

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'C', New Delhi**

**Before : Shri Sudhanshu Srivastava, Judicial Member And
Shri O.P. Kant, Accountant Member**

**ITA No. 5808/Del/2015
Assessment Year: 2011-12**

Surender Arora, Prop. Electro Sales Corporation, A-19, Priya Darshani Vihar, Delhi. PAN- AAEP A0367Q. (Appellant)	vs.	J.C.I.T., Range-36, New Delhi. (Respondent)
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Appellant by	Sh. Vijay Nishchal, C.A.
Respondent by	Sh. Raghunath, Sr. DR

Date of Hearing	27.08.2019
Date of Pronouncement	15.10.2019

ORDER

Per O.P. Kant, A.M.:

This appeal by the assessee is directed against order dated 18/05/2015 passed by the learner Commissioner of Income-tax (Appeals)-19, New Delhi (in short the Learned CIT(A)] for assessment year 2011-12 raising following grounds:

1. *That the order is against law and facts of the case.*

2. *That the Learned Commissioner of Income Tax (Appeals) was not justified in confirming impounding of salary register of the Assessee u/s 131(3) of the Income Tax Act, 1961. Expenses of Rs.28,02,500/- as salary and wages have been claimed genuinely. It is prayed that impounding of salary register being unwarranted be released to the Assessee.*

3. *That the Learned Commissioner of Income Tax (Appeals) was not justified in confirming that cartage vouchers are false and have been self made without any supporting evidence. The cartage expenses of Rs.7,12,368/- have been claimed genuinely. It is prayed that the contention of the Learned Commissioner of Income Tax (Appeals) being unwarranted be rejected.*

4. *That the Learned Commissioner of Income Tax (Appeals) was not justified in confirming rejection of the books results of the Assessee u/s 145(3) of the Income Tax Act, 1961. The Assessee had maintained proper and genuine books of accounts. It is prayed that the contention of Commissioner of Income Tax (Appeals) being unwarranted be rejected.*

5. *That the Learned Commissioner of Income Tax (Appeals) was not justified in estimating net profit margin as 1.1% at Rs.48,00,111/- resulting in an addition of Rs.6,79,359/-. It is prayed that the results of the Assessee be accepted as the Assessee had maintained proper books of accounts as required under the Income Tax Act, 1961 and addition of Rs. 6,79,359/- be deleted.*

That the above grounds are independent and without prejudice to one another.”

2. Briefly stated, facts of the case are that the assessee was engaged in trading of electronics, FMCG goods under the proprietary concern, namely M/s Electro sales Corporation. For the year under consideration, the assessee on the turnover of approximately Rs. 45 Crores, declared gross profit of Rs. 2,91,16,136 (6.53%) and net profit of Rs. 42, 19, 752 (0.94%) and filed return of income on 28/09/2011 declaring total income of Rs. 43, 28, 440/-. The case

was selected for the scrutiny and notice under section 143(2) of the Income-tax Act, 1961 (in short the Act) was issued and complied with. During the assessment proceedings, the Assessing Officer found certain defects in respect of the record maintained for salary and wages expenses of Rs. 28, 02, 500/-and cartage expenses of Rs. 17,12,368/-. As the assessee could not explain the defects in the books of accounts maintained by the assessee, he rejected the books of accounts invoking the provisions of section 145(3) of the Act and estimated the net profit margin at 2%, which was worked out to Rs.89,07,475 and after subtracting the profit declared by the assessee of Rs.42, 19, 752/-, he made addition for the balance amount of Rs. 46, 87, 722/-.

3. On further appeal, the Learned CIT(A) upheld the rejection of books of accounts, however he reduced the net profit margin to 1.1% and sustained addition of Rs.6,79,359/-. Aggrieved, the assessee is before the Tribunal raising the grounds as reproduced herein above.

4. The ground No. 1 being general in nature, we are not required to adjudicate upon.

5. In the ground No. 2, the assessee has stated that claim of salary and wages expenses is genuine and he further stated that salary register impounded be released to the assessee. In our opinion, for release of impounded salary register, the assessee should approach to the relevant departmental authorities. The departmental authorities may decide in accordance with law depending on the requirement of those documentary evidences for any further proceedings. As far as addition in dispute is concerned, net profit of Rs. 6,79,359/- has been sustained by the Learned CIT(A), which has been contested in ground No. 4 (four) and 5(five) before us. No addition has been made in respect of salary and cartage expenses and defect in maintaining those expenses has been made basis for rejection of books of account by the Assessing Officer, therefore, ground No. 2 and 3 of the appeal are not required to be adjudicated upon specifically. Accordingly, same are dismissed as infructuous.

6. In ground No. 4, the assessee has challenged rejection of books of accounts sustained by the Learned CIT(A). Before us the Counsel of the assessee filed a paper book containing pages 1 to 126 and submitted that there were no material defects in the books of accounts and salary was mainly paid

by way of cheques to approximately 17 employees. He referred to paper book page 30 , which is schedule of profit and loss account containing salary and wages expenses of Rs. 28,02,500/-. He also referred to ledger of salary account available on page 35 to 39 of the paper book . He further referred to employees' details of date -wise salary payment available on pages 40 to 43 of the paper book and employee -wise monthly payment of salary available on page 44 to 51 of the paper book . He submitted that in assessment year 2012-13 also certain defects in respect of the maintenance of the salary vouchers were observed by the Assessing Officer and only part of the salary expenses have been disallowed and no books of accounts have been rejected. Regarding the cartage expenses also, he relied on the submission made before the assessing authority and submitted that most of the expenses were incurred on 'Hand Thelas', 'auto rickshaw' and 'three wheeler tempos', and none of those provided the receipts of the expenses incurred. According to him, expenses on salary and wages and on cartage incurred are genuine and therefore sustaining of rejection of books of accounts by the Learned CIT(A) is not justified.

7. On the contrary, the Learned DR submitted that it was surprising that assessee was having turnover of more than Rs.44 Crores and no salary or

cartage records have been maintained. He submitted that in view of the non-maintenance of the supporting vouchers of the expenses of salary and cartage, the expenses debited and recorded in the books of accounts cannot be substantiated and thus books of accounts of the assessee are not reliable. Thus, it was submitted that lower authorities are justified in rejecting books of accounts of the assessee and in estimating the net profit of the assessee.

8. We have heard the rival submissions of the parties and perused the relevant material on record. The Assessing Officer noticed that in the profit and loss account, major expenses are on salary of Rs.28,02,500/-and cartage expenses of Rs.7,12,368/-. Regarding the salary expenses, the Assessing Officer impounded the salary register and after examination of records, he observed as under:

- (i) The salary register appears to be prepared as a fresh
- (ii) The pattern of making the attendance of all the employees is exactly same
- (iii) No entry of any absence or leave in the register was marked.
- (iv) There was no revenue stamp for any payments made.
- (v) There was no ESI registration for the employees.
- (vi) Payment to the persons which have been paid by the cheque , do not appear in the salary register.

9. Regarding cartage expenses, the Assessing Officer observed the same are self-made without any supporting document. It is submitted by the assessee that due to rain water seepage in one corner of the premises of the assessee, document, registers, voucher etc. kept were damaged and new registers were created. In view of these observations the Learned CIT(A) sustained the rejection of books of accounts observing as under:

“8. I have gone through the submissions of the assessee and the order of the Assessing Officer. The Assessing Officer has pointed out specific deficiencies in the salary payments. The fact that salary payments as per register are not genuine and the payments to persons which have been paid by cheque, do not appear in the salary register, does show that the books of accounts maintained by the assessee are not true & correct. The failure of the assessee to produce vouchers in respect of cartage also cause doubt about the seriousness of the assessee in respect of maintenance of vouchers. Since these defects were not found in the subsequent years, a mere disallowance was made and the assessment was carried out. However, for the case under review, serious defects have been pointed out by the Assessing Officer in the books of accounts and therefore, I uphold the rejection of books of accounts. However, I find that the Assessing Officer had estimated net profit of 2% to make an addition of Rs. 46,87,722/-. The amount added is even more than the total amount of salary & cartage expenses which were being investigated by the Assessing Officer. It is an accepted fact that the Turnover of 45 crores cannot be achieved without the help of employees comprising of salesmen, after sales service experts, engineers, etc.. and cartage for transport of consumer durables to the residence of buyers. Considering the facts & circumstances of the case and also considering the fact that no separate disallowance has been made for the personal use of vehicles etc. by the assessee, I estimate the net profit margin at 1.1% at Rs. 48,99,111/-. This will result in an addition of Rs. 6,79,359/-.”

10. In our opinion, in view of the glaring defects in the salary register as well as cartage register, the books of accounts of the assessee cannot be relied upon as true and correct and thus the action of the Learned CIT(A) in sustaining the rejection of the books of accounts is justified. As far as application of net profit of 1.1% on the turnover of the assessee is concerned, we find that the gross profit of the assessee has fallen from 13.12% in assessment year 2009-10 to 6.53% in the year under consideration and the net profit of the assessee in immediately preceding assessment year is found to be more than the net profit margin of the year under consideration. Before us no other comparable case having net profit margin less than 1.1% has been brought on record by the assessee. Therefore in facts and circumstances of the case, the net profit rate applied by the Learned CIT(A) is justified.

11. Accordingly the ground No. 4 and 5 of the appeal are dismissed.

12. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 15/10/2019.

Sd/-

(Sudhanshu Srivastava)
Judicial member

Sd/-

(O.P. Kant)
Accountant Member

Dated: 15th Oct., 2019

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