

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "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. 901/JP/2019

निर्धारण वर्ष / Assessment Year :2013-14

Asharaf Khan Kureshi, E-11, Gulzar Colony, Pada Mandi, Eidgah, Delhi Bye Pass, Jaipur.	बनाम Vs.	I.T.O., Ward 5(4), Jaipur.
स्थायी लेखा सं./जीआईआर सं./ PAN/GIR No.: AYKPK 9356 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Amit Kumar Jain (CA)
राजस्व की ओर से / Revenue by : Ms. Chanchal Meena (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 17/06/2020
उदघोषणा की तारीख / Date of Pronouncement : 17/06/2020

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 26/03/2019 of Id. CIT(A)-2, Jaipur for the A.Y. 2013-14. The assessee has raised following grounds of appeal:

- "1. The learned Assessing Officer has erred under the facts and circumstances of the case by rejecting the Books of Accounts on the grounds that assessee failed to verify the valuation of Closing Stock.*

With regard to the verification of closing Stock, we would like to bring to your light that the assessee was doing trading of Livestock where the frequency of purchase and sale is quite huge. The stock purchased in a day is sold within 1 and 2 days to the farmers and villagers.

The unorganized nature of business thus not makes it practically possible to maintain stock register on a day to day basis.

However, the assessee has maintained proper books of accounts, extracts of which had also been provided to the Id. ITO as and when required during the scrutiny proceedings, which can also be verified from the records of the Id ITO.

Also completed audited financial statements alongwith necessary annexure had been submitted for consideration. Hence, the accounts audited cannot be rightly rejected by the Id AO without proper justification.

2. *The Id. A.O. has also grossly erred the facts and circumstances of the case by making a trading addition on estimation basis by applying G.P. rate of 1.50% against the G.P. rate of 1.14% as the assessee was entered into wholesale business in the relevant Asstt. Year.*

Due to change in the nature of business from retail to wholesale which is evident from sale which has increased by 2.33 times, the GP ratio tend to decline. Also, comparative chart of G.P. is also produced to the Id. AP. As follows:

<i>Asstt. Year</i>	<i>Turnover</i>	<i>Gross Profit</i>	<i>GP Ratio</i>
<i>2011-12</i>	<i>4,45,26,613</i>	<i>6,14,591</i>	<i>1.38</i>
<i>2012-13</i>	<i>6,25,16,913</i>	<i>8,63,557</i>	<i>1.38</i>
<i>2013-14</i>	<i>14,59,38,268</i>	<i>16,64,789</i>	<i>1.14</i>
<i>2014-15</i>	<i>25,65,77,735</i>	<i>30,50,389</i>	<i>1.19</i>

Hence the Id. AO has made additions on ad hoc basis “without considering these very important facts and has made retail as well as wholesale business comparable which is in fact not” which is unjustified.”

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic. The assessee is an individual and engaged in the business of purchase and sale of livestock. The assessee filed his return of income on 04/09/2013 declaring

total income of Rs. 1,98,740/-. During the scrutiny assessment, the A.O. verified the details and record produced by the assessee and noted that the assessee has declared a gross profit (G.P.) rate of 1.14% on turnover of Rs. 14,59,38,268/-. The A.O. further noted that in the immediate preceeding year, the assessee has declared G.P. @ 1.38%, the A.O. was of the view that the G.P. declared by the assessee is very low in comparison to the preceeding year. The A.O. further noted that the assessee is maintaining proper books of account as all the entries in the books of account are without any supporting evidence and based on the memory of the assessee. The A.O. recorded statement of the assessee U/s 131 of the Income Tax Act, 1961 (in short, the Act) wherein the assessee admitted the fact that all the transactions were carried out in cash and there is no purchase bill, sale bill or vouchers in support of the expenditure incurred by the assessee. The assessee is not maintaining any stock register. Accordingly, the A.O. invoked provisions of Section 145(3) of the Act and rejected the book results of the assessee. The A.O. estimated income of the assessee by applying G.P. at 2% and consequently made trading addition of Rs. 12,53,946/- and addition on account of disallowance of expenses of Rs. 1,71,618/-

3. The assessee challenged the action of the A.O. before the Id. CIT(A) and the Id. CIT(A) has restricted the trading addition by applying G.P. rate at 1.50% as against the G.P. rate applied by the A.O. at 2% and consequently addition of Rs. 5,25,378/- was upheld.

4. Ground No. 1 of the appeal is regarding rejection of books of account U/s 145(3) of the Act. The Id AR of the assessee has submitted that the assessee has maintaining proper books of account and extracts of which has been furnished before the A.O.. The accounts of the assessee were also audited, therefore, having regard to the nature of business of the assessee for purchase and sale of livestock, the stock register is not feasible, therefore, the rejection of books of accounts is not justified and valid. The Id AR has further contended that the A.O. has not pointed out any specific defect in the books of account of the assessee and therefore, the rejection of books of account is highly arbitrary and liable to be set aside. In support of his contention, he has referred to various decisions of this Tribunal on the point that without pointing out a specific defect in the books of account of the assessee, the rejection of the same is not justified. He has further pointed out that since the livestock cannot be maintained in the stock register, therefore, the

assessee is not maintaining any stock register, however, all the details of purchase and sales were produced before the A.O.

5. On the other hand, the Id DR has submitted that the A.O. has conducted an enquiry and also examined the assessee on the point of maintaining the books of account as well as supporting evidence. The assessee in his statement recorded U/s 131 of the Act has admitted that the assessee had shown purchase and sales in the trading account on the basis of memory and has not maintained any record in this regard. All the transactions carried out in cash even neither any purchase bill nor any sale bill was produced by the assessee. Further the expenditure debited in the trading and P&L account are also not supported by any documentary evidence. The assessee has admittedly not maintained any stock register, therefore, the books of account of the assessee do not reflect true affairs and results of the business activity of the assessee. The Id DR has thus contended that the A.O. was justified in rejecting books of account. She has relied upon the decision of the Hon'ble Supreme Court in the case of Kachwala Gems Vs Jt.CIT 288 ITR 10 (SC).

6. We have considered the rival submissions as well as relevant material on record. Undisputed facts as emerging from the record regarding maintenance of books of account are that the assessee,

though, prepared trading and P&L account, however, all the transactions of purchase and sale shown by the assessee in the books of account are not supported by any bills, vouchers or other documentary evidence. The assessee has also admitted this fact that the purchase and sale shown by the assessee are on the basis of memory and not on the basis of any record. Similarly, the assessee has not maintained any bills or vouchers in respect of other expenditure incurred by the assessee in respect of business and claimed in the P&L account. The A.O. recorded statement of the assessee during the assessment proceedings U/s 131 of the Act in para 3 of the assessment order as under:

"3. During the course of assessment proceedings, summon u/s 131 of the Act issued and the statement of Sh. Ashraf Khan Kureshi recorded on oath on 02/03/2016. In this statement the assessee stated that:

- 1. Assessee is doing business of sale-purchase of livestock of buffalos (Pada). Mostly he has purchased the pada from the farmer/villagers. All the transactions are in cash.*
- 2. Assessee is stated that the purchase shown in the trading account on the basis of memory and he has not maintained any record in this regard. All the purchases of Rs. 144209519/- shown on the basis of memory. Details of purchase parties were submitted only on the basis of memory.*
- 3. Assessee has also not produced any sale bill*

3. *Assessee is also stated regarding direct-indirect expenditure that he has no records of such expenditure. This expenditure is also shown on the basis of memory.*
4. *Assessee has not maintained any stock register regarding business.*
5. *Assessee has not produced books of accounts.”*

Once the transactions recorded in the books of account maintained by the assessee are not supported by any documentary evidence then it is a clear case of serious defects in the books of account, though, maintenance of stock register in respect of purchase and sale of livestock may not be possible. However, the transactions of purchase and sale of the livestock has to be supported by some documentary evidence and all the transactions of a huge turnover of Rs. 14.59 crores cannot be correctly remembered based on memory. Therefore, in these facts and circumstances of the case when the assessee is not keeping any documentary evidence in support of any of the transactions then the book results of the assessee cannot be accepted as the books maintained by the assessee are based on memory. The sale transaction of more than Rs.14.59 crores and each transaction is claimed to be less than Rs. 20,000, the correct business result cannot be deduced from these books of account as claimed by the assessee. Hence, we do not find any error or illegality in the action of the A.O. in rejection of the books of account

of the assessee U/s 145(3) of the Act. The decisions relied upon by the Id AR of the assessee are on the point that the A.O. cannot reject the books of account only on the ground of decline in G.P. rate in absence of any defect pointed out in the books of account. In the case in hand, the A.O. has clearly brought on record the relevant facts stare at the correctness of the book results as all the transactions are claimed to have been based on memory and not based on any documentary record or evidence. Therefore, it appears that the assessee has maintained books of account by estimating the transactions of purchase and sales. Accordingly, we do not find any merit or substance in ground No. 1 of the assessee's appeal. Hence, we uphold the action of the lower authorities.

7. Ground No. 2 of the appeal is regarding trading addition confirmed by the Id. CIT(A) by applying the G.P. rate at 1.50% as against the declared G.P. rate of 1.14% by the assessee.

8. We have heard the Id AR as well as the Id DR and considered the relevant material on record. After rejection of books of account, the income of the assessee is required to be estimated as the A.O. has to frame the assessee on the basis of best judgement. The past history of G.P. declared by the assessee is a reasonable and proper basis for estimation of the income of the assessee after rejection of the books of

account. In the case in hand, the details of the G.P. declared by the assessee in the preceeding years i.e. 2011-12 and 2012-13 shows that the assessee declared G.P. at 1.38% for each year. Thus, the average G.P. for the preceeding years comes to 1.38% as against the G.P. declared for the year under consideration at 1.14%, therefore, the income of the assessee is required to be estimated by taking the G.P. at 1.38%. We find that there is no basis for adopting the G.P. at 2% by the A.O. and 1.50% by the Id. CIT(A). Accordingly, we restrict the trading addition to the extent of G.P. at 1.38% to be applied for estimation of the income. The A.O. is directed to recompute the income of the assessee on the basis of G.P. at 1.38%.

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

Order pronounced in the open court on 17th June, 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:- 17/06/2020

*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Asharaf Khan Kureshi, Jaipur.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward 5(4), Jaipur.
3. आयकर आयुक्त / CIT

4. आयकर आयुक्त(अपील)/The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 901/JP/2019)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar