

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMNRITSAR BENCH, AMRITSAR  
BEFORE SHRI N.K. CHOUDHRY, JUDICIAL MEMBER  
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER**

**आ.अ.सं./I.T.A Nos.667 to 669 /ASR/2017**

**निर्धारणवर्ष/A.Ys.:2010-11, 2011-12 & 2012-13**

M/s. Grand Lilly Motels Limited, 4, Model Town, Jalandhar PAN: AABCJ 4527 E	Vs.	Assistant Commissioner of Income Tax, Circle- III, Jalandhar
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Shri R. K Bajaj , Advocate
राजस्वकीओरसे /Revenue by	Shri Alok Kumar, CIT (D.R.)

सुनवाईकीतारीख/ Date of hearing:	19.12.2019
उद्घोषणाकीतारीख/Pronouncement on:	19.12.2019

**आदेश /O R D E R**

**PER O. P. MEENA, AM:**

1. The above captioned appeals by the Assessee are directed against the separate orders of learned Commissioner of Income tax (Appeals)-2,Jalandhar (in short “the CIT (A)”) dated 04.05.2017, 11.05.2017 and 11.05.2017 for the Assessment Year 2010-11, 2011-12 and 2012-13 respectively.
2. The above appeals were hearing common issue involved, hence, heard together for the sake of brevity and convenience.
3. **Condonation of delay in filing of appeal before Tribunal.**
4. At the outset, the learned Counsel for the assessee submitted that there was a delay of 68 days in filing of the appeal. The learned

counsel for the assessee filed an affidavit that he was fallen sick due to which he was admitted in hospital and therefore, the delay was caused in filing of appeal.

**5.** We have heard the rival submissions and perused the relevant material on record and find that the assessee has satisfactorily explained the delay in filing of appeal. Therefore, we are of the view that the assessee has been able to demonstrate and sufficient reasons on medical ground for delay in filing of an appeal before the Tribunal. Therefore, we fit to condone the delay in filing of above appeals.

**I.T.A.No. 667/ASR/2017/A.Y. 2010-11**

**6.** Ground No.1 relates to confirming addition of Rs. 43,41,084 on account of trading addition due to enhancement of sales, which is not profit and highly unjustified , unreasonable and uncalled for.

**7.** Succinct facts are that the AO has worked out the net grocery consumption at Rs. 54,63,322 ( after deducting 15% for food wastage) based on grocery consumption of Rs. 64,28,026 shown by the assessee. Considering history for A.Y. 06-07, and 08-09, the working of sales were estimated by applying consumption ratio of 1:3. Accordingly, sales of from food were enhanced by an amount of Rs. 43,41,084.

**8.** Being, aggrieved, the assessee filed an appeal before the Ld. CIT (A). However, could not succeed.

**9.** Being, aggrieved the assessee filed this appeal before the Tribunal. The learned counsel for the assessee submitted that the

addition of sale have been made by enhancing the sale for food and the AO has added the entire estimation of sales , which could not be justified as only profit element should have been considered for addition. In support of this contention the counsel has relied on following case laws :

Manmohan Sadani v. CIT [2008] 304 ITR 52 (MP), CIT v. President Industries [2002] 258 ITR 654 (Gujarat) , CIT v. Balchnad Ajit Kumar [2003] 263 ITR 610 (MP)

**10.** Per contra, the Ld. DR relied upon the orders of the lower authorities

**11.** We have heard the rival submissions and perused the relevant material on record. We find that the AO has estimated sales based on consumption. However, where sale of finish goods sales are estimated, then there would be manufacturing expenses the entire sales as estimated could not be considered, as profit earned by the assessee as there must have incurred some expenditure to effect such sale and purchased the raw material to manufacture food. Therefore, the profit embedded in such amount of estimated sales would be subjected to tax. This view is also supported by the decision relied by the assessee in following cases Manmohan Sadani v. CIT [2008] 304 ITR 52 (MP), CIT v. President Industries [2002] 258 ITR 654 (Gujarat) , CIT v. Balchand Ajit Kumar [2003] 263 ITR 610 (MP). Therefore, respectively following the ratio laid down in these judgements, we are

of the considered opinion that only gross profit addition is warranted in this case. Since we are not aware that what Gross Profit has been disclosed by the assessee in past three assessment years. We therefore, direct to restrict the addition to by taking average rate of Gross Profit of the assessee as shown in regular books of accounts. Accordingly, this issue is set-aside to the file of the AO who will work out the addition based on arriving Gross Profit for addition. This ground of appeal is set-aside to the AO.

**12. Ground No. 2 relates to confirming of addition of Rs. 96,262 being disallowance under section 40A (3) of the Act.**

**13.** We have heard the rival submissions and perused the relevant material on record. We find that the AO has disallowed the payment of Rs. 96,262 as it was paid in cash for repairing car to M/s. Jayee Automobile Pvt. Ltd. Chandigarh in violation to provisions of section 40A(3) of the Act. The Id. CIT (A) has also confirmed the same. We find that the payment has been made in violation to the provisions of section 40A (3) of the Act, and no compelling circumstances brought on record. Therefore, the disallowance made by the AO and confirmed by the CIT (A) are upheld. This ground is therefore, dismissed.

**14. Ground No. 3: is not pressed before us by the learned counsel for the assessee, ex-consequenti, it is treated as dismissed as not pressed.**

**15.** In the result, the appeal of the assessee is partly allowed.

**I.T.A.No. 668/ASR/2017/A.Y. 2010-11**

**16.** Ground No.1 to 4 are relates to confirming addition of Rs. 34,60,497 being enhancement of sales.

**17.** We have heard the rival submissions and perused the relevant material on record. Both parties have agreed that facts of these grounds of appeal are identical as Ground No.1 in assessment year 2009-10. Therefore, our findings as given in respect of Ground No.1 in I.T.A. No. 667/ASR/2017 for A.Y. 2009-10 would mutatis mutandis apply to these grounds of appeal. Accordingly, this issue is set-aside to the file of the AO to compute the addition after finding out average rate of gross profit for the last three assessment years. Accordingly, this ground of appeal is set-aside to the file of the AO.

**18.** In the result, appeal of the assessee is allowed for statistical purposes.

**I.T.A.No. 669/ASR/2017/A.Y. 2011-12**

**19.** Ground No.1 to 4 are relates to confirming addition of Rs. 3, 30,181 being enhancement of sales.

**20.** We have heard the rival submissions and perused the relevant material on record. Both parties have agreed that facts of these grounds of appeal are identical as Ground No.1 in assessment year 2009-10. Therefore, our findings as given in respect of Ground No.1 in I.T.A.No. 667/ASR/2017 for A.Y. 2009-10 would mutatis mutandis

apply to these grounds of appeal. Accordingly, this issue is set-aside to the file of the AO to compute the addition after finding out average rate of gross profit for the last three assessment years. Accordingly, this ground of appeal is set-aside to the file of the AO.

**21.** In the result, appeal of the assessee is allowed for statistical purposes.

**22.** In the result, the appeal of the assessee for A.Y. 2010-11, 2011-12 and 2012-13 are allowed for statistical purposes.

**23.** The order pronounced in the open Court on 19.12.2019

Sd/-  
(N.K.CHOUDHRY)  
JUDICIAL MEMBER

Sd/-  
(O.P.MEENA)  
ACCOUNTANT MEMBER

Amritsar: Dated: December 19,2019/opm

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/  
Guard file of ITAT.

By order

Assistant Registrar