

**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH, JABALPUR**

BEFORE SHRI SANJAY ARORA, HON'BLE ACCOUNTANT MEMBER &
SHRI MANOMOHAN DAS, HON'BLE JUDICIAL MEMBER

I.T.A. No. 66/JAB/2019
(Asst. Year: 2012-13)

Dy. CIT, Circle-1(1), Jabalpur.	vs.	TDP & Associates, 502, Near Jain Mandir, Garha Ward, Jabalpur. [PAN : AAEFT 1016 D]
(Appellant)		(Respondent)

C.O.No.01/JAB/2022
(Arising out of I.T.A. No. 19/JAB/2019)
(Asst. Year: 2012-13)

TDP & Associates, 502, Near Jain Mandir, Garha Ward, Jabalpur. [PAN : AAEFT 1016 D]	vs.	Dy. CIT, Circle-1(1), Jabalpur.
(Appellant)		(Respondent)

Appellant by : Shri Shiv Kumar, Sr. DR
Respondent by : Shri Sapan Usrethe, Advocate

Date of hearing : 15/06/2022
Date of pronouncement : 17/06/2022

ORDER

Per Sanjay Arora, AM:

This is an Appeal by the Revenue and Cross Objection (CO) by the Assessee, directed against the Order dated 09/05/2019 by the Commissioner of Income Tax (Appeals)-1, Jabalpur ('CIT(A)', for short) allowing the assessee's appeal contesting it's assessment under section 147 read with section 143(3) of the

Income Tax Act, 1961 ('the Act' hereinafter) dated 28/12/2017 for Assessment Year (AY) 2012-13.

2. The appeal, initially dismissed by the Tribunal on 23/08/2019 on account of low tax-effect, was later recalled vide order u/s. 254(2) dated 27/04/2022 for being heard on merits. The assessee's CO, filed on 27/05/2022, is supportive and, besides, raises legal issues.

3. The assessee is a partnership firm in the business of vending of country made and Indian made foreign liquor (IMFL) at Jabalpur. As per the Government policy, it's sales ought to have been at a minimum of Rs. 20,53,95,089 as against the disclosed turnover of Rs. 20,06,78,305, so that there was suppression of sales and, thus, profit by Rs. 47,16,784. The Assessing Officer (AO) noted that though the prescription as to minimum sales, reckoned at 110% of the total direct cost (vide para 9.3 of the order No. MP108, dated 15/01/2008 by the Commissioner of Excise, Gwalior), was applicable only to IMFL, he was constrained to apply the formula on the total cost, i.e., including that in relation to country made liquor, in absence of any bifurcation of the sales and costs *qua* the two liquor types. An addition for Rs. 47.17 lacs was accordingly made per the impugned assessment. The assessee, in first appeal, found favour with the Id. CIT(A), who deleted the addition, holding as under:-

'7.1.3 I have carefully considered the submission put forth & the documents furnished on behalf of the appellant, perused the facts of the case and the observation of the AO in the impugned assessment order and other material brought on record. The AO made the addition by adopting 10% net profit on sale of foreign liquor and country liquor. The AO made the addition on the basis of circular of Excise Commissioner, which states that minimum 10% profit is to be arrived. The circular is to be for the foreign liquor and not for the country liquor. The AO added the total sale of foreign liquor as well as country liquor and 10% of profit is adopted. The appellant has shown 14.54% in the case of foreign liquor which is more than the minimum sale price for foreign liquor. The AO is not justified in adopting 10% minimum sale price in foreign liquor as well as country liquor. The

appellant is engaged in the sale of liquor. The expenditures are integral part of the business. The appellant's books account are audited u/s. 44AB of the IT Act. All the expenses are duly recorded and entered. The AO has not pointed out any specific defects in the books of accounts. The AO cited the general reasons. The above defects are general in nature. The appellant books are audited u/s 44AB of the I.T. Act. The appellant need not to maintain separate books for each and every shop and type of liquor, the appellant is making cash payment on self-made vouchers and does not exceed the limit of Rs.20,000/- which is as per law. The payment for expenses and material purchases were duly recorded in the books of account and the AO has not pointed out which payment and material purchases were bogus. The AO is not justified in making the disallowance out of above expenses without any reason. Therefore, the addition made by the AO amounting to Rs. 47,16,784/ is deleted. This ground of appeal is allowed.'

Aggrieved, the Revenue is in appeal before us.

4. We have heard the parties, and perused the material on record.

We find the Revenue's entire case as much ado about nothing. All the documents on record clearly reflect the unexceptional case of the assessee, whose audited accounts (along with the audit report) exhibit the non-maintainability of the Revenue's charge. The sales as well as the major costs stand clearly reflected therein for the two liquor types, so that working the minimum sales as per the formula presented no problem. Further, suitable replies stand furnished both before the audit party – accepting objection/s by whom the reassessment proceedings had been initiated, and the AO in the reassessment proceedings, clarifying the position, working out the minimum sale as per the Government formula at Rs. 823.90 lacs, as against the actual IMFL sales for Rs. 857.96 lacs, yielding a margin of 14.54% (as against the minimum prescribed rate of 10%) over cost (PB pg.8).

As we observe, the AO has merely adopted the audit objection, suitably replied though, in his reasons recorded, without as much as perusing the record before him or the assessee's reply thereto. That is, there is complete inapplication of mind by the AO in the matter, vitiating the very assumption of jurisdiction to assess u/s. 147. The assessee's CO raising these issues, is barred by time, having

been filed only on 27/05/2022, as against the Revenue's appeal on 20/08/2019. The CO is in fact not accompanied by a condonation petition, nor was this brought to the notice of the Bench at the time of hearing. The assessee, nevertheless, in our view could raise these issues, being legal, with the material on record and undisputed even in defence on the impugned order. We, accordingly, have no hesitation in holding re-assessment as bad in law as well as, without prejudice, deleting the impugned addition made.

We decide accordingly.

5. In the result, both the Revenue's appeal and the assessee's CO are dismissed.

Order pronounced in open Court on June 17, 2022

sd/-
(Manomohan Das)
Judicial Member

sd/-
(Sanjay Arora)
Accountant Member

Dated: 17/06/2022

vr/-

Copy to:

1. The Appellant: Dy. CIT, Circle-1(1), Jabalpur
2. The Respondent: M/s. TDP & Associates, 502, Near Jain Mandir, Garha Ward, Jabalpur (MP)
3. The Principal CIT-1, Jabalpur (MP)
4. The CIT (Appeals)-1, Jabalpur.
5. The Sr. D.R., ITAT, Jablapur
6. Guard File

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Jabalpur.