

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. 628/JP/2019
निर्धारण वर्ष/Assessment Year :2013-14

Jaipur Gem Crafts Jaipur Behind Golimar Garden, Amer Road, Jaipur	बनाम Vs.	ITO, Ward 5(1), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AABFJ4618E		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से/ Assessee by : None (written submission)
राजस्व की ओर से/ Revenue by : Smt. Monisha Choudhary (JCIT)

सुनवाई की तारीख/ Date of Hearing : 02/08/2021
उदघोषणा की तारीख/Date of Pronouncement: 03/08/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)- 02, Jaipur dated 25.01.2019 for Assessment Year 2013-14.

2. None has appeared on behalf of the assessee. However, an application has been received from Id. AR, Sh. H. M. Singhvi stating that the case may be decided on the basis of written submission as he is unable to argue the case on Video Conferencing. It was therefore decided to dispose off the matter after taking into consideration the written submission so filed by the assessee and other material available on record.

3. At the outset, it is noted that there is a delay in filing the present appeal. Taking into consideration the affidavit filed by the assessee, the delay of 22 days is hereby condoned and the appeal is admitted for adjudication.

4. In its appeal, the assessee has taken a sole ground of appeal which reads as under:-

"That the Learned CIT Appeal-II went wrong in confirming the addition of Rs. 7,06,008/- being 25% G.P. on total turnover of Rs. 5,04,29,116/- against GP 23.60% declared by the assessee is arbitrary should be deleted."

5. In this regard, the Id. AR in his written submission has submitted as under:-

"The assessee firm is engaged as exporter of carpets. Cotton durreis, Handicraft items, Readymade Garments, Woodwares and painting, etc.

The assessee firm filed its return of income u/s 139(1) and filed the audited financial statements and audit report u/s 44AB. There was no qualification in the Audit Report.

During the year assessee firm declared G.P. of Rs. 1,18,97,200/- on sales of Rs. 5,04,70,716/- giving a G.P rate of 23.60% against G.P. rate of 17.04% on the total sales of 4,77,78,214/- in the immediately preceding year. The AO by referring to 4 parties from whom purchases of Rs. 1,63,24,540/- was made held that these purchases are unverifiable. The AO, therefore, invoked the provision

of Sec. 145(3) and disallowed 25% of these purchases resulting with trading addition of Rs. 21,00,246/-.

The Learned CIT(A) by following the decision of ITAT upheld the application of provision of Sec. 145(3) but restricting the addition to Rs. 7,06,008/-. However, the Learned CIT(A) mentioning that the past history of the assessee is the best guide to estimate the income as held by various High Courts. .

As mentioned supra the addition was restricted to Rs. 7,06,008/- which resulted the G.P. rate of the year under consideration to 24.98% which is in excess by 1%. The Learned CIT(A) has not considered that the turnover has increased by Rs. 26,52,000/- whereas the difference of G.P rate of the last year and current year is only 0.35%. There was no justification to restrict the G.P addition of Rs. 7,06,008/-

Hon'ble ITAT Jaipur in the case of M/s Gem Paradise has held that the G.P rate applied by ITAT was not justified considering the judgement of the Hon'ble Rajasthan High Court in the case of Gotan Lime Khaniz Udyog and other decision restricted the addition to Rs. 4,00,000/- as against the G.P. of Rs. 10,92,695/-.

Hon'ble ITAT Jaipur in the case of Shanker Exporters v. Additional Commissioner of Income Tax has held that

We have heard rival submissions and considered them carefully. After considering the submissions and perusing other materials on record, we find that assessee has maintained regular books of account and they were audited under s. 44AB also. Day-to-day stock register, production and manufacturing record were maintained

and were produced before the AO. Total turnover of the assessee was Rs. 3,73,81,375 and out of this turnover, purchases to the tune of Rs. 15,83,000 remained unverified because of the reason that summons issued under s. 131 to these parties were either returned unserved or no compliance was made by the respective party. Therefore, AO drew an adverse inference against the assessee and rejected the books of account. In our considered view only on account of non-verifying of few purchases the rejection of books of account was not justified as there was no other defect found by the AO in maintaining books of account. It is also not the case of the Department that there is any material outside the books which indicates that these purchases are bogus. Payments were made through proper banking channel. There is a possibility that sometimes after a gap of $1/2$ years the party may not be available at the address given or that they did not bother to reply the summons issued by the Department. Otherwise, all other details along with purchases and sales vouchers, day-to-day stock register etc., were maintained by the assessee and they were not found incorrect. It is also a matter of fact that sales made against those purchases have been accepted by the AO himself Therefore, in our considered view rejection of books of account were not justified. Accordingly, we allow this ground of the assessee."

Hon'ble Rajasthan High court in the case of Malani Ramjivan Jaganath v. Assistant Commissioner of Income Tax (2007) 316 ITR 120 (Raj.) has held that merely on account of deviation in G.P. rate books of accounts cannot be rejected.

It is therefore, prayed that the addition of Rs. 7,06,008/- sustained by CIT(A) be deleted or be reduced as worked by applying rate of 23.95% in the immediately previous year."

6. Per contra, the Id. DR relied on the order of the lower authorities and our reference was drawn to the findings of the Id. CIT(A) contained at para 2.3 to 2.3.2 of the appellate order which read as under:-

"2.3 I have perused the facts of the case, the assessment order and the submissions of the appellant. It is seen that notices under section 133(6) were issued to 4 parties from whom purchases of Rs. 1,63,24,545/- was made. However, the same returned unserved with the remark 'Not Known' or 'Left'. In respect of 2 parties, the investigation wing informed that these sellers are not genuine. The assessee has also not produced these suppliers to prove the genuineness of purchases. Therefore, the purchases cannot be said to be verifiable from books of accounts. Accordingly, the Assessing Officer rightly applied provision of section 145(3) of the I.T. Act, 1961.

2.3.1 In the year, assessee's GP is 23.60% on turnover of Rs. 5,04,29,116/- against GP rate of 23.83% on turnover of Rs. 2,52,34,453/-last year. As seen above, after application of section 145(3), the best recourse is to estimate the income on basis of past history of assessee. This view is supported by various High Court decision also.

Assessing Officer alleged purchased of Rs. 1,63,24,545/- made from 4 parties as unverifiable and bogus and made addition of 25% of such purchase i.e. Rs. 21,00,246/-. The action of the

Assessing Officer is not proper. As observed above, past history is to be considered for making estimation of income.

2.3.2 Keeping in mind, the substantially high unverifiable purchase and fall in GP compared to last year, in my view GP rate of 25% on total turnover of Rs. 5,04,29,116/- will meet the end of justice. Accordingly addition of Rs. 7,06,008/- is upheld. This ground of appeal is partly allowed."

7. We have heard the rival contentions and perused the material available on record. The Id CIT(A) has upheld the rejection of books of accounts by invoking provisions of section 145(3) and has estimated gross profit rate of 25% as against gross profit rate of 23.60% declared by the assessee. The rejection of books of accounts is not under challenge before and hence, the limited issue under consideration is estimating of gross profit rate once the books of accounts have been rejected and in this regard, as rightly held by the Id CIT(A), the past history of the assessee provides a reasonable and rationale basis for such estimation or comparable third party data which is absent in the instant case. In the past, on perusal of assessee's submission before the Id CIT(A), we note that the assessee has disclosed a gross profit of 27.05% in A.Y 10-11, 26.16% in A.Y 2011-12 and 17.04% in A.Y 2012-13 and these past years results have apparently not attained finality as the matters are pending before the AO in the set-aside proceedings before the AO for A.Y 2010-11 and before the Id CIT(A) in other years. Nothing has been brought on record in terms of finality of past year results. Therefore, in such peculiar facts and circumstances of the case where the past years results have not attained finality and even third party comparable data is not on record, we are constrained to remand to the file of the AO for the limited purposes of determining the past years gross profit rate as have attained finality and

apply the average of such gross profit rate which have attained finality to the year under consideration. In the result, the ground is allowed for statistical purposes.

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

Order pronounced in the open Court on 03/08/2021.

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

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

जयपुर / Jaipur

दिनांक / Dated:- 03/08/2021

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Jaipur Gem Crafts Jaipur, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward 5(1), 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 No. 628/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar