

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

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 1079/JP/2019
निर्धारण वर्ष/Assessment Year :2016-17

Shri Mahaveer Prasad Rathi M/s Maganlal Bansilal Rathi, Sardar Bazar, Kekri	बनाम Vs.	ITO, Ward-2(3), Ajmer
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABOPR3183Q		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Hemang Gargieya &
Mahendra Gargieya (Adv.)
राजस्व की ओर से/ Revenue by : Monisha Choudhary (Jt. CIT)

सुनवाई की तारीख/ Date of Hearing : 28/10/2020
उदघोषणा की तारीख/Date of Pronouncement: 09/11/2020

आदेश/ ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), Ajmer dated 09.07.2019 pertaining to A.Y 2016-17.

2. In Ground No. 1, the assessee has challenged the action of Id. CIT(A) in upholding the rejection of books of accounts u/s 145(3) of the Act. Ground Nos. 2 and 3 relates to sustaining of trading addition of Rs. 2,94,208/-.

3. In this regard, the Id. AR submitted that the assessee is engaged in the business of purchase and sale of food grain/agriculture produce and also acted as a commission agent. The assessee has maintained complete books of account consisting of cash book, ledger and journal. All the purchases and sales are fully vouched. All the expenses were fully supported by vouchers. The

accounts are audited and duly produced before the Assessing Officer. It was submitted that the Assessing Officer rejected the books of accounts u/s 145(3) only for the reason that there is a fall in GP rate as compared to the previous year and secondly, on account of absence of Quality Register. It was submitted that fall in G.P rate or for that matter, the absence of a qualitative details alone cannot be made a basis of rejection of the books of account. In support, the reliance was placed on the decision in case of Pr. CIT vs. Bhawani Silicate Industries (2016) 236 Taxman 596 (Raj) and CIT vs. Poonam Rani (2010) 326 ITR 223 (Del). It was further submitted that even on merits, where the books of accounts have been rejected, the Assessing Officer has to make a fair estimation of GP rate in the hands of the assessee. It was submitted that as against GP rate of 2.28% declared by the assessee, the Assessing Officer has applied GP rate of 2.75% without any basis. It was submitted that the Assessing Officer has accepted GP rate as low as 0.49% for A.Y 2014-15. It was submitted that the assessee has duly submitted the reasons for the fall in the G.P rate during the year as there is increase in the purchases prices and due to teji in the mandi, the G.P. rates fluctuated during the year. Further, it was submitted that if the average GP rate of 3 years is considered, the same comes to 2.52% as against G.P rate of 2.75% applied by the AO. It was accordingly submitted that trading addition so made be deleted.

4. Per contra, the Id. DR referred to the order of the Assessing Officer and submitted that ample opportunities were provided to the assessee to produce books of accounts and other relevant documents for physical verification during the course of assessment proceedings. It was submitted that the assessee attended and produced books of accounts but did not produce purchase/sale bills and quality wise stock register. It was essential to examine the quality wise register as there was wide fluctuation in the purchase price of certain commodities during the year. However, the assessee failed to produce the

quality wise stock register during the course of assessment proceedings and in absence of which, the true and correct profits cannot be ascertained and therefore, the trading results as declared by the assessee were not found acceptable and the books of accounts were rejected invoking the provisions of section 145(3) of the Act. It was further submitted that given the discrepancy in the books of accounts, the Assessing Officer has made a fair and reasonable estimation of G.P. rate of 2.75% as against declared G.P rate of 2.28%. It was accordingly submitted that there is no infirmity in the findings of the Assessing Officer and which has been rightly confirmed by the Id. CIT(A) and which may be affirmed.

5. We have heard the rival contentions and perused the material available on record. The assessee is engaged in the business of purchase and sale of food grain/agriculture produce and also acted as a commission agent. During the course of assessment proceedings, the Assessing officer observing that there is a fall in the gross profit rate as compared to the previous year called for the books of accounts for further verification and on examination of sample purchase bills submitted by the assessee, observed that there is wide variation in purchase price of Jeera which varies from Rs 7500/- per quintal to Rs 14,150/- per quintal, a fact not disputed by the assessee and therefore, to determine the correct gross profit rate sought to verify the quality wise stock register which the assessee failed to produce. We therefore find that in the facts of the present case, where there is wide fluctuation in the purchase price of the commodity which is likely to have effect on the sale price of such commodity as well, the maintenance of quality wise stock register giving details of the respective commodities in terms of quantity and price quality wise both in respect of purchases and sales are essential to ascertain the gross profit rate. We have also gone through the decisions cited by the Id AR at the Bar and find that the same are distinguishable rendered in the peculiar facts and

circumstances of the respective cases and therefore, doesn't support the case of the assessee. Therefore, we find that in the facts and circumstances of the present case, in absence of such quality wise details being maintained and produced for verification, the action of the Assessing officer in rejecting the books of accounts u/s 145(3) cannot be faulted and the same is hereby upheld.

6. Once the books of accounts have been rejected, the Assessing Officer is required to make the assessment on the basis of his best judgment and a fair estimate of income has to be made instead of resorting to making the addition to the book results which already stand rejected or any alteration in the book results. The Assessing officer while exercising his jurisdiction cannot act arbitrarily or capriciously. The assessment must proceed on judicial considerations in light of relevant material available on record. In other words, in any case of best judgment, though the element of guess work is involved, however the guess work should have nexus with the material on record and discretion must not be exercised arbitrarily or capriciously. For the purposes of making the best judgment assessment, past history of the assessee has been held as reliable and reasonable basis for estimation of profits. In the instant case, the average GP of past three years comes to 2.52% which we find a reliable and reasonable basis to estimate the GP for the current year. We therefore direct the AO to apply GP rate of 2.52% for the year under consideration as against G.P rate of 2.28% declared by the assessee. The grounds of appeal are disposed off accordingly.

7. Ground No. 4 relates to sustenance of addition of Rs. 94,920/- in respect of agricultural income. In this regard, the Id. AR submitted that the assessee owned & possessed 18 Kaccha Bighas of agriculture land and has earned agricultural income in the previous year and has already filed a copy of Khasara Girdawari, copy of Jama Bandi and copy of bills of sale of agricultural goods. It

was submitted that only dispute that remains is "whether the agricultural income claimed is on a higher side, with reference to the area of land" as suspected by the Id CIT(A). In this regard, it was submitted that the Id. CIT(A) is not an agriculturalist or an expert of this field who can estimate the growth of crop and has not brought any material on record to prove that the agricultural income claimed by the assessee is on a higher side. It was further submitted that during the course of assessment proceedings, the Assessing Officer has not disputed or disbelieved the copy of Khasra Girdawari and Mandi receipts/sales Bills which clearly show the fact of growing of crops like Urad, Mung, Chana etc and receipts of income. Two sale invoices of Rs. 43,470/- and Rs. 1,59,460/- totaling to Rs. 2,02,930/- and one Krashi Upaj Mandi Samiti Receipt of Rs. 1,06,450/- could not be ignored. It was accordingly submitted that given huge area being 18 bighas, income of Rs. 2.94 lakhs only which comes to a small Rs. 16,333/- per bigha is not at all excessive as wrongly suspected by the Id. CIT(A). It was further submitted that the assessee has declared agriculture income of Rs. 2,66,490/- in A.Y 2017-18 which was accepted by the Revenue. It was accordingly submitted that the addition of Rs. 94,920/- sustained by the Id. CIT(A) should be deleted.

8. Per contra, the Id. DR referred to the finding of the Assessing Officer and submitted that the assessee has filed receipt of Krashi Upaj Mandi Samiti pertaining to F.Y 2016-17 relevant to A.Y 2017-18 which has been rightly ignored by the Assessing Officer and addition of Rs. 1,94,930/- has been made in absence of any cogent evidence been produced by the assessee in respect of agricultural income. It was further submitted that during the course of appellate proceedings, the matter was remanded back to the Assessing Officer and after calling for the remand report, the Id. CIT(A) has allowed relief of Rs 1 lacs to the assessee and the remaining addition of Rs. 94,930/- has been rightly confirmed by the Id. CIT(A) which should be confirmed.

9. We have heard the rival contentions and perused the material available on record. Considering the land holding of the assessee and the crops like urad, mung and chana being grown on the land during the year and evidence of sale of such crops placed on record, the addition of Rs 94,930 sustained by the Id CIT(A) is hereby directed to be deleted.

In the result, appeal of the assessee is disposed off in light of aforesaid directions.

Order pronounced in the open Court on 09/11/2020.

Sd/-
(संदीप गोसाई)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

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

जयपुर / Jaipur

दिनांक / Dated:- 09/11/2020

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Shri Mahaveer Prasad Rathi, Kekri
2. प्रत्यर्थी / The Respondent- ITO, Ward 2(3), Ajmer
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. 1079/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

