

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. 717/JP/2019
निर्धारण वर्ष /Assessment Year :2015-16

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| Kamal Kumar S/o Shri Gopal Singh R/o Nadiya Mohalla Bharatpur | बनाम Vs. | The ITO, Ward -2, Bharatpur |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: DMSPK9842K | | |
| अपीलार्थी /Appellant | | प्रत्यर्थी /Respondent |

निर्धारिती की ओर से / Assessee by : Sh. Rajendra Agarwal (CA)
राजस्व की ओर से / Revenue by : Sh. K. C. Gupta (JCIT)

सुनवाई की तारीख / Date of Hearing : 02/07/2020
उदघोषणा की तारीख / Date of Pronouncement: 03/07/2020

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-22, Alwar dated 26.12.2018 wherein the assessee has taken following grounds of appeal:-

"1. The Id CIT(A) has erred in not allowing the ground of appeal that the Ld. AO erred in arbitrary rejecting the trading results invoking the provisions of section 145(3) of the I.T. Act.

2. The Id CIT(A) has erred in confirming the trading addition of Rs. 2,59,620/- out of trading addition of Rs. 5,18,728/- made by the Id. AO."

2. In Ground No. 1, the assessee has challenged the rejection of books of accounts u/s 145(3) of the Act. During the course of hearing, the Id. AR submitted that assessee is a liquor contractor and doing the business at a

very remote area of Roopwas Tehsil of Bharatpur District. The assessee was new in this line of business and it was the first year of his business and he did not have any liquor business experience. Being unexperience in the line and without having the required education, the profitability was very low, though he earned good cash profits. The gross profit and net profit shown are actual, correct and true profits. The entire purchases of the assessee are verifiable from Form 26AS and each and every purchase of liquor was made from District Excise Office, Rajasthan State Ganganagar Sugar Mills & RSBC1, (All Rajasthan Government departments/ corporation). No single purchase was made from the market other than government agency. Hence the entire purchases are vouched and verifiable. At para No.3 at page No.2 of the assessment order, the Ld.AO himself stated that "The A/R of the assessee attended the assessment proceedings and produced books of account consisting of cash book, ledger etc. which were examined on test checked basis but did not produce proper books of accounts as such stock register, day to day stock register and sale & expenses vouchers." The Ld.AO further alleged that most of the sales vouchers are not fully vouched. In this regard, it was submitted that the assessee is maintaining regular books of accounts consisting of cash hook, ledger, bank book, journal etc, all the purchases are made from the government departments and it is not practicable to maintain the sale bills being sales made to the consumers on retail basis having petty value. The books of accounts had been audited by the Chartered Accountant u/s 44AB of the Income Tax Act, 1961. Stock details are not required being no opening and no closing stock remained in the Profit & Loss a/c. All the goods traded by the assessee are duly controlled by the government, quantity of stock is maintained as per the norms of the Excise Department. The purchases of liquor are made from the State Govt. Deptt. and the prices are also fixed by the State Govt. Further, all the purchase bills and ledger accounts were produced before the AO in the course of assessment

proceedings and no single defect had been pointed out by him. All the cases relied upon by the Ld AO are very old and are having no relevance with the liquor business. Hence keeping in view of the above submissions, the Id.AO erred in rejecting the books of accounts of the assessee u/s 145(3). It was further submitted that though this ground was taken before the Id CIT(A) and written submissions were filed, however, the Id CIT(A) has not adjudicated this ground of appeal.

3. Per contra, the Id. DR submitted that during the course of assessment proceedings, the assessee has admitted to have not maintained any day to day stock register, sales vouchers, expenses vouchers, the sales and other expenses are not verifiable and therefore, the books of accounts maintained by the assessee were held not reliable and had rightly been rejected by the Assessing Officer by invoking the provisions of section 145(3) of the Act. It was accordingly submitted that there is no infirmity in the order of AO in rejecting the books of accounts of the assessee and the ground of appeal so taken by the assessee be dismissed.

