

आयकर अपीलीय 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. 92/JP/2018
निर्धारण वर्ष/Assessment Year : 2010-11.

M/s. Chemicals India, B-2, Small Scale Industrial Area, Kota 324 007.	बनाम Vs.	The Joint Commissioner of Income Tax, Range-1, Kota.
स्थायी लेखा सं./जीआईआर सं./PAN No. AAFC 9036 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Shri Siddharth Ranka (Advocate)

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

सुनवाई की तारीख / Date of Hearing : 25.09.2019.

घोषणा की तारीख / Date of Pronouncement : 30/09/2019.

आदेश / ORDER

PER VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 8TH November, 2017 of Id. CIT (Appeals), Kota for the assessment year 2010-11. The assessee has raised the following grounds of appeal :-

- "1. That on the facts, in the circumstances of the case and in view of the detailed written and oral submissions made and the evidence already available on AO's own record and further evidences adduced by the assessee the orders of the learned Lower Authorities are against the law and facts of the case.
2. That the Id. Assessing Officer has erred in making addition in the amount of Rs. 42,584/- of alleged difference in the transactions in the copies of accounts collected by the Id. Assessing Officer directly from suppliers while brushing aside the detailed explanation and reconciliation of the transaction, furnished by the assessee and the learned CIT (Appeals), Kota also erred in confirming the same.

3. That the Id. Assessing Officer further erred in disallowing 25% of Purchases debited under the head "Coal and Fuel Expenses" in the amount of Rs. 5,88,651/- while rejecting the submission and explanation produced by the assessee and relying on the alleged statements of the suppliers which have been recorded by the AO that too at the back of the assessee appellant and the assessee had never been provided any opportunity by the AO to confront those suppliers neither the copies of the alleged statements have been provided to the assessee in spite of a specific demand and the learned CIT (Appeals), Kota also erred in confirming the same.
4. That the Id. Assessing Officer also erred in charging interest u/s 234B and 234C and the learned CIT (Appeals), Kota also erred in confirming the same.

The appellant craves leave to add, amend or alter any ground at/before the time of hearing of appeal."

2. Ground no. 1 is general in nature and the Id. Counsel for the assessee has stated at bar that the assessee does not press ground no. 1 of the assessee's appeal. Accordingly, the ground no. 1 of the assessee's appeal is dismissed being not pressed.

Ground Nos. 2 & 3 are regarding additions made on account of difference in the closing balance on account of purchases in comparison to the assessee's account in the books of supplier as well as adhoc disallowance made by the AO on account of Coal and Fuel expenses.

3. I have heard the Id. Counsel for the assessee as well as the Id. D/R and considered the relevant material on record. The Id. Counsel has referred to the reconciliation of the differences in the closing balance as filed before the AO and further submitted that once the assessee has not claimed any excess amount on account of purchases, then a more balance shown by the assessee's supplier in its books of account will not be a ground for making any addition. As regards the

adhoc disallowance on account of Coal and Fuel expenses, he has contended that the AO after rejecting the books of account made this adhoc disallowance which is otherwise not permissible. Even otherwise the disallowance was made on the basis of statement recorded at the back of the assessee without giving opportunity of cross examination. The Id. D/R has submitted that the assessee has failed to reconcile the differences and, therefore, to the extent of Rs. 42,584/- which remains un-reconciled, the AO made the addition. As regards the disallowance on account of Coal and Fuel expenses, the Id. A/R has contended that the AO has conducted a proper enquiry and examined the suppliers who have denied issuing any bills/invoices to the assessee and also accepted the modus operandi of receiving the payment from the bank account of the assessee.

4. Having considered the rival submissions and careful perusal of the record, it is noted that the AO rejected the books of account of the assessee by invoking the provisions of section 145(3). Thus once the AO has invoked the provisions of section 145(3), the only course of action left with the AO to proceed with the assessment on best judgment basis and the income of the assessee ought to have been estimated on some reasonable and proper basis. It is also not in dispute that the past history i.e. the GP/NP declared by the assessee is the proper and reasonable basis and guidance for estimation of income of the assessee for the year under consideration. Instead of making the assessment by considering the provisions of section 145(3) read with section 144, the AO has proceeded to make specific disallowance after rejection of books of account. This action of the AO is not permitted under law as the book results were rejected by the AO then the items which are part of the trading account cannot be disallowed but the income of the assessee was required

to be estimated. The Id. Counsel for the assessee has pointed out that the AO has not pointed out any decline in the GP rate of the assessee for the year under consideration but the income declared by the assessee shows a better GP and NP rate in comparison to the preceding years. He has referred to the comparative chart of the preceding years as well as for the year under consideration showing the GP declared by the assessee. Thus having regard to the fact that the AO has rejected the books of account and the GP declared by the assessee for the year under consideration is 17.88% in comparison to the average of 3 years at 17.76%, the rejection of books of account under section 145(3) would not ipso facto lead to an addition if the assessee has declared the results either better or in line with the preceding years. Therefore, once the assessee's GP declared for the year under consideration is better than the average of the preceding year, then inspite of rejection of books of account, no addition is called for. Even otherwise, the AO has not attempted to make any trading addition but made specific disallowance after rejection of books of account which is not permissible. Accordingly, in the facts and circumstances of the case, the additions made by the AO on account of some discrepancies in the balance sheet on account of Coal and Fuel expenses are deleted.

5. In the result, the appeal of the assessee is partly allowed.

Order is pronounced in the open court on 30/09/2019.

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

Jaipur
Dated:- 30/09/2019.
Das/

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

1. The Appellant- M/s. Chemicals India, Kota.
2. The Respondent – The JCIT, Range-1, Kota.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 92/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar