

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

श्री आकाश दीप जैन, उपाध्यक्ष एवं श्री विक्रम सिंह यादव, लेखा सदस्य
BEFORE: SHRI. AAKASH DEEP JAIN, VP & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA NO. 419/Chd/ 2021
निर्धारण वर्ष / Assessment Year : 2018-19

M/s Piyush Overseas Pvt. Limited 171, Industrial Area-A Ludhiana	बनाम	The DCIT, National e-Assessment Ward-6(1), Ludhiana
स्थायी लेखा सं./PAN NO: AACCP2256N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Parveen Jindal, CA
राजस्व की ओर से/ Revenue by : Shri Akashdeep, JCIT, Sr. DR

सुनवाई की तारीख/Date of Hearing : 26/09/2022
उदघोषणा की तारीख/Date of Pronouncement : 28/09/2022

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [in short the 'Ld. CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (in short 'the Act') dated 28/10/2021 for assessment year 2018-19, wherein the assessee has taken the following grounds of appeal:

1. That under the facts, circumstances and in law, the Ld. CIT(A) has erred in confirming the action of the Assessing officer for rejection of the books of accounts of the assessee u/s 145(3) of the Act.
2. That under the facts, circumstances and in law the Ld. CIT(A) has erred in confirming the action of the Assessing officer for making the additions for Rs. 84,01,028/- by applying average ratio of gross profit for three years.
3. That under the facts, circumstances and in law the Ld. CIT(A) has erred in endorsing the conclusion of the Assessing Officer that the assessee is not maintaining complete and proper books of accounts.
4. That the appellant may be allowed to add, amend, alter or raise additional grounds fo appeal before the appeal is finally heard or disposed off.

2. Briefly the facts of the case are that the assessee company which is engaged in the business of manufacturing and trading of cloth, textiles and readymade garments filed its return of income declaring total income at NIL. The matter was selected for scrutiny and after issuance of notice under section 143(2) and subsequent notices and calling for the information and explanation from the assessee, a show cause was issued to the assessee as to why the books of account should not be rejected by invoking the provision of Section 145(3) of the Act. Thereafter taking into consideration the submissions of the assessee which were not found acceptable, the books of accounts were rejected and taking into consideration the past history of the assessee, the AO applied average G.P. rate of last three years at 3.13% as against G.P. rate of 0.55% declared by the assessee and addition of Rs. 84,01,028/- was made vide assessment order passed under section 143(3) dt. 04/03/2021.

3. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A), NFAC, Delhi who has since confirmed the order and the findings of the AO. Against the said order and the findings of the Ld. CIT(A), NFAC, Delhi, the assessee is in appeal before us.

4. During the course of hearing, the Ld. AR submitted that the sole reason for rejection of books of accounts under section 145(3) and estimating the profit by the AO was that the assessee was not maintaining day to day stock register with quantitative details. It was further submitted that the AO has wrongly held in the assessment order that bills and vouchers were not produced by the assessee and therefore, the AO has wrongly concluded that the assessee is not maintaining complete and proper books of account alongwith bills and vouchers and has going ahead and rejected the books of account by invoking the provision of section 145(3) of the Act.

4.1 In this regard, it was submitted that the assessment in this case was completed under the e-assessment and it was submitted before the AO as well as before the Ld. CIT(A) that it is not possible for the assessee to produce books of account, sale / purchase register, cash book, and other ledger account along with bills and vouchers, TDS return etc. as the same was voluminous and compliance of the same electronically

through ITBA Portal was impractical and non-feasible. It was further submitted that it was not possible for the assessee to maintain the quantitative records given the peculiar nature of its business. It was further submitted that it was brought to the notice of the AO as well as the Ld. CIT(A) that the assessment in the case of the assessee for the prior years have been completed where the books of accounts and the results so declared have been accepted by the AO and given that there is no change in the facts and circumstances of the case, it was wrong on the part of the AO to reject and on the part of the Ld. CIT(A), NFAC to confirm the rejection of books of accounts.

5. Per contra, the Ld. DR submitted that in this case, the assessee is not maintaining stock register and even bills and vouchers were not produced before the AO. It was accordingly submitted that the AO has rightly rejected the books of account by invoking the provision of Section 145(3) of the Act and thereafter has estimated the G.P. rate based on the average G.P. rate of last three years which is also a settled position as upheld by the Hon'ble High Courts and the various Benches of the Tribunal from time to time. It was accordingly submitted that there is no infirmity in the order so passed by the Ld. CIT(A), NFAC New Delhi and the contention so advanced by the Id AR be dismissed. He accordingly supported the order and findings regarding rejection of books of accounts and estimation of gross profit.

6. We have heard the rival contentions and perused the material available on record. Prima facie, we find merit in the contention of the Id AR that where the assessment has been conducted through a virtual electronic platform, it may not be feasible to submit and upload the voluminous books of account, sale / purchase register, cash book, and other ledger account along with bills and vouchers, TDS return etc. as so desired by the AO. We find that the said contention has also not been rebutted by the Revenue. At the same time, in all fairness, the AO has the right to examine the books of accounts and the Ld AR has stated at the Bar that where so allowed, the assessee shall produce the books of accounts before the AO for necessary verification. Therefore, in the interest of justice and fair play, we set-aside the matter to the file of the AO to call for and examine books of accounts and related documentation physically and decide the matter afresh as per law. Needless to say,

the assessee shall attend to the proceedings and produce books of accounts and other documents as called for by the AO.

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

Order pronounced in the open Court on 28/09/2022.

Sd/-

आकाश दीप जैन
(AAKASH DEEP JAIN)
उपाध्यक्ष / VICE PRESIDENT

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

Date: 28 /09/2022

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar