

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT

**Before: Shri Waseem Ahmed, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 126/Rjt/2018
Assessment Year 2013-14**

The DCIT, Circle-3(1), Rajkot (Appellant)	Vs	M/s. Kaneria Oil Industries, Rajkot PAN: AACFK3239M (Respondent)
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**Assessee by: Shri R.D. Lalchandani, A.R.
Revenue by: Shri Sanjeev Jain, CIT-D.R.**

Date of hearing : 27-06-2022
Date of pronouncement : 01-07-2022

आदेश/ORDER

PER BENCH:-

This Revenue's appeal for A.Y. 2013-14, arises from order of the CIT(A)-3, Rajkot dated 08-01-2018, in proceedings under section 143(3) of the Income Tax Act, 1961; in short "the Act".

2. The revenue has taken the following grounds of appeal:-

- “1. On the facts and circumstances of the case and in law, the ld. CIT(A) has erred in law and on facts in deleting the addition made to the trade result by adopting GP ratios @ 3.75% without appreciating the facts of the case.
 2. On the facts and circumstances of the case and in law, the ld. CIT(A) ought to have upheld the order of the Assessing Officer.
 3. Because of the ld. CIT(A) ought to have seen that rejection of books by the Assessing Officer is based on estimated shortage claimed by the assessee.
 4. On the facts and circumstances of the case and in law, the ld. CIT(A) has erred in coming to the conclusion that Assessing Officer is not correct in rejecting books of account and estimating gross profit on the basis of shortage.
 5. Any other ground that the revenue may raise before or during the proceeding before the Hon’ble ITAT.
 6. It is, therefore, prayed that the order of the CIT(A) may be set aside and that of the A.O. be restored to the above extent.”
3. The brief facts of the case are that the assessee is engaged in business of manufacturing and repacking of edible oil. The assessee during the impugned year, claimed shortage in ground nut oil, cotton-seed refined oil and refined corn oil on estimate basis. The assessee has been claiming such shortages every year on estimated basis and has been following such practice for past several years. During the assessment proceedings, on being requisitioned, the assessee submitted that he has been claiming such shortages on estimated basis, which is a standard shortage claimed due to leakage, pilferage in transportation and repacking during the process of transfer of oil from lorries to final packing in tins. However, the AO did not

accept the assessee's contention and estimated the gross profit @3.75% similar to that of earlier years in assessment year 2009-10 and assessment year 2010-11.

4. In appeal, the issue was decided in favour of the assessee by Ld. CIT(Appeals) by noting that ITAT in assessee's own case for assessment 2010-11 had decided the issue in favour of the assessee. Ld. CIT(Appeals) further noted that in the appeal for assessment year 2011-12, Ld. CIT(Appeals) in that year has decided the issue in favour of the assessee by in turn placing reliance on the ITAT order for assessee's own case for assessment years 2009-10 and 2010-11, where the ITAT, Rajkot afforded complete relief to the assessee. Accordingly, in view of the above factual matrix, Ld. CIT(Appeals) decided the appeal assessee's favour.

5. Before us, the counsel for the assessee submitted that all appeals from assessment it 2010-11 have been decided by the ITAT in favour of the assessee. Further, the appeal filed against the ITAT order have been dismissed on account of low tax effect by the Gujarat High Court. The counsel for the assessee drew our attention to page 32 to 39 of the paper book, containing the ITAT, Rajkot order in assessee's own case which has been decided in his favour for assessment 2009-10. He further drew attention to pages 65 to 72 of the paper book, where the ITAT for assessment of 2010-11 decided the issue in assessee's favour on similar facts. The Ld. DR also admitted that this issue has been decided in favour of the assessee by the ITAT, Rajkot bench and for assessment year 2009-10 vide order dated 26-04-2013. Accordingly, in view of the above facts, since

the ITAT, Rajkot bench in assessee's own case on similar facts has decided the issue in favour of the assessee, respectfully following the same, we are hereby dismissing the revenue's appeal. For the sake of completeness, we are hereby reproducing the relevant extracts of the order of the ITAT as above:

“9. We have heard both the parties and perused the material on record and the paper book submitted by the assessee. It is apparent from the order of the Revenue that it had rejected the books of accounts of the assessee for not accurately recording the shortages in the books of accounts. Further in the case of other assessees having similar business, the GP rate declared by them were much higher i.e. 8.29 % and 9.09% as compare to 3.48 % declared by the assessee. With these reasons the Revenue had rejected the books of accounts and the ld AO estimated the GP 3.75 % of the turnover arbitrarily without citing any logical reason and similarly the Ld CIT(A) has modified by estimating the GP at 3.68%. We do not find any justification on the stand of the Revenue. Addition based on presumptions and assumptions without any scientific basics or logical reasoning cannot be sustained. In case the assessee is maintaining its books of accounts on day to day basis and the only defect pointed out by the revenue is that the discrepancy with respect to recording of shortages. Revenue could have investigated the issue in details and adopted a logical method to arrive at the correct profit of the assessee if at all there were genuinely some discrepancies with respect to shortages. Considering the facts and circumstances of the case, we do not find any justification in the stand of the Revenue and accordingly we hereby delete the additions made by the Ld. AO which was further partly sustained by the Ld CIT(A) on this issue. We also do not find any justification in the stand of Revenue for rejecting the books of accounts. Accordingly ground Nos.1, 2 & 3 raised by the assessee in its appeal are allowed in its favour and consequently ground No.1 raised by the Revenue in its appeal is dismissed.”

5.1 In view of the above observations, since the issue has been decided in favour of the assessee for earlier years by ITAT, Rajkot bench, we are hereby dismissing the revenue's appeal.

6. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 01-07-2022

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Rajkot : Dated 01/07/2022

Sd/-
(SIDHHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order,

Assistant Registrar,
Income Tax Appellate Tribunal,
Rajkot