

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'B', 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 Nos. 1179 & 1180/JP/2019
निर्धारण वर्ष/Assessment Years : 2013-14 & 2014-15

M/s Swastik Oil Industries, F-5 to 8, Industrial Area, Newai, Tonk	बनाम Vs.	DCIT, Circle-07, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAJFS8180J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Mahendra Gargieya (Adv.) &
Sh. Devang Gargieya (ITP)
राजस्व की ओर से / Revenue by : Smt. Runi Pal (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 18/06/2021
उदघोषणा की तारीख / Date of Pronouncement: 22/06/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

These are two appeals filed by the assessee against the orders of Id. CIT(A)-03, Jaipur dated 13.09.2019 for A.Ys 2013-14 & 2014-15 respectively. Since common issues are involved, both these appeals were heard together and are being disposed off by this consolidated order.

2. Firstly, we take up assessee's appeal for A.Y 2013-14 in ITA No. 1180/JP/2019 wherein the assessee has taken following grounds of appeal:

"1. The impugned order u/s 143(3) dated 31.03.2016 is bad in law and on facts of the case, for want of jurisdiction and for various other reasons

and hence the same may kindly be quashed and in any case, the impugned addition/s be deleted.

2.1 Rs. 1,50,000/-: The Id. CIT(A) erred in law as well as on the facts of the case in confirming the application of section 145(3). The provision so invoked and confirmed by the CIT(A) being contrary to the provisions of law and facts, the same may kindly be quashed. Consequently, the trading addition partly confirmed by the Id. CIT(A) of Rs. 1,50,000/- may kindly be deleted in full.

2.2. Alternatively and without prejudice the above

The Id. CIT(A) erred in law as well as on the facts of the case in partly confirming the trading addition upto Rs. 1,50,000/- out of Rs. 9,44,277/- made by the AO. The addition so made and partly confirmed by the CIT(A) being contrary to the provisions of law and facts, the same may kindly be deleted in full.

3. Rs. 1,02,656/-: The Id. CIT also erred in law as well as on the facts of the case in fully confirming the disallowances made by the AO out of the following expenses claimed by the assessee:

<i>S. No.</i>	<i>Head of Expenses</i>	<i>Expenses claimed by the assessee</i>	<i>Disallowed by the Id. AO</i>	<i>Disallowance (Rs.)</i>
<i>3.1</i>	<i>Telephone Expenses</i>	<i>Rs. 1,34,874/-</i>	<i>10% of total expenses claimed i.e. Rs. 10,26,581/-</i>	<i>13,487/-</i>
<i>3.2</i>	<i>Travelling Expenses</i>	<i>Rs. 1,15,898/-</i>		<i>11,589/-</i>
<i>3.3</i>	<i>Building Repair & Maintenance Expenses</i>	<i>Rs. 5,77,516/-</i>		<i>57,751/-</i>
<i>3.4</i>	<i>Office Expenses</i>	<i>Rs. 1,98,293/-</i>		<i>19,829/-</i>
	<i>Total</i>	<i>Rs. 10,26,581/-</i>		<i>102,656/-</i>

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

3. During the course of hearing, the Id. AR submitted that the assessee doesn't want to press ground No. 1 of its appeal. Hence, the same is dismissed as not pressed.
4. In Ground No. 2, the assessee has challenged the rejection of books of accounts and trading addition sustained by the Id. CIT(A) on account of low yield ratio in comparison to the preceding year.
5. Briefly, the facts of the case are that the assessee is a partnership firm engaged in the manufacturing and trading of edible oil, oil cakes from mustard, Tarameera and groundnuts. The assessee filed its return of income on 25/12/2013 declaring total income of Rs. 57,06,490/-. Thereafter, the assessment was completed at Rs. 92,10,090/- by making additions of Rs. 9,44,277/- by the A.O. on account of low yield of oil from seeds i.e. from groundnuts, mustard and Tarameera seeds. The assessee challenged the action of the A.O. before the Id. CIT(A), who has restricted the trading addition made by the A.O. of Rs. 9,44,277/- on account of low yield ratio to Rs. 1,50,000/-. Against the said findings, the assessee is in appeal before us.
6. During the course of hearing, the Id. AR submitted that the absence of stock register or low yield cannot be a ground for invoking of section 145(3) of the Act. It was submitted that the appellant has maintained all the books of account consisting of cash book, ledger, quantitative details of opening stock and closing stock and stock/production register. Further, the books of accounts were duly produced before the Assessing Officer and therefore, there is no valid basis to apply section 145(3) in the instant case. It was further submitted that even invoking section 145 does not confer blind powers upon the Assessing Officer and he is not at liberty to assess the income at whatever figure he wants. He is bound to make an

honest estimation of income, keeping in view the material available on record, past history of the case, local knowledge and repute of the assessee. It was further submitted that regarding low yield, the assessee has made detail submissions before the Assessing Officer. However, the same has not been correctly appreciated by the Assessing Officer. It was submitted that the results declared by the assessee this year are much better in as much as the GP declared this year at 4.83% on sales of Rs. 53,20,85,035/- as against GP rate of 3.54% on sales of Rs. 62,51,07,501/- in the immediately preceding year.

7. It was submitted that similar issue have arisen in the case of the assessee for A.Y 2012-13 wherein the Tribunal vide its order dated 21.10.2019 in ITA No. 1305/JP/2018 has deleted the trading additions so made by the Assessing Officer for the reason that the variation in the yield ratio is very meager and in some of the cases, it is less than 1 %. It was submitted that this year also, fall in yield is negligible being below 1 % and GP declared this year at 4.83% is much better than the GP of 3.54% in earlier year. It was accordingly submitted that there is no basis to sustain the disallowance so made by the Assessing Officer and which has been partly confirmed by the Id. CIT(A).

8. Per contra, the Id. DR submitted that the books of accounts have been rightly rejected by the Assessing officer on account of no separate stock register, low yield and various other reasons as so stated in the assessment order. Regarding the contention of the assessee that there was only slight decline in yield percentage as compared to average yield, it was submitted that the Id. CIT(A) has already restricted the additions to Rs. 1,50,000/- as against addition of Rs. 7,94,277/- made by the Assessing Officer. It was accordingly submitted that the addition so sustained by the Id. CIT(A) may be confirmed.

9. We have heard the rival contentions and perused the materials available on record. We find that the **Co-ordinate Bench** in **assessee's own case for A.Y 2012-13** has dealt with similar issue on account of addition made by the Assessing Officer on account of low yield ratio and the relevant findings reads as under:-

"6. We have considered the rival submissions as well as relevant material on record. The A.O. has noted that for the year under consideration, the assessee has declared low yield ratio in respect of groundnut, mustard and Tarameera seeds in comparison to the preceding years. The details of the perspective yield ratio were given by the A.O. as under:

Product	Yield Ratio in A.Y. 2011-12	Yield Ratio in A.Y. 2012-13
Ground nut	28.19%	27.9%
Mustard	35.92%	34.37%
Taramira	29.23%	27.35%

Yield Chart						
	Ground Nut Seeds (In KG)		Mustard Seed (In Kg.)		Taramira Seed (In Kg.)	
Oil	1170204.600	27.90%	134646.040	34.37%	1185437.500	27.35%
Cake	1991570.000	47.48%	255040.000	65.11%	3131509.00	72.42%
Shortage	1032476.400	24.62%	2015.960	00.52%	10304.900	00.23%
Total	4194251.000	100%	391702.000	100%	4324251.400	100%

The A.O., accordingly, proceeded to make the addition by adopting yield ratio of the preceding year i.e. A.Y. 2011-12 and made the addition in respect of all three oil products i.e. groundnuts, mustard and Tarameera seeds total amounting to Rs. 18,74,102/-. On appeal, the Id. CIT(A) has accepted the contention of the assessee on the point that when the A.O. has not rejected books of account then such addition is not justified. However, the Id. CIT(A) has sustained the addition to the extent of Rs.3.00 lacs as against Rs. 18,74,102/-. The relevant finding of the Id. CIT(A) in para 7.2 as under:

"7.2. I have considered the assessment order, appellant's submissions and documents on record. The assessee had maintained the complete books of accounts along with various ledgers and journals. The purchase, sales and expenses were fully vouched & verifiable and these facts were also accepted by the AO. The AO had invoked the provisions of section 145(3) and issued a show cause notice after noticing discrepancies such as non maintenance of stock register, production registers, inward registers outward registers etc. but also considered the written submission of the appellant and had not rejected the books of account at all u/s 145(3). In a similar issue, The Hon'ble High Court, Rajasthan in the case of Malani Ramjivan Jagannath vs. ACIT 20T CTR (Raj) 19 held as under:-

"In doing so, it had ignored all admitted facts in the face of which there about the sales and purchases, non maintenance of stock register lost its significance so far as arriving at GP rate is concerned."

Further the Hon'ble ITAT, Jaipur in the case of Ambika textile Industries vs. DCIT held that huge trading addition can't be made without pointing any defect in the books of accounts. Apart from this the Hon'ble ITAT, Jaipur in the case of DCIT vs. Mewar Textile Mills Ltd. held that the AO had nowhere invoked the provisions of section 145(1) and if the provisions was not invoked then the estimate of profit would not possible in the eyes of law.

Further, the AO made trading addition considering the yield ratio of similar business carrying out same job at same station in the same conditions. Here I am of view that if the same businesses with same raw material even the party from whom raw material was purchased was, more or less same; carrying out function at the same station should yield more or less the same result and; this fact pointed out by the AO cannot be neglected. Therefore, respectfully following ratio laid down case laws and facts as discussed above I hereby restricted the addition of Rs. 3,00,000/-, the

appellant gets relief of Rs. 15,74,102/-. Accordingly, the ground is treated as partly allowed."

*Thus, the Id. CIT(A) has accepted the contention of the assessee that a trading addition cannot be made without pointing out defects in the books of account. Though, in the case in hand, the addition made by the A.O. is not in the nature of trading addition but it is the addition on account of low production of oil from the oil seeds in comparison to the earlier years. **We find variation in the yield ratio is very meager and in some of the cases it is less than 1%. Once the difference is very negligible which can be due to various factors and reasons including the quality of seed, oil contents in the seeds due to climate condition for a particular season which affects the quality of crop itself. Ignoring all these factors as explained by the assessee in the reply to the show cause notice of the A.O., the addition made by the A.O. and sustained by the Id. CIT(A) is not justified.** The Id. CIT(A) has also not given any basis for sustaining the addition of Rs. 3.00 lacs and therefore, such an ad hoc addition without specifying the basis is not permissible, accordingly, the addition sustained by the Id. CIT(A) is deleted."*

10. In the year under consideration, the Id CIT(A) has taken note of slight downfall in ground nut oil yield ratio by 0.31% and mustard oil yield ratio by 0.23% as compared to average of past three years and the reasons for such variance as apparent from his findings which read as under:

"I have perused the record I find that there is slightly downfall in the yield shown by the appellant in this year as compare to the average of 3 years which is as under:-

<i>Item</i>	<i>Average of 3 Year Yield</i>	<i>This Year Yield</i>
<i>Ground Nut Oil</i>	<i>27.89%</i>	<i>27.58%</i>
<i>Mustard Oil</i>	<i>35.03%</i>	<i>34.80%</i>

The difference in Ground Nut Oil is 0.31% and difference in mustard seeds oil is 0.23%. The A/R argued that the yield difference is due to the quality of the seeds and the oil content therein largely depend upon rains. This year, there were lesser rain as compared to the preceding year and hence there is a minor fall. There are various other factors which affect the rate of yield however, to keep the same rate of yield every year is beyond human control.

There is substance in the submission of the A/R that yield % depends on the quality of Ground Nut, Mustard Seeds and it cannot be same in every year. The Gross profit of the appellant is better in this year as compared to the last year. The appellant this year declared GP rate of 4.83% on sales of Rs.53,20,035/-. The Gross profit rate of this year is better as compared to the last year GP rate of 3.54% on sales of Rs.62,51,07,501/-. Therefore considering the facts of the case and nature of business and considering the slight decline in yield percentage as compared to average yield. I find that it would be reasonable to restrict the addition of Rs.1,50,000/- and balance addition of Rs.7,94,277/- is deleted. This ground is partly allowed."

In spite of above, the Id CIT(A) has sustained the addition of Rs 1,50,000/- without giving any basis for sustaining and therefore, such an adhoc addition without specifying the basis is not permissible, accordingly, the addition sustained by the Id. CIT(A) is deleted.

11. Regarding Ground No.3, the Id. AR submitted that a bare reading of the order of the AO shall reveal that in almost all the cases the disallowances have been made on ad hoc basis, simply on mere suspicion, surmises and conjectures. No specific instance of any nature whatsoever has been given by the AO in the impugned order to support his contention with the documentary evidence that the expenditures were incurred for non-business purposes, element of personal user was there. An allegation remains a mere allegation unless proved. Suspicion cannot take the place of reality are the settled principles (Dhakeshwari Cotton Mills 26 ITR 775 (SC)).

12. It was submitted that a businessman is the best judge to take care of its own interest & to take decisions and the AO is not supposed to intervene therein nor he can replace the assessee. Here, whatever decisions were taken by the assessee, has to be understood as taken out of commercial expediency. Kindly refer T.T. (P) Ltd. v/s CIT (1980) 121 ITR 551 (Kar), CIT v/s Udhoji Shrikrishnadas (1983) 139 ITR 827 (MP) JK Woolen Manufacturers 72 ITR 612 (SC).

13. It was further submitted that looking to a huge turnover of more than Rs.53.20 crores (approx), claim of expenditure is otherwise very meager. Thus such a meager claim to achieve such a huge turnover is not at all unjustified. All these expenses were incurred exclusively for businesses purpose and are under the provisions of the Act. Therefore, the entire disallowance, so made may kindly be deleted in full.

14. Per contra, the Id. DR submitted that the Id AR though has raised various contentions but he has failed to mention that similar disallowances have been made in the preceding assessment year 2012-13 as well and

our reference was drawn to the findings of the Co-ordinate Bench which are contained at para 10 of its order which reads as under:-

"10. We have heard the Id AR as well as the Id DR and considered the relevant material on record. The A.O. has disallowed 10% of the telephone expenses on the ground that the assessee did not maintain any call register and in absence thereof, personal element cannot be ruled out. Once the telephone expenses are verifiable from the telephone bills itself then this cannot be a case of unverifiable expenses. Further the personal element is only suspected by the A.O. and not found. Even otherwise, when the telephones are used in the business premises of the assessee and the expenses are verifiable from the telephone bills itself then the same cannot be disallowed on mere suspicion.

Similarly, the travelling expenses were also disallowed as 10% on the ground of personal element. The A.O. has not doubted the expenditure incurred by the assessee and if the expenses are not found to be excessive having regard to the nature of business and volume of business of the assessee then such an ad hoc disallowance on personal element is not justified.

In case of building repair and maintenance expenses, the A.O. has made 10% disallowance on account of non-verifiability of the expenses as the same were paid in cash and supported with self-made vouchers. Since this expenditure was incurred in cash and the assessee has produced only self-made vouchers then in absence of supporting documentary evidence, 10% disallowance of expenditure is justified.

Regarding other office expenses, the assessee has shown office expenses of Rs. 2,85,200/- and most of these were paid in cash and supported by the self-made vouchers. However, it is to be noted that if

the expenditure is not found to be excessive and it is inevitable for the business of the assessee then the petty expenses incurred by the assessee on day to day basis is bound to be incurred in cash and without any vouchers from the other side due to such a small and petty expenses. Accordingly, once the said expenditure is not found to be excessive having regard to the nature of business and volume of the business of the assessee then an ad hoc disallowance is not justified. Accordingly, in view of the above facts and circumstances, except 10% of building repair and maintenance expenses, all other disallowances made by the A.O. and sustained by the Id. CIT(A) are deleted."

15. We have heard the rival contentions and perused the material available on record. We find that under identical set of facts and circumstances of the case, the disallowances were made in the earlier year and the same have been partly confirmed by the Coordinate Bench. Therefore, following the decision of the Coordinate Bench, except 10% of building repair and maintenance expenses, all other disallowances made by the A.O. and sustained by the Id. CIT(A) are hereby deleted and the ground is thus partly allowed.

16. The Id. AR further submitted that the assessee wishes to take the following additional ground of appeal:-

"3. Rs. 3,60,000/-: The Id. CIT further erred in law as well as on the facts of the case in partly confirming the disallowance upto Rs. 3,60,000/- being @ 15%, out of the commission of Rs. 24,00,000/- paid and claimed by the assessee. The disallowance so made and partly being confirmed contrary to the provisions of law and facts of the case and contrary to the submissions & evidences available on record hence, the same kindly be deleted in full."

17. It was submitted that due to inadvertent mistake, this ground was not raised before the Tribunal at the time of filing memorandum appeal i.e. Form-36. This ground does not require any fresh investigation of facts in as much as the same are available on record. Per contra, the Id. DR objected to the raising of the additional ground of appeal. After hearing both the parties and considering the fact that the assessee has taken this ground before the Id. CIT(A) and therefore, emerging from the impugned order and all the relevant facts being available on record, the additional ground being raised is hereby admitted for necessary adjudication.

18. In this regard, the Id. AR submitted that the facts as noted by the AO are that in the Profit & Loss account, the assessee has claimed Rs. 28,76,659/- on account of commission payment to various persons against total turnover of Rs. 53,20,85,035/- which is 0.54% of the turnover. During the course of assessment proceeding, the relevant details have been obtained and from the details so submitted, it is observed that out of the total commission payment of Rs. 28,76,659/-, Rs. 24 Lacs have been paid to related persons covered u/s 40A(2)(B). When asked vide letter dated 23.12.2015, 02.03.2016 and dated 23.03.2016, the assessee filed detailed explanations however, rejecting the same, the AO disallowed entire claim of Rs. 24 lacs u/s 40A(2)(b) of the Act.

19. In first appeal, the Id. CIT(A) vide order dated 13.09.2019 restricted the addition upto Rs.3,60,000/- holding as under:

"6.3 I have carefully considered the observation made by the AO in the assessment order, submission and additional evidences filed by the A/R of the appellant, remand report of the AO and rejoinder filed by the A/R of

the appellant. I find that this issue was already decided by CIT(A)-1, Jodhpur in the appellant own case for A.Y. 2012-13 as under:-

"I have considered the assessment order, appellant's submissions and documents on record The AO stated that commission payment to a HUF being a separate entity could not enjoy any physical entity to perform any act. Therefore, only resource based income may be earned by a HUF such as interest, income house property income etc but an HUF itself have not any skill or expenses in its own therefore could not render any service for promoting business. On perusal of appellant's submission, I find that the appellant had claimed commission of Rs. 27,15,336/- which was 0.43% of total turnover as against Rs. 4,22,420/- claimed in the preceding year, out of total commission Rs 21.00,000/- was paid to related persons covered u/s 40A(2)(b) of the act. Since the commission was paid to increase its sales which was reflected in its higher turnover. During the year under consideration the turnover of the appellant was Rs. 62.51 lacs with GP rate of 3.54% as compared to Rs. 42.42 lacs with GP rate of 3.23% in proceeding AY. It is also a fact that members of an HUF can very well discharge the functions for their HUF. Here I am of view that the commission is an expenditure incurred solely and exclusively for the purpose of the business and fully allowable. Further there had been no loss of revenue as all the payees had already declared the said amount in their hands and paid tax accordingly. The objected that for entering into an agreement or contract at least two person is required. This means for a valid contract/ agreement, minimum two separate parties are essential. In the instant case, when the members and karta of HUF are the very same persons, they are entering into agreement and negotiating rates of commission and terms of agreement only and this cannot be ignored. Accordingly, the addition made by the AO is hereby

restricted to the tune of 15% i.e. Rs. 3,15,000/- appellant gets relief of Rs.17,85,000/-. The ground is treated as partly allowed"

The facts of this case are totally similar as decided by the CIT(A)-1 Jodhpur. In this case the commission are paid to the same persons and the service also rendered by the recipient. The total commission in this year is Rs.28,76,659/- which is 0.54% of total turnover. In the last year the commission payment is Rs.27,15,336/- which 0.43%. The Net profit in this year is 1.07% as compute to last year 0.87% which is better in this year. It is also a fact that members of an HUF can very well discharge the functions for their HUF. Here I am the view that the commission is an expenditure incurred solely and exclusively for the purpose of the business and fully allowable. Further there had been no loss of revenue as all the payees had already declared the said amount in their hands and paid tax accordingly. The objected that for entering into an agreement or contract atleast two person is required. This means for a valid contract/ agreement, minimum two separate parties are essential. In the instant case, when the members and karta of HUF are the very same persons, they are entering into agreement and negotiating rates of commission and terms of agreement only and this cannot be ignored. Accordingly I restrict the addition 15% of the commission paid to person covered u/s 40A(2)(b) which comes of Rs.3,60,000/-. Hence I confirm the addition of Rs.3,60,000/- and balance amount of Rs.20,40,000/- is deleted. This ground is partly allowed."

20. In the above factual background, it was submitted that the assessee this year has paid commission and brokerage of Rs.28,76,659/- as against Rs.27,15,336/- claimed in the preceding year. Detailed written submissions were filed before the AO as well as before the Id. CIT(A) along with

detailed paper book, which has been reproduced in verbatim from Pg-20 to 28 of his order. The assessee fully justified and proved the necessity of such expenditure as also established the genuineness and the fact of making payment and that such expenses were incurred purely out of commercial expediency. It was submitted that the advantages of making transactions through the agents were also explained and established. The fact of rendering services was duly and fully established with the help of various evidences. It was submitted that the payments were made through cheque and TDS were deducted thereon. Moreover, the payees duly declared the receipt of commission in their hands and paid the taxes thereon. Moreover, there was no loss to the revenue and this rather resulted in a case of double taxation in as much as all the payees have already declared the income and paid taxes. Even otherwise had the assessee did not pay commission, it could have made payment of remuneration to the payees, within the permissible limit u/s 40(b), which was more than Rs.35,00,000/- as against which, the assessee had claimed only Rs. 24,00,000/-.

21. It was submitted that the Id. CIT(A) even though admitted all the contentions raised by the assessee and even admitted that that the subjected commission payments were incurred solely and exclusively for the business purposes and also admitted that there was no loss to the revenue, yet however, he restricted the disallowance @ 15% of the claimed amount resulting into disallowances of Rs.3,60,000/-. Pertinently however, he did not at all provide any basis of making disallowance of 15%. He did not bring the Fair Market Value on record. In case he found the claim to be excessive (although not alleged so) so as to invoked S.40A(2), unless this was done, no disallowance w.r.t. S.40A(2) could

have been made as held in the case of Upper India Publishing House (P) Ltd. vs. CIT (1979) 117 ITR 0569 (SC) held as under:

“Reference—Question of fact/Academic question—The question whether a particular expenditure on rent is excessive and unreasonable or not is essentially a question of fact—The other question as regards applicability of s. 40A(2)(a) becomes academic as the same cannot have any application unless it is first held that the expenditure on rent was excessive or unreasonable.”

In fact, a reading of the order of the Id. CIT(A) clearly shows that the disallowance has been partly sustained only due to suspicion but absolutely without any basis.

22. Per contra, the Id. DR relied on the finding of the lower authorities and submitted that similar disallowances have been made in the preceding assessment year 2012-13 as well and the Id CIT(A) has restricted the disallowance to 15% and against which the assessee has not filed any appeal before the Tribunal. It was submitted that there is no change in the facts and circumstances of the case and the commission has been paid to the same parties and therefore, where the assessee has accepted the findings of the Id CIT(A) for A.Y 2012-13 and following the same, the Id CIT(A) for the impugned assessment year has restricted the disallowance to 15%, the ground so raised by the assessee may be dismissed.

23. We have heard the rival contentions and perused the material available on record. We find that under identical set of facts and circumstances of the case, the disallowances were made in the earlier A.Y 2012-13 and the same have been partly confirmed by the Id CIT(A) and the assessee has not filed any appeal against the said decision before the Tribunal and the matter has thus attained finality. Therefore, following

the earlier decision of his predecessor CIT(A), where the Id CIT(A) for the impugned assessment year has restricted the disallowance to 15%, we don't see any infirmity in the said decision and findings of the Id CIT(A) and are not inclined to interfere in the said findings and the ground of appeal so taken by the assessee is thus dismissed.

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

25. In appeal for A.Y 2014-15, in ITA No. 1180/JP/2019, the assessee has taken following grounds of appeal:

"1. The impugned order u/s 143(3) dated 19.12.2016 is bad in law and on facts of the case, for want of jurisdiction and for various other reasons and hence the same may kindly be quashed and in any case, the impugned addition/s be deleted.

2.1 Rs. 6,50,796/-: The Id. CIT(A) erred in law as well as on the facts of the case in confirming the application of section 145(3). The provision so invoked and confirmed by the CIT(A) being contrary to the provisions of law and facts, the same may kindly be quashed. Consequently, the trading addition partly confirmed by the Id. CIT(A) of Rs. 6,50,796/- may kindly be deleted in full.

2.2. Alternatively and without prejudice the above

The Id. CIT(A) erred in law as well as on the facts of the case in partly confirming the trading addition upto Rs. 6,50,796/- out of Rs. 59,90,090/- made by the AO. The addition so made and partly confirmed by the CIT(A) being contrary to the provisions of law and facts, the same may kindly be deleted in full.

3. Rs. 1,00,000/-: The Id. CIT also erred in law as well as on the facts of the case in fully confirming the disallowances a lump sum amount of Rs. 1,00,000/- made by the AO on account of Telephone Expenses,

Travelling Expenses, Building Repair & Maintenance Expenses and Office Expenses. The disallowance so made being contrary to the provisions of law and facts of the case. Hence, the same kindly be deleted in full."

26. Both the parties fairly submitted that the facts and circumstances of the case are identical as in A.Y 2013-14. Therefore, our findings and directions as contained in ITA No. 1179/JP/2019 for A.Y 2013-14 shall apply *mutatis mutandis* to this matter and the appeal is partly allowed.

27. In the result, both the appeals of the assessee are disposed off in light of aforesaid directions.

Order pronounced in the open Court on 22/06/2021.

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

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

जयपुर / Jaipur

दिनांक / Dated:- 22/06/2021

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- M/s Swastik Oil Industries, Tonk
2. प्रत्यर्थी / The Respondent- DCIT, Circle-07, Jaipur
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 Nos. 1179 & 1180/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar