

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCH 'A', JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
Before : Shri Vijay Pal Rao, JM & Shri Vikram Singh Yadav, AM

आयकर अपील सं./ITA No. 374/JP/2018  
निर्धारण वर्ष/Assessment Year : 2014-15

Shri Pradeep Kumar Contractor Morolia Mension, Station Road Jhunjhunu	बनाम Vs.	The ACIT Circle- Jhunjhunu Jhunjhunu
स्थायी लेखा सं./जीआईआर सं./	PAN/GIR No.: AAGFP 9445 C	
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Manish Agarwal, CA  
राजस्व की ओर से / Revenue by : Shri K.C. Gupta, JCIT-DR

सुनवाई की तारीख / Date of Hearing : 02/12/2019  
घोषणा की तारीख / Date of Pronouncement : 09 /01/2020

आदेश / ORDER

PER VIJAY PAL RAO, JM

This appeal by the assessee is directed against the order of Id.  
CIT(A)-3, Jaipur dated 07-02-2018 for the Assessment Year 2014-15.

The assessee has raised the following grounds.

“1. On the facts and in the circumstances of the case the Id. CIT(A) has grossly erred in confirming the action of AO in invoking the provisions of section 145(3) and thereby rejecting books of accounts. Appellant prays

books of accounts of assessee are duly audited without any adverse remarks and deserves to be accepted as such.

2. On the facts and in the circumstances of the case the Id. CIT(A) has grossly erred in confirming the action of the AO in making adhoc disallowance of Rs. 25,00,000/- arbitrarily and by completely ignoring the submission made and evidences adduced.

2.1. That the lower authorities has further erred in confirming the addition by grossly ignoring the fact that new work awarded were much below the tender price which has resulted into fall in g.p., thus the reason for low g.p. being fully substantiate the consequent addition deserves to be deleted.’’

2.1 At the time of hearing, the Id.AR of the assessee stated at Bar that he does not want to press the Ground No. 1 of the appeal and the same may be dismissed as not pressed for which the Id. DR has no objection. Hence, the Ground No. 1 of the assessee is dismissed being not pressed by the Id.AR of the assessee.

3.1 The Ground No. 2 and 2.1 of the assessee are regarding an addition of Rs. 25.00 lacs made by the AO and confirmed by the Id. CIT(A).

3.2 The assessee is a partnership firm and engaged in the business of execution of civil work mainly awarded by the State Govt. Department. The AO noted that during the year under consideration the assessee has declared the g.p. of 14.04% which is less than the g.p. declared by the in

the immediately preceding year at 18.15%. The AO found that there is a substantial decrease in the g.p. rate as well as n.p. rate declared by the assessee. The AO accordingly called for necessary details and examined the books of account of the assessee. The books of account of the assessee were rejected by the AO by invoking the provisions of section 145(3) of the Act. After rejection of books of account of the assessee, the AO made a lumpsum addition of Rs. 25.00 lacs to the total income of the assessee. The assessee challenged the action of the AO before the Id. CIT(A) but could not succeed.

3.3 Before us, the Id.AR of the assessee submitted that the assessee has duly explained the reasons for decline in g.p. for the year under consideration as assessee has been awarded three contract works by the Rajasthan State Govt. Department at below B.S.R. Rate. The assessee took these works to execute in order to use the idle machine and manpower. Therefore, it is due to the specific circumstances where the assessee has taken up the work awarded by the State Govt. Deptt. The work has been awarded through open tender system and the fact that it has been awarded at a price which is lower than the tender price based on

BSR rate prescribed at State PWD Department for execution of work. The Id.AR of the assessee further contended that the turnover of the assessee has been increased as compared to preceding year. Therefore, to achieve the higher turnover, lower profit margin was bound to happen. The Id.AR of assessee has referred to the details of four contract works awarded to the assessee by PWD Department and submitted that these four contract works were awarded at below BSR Rate ranging from below 10.11% to 3.53%. In support of his contentions, the Id.AR of the assessee relied on the decision of Hon'ble Rajasthan High Court in the case of CIT vs M/s. Gotan Lime Khanij Udyhog, 256 ITR 243 (Raj) and submitted that Hon'ble High Court held that "*the rejection of books of account u/s 145(3) does not always lead to an addition in every such circumstances, even if there is fall in the g.p. ratio as such*". The Id.AR further submitted that each Assessment Year is different and due to market forces trading results of the assessee are bound to change. Once the assessee has explained the reasons for fall in g.p. rate with necessary evidences then it is not expected that the assessee should maintain the same g.p. rate as in the preceding year. The Id.AR of the assessee

submitted the addition made by the AO is not justified and the same may be deleted.

3.4 On the other hand, Id. DR submitted that the AO found various discrepancies in the books of account of the assessee as recorded in para 3 of the assessment order. Therefore, the books of account of the assessee did not reveal the true and correct state of affairs and consequently the AO rejected the books of account of the assessee. Once the books of account of the assessee are rejected then the income of the assessee has to be estimated by taking the appropriate g.p. rate. The AO has thus made the addition of Rs. 25.00 lacs which is less than the addition as would have been made if the average g.p. of preceding year is taken as basis. The Id. DR submitted that though the AO has made lumpsum addition, however, the same is not excessive or arbitrary if the facts and circumstances of the case are taken into consideration. The Id. DR thus relied on the orders of the lower authorities.

3.5 We have considered the rival submissions as well as relevant materials available on record. The assessee has not pressed the Ground No. 1 regarding the rejection of books of account. Therefore, the issue of rejection of books of account has attained finality. Once the books of

account of the assessee are rejected by the AO then the only option is left with the AO to frame the assessment based on best judgement u/s 145(3) r.w.s. 144 of the Act. It is a settled principle of law that estimation of income after rejection of books of account should be based on proper and reasonable criteria and past history of the g.p. declared by the assessee is reasonable guidance for estimation of income. In the case in hand, there is no dispute that assessee has declared the g.p. at 14.04% in comparison to the g.p. rate for A.Y. 2012-13 at 18.63% and for A.Y. 2013-14 at 18.15%. Therefore, the average of preceding two years g.p. rate declared by the assessee comes to 18.39%. The assessee has explained the reasons for decline in g.p. rate that some of the contracts awarded during the year under consideration are below BSR Rate. We find that if this fact is considered for giving an appropriate rebate in the g.p. rate declared by the assessee then the estimation of income has to be based on some reasonable and proper criteria being g.p. rate declared in the preceding years. If the simple average of g.p. rate of preceding year is taken into consideration being 18.39% then the income for the year under consideration has to be estimated based on the past history of assessee's g.p. resulting into addition of about Rs. 1.50 crores. The AO after

considering all these facts has made only an addition of Rs. 25.00 lacs which is very meager. Therefore, when the AO has already given the benefit of all these facts explained by the assessee and discounted the g.p. for estimation of income then in the facts and circumstances of the case, we do not find any error or illegality and consequential interference in the impugned order of the ld. CIT(A). Thus Ground No. 2 and 2.1 of the assessee are dismissed.

4.0 In the result, the appeal of the assessee is dismissed

Order pronounced in the open court on 09 /01/2020.

Sd/-  
( विक्रम सिंह यादव )  
(Vikram Singh Yadav)  
लेखा सदस्य / Accountant Member

Sd/-  
(विजय पाल राव)  
(Vijay Pal Rao)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur  
दिनांक / Dated:- 09/01/ 2020  
\*Mishra

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

1. अपीलार्थी / The Appellant- Shri Pradeep Kumar Contractor, Jhunjhunu
2. प्रत्यर्थी / The Respondent- The ACIT, Circle - Jhunjhunu
3. आयकर आयुक्त(अपील ) / CIT(A),
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.374/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar