

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", JAIPUR
श्री रमेश सी शर्मा, लेखा सदस्य एवं श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, AM & SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./ITA No. 1304/JP/2019
निर्धारण वर्ष / Assessment Year :2012-13

Anil Kumar Agarwal, 3/360, Vidhyadhar Nagar, Jaipur.	बनाम Vs.	A.C.I.T., Circle-4, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABKPJ 6701 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Binod Kr. Gupta &
Shri Deepak Sharma (CA)
राजस्व की ओर से / Revenue by : Smt. Runi Paul (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 09/09/2020
उदघोषणा की तारीख / Date of Pronouncement : 11/09/2020

आदेश / ORDER

PER: R.C. SHARMA, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-2, Jaipur dated 25/06/2019 for the A.Y. 2012-13 in the matter of order passed U/s 143(3) of the Income Tax Act, 1961 (in short, the Act).

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.
3. Rival contentions have been heard and record perused. Facts in brief are that the assessee is an individual and engaged as Contractor working

for PHED, Government of Rajasthan, in the name and style of M/s. Jai Shree Shyam Borewell Company. The assessee filed his return of income on 28.09.2012 declaring total income of Rs. 93,65,980/-.

4. The case of the assessee was selected for scrutiny. Books of Accounts were rejected and Section 145(3) was invoked. Assessment was made u/s 143(3) at Rs. 1,05,36,770/- on 16.02.2015 making trading addition of Rs.11,70,790/- (estimating NP at 7% by applying decision of Hon'ble Rajasthan High Court in the case of M/s Jain Construction Company

5. During the course of first appeal the assessee pleaded before the Ld.CIT(A) that the AO applied the judgment of Hon'ble Rajasthan High Court in the case of M/s Jain Construction Company and applied the rate of 7% but the deduction of depreciation and interest was not given, whereas the same was given in the case of M/s Jain Construction. The Ld.CIT(A) confirmed the rejection of books of accounts and applying the past history estimated the NP Rate of 6.85%. Against the order of the Id. CIT(A), the assessee is in further appeal before the ITAT.

6. We have considered rival contentions and carefully gone through the orders of the authorities below and found that the A.O. issued a SCN dated 06.02.2015 (reproduced at Page-3, Para-3.2 of AO Order) proposing to

estimate the NP Rate following the decision of **Hon'ble Rajasthan High Court in the case of M/s Jain Construction Company**. The AO applied this judgment and estimated the Net Profit @ 7% (as held in the case of M/s Jain Construction). In this judgment, the Hon'ble Rajasthan High Court estimated Net Profit Rate, subject to deduction on account of depreciation and interest. Applying the same judgment to the instant case, the Net Income viz a viz the income shown by the assessee would be as follows:-

Particulars	Amount (Rs.)
Net Profit @ 7% on Rs. 15,19,43,860/-	1,05,36,769/-
Less : Depreciation	22,63,693/-
Less: Bank Interest	5,72,873/-
Less: Interest on Loan	3,69,390/-
Less: Other Interest	95,860/-
Profit to be estimated as per decision of M/s Jain Construction Company (4.76%)	72,34,953/-
Profit Shown by the assessee (6.23%)	94,65,980/-

The assessee has declared profit of Rs. 94,65,980/-. After making the adjustment on account of depreciation and interest as allowed by Hon'ble Rajasthan High Court in the case of Jain Construction Company the Net

Profit comes to Rs. 72,34,994/-. Therefore, profit declared by the assessee is more; hence, it should be accepted even according to the A.O. Thus, no addition is warranted even as per the decision of the Hon'ble Rajasthan High Court and the Id. CIT(A) was not justified in confirming N.P. rate at 7%.

7. Even on merit, we found that the trading results of the assessee of last three years are as under:

AY	Turnover	NP Rate
2010-11	4,88,23,963	6.23%
2011-12	4,73,12,981	8.10%
2012-13	15,19,43,860	6.23%

8. We observe that the A.O. has not pointed out any specific discrepancy in the books of account for invoking provisions of section 145(3). The AO made a general observation that expenses and purchases have been inflated whereas no specific defect has been pointed out. Further, time and again different judicial bodies have expressed the view that books should not be rejected for minor instances.

9. We found that complete books of accounts along with bills and vouchers was produced before the AO, which he himself admitted in First Para at Page No.-1 of his order. The AO observed that the vouchers are

not having complete name and address of the persons to whom payment has been made and payments have been made in cash. The assessee is carrying business on contract basis. The business of the assessee is such that he is required to work at various locations or sites, situated at remote locations scattered in all around Rajasthan. It is important to understand the nature of work which requires extensive use of labours, compressors, diesel, sand, water, pump, pipes, submersible pumps, iron, steel, cement etc. looking to the requirement, it is further clear that many of these have to be sourced locally. In such kind of business sites people providing material and service are unorganized and does not provide proper bills and vouchers. However, during the course of assessment proceedings, all the required information, details were filed and books of accounts were also produced alongwith supporting before the A.O. for examination. Further, same have examined on test check basis.

10. In the instant case also, since the work sites of assessee is scatted all over Rajasthan, the possibility of self made vouchers cannot be ruled out. Further, the AO has not pointed out any false claim for rejecting the books of accounts.

11. Moreover, from the record, we found that the turnover during the year has increased to Rs. 1,519.43 Lacs from Rs. 473.13 Lacs in immediate

previous year, means turnover has increased by more than 221%. To achieve the increment in the business, assessee have to take the business at very competitive price, resultantly, the profit was reduced. In view of the above facts and circumstances, there is no justification for any trading addition so made.

12. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 11th September, 2020.

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

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

जयपुर / Jaipur
दिनांक / Dated:- 11/09/2020
*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Anil Kumar Agarwal, Jaipur.
2. प्रत्यर्थी / The Respondent- The A.C.I.T., Circle-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. 1304/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar