

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, "A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 1212/JP/2019
निर्धारण वर्ष / Assessment Year : 2014-15

Shri Hari Narain Singh C/o Bikaner Misthan Bhandar 47, Dhaba Complex, Bhiwadi	बनाम Vs.	The ACIT Circle-2 Alwar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AILPS 8010 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Ms. Shivangi Samdhani, CA
राजस्व की ओर से / Revenue by: Shri, A.S. Nehra, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 30/08/2022
उदघोषणा की तारीख / Date of Pronouncement: 21 /09/2022

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This is an appeal filed by the assessee against the order of ld. CIT(A), Alwar dated 20-08-2019 for the assessment year 2014-15 wherein the assessee has raised the following grounds of appeal.

“1. In the facts and circumstances of the case and in law the ld. CIT(A) has erred in confirming the action of the AO of rejecting the books of account u/s 145(3) of the I.T. Act, 1961. The action of the ld. CIT(A) is illegal, unjustified and arbitrary and against the facts of the case. Relief may please be granted by accepting the books as it is.

2. In the facts and circumstances of the case and in law the ld. CIT(A) has erred in confirming the action of the AO of making trading addition of Rs.2,52,812/- after rejecting the books of account of the assessee. The action of the ld. CIT(A) is illegal, unjustified and arbitrary and against the facts of the case. Relief may please be granted by deleting the said addition of Rs.2,52,812/-.

3. In the facts and circumstances of the case and in law the ld. CIT(A) has erred in confirming the action of the AO of making addition u/s 69A to the extent of Rs.13,67,652/-. The action of the ld. CIT(A) is illegal, unjustified and arbitrary and against the facts of the case. Relief may please be granted by deleting the said addition of Rs.13,67,652/-..

2.1 During the course of hearing, the ld. AR of the assessee has not pressed the Ground Nos. 1 & 3. Therefore, both the grounds are dismissed being not pressed.

3.1 Apropos Ground No. 2 of the assessee, the facts as emerges from the order of the ld.CIT(A) are as under:-

“4.3 I have perused the assessment order as well as submissions of the appellant. Following facts have emerged.

1. That the appellant is engaged in running a sweet and confectionary shop during the year under consideration.
2. That a survey under Section 133A of the Act was conducted at the business premises of the appellant on 5-03-2014.

3. That the appellant has surrendered an amount of Rs.20 lakhs on account of investment made in plot and construction of business premises.

4. That during assessment proceedings, it has been found by the AO that sweets sold out of book also and further find a sharp decline in the GP rate as compared to preceding years.

5. That the AO after recording the facts had rejected the books of accounts u/s 145(3) of the Act and estimated the GP taking the average GP of last 3 years. Accordingly, an addition of Rs.2,52,812/- was made taking the GP rate of 14.91%.

4.4 I have taken into consideration above mentioned facts of the case. The AO's action is justified as there is no ostensible reason for the decline in GP rate as compared to preceding years besides evidence of out of book sales was also recorded. Accordingly, the addition of Rs.2,52,812/- is sustained and the appellant's ground of appeal on this issue is dismissed.'''

3.2 During the course of hearing, the ld. AR of the assessee prayed that assessee's brother also surrendered undisclosed income of Rs.20,00,000/-. His case was similar with that of the assessee. In the assessee's brother case, the same CIT(A) deleted the trading addition by holding that trading addition subsumed in

surrendered amount (CIT(A) page 4 last 6 lines). However, under 100% identical facts the case of the assessee has been decided differently.

3.3 On the other hand, the ld. DR supported the order of the ld. CIT(A).

3.4 After hearing both the parties and perusing the materials available on record, it is noted from the record that the assessee was aware of the irregularities in his books of accounts and he admitted that there was unrecorded income of Rs.20,00,000/- and also surrendered the same. Such income was only invested in land and building. The statements of the assessee were accepted and not disputed. Such surrendered income had covered all the irregularities in the books of the assessee and therefore, any further trading addition is unwarranted. The average GP of past 2 years is 14.91%. If surrendered income is taken into consideration and GP is recalculated which comes to 26% i.e. much higher than the average G.P. Rate. It is also noted that assessee's brother also surrendered undisclosed income of Rs.20,00,000/-. His case was similar with that of the assessee. In the assessee's brother case, the same ld. CIT(A) deleted the trading addition by holding that trading addition subsumed in surrendered amount (CIT(A) page 4 last 6 lines). The ld. AR submitted that the case of the assessee is identical with the facts the case of assessee's brother but it has been decided differently. Taking into consideration the above facts as narrated by the assessee and if the surrendered income is taken into consideration and GP is recalculated which comes to 26% i.e. much higher

than the average GP Rate then we do not concur with the findings of the ld.

CIT(A). Thus the addition confirmed by the ld. CIT(A) amounting to Rs.2,52,812/-

is directed to be deleted. Hence, the Ground No. 2 of the assessee is allowed.

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

Order pronounced in the open court on 21 /09/2022.

Sd/-

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 21 /09/2022

*Mishra

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

1. The Appellant- Shri Hari Narain Singh, Bhiwadi
2. प्रत्यर्थी / The Respondent- ACIT. Circle-2, Alwar
3. आयकर आयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 1212/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar