

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. 834/JP/2018
निर्धारण वर्ष / Assessment Years : 2011-12

Shri Rajendra Kumar Sharma Prop. M/s Ashirwad Filing Station, Nagargarh, Baran.	बनाम Vs.	The ITO, Baran.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BARPS 3986 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Hemang Gargieya (Adv.)
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (JCIT)

सुनवाई की तारीख / Date of Hearing : 17/03/2021
उद्घोषणा की तारीख / Date of Pronouncement : 30/04/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), Kota dated 01.02.2018 for the assessment year 2011-12 wherein the assessee has taken the following grounds of appeal:-

- "1. The impugned additions and disallowances made in the order u/s 143(3) of the Act dated 25.11.2013 are bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be deleted.*
- 2. Rs. 3,14,300/- The Id. CIT(A) erred in law as well as on the facts of the case in confirming the very action taken u/s 145(3) and applying the GP Rate of 1.66%, which is bad in law without*

jurisdiction and being void ab-initio, the same kindly be quashed. Consequently the impugned trading additions made u/s 143(3) also kindly be quashed.

3. Rs.2,23,840/-: The Id. CIT(A) erred in law as well as on the facts of the case in confirming the disallowances of the following expenses claimed by the making:-

<i>S.No.</i>	<i>Head of Expenses</i>	<i>Expenses claimed by the assessee (Rs.)</i>
<i>3.1</i>	<i>Depreciation on Tanker</i>	<i>1,28,031/-</i>
<i>3.2</i>	<i>Tanker Insurance</i>	<i>62,821/-</i>
<i>3.3</i>	<i>Interest on TATA Finance</i>	<i>32,988/-</i>
<i>Total</i>		<i>2,23,840/-</i>

The disallowance so made is contrary to the provisions of law and facts of the case. Hence, the same kindly be deleted in full.

4. The Id. CIT(A) further erred in law as well as on the facts of the case in confirming charging interest u/s 234B, 234C & 234D of the Act. The appellant totally denies its liability of charging of any such interest. The interest so charged, being contrary to the provisions of law and facts, kindly be deleted in full."

2. Ground no. 1 was not pressed during the course of hearing hence, the same is dismissed as not pressed.

3. In ground No. 2, the assessee has challenged the action of Id. CIT(A) in confirming the rejection of books of accounts U/s 145(3) and applying GP @ 1.66%. In this regard, during the course of hearing, the Id. AR submitted that the assessee is engaged in the business of running petrol pump and during the year under consideration has declared GP rate of 1.52% on sales of Rs. 20,33,37,902/- as against GP

rate of 1.51% on Sales of Rs. 12,31,31,415/- in preceding financial year. It was submitted that the assessee has maintained complete books of accounts, all the purchases and sales are fully vouched by vouchers. It was submitted that the allegation of the Assessing Officer regarding non production of stock register is contrary to the facts available on record as the assessee has submitted a detailed quantitative statement along with the tax audit report and has also submitted daily stock summary of motor spirit and high speed diesel. Regarding the allegation of the Assessing Officer that the assessee has shown excess shortage, it was submitted that the assessee has maintained complete record as per prescribed format by the oil company. Moreover, the surprise verification are conducted by the oil company from time to time and the shortage so claimed by the assessee are as per tolerance limit provided by the oil company. It was accordingly submitted that there is no valid basis for invocation of section 145(3) of the Act and rejection of books of accounts. It was further submitted that even where the books of accounts are rejected, the Assessing Officer is required to make a fair estimation of assessee's income. Regarding the comparison of GP declared by the assessee with other parties namely Raj Filling Station and Seth Filing station, it was submitted that these cases are not comparable due to difference in the storage capacity of these filing station as both are having 100KL storage capacity wherein the assessee is having only 40 KL storage capacity. It was submitted that the Assessing Officer never confronted the assessee the relevant details of such cases during the course of assessment proceedings, therefore, in absence of the same, the third party data cannot be used against the assessee. It was further submitted that

during the year under consideration, there is a sharp increase in the turnover by 165% i.e. from Rs. 12.31 crore to Rs. 20.33 crore and Gross profit has also increased by 167% from Rs 18.50 lacs to Rs 30.95 lacs as compared to preceding year which strongly justify the declared trading results. It was further submitted that the declared GP @ 1.52% is better than the average GP of last 3 years which comes to 1.44% and therefore, the GP so declared should be accepted and in support, reliance was placed on the decision in case of CIT vs. Amrapali Jewels (P) Ltd. (2012) 65 DTR 196 (Raj).

4. In ground no. 3 wherein the assessee has challenged the disallowance of expenses amounting to Rs. 2,23,840/-, it was submitted that the assessee has claimed the depreciation of Rs. 1,28,031/- on tanker, Rs.62,826/- for Tanker Insurance and Rs. 32,988/- for interest paid to TATA finance for purchase of tanker. It was submitted that the AO has disallowed these expenses alleging that the assessee has failed to produce any evidence regarding the fuel for use of tanker and also failed to furnish evidence w.r.t. use of tanker for business purchases. It was further submitted that the concept of "put to use" of an asset is limited to claim and calculation of depreciation only and does not extend to expenses claimed under section 37(1) which specifically states that any expenditure laid out or expended wholly and exclusively for the purpose of the business or profession shall be allowed. The AO has raised no objection and rather admitted that the payment has been made during the year itself. Thus, all the other expenses i.e. insurance of Rs. 62,826/- and interest of Rs. 32,988/- deserved to be allowed. Regarding depreciation of Rs. 1,28,031/-, it was submitted that the

lower authorities did not consider the matter judiciously in as much as a bare perusal of VAT invoice dated 10.12.2010 clearly shows that the assessee had purchased complete Tanker along with body and chasis, which were duly delivered along with insurance to him on 10.12.2010. Thereafter, the assessee purchased complete accessories on 17.12.2010 and 05.01.2011 as per Invoice No. 82 and 099. Finally, cabin was also purchased and installed on 02.03.2011. Moreover, Road Tax of Rs. 4,585/- was also paid. Furthermore, the assessee has been using the Tanker for his business in M/s Ashirwad Filling Station and thus fulfilled all the three conditions for claiming depreciation i.e (i) ownership of the asset (ii) asset used for the purpose of business or profession and (iii) asset used during the relevant previous year. Accordingly, he was fully entitled to claim depreciation on the Tanker as well as other expenses incurred. In support, the assessee has placed reliance on the decision of Coordinate Bench in case of Shri Mangal Singh Palsania vs. ACIT (ITA No. 52/JP/2014).

5. Per contra, the Id. DR relied on the findings of the lower authorities and our reference was drawn to the findings of the Id CIT(A) which are contained at page 7 of his order which reads as under:-

" I have gone through assessee's submission and AO's findings. The AO did bring out specific instances of discrepancy in traded items like petrol and diesel and the shortage claimed vis a vis other dealers of the same area. The appellant has not been able to come up with any further reasoning to counter the findings of the AO in the course of the appellate proceedings and has not even represented despite several notices for hearing in 4 years since filing of the appeal.

Under the circumstances, I see no reason to disagree with the findings of the AO in rejecting the books of the appellant u/s 145(3) and estimation of his profits considering the lack of proper explanation for lower GP as compared to peer traders in the same area, non maintenance of proper stock details and those related to claim of shortage, expenses etc. The addition of Rs. 3,14,300/- is upheld.

The ground of appeal no. 1 is dismissed.

As regards ground no. 2, the appellant could not produce the claim of expenses related to the tanker before the AO and only relied on oral submission despite repeated query in this regard. The appellant has not been able to come up with any further reasoning to counter the findings of the AO in the course of the appellate proceedings. Under the circumstances, I see no reason to disagree with the findings of the AO of disallowing the claim of expenses including depreciation as the use of the asset for business purposes before the end of the year could not be established. The disallowance of Rs. 2,23,840/- is accordingly being upheld. The ground of appeal No. 2 is dismissed."

6. We have heard the rival contentions and perused the material available on record. Where the books of accounts are rejected by the AO, the AO is to assess the income of the assessee on the basis of best judgment and average of past years GP rate which has attained finality has been considered as proper and reasonable basis and guidance for the best judgment. In the instant case, the AO has adopted G.P rate of immediately preceding year as compared to average of past GP rates. The assessee has submitted that average of past three years GP rate comes to 1.44% as compared to current year rate of 1.52%. We therefore, find that the assessee has declared better gross profit rate of

1.52% as compared to average of past three years GP rate of 1.44% and even where the books of accounts are rejected, there is no basis for making the addition in the hands of the assessee. Therefore, leaving the question of rejection of books of accounts open as the same has become more academic in nature, the addition so made amounting to Rs 3,14,300/- is directed to be deleted.

7. Regarding claim of depreciation and other expenses relating to tanker amounting to Rs 2,23,840/-, on perusal of explanation and documentation placed on record, we find that there is no merit in disallowance of the said expenses and the same are directed to be deleted.

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

Order pronounced in the open Court on 30/04/2021.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)

(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 30/04/2021.

*Santosh

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

1. अपीलार्थी / The Appellant- Shri Rajendra Kumar Sharma, Baran.
2. प्रत्यर्थी / The Respondent- ITO, Baran.
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.834/JP/2018 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar