

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH 'A' JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं डॉ. मीठा लाल मीना, लेखा सदस्य के समक्ष
BEFORE: HON'BLE SHRI SANDEEP GOSAIN, JM & HON'BLE DR. MITHA LAL MEENA, AM

आयकर अपील सं./ITA No. 356/JP/2018
निर्धारण वर्ष/Assessment Years : 2012-13.

Shri Sunder Lal Advani, Prop. of M/s. Mahalaxmi Enterprises, 9/1, Small Scale Industrial Area, Kota.	बनाम Vs.	Income Tax Officer, Ward 1(1), Kota.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AEZPA 8220 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Saurav Harsh, Advocate.

राजस्व की ओर से / Revenue by : Mrs. Monisha Choudhary, (JCIT)

सुनवाई की तारीख / Date of Hearing : 07.09.2022.

घोषणा की तारीख / Date of Pronouncement : 10/10/2022.

आदेश / ORDER

PER SANDEEP GOSAIN, J.M.

This is an appeal by the assessee against the order of Id. CIT (Appeals), Kota dated 15.01.2018 for the assessment year 2017-18. The grounds raised by the assessee are as under :-

1. That on the facts, in the circumstances of the case and in view of the detailed written and oral submissions made and the evidence already available on AO's own record and further evidences adduced by the assessee the orders of the learned Lower Authorities are against the law and facts of the case.

2. That the Id. Assessing Officer has erred in making Trading addition in the amount of Rs. 52,34,436/- by brushing aside the explanation of the appellant and the learned CIT (Appeals), Kota also erred in confirming the same without there being any basis.
3. That the Id. Assessing Officer erred in making disallowance of Rs. 1,14,620/- made u/s 40a(ia) for non deduction of TDS on interest by brushing aside assessee's reasonable explanations and submissions and the learned CIT (Appeals), Kota also erred in confirming the same to the extent of Rs. 55,820/- without there being any basis.
4. That the Id. Assessing Officer further erred in disapproving the carried forward Speculation loss of A.Y. 2011-12 and making an addition of Rs. 60,738/- to the Total income of the assessee by brushing aside assessee's reasonable explanations and submissions and the learned CIT (Appeals), Kota also erred in confirming the same without there being any basis.
5. That the Id. Assessing Officer also erred in disallowing the CNG Kit & fitting Expense amounting to Rs. 23,500/- and not allowing depreciation thereon by treating it as capital expenditure while brushing aside assessee's reasonable explanations, submissions and evidences adduced and the learned CIT (Appeals), Kota also erred in confirming the expense amount while allowing the depreciation thereon.
6. That the Id. Assessing Officer also erred in charging interest u/s 234A, 234B, 234C and 234D and the learned CIT (Appeals), Kota also erred in confirming the same.

The appellant craves leave to add, alter, modify or amend any ground on or before the date of hearing.

2. The brief facts of the case are that the assessee is proprietor of M/s. Mahalaxmi Enterprises and engaged in the business of sale of edible oils on whole sale basis as well as on retail basis. The assessee filed his return of income declaring income of Rs. 7,03,950/- on 17.08.2012. The case of the assessee was selected for scrutiny under CASS and accordingly notice under section 143(2) of the Income Tax Act, 1961 dated 06.08.2013 was issued and served on the assessee on 13.08.2014 through notice server. The assessee was also served notice under section 142(1)

along with questionnaire dated 14.03.2014 which was served on the assessee on 18.03.2014. The assessee was further issued notices under section 143(2)/142(1) dated 10.10.2014 which were served on the assessee on 13.10.2014. In compliance to the notices, the assessee furnished cash book, bank book, ledger, journal, purchase and sale register consisting of stock details and other subsidiary records. The books of accounts are audited by a Chartered Accountant and audit report under section 44AB and report in Form No. 3CB were submitted before the AO. The AO completed the assessment under section 143(3) of the IT Act, 1961 on 18.03.2015 at total income of Rs. 61,38,672/- by making various additions after rejecting the books of accounts of the assessee by invoking provisions of section 145(3) of the IT Act, 1961 and estimated the income thereafter. Aggrieved by the order of AO, the assessee preferred appeal before the Id. CIT (A). The Id. CIT (A) after taking into consideration the details furnished by the assessee partly allowed the appeal of the assessee. Being aggrieved, now the assessee has preferred appeal before us.

Ground nos. 1 & 2 are inter-related and relates to challenging the order of Id. CIT (A) in upholding the trading addition made by the AO.

3. In this regard the Id. A/R reiterated the same arguments as was raised by him before the lower authorities and also relied upon the submissions as under :-

" 1. The Id. Assessing Officer has rejected the books of accounts and has made an ad-hoc addition of Rs. 52,34,436/- by taking the average gross profit of 3 years.

1.1. Trading Chart of last 3 years in this regard may kindly be perused :-

A.Y.	Sales	Incremental Growth	Gross Profit	G.P Ratio
2012-2013	341087587	3330.50%	3497406	1.03%
2011-2012	9942796	-77.97%	593142	5.97%
2010-2011	45132149		301625	0.67%

1.2 It is submitted for kind consideration:

- That Id. Assessing officer merely on the basis of cash withdrawal by the assessee during the year under consideration has rejected the books of account when all the cash withdrawal is only and purely for the purpose of day-to-day business activities. That assessee regularly maintained the cash book and same was submitted during the assessment proceeding before the Id. Assessing officer. Cash withdrawal is incurred for business needs. Similar withdrawals are there in the past. Entire endeavour of the Assessing Officer was to somehow refer some defect, howsoever small or flimsy or irrelevant it may be, so as to somehow reject the books of accounts and make Trading Addition in the hands of the assessee appellant.
- No defect whatsoever has been pointed out in the Opening Stock, Purchases made during the year, Sales made during the year and Closing Stock; however, for petty reasons entire books of accounts have been rejected and Trading Additions have been made.
- Verification was got done by the Assessing Officer at the back of the assessee from some of the parties (*without confronting them to the assessee's*) in 2015, whereas, business transactions were done during F.Y. 2011-2012, i.e., after a period of 3 years. How can assessee be made answerable if some of them close their business. Average daily sales are Rs. 9.35 lacs per day.
- Transactions of sales and incurring of expenses in cash is not a SIN nor is there any restriction under the Act.

- That further, preceding year results are not comparable with year under consideration. That on perusal of Trading Chart it can be noticed that A.Y. 2012-13 was an exceptional year in so far as the turnover during the year was extraordinarily high as compared to preceding years and thus past years figures cannot be made a benchmark. Thus, it can be seen that there has been extraordinary jump in the turnover of the assessee and it has increased almost 34 times during the year under consideration. When such substantial increase in business is there, GP is bound to fall. Thus, the trading results of the assessee is not at all comparable from the preceding year and the results are to be seen specifically with regard to circumstances prevailing during the year.
- The nature of business in which assessee appellant deals, i.e., trading in Edible Oil can never have a consistent GP margin as the margins are dependent on market demand and supply, production, quality of production, very heavy fluctuation of price is there - which is not in the control of the assessee appellant, etc.
- The Assessing Officer has not bothered to refer to results of similar situated assesseees as that of the assessee.
 - Madhur Vegoils Pvt. Ltd. declared GP% of 1.07% during the year under consideration on which GP% has been applied by the AO @ 1.26% vide his assessment order dated 28.12.2018 on turnover of Rs. 106 crores.
 - Mohini Devi Advani Prop. M/s. Monika Trading Company declared GP% of 0.64% during the year under consideration on turnover of Rs. 57 crores, wherein CIT(A) restricted the GP% to 0.70%.
 - Meena Advani Prop. M/s. Shiv Traders declared GP% of 0.96% during the year under consideration on turnover of Rs. 22 crores.
- Assessee appellant maintains Stock Register which has not been doubted or disputed. Quantitative tally has been mentioned even in the Auditors report.
- Gross Profit in absolute numbers is highest over the last 3 year.

- We wish to rely upon Sanjay Agarwal v. ITO dated 01.03.2021. ITA No. 351/JP/2019 (ITAT Jaipur Bench) wherein it has been held as under:

"23. We have heard the rival contentions and perused the material available on record. In this case, the AO has rejected the books of accounts and has estimated G.P. rate of 0.69% on declared turnover as against G. P rate of 0.38% declared by the assessee and made a trading addition of Rs. 49,56,217/- in the hands of the assessee. The AO has stated that when the books of accounts are rejected, it is duty of the AO to deduce true and fair income of the assessee and it is open to him to take a higher percentage consistent with the state of trade in the locality or with any special circumstances of the assessee which warrants higher rate of profits. Thereafter, he has referred to the discrepancies noticed in the books of accounts and stated that the assessee has failed to give evidence regarding payment of duties and taxes amounting to Rs 5,45,677/- and loss claimed in the profit/loss account amounting to Rs 36,96,691/- and thereafter went ahead and make an addition of Rs 49,56,217/- largely representing the aforesaid two figures which remain unverified. To our mind, the addition so made is neither reflective of state of trade in the locality nor demonstrate any special circumstances of the assessee rather the additions have been made basis the discrepancies found in the books of accounts which are more in the nature of unverified payment of taxes and claim of losses. Once the books of accounts are rejected, the AO has to estimate the profits based on his best judgment and either the past year results or comparative profits declared in similar line of trade in commodities could be a guiding factor. Regarding past year results, it is an admitted position of Revenue that past year results cannot be made a guiding factor and the assessee has also contended that given the exceptional circumstances where the turnover has increased by almost 130 times, the past year results are not reflective of state of affairs of current year. There is nothing on record in terms of comparative profits declared in similar line of trade in commodities. Further, the assessee has explained the substantial fall in G. P rate due to fall in prices of cardamom where the prices have reduced by almost half the rate at the end of the year as compared to

beginning of the year: Therefore, we find that there is no rational basis for estimating the gross profit rate by the AO even where the books of accounts are rejected. In fact, in the remand report submitted to the Id CIT(A), the AO has admitted that there is no specific reason mentioned in the assessment order to estimate the gross profit rate of 0.69% as against declared gross profit rate of 0.38%. Further, the AO has acknowledged the fact that turnover has increased substantially during the year and the trading results are duly supported with documentary evidences. Regarding commodity and cardamom trading losses of Rs. 36,96,691/-, the Id CIT(A) has also recorded a finding that these are speculative losses and are not part of trading account of the assessee and thus, doesn't effect the trading results so declared by the assessee. In the results, the trading additions so made by the AO and confirmed by the Id CIT(A) is hereby directed to be deleted."

The Id. A/R thus humbly submitted that the disallowance is based on whims, fancies, surmises, without understanding the facts on record, without application of mind and deserves to be deleted as submitted hereinabove.

4. On the other hand, the Id. D/R relied on the orders passed by the lower authorities.

5. We have heard the rival contentions and perused the material available on record and also gone through the orders of the lower authorities. From the record we find that the assessee has derived income from refined oil business and the gross profit in the year under appeal has fallen by over 4.9% as compared to the previous year. Apart from this there was specific discrepancies highlighted by the AO in the books of accounts, like, difference in cash balance, lack of proper supporting evidence for diesel and petrol expenses, loading and unloading expenses claimed, lack of confirmation of certain parties from whom credits are shown in cash etc.

Whereas the Id. A/R submitted that assessee has maintained regular books of accounts supported by cash book, bank book, ledger, journal, purchase and sale registers (stock details are mentioned therein), other subsidiary records and the accounts are audited by a Chartered Accountant and are having Audit Report under section 44AB and Report in Form 3CB. The Id. A/R also relied upon the decision of Coordinate Bench of the Jaipur Tribunal in the case of Sanjay Agarwal vs. ITO in ITA No. 351/JP/2019 dated 01.03.2021. It was also submitted by the Id. A/R that on perusal of trading chart it can be noticed that the year under consideration was an exceptional year in so far as the turnover during the year was extraordinary high as compared to preceding year and thus past years' figures cannot be made a bench mark. Thus it can be seen that there has been extraordinary jump in the turnover of the assessee and it has increased almost 34 times during the year under consideration. It was further submitted that when substantial increase in business is there, then in that eventuality the Gross Profit is bound to fall.

5.1. The explanation thus given by the assessee has been considered. The decision relied upon by the Id. A/R in the case of Sanjay Agarwal, supra, is not applicable to the facts of the assessee's case because the paramateria and the facts contained in that case are altogether different. In the case of Sanjay Agarwal, supra, there was substantial fall in the GP rate because of fall in the prices of cardamom where the prices have reduced by almost half the rate. Therefore, ratio laid down in the case of Sanjay Agarwal, supra, is not applicable. The other arguments raised by the assessee are general in nature. However, we are of the view that when the books of accounts are rejected by the AO by holding that there was difference in cash

balance, lack of proper supporting evidence, lack of confirmation of certain parties from whom credits are shown in cash etc. then in that eventuality it was burdened duty of the AO to deduce true and fair income of the assessee consistent with the state of trade in the locality. Therefore, the AO was under obligation to estimate the profit based on his best judgment and with the past years results or comparative profits declared in similar line of trade in commodities could be a guiding factor. Before us, the copies of orders passed by the Revenue Authorities pertaining to Smt. Meena Advani, Smt. Mohini Devi Advance and M/s. Madhur Vegoils Pvt. Ltd. have been filed who are engaged in similar line of trade in commodities. Therefore, after considering the over-all circumstances and also considering the comparative profit declared in similar line of trade in commodities and also considering the circumstances of increase in turnover for the year under consideration, we are inclined to restrict the GP addition from 2.56% to 1.06% on estimated basis as being just and reasonable.

Ground nos. 3 & 4 relate to disallowance made under section 40a(ia) for non deduction of TDS on interest and disapproving the carried forward Speculation loss.

6. After going through the order of the Id. CIT (A), we do not find any infirmity in his order. The Id. CIT (A) has dealt with the issues reasonably. The Id. A/R has not been able to controvert the findings of the Id. CIT (A). We, therefore, find it reasonable to uphold the order of the Id. CIT (A). The grounds of the assessee are dismissed.

7. Ground No. 5 has not been pressed. Therefore, the same is dismissed as not pressed.

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

Order pronounced in the open Court on 10/10/2022.

Sd/-
(डॉ. मीठा लाल मीना)
(DR. MITHA LAL MEENA)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 10/10/2022.

das/

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

1. अपीलार्थी / The Appellant- Shri Sunder Lal Advani, Kota.
2. प्रत्यर्थी / The Respondent- The ITO Ward 1(1), Kota.
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. 356/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

