% respectively. Thus the GP declared by the assessee for the assessment year 2010-11 is in line with the GP declared by the sister concern which was found to be proper and reasonable and hence no addition is called for. As regards the assessment year 2009-10, the GP declared by the assessee is 14.74% and , therefore, the income of the assessee is required to be estimated by considering the reasonable and proper GP rate at 16%. Accordingly, the AO is directed to estimate the income for the assessment year 2009-10 by applying a GP rate of 16%.

4. In the result, appeal of the assessee in ITA No. 1171/JP/2018 is partly allowed and appeal of the assessee in ITA No. 1172/JP/2018 is allowed.

Order is pronounced in the open court on 03/10/2019.

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

Jaipur

Dated:- 03/10/2019.

Das/

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

1. The Appellant- Shri Radha Mohan Vijay, Jaipur.
2. The Respondent – The ACIT Circle-5, Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 1171 & 1172/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