4. In ground No. 2, the assessee has challenged the sustenance of trading addition of Rs. 2,59,620/- by the Id. CIT(A) out of total trading addition of Rs. 5,18,728/- made by the AO. In this regard, the Id. AR submitted that the assessee declared gross profit of Rs. 47,69,239/- on turnover of Rs. 5,28,79,672/- on the basis of actual purchase from Government agencies duly verified from Form No. 26AS and actual sales made during the year. It was further submitted that there was no opening and closing stock and GP declared by the assessee comes to 9.02% on turnover of Rs. 5,28,79,672/- which is true and correct gross profit which should be accepted. It was further submitted that in the case of Sh. Deepak Sharma, the AO himself applied G.P rate of 9.51% on the total turnover of

Rs. 2,59,21,291/-whereas the total turnover of the assessee is Rs. 5,28,79,672/- which is 2.04 times of Sh. Deepak Kumar Sharma. Hence, the AO has arbitrarily applied G.P. rate of 10% ignoring the fact that the assessee is new one in the line of the liquor business and Sh. Deepak Sharma is a very experienced person in the field. Further, reliance was placed on the Co-ordinate Bench decision in case of Sh. Pratap Singh Tanwar vs. ITO (2017) 59 ITR (Trib) 594 wherein the Tribunal has confirmed the GP rate of 7% by the Id. CIT(A) wherein the assessee is engaged in the similar line of business. Further, reliance was placed in case of Sh. Abhishek Gupta vs. ITO, Ward-04, Bharatpur vide order dated 11.12.2018 for A.Y 2016-17 wherein the AO has made a lump sum disallowance of Rs. 50,000/- u/s 37(1) of the Act and the G.P rate of 3.36 % on turnover of Rs. 2,89,81,715/- was accepted. Similarly, reliance was placed in case of Sh. Dharm Gopal vs. ITO, Ward-03, Bharatpur vide order dated 11.12.2018 for A.Y 2016-17 wherein under the similar facts and circumstances, the assessment was completed u/s 143(3) by applying profit rate of 2% on the total turnover of Rs. 2,51,86,280/-. It was accordingly submitted that the Assessing Officer was not justified in applying the GP rate of 10% and making huge trading addition of Rs. 5,18,728/-. It was further submitted that though the Id. CIT(A) has stated that the AO applied GP rate of 10% on estimate basis without giving any reference to comparable cases, but he himself applied arbitrarily applied GP rate @ 9.51% as compared to 9.02% declared by the assessee. It was accordingly submitted that the addition made by the Assessing Officer and confirmed by the Id. CIT(A) may be deleted.

5. Per contra, the Id. DR submitted that the case of Sh. Deepak Sharma was brought to the notice of the AO and Id CIT(A) by the assessee himself wherein the AO had applied the GP rate of 9.5%. Therefore, taking the said comparable case into account, the Id. CIT(A) has estimated the GP rate of

9.51 as against 9.02% declared by the assessee. It was accordingly submitted that the Id CIT(A) has already reduced the addition to 2,59,620/- which is reasonable and comparable in the facts and circumstances of the present case. Hence, the order of the Id. CIT(A) may be confirmed and the ground of appeal taken by the assessee be dismissed.

6. We have heard the rival submissions and perused the material available on record. Firstly, regarding the rejection of books of accounts, we refer to relevant findings of the AO which reads as under:

"During the year under consideration, the assessee has shown gross profit of Rs, 47,69,239/- on total turnover of Rs. 5,28,79,672/- which gives GP @9.02 %. During the course of assessment proceedings the AR of the assessee was asked to produce all the books of account maintained by the assessee in support of the above result shown by the assessee. In compliance, the A/R of the assessee attended the assessment proceedings and produced books of account consisting of Cashbook, Ledger, etc. which were examined on test checked basis but did not produce proper books of accounts as such Stock Register, Day to day Stock register and Sale & Expense vouchers. On examination of books of account and bills/vouchers on test check basis and discussion with the A/R during the course of assessment proceedings following defects in the books of accounts were noted:-

- i) Stock Register, Day -to -day stock register has not been maintained by the assessee.*
- ii) The assessee does not maintain stock register of various type of wine and bears sold by him.*

- iii) *For expenses no proper bills/vouchers available. Hence, not verifiable.*
- iv) *Most of the expenses have been booked on the basis of self made vouchers and not fully verifiable from the bills/vouchers.*
- v) *Most of the sales vouchers are not fully vouched. In the absence of stock register. The Trading result declared by the assessee cannot be relied upon.*

The Hon'ble Supreme court in the case of Chhabil Das Trubhuwandas Shah Vs CIT 59 ITR 733 (SC) has held that in absence of quantitative tally, the fall in margin of profit cannot be explained. The Rajasthan High Court in the case of Ghasiram Todarmal Vs CIT reported in 196 ITR 329 has held that if the stock register maintained by the assessee does not reflect the true stage of affairs of the articles consumed or produced the action of rejection of books of account is just. Here, the assessee even does not maintain the stock register, in the case of non maintenance of stock register application of section 145 has been held justified in the case reported at 11 ITR 923 (Orissa), 114 ITR (Bom) 38 ITR 579 (SC).

The A/R of the assessee admitted to have not maintained any day- to - day Stock Register, Stock Register, Sales vouchers, Expenses vouchers, the Expenses claimed have been booked on the basis of self made vouchers and sales are not verifiable. Since, the assessee has not properly maintained the Stock Register, Sales Vouchers and Vouchers for expenses shown in trading and P&L a/c, the books of account maintained by the assessee are not reliable. As per order sheet entry dated 14.11.2017 the AR of the assessee was asked that proper books of account were not maintained and why not your books

of account will be rejected u/s 145(3). In view of the above discrepancies and legal position the trading results declared by the assessee are rejected invoking the provisions of section 145(3) of the IT Act."

7. We therefore find that during the course of assessment proceedings, the assessee was asked to submit his books of accounts and he has admitted to have not maintained any day to day stock register, sales vouchers, expenses vouchers and as a result, the AO has held that the sales and other expenses are not verifiable and the books of accounts maintained by the assessee were held not reliable and were rejected by the Assessing Officer by invoking the provisions of section 145(3) of the Act. There is no dispute that the assessee being in the liquor business, the purchases made from the Government corporations and agencies are verifiable. At the same time, for determination of profits, the sales are also required to be verified and proper records need to be maintained in terms of stock purchased and sold of liquor with quality, make and price. Nothing has been brought on record which substantiate the price at which the sales has been made during the year, what price the individual goods have been purchased, their MRP and actual sale price. Further, maintenance of stock register is essential not just for determining the opening and closing stock but for establishing the necessary linkage with the goods purchased and sold during the year. The assessee may plead for non-maintenance of sale bills being involved in retail sale of liquor however, at the same time, the assessee cannot plead non-maintenance of stock register. Infact, where the assessee plead that the purchases are verifiable, then what stops him from producing the records of such purchases and its linkage with the sales made during the year out of such purchases. Further, being the first year of operation cannot be a ground for non-maintenance of proper books of accounts. Therefore, in the

entirety of facts and circumstances of the case, we uphold the rejection of books of accounts under section 145(3) of the Act and the ground of appeal so taken is rejected.

8. Once the books of accounts are rejected, the AO is required to estimate the gross profit in the hands of the assessee and for the purposes, the prior history of the assessee in his own case or contemporaneous third party data has been held as a reliable basis for estimation of profits. In the instant case, this being the first year of operation, one has to consider the comparable third party data of assessee engaged in similar line of business pertaining to year under consideration. The assessee has submitted comparable cases of Shri Deepak Kumar Sharma for A.Y 2014-15, Shri Abhishek Gupta for A.Y 2016-17 and Shri Dharam Gopal for A.Y 2016-17. Firstly, we find that these cases relate to A.Y 2014-15 and A.Y 2016-17 and thus, strictly speaking, cannot act as a contemporaneous data for year under consideration which is A.Y 2015-16. Therefore, in absence of any contemporaneous data available on record, we decline to interfere in the findings of the Id CIT(A) where he has already reduced the trading addition to Rs 2,59,620/- from Rs 5,18,728/- made by the AO and the fact that the Revenue is not in appeal against the said findings and the Id DR has supported the said findings. In the result, the ground of appeal is dismissed.

In the result, appeal of the assessee is dismissed.

Order pronounced in the open Court on 03/07/2020.

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

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

जयपुर / Jaipur

दिनांक / Dated:- 03/07/2020

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Shri Kamal Kumar, Bharapur
2. प्रत्यर्थी / The Respondent- The ITO, Ward 2, Bharatpur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 717/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar