

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

श्री रमेश सी. शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH C. SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA No. 1381/JP/2019
निर्धारण वर्ष/Assessment Year : 2014-15.

Shri Vinod Kumar Kothari 02, Industrial Area, Malpura, Tonk.	बनाम Vs.	The Income Tax Officer, Ward Tonk.
स्थायी लेखा सं./जीआईआर सं./PAN No. ACRPK 8599 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri K.L. Moolchandani (CA)

राजस्व की ओर से / Revenue by: Ms Chanchal Meena (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 21.07.2020.

घोषणा की तारीख / Date of Pronouncement : 22 /07/2020.

आदेश / ORDER

PER VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 25.10.2019 of Id. CIT (A)-3, Jaipur for the assessment year 2014-15. The assessee has raised the following grounds of appeal :-

1. On the facts and in the circumstances of the case, the LD. CIT (A) has incorrectly observed that none attended on 7.3.2019, 25.3.2019 & 10.4.2019. As evident from the copy of submissions made before him, the appellant had attended his office on all these days and sought to submit the written reply on the given dates. Finally the reply could be submitted on 10.4.2019, as the same was not received by the LD. CIT on earlier dates due to paucity of time. In the circumstances the LD. CIT (A) has dismissed the appeal summarily without going into the merits of the case as

contended in the written reply. Thus dismissing the appeal in summary manner by him without going into the merits of the facts is bad in law and the same deserves to be quashed summarily.

2. Without prejudice to the above ground no. 1, on merits also, the Id. Authorities below have factually and legally erred in making and confirming the following additions without appreciating the facts of the case in right perspective as contended in the written reply submitted on 10.4.2019 :
 - (i) Lump sum trading addition of Rs. 1,00,000/-
 - (ii) Addition of Rs. 2,33,106/- out of depreciation on Plant & Machinery
 - (iii) Addition of Rs. 8,61,466/- by disallowing Power & Fuel Expenses and
 - (iv) Addition of Rs. 1,20,000/- on account of rental income.

3. The appellant craves to add, amend or withdraw any of the ground of appeal either before or at the time of hearing of appeal.

2. The hearing of the appeal was concluded through Video Conference due to the prevailing situation of COVID 19 Pandemic. The Id. A/R of the assessee has submitted that the assessee is a wholesale dealer in Grains and filed his return of income on 21st September, 2014 declaring total income of Rs. 2,18,230/-. The AO proposed to reject the books of account on the ground that the GP declared by the assessee for the year under consideration is 0.93% as against the GP declared for the immediately preceding year at 1.75%. The Id. A/R has further submitted that the AO has rejected the books of account only for making the trading addition and without finding any specific defect in the books of account. He has thus contended that the AO has made a lump sum addition of Rs. 1,00,000/- after rejecting the books of account under section 145(3) of the IT Act. Thus the Id. A/R has contended that when the assessee is maintaining

regular books of account, then the rejection of books of account is arbitrary and illegal. He has further submitted that the AO has also disallowed depreciation on Plant & Machinery, Power and Fuel expenses on the ground that the assessee has not carried out any manufacturing activity and the factory was given on rent to some outside party. However, the assessee has explained the fact that the tenant has already vacated the premises without paying any rent and the assessee is using the same for the purpose of its godown and, therefore, all the claims of depreciation and power expenses are allowable expenditure. Since the tenant has vacated the premises without paying the rent, therefore, no rental income was offered to tax and the addition made by the AO on this account is also unjustified. The Id. A/R has further submitted that the assessee has duly filed his written submission before the LD. CIT (A), however, the LD. CIT (A) without considering the written submissions filed by the assessee has dismissed the appeal of the assessee by passing the impugned ex parte order. Therefore, the reasoning given by the LD. CIT (A) is contrary to the record. Hence the Id. A/R has submitted that the impugned order of LD. CIT (A) may be set aside.

3. On the other hand, the Id. D/R has submitted that the AO has given the finding of fact that the assessee is not maintaining proper stock register and, therefore, the correct result and income cannot be deduced from the books of account maintained by the assessee. The AO has pointed out specific defect in the books of account as no day to day stock register has been maintained and further the assessee has also not maintained the stock on the quality of goods when the assessee is dealing in the Grains. The AO has invoked the provisions of section 145(3) by following the judgment

of Hon'ble Supreme Court in case of Chhabil Das Trubhuwandas Shah vs. CIT 59 ITR 733 (SC) as well as various High Courts. She has relied upon the orders of the authorities below.

4. We have considered the rival submissions as well as the relevant material on record. There is no dispute that the GP declared by the assessee for the year under consideration is very less in comparison to the GP declared in the preceding years. The assessee has not disputed the fact that in the immediately preceding year the assessee declared the GP @ 1.75% and for the assessment year 2012-13 at 1.87% whereas for the year under consideration the assessee has declared GP at 0.93%. Therefore, this sharp decline in the GP is a good reason for examination and verification of the book result and correctness of the books of account. The AO accordingly held that the assessee is not maintaining proper stock register to give the details of quantity-wise as well as quality-wise stocks. There is no dispute that non maintenance of stock register would result defect in the books of account so far as it does not reflect the true state of affairs of the business of the assessee and particularly the inventories and in-flow and out-flow of the goods. However, the finding of the AO shall not be based merely on the minor defects in the stock register, if the assessee is properly following the accounting principles and particularly the books are maintained as per the Accounting Standard. The LD. CIT (A) has dismissed the appeal of the assessee by recording the reason that the assessee has failed to offer any explanation nor any supporting evidence were produced. The Id. A/R has submitted that the assessee has filed the written submissions before the LD. CIT (A) on 07.03.2019 but the same were not considered by

the LD. CIT (A) while passing the impugned order. The impugned order passed by the LD. CIT (A) is not a speaking order but the appeal of the assessee was dismissed summarily. The relevant part of the order of the LD. CIT (A) in para 5 is as under :-

"5. I have carefully perused the grounds of appeal and assessment order u/s 143(3) of I.T. Act, 1961. As already discussed above, the appellant has failed to offer any explanation for submission in support of the grounds raised in this appeal nor any supporting evidences were produced by him despite adequate opportunity having been provided.

In this connection, reliance may be placed upon the decision of the Hon'ble Supreme Court in the case of H.M. Esufali H.M. Abdulali (1973) 90 ITR 271 wherein the Hon'ble Court has held that the appellate authority cannot substitute its own judgment in place of the judgment of the AO unless it is shown that the judgment of the AO was biased, irrational, vindictive or capricious.

In the instant case the appellant has not able to show that the decision of the Assessing Officer was arbitrary, biased, irrational, vindictive or capricious without any basis, I find no reason to interfere with the decision of the Assessing Officer."

Accordingly, when the issue of rejection of books of account as well as other disallowances made by the AO has not been properly examined by the LD. CIT (A) in the light of various objections raised by the assessee, then in the facts and circumstances of the case and in the interest of justice, we are of considered opinion that the matter requires re-adjudication on the part of the LD. CIT (A) after giving an opportunity of hearing to the assessee. Hence, we set aside the impugned order of LD.

CIT (A) and remit the matter to the record of the LD. CIT (A) for deciding the same afresh after giving an opportunity of hearing to the assessee.

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

Order is pronounced in the open court on 22/07/2020.

Sd/-
(रमेश सी. शर्मा)
(RAMESH C. SHARMA)
लेखा सदस्य / Accountant Member

Sd/-
(विजय पाल राँव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

Jaipur

Dated:- 22/07/2020.

Das/

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

1. The Appellant- Shri Vinod Kumar Kothari, Tonk.
2. The Respondent – The ITO Ward Tonk.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 1381/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar