IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "C" BENCH: NEW DELHI

BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER &
SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.4044/Del/2016
[Assessment Year : 2011-12]

Mr.Hem Chand Gupta, 1/429/15, Gali No.1, Friends Colony, Indl.Area, Shahdara, Delhi-110006. ***PAN-AALPH2688Q***	vs	ITO, Ward-35(1), New Delhi
APPELLANT		**RESPONDENT**
Appellant by	None	
Respondent by	Shri Sanjay Tripathi, Sr. DR	
Date of Hearing	16.11.2022	
Date of Pronouncement	16.11.2022	

ORDER

PER KUL BHARAT, JM :

This appeal filed by the assessee for the assessment year 2011-12 is directed against the order of Ld. CIT(A)-19, New Delhi dated 07.03.2016.

2. The assessee has raised following grounds of appeal:-

1. *"The Ld. Commissioner of Income Tax (Appeals) - 19, New Delhi has erred in arbitrarily confirming the addition by the Ld. Income Tax Officer, without considering the facts of the case explained and submitted to him.*

2. *The Ld. Commissioner of Income Tax (Appeals) - XXI, New Delhi has erred in presuming that the assessee has shown low gross profit and addition made applying the previous year GP rate on the basis of similar addition upheld by CIT(A) for Assessment year 2009-10. Whereas assessee has submitted that turnover of the appellant has substantially increased by 25% and the due to substantial increase and fluctuation in copper prices gross profit were low.*

3. *That the addition of Rs.11,81,020/- on account of lower Gross Profit declared by the appellant for the year by applying the G.P. rate of previous assessment year on the basis of similar addition was upheld by the Ld. CIT(A) for Asst. Year 2009-2010. That the Ld. Assessing Officer has verified all the details of manufacturing of the appellant and did not find any discrepancies. That the Ld. Assessing Officer has also erred in ignoring the fact that the Turnover of the appellant has substantially increased by 25% and due to substantial increase and fluctuation in Copper Price. However No defects in the manufacturing results was observed by the Ld. Assessing Officer but for addition sake, addition on lower GP was made.*

4. *That the Ld. Assessing officer has also erred in ignoring the judicial pronouncement in the similar case by the jurisdictional High Court in the case of CIT-XII v. Smt. Poonam Rani vide ITA No. 406/2009 and also by ITAT, Lucknow in the case of M/s Rako Agro Chem Pvd. Ltd. Vs. ACIT, Range-IV, Lucknow vide ITA N.78/(LKW)/2011. The Ld. CIT(A) has also erred in presuming that there was some variations in the Scrap % in certain months which results into higher Gross Profit and also erred in rejecting the Books of Accounts of the assessee.*

5. *The Ld. Commissioner of Income Tax (Appeals) - XXI, New Delhi has erred in presuming that the assessee has shown low house rental income and further addition made for vacant property .*

6. *That the addition of Rs. 1,09,201/- was made on the rental income from the property at 1/87, Gali No.l, Vishwas Nagar, Shahdara, Delhi measuring 900 Sq Fts. It was submitted during the assessment proceedings that the appellant has rented out Vi of the property to M/s Bharat Wire Products measuring 450 Sq. Fts consisting of Ground Floor only. It was further contested that the rental value declared by the appellant was as per the prevailing market rates and the major Job Work for the appellant was conducted by them. However while finalizing the assessment, Ld. Income Tax Officer has ignored all the submissions made by the*

appellant during the assessment proceedings. That the Ld. CIT(A) has erred in presuming that the Rent Control Act is not applicable in the case of assessee.

7. *Further, the addition of Rs. 1,47,000/- by CIT(A)-19 on the rental income from the first floor which is vacant property at 1/87, Gali No.l, Vishwas Nagar, Shahdara, Delhi measuring 900 Sq Fts. It was submitted during the assessment proceedings that the appellant has rented out 1/2 of the property to M/s Bharat Wire Products. That the Ld. AO had made the addition on Rental Property considering the full property and hence the additions made by Ld. CIT(A) is duplication of addition made by the AO.*

8. *The Ld. Commissioner of Income Tax (Appeals) - XXI, New Delhi has erred in presuming that the assessee has not own personal car so that uses of Car may be of personal nature.*

9. *That an addition of Rs.43,038/- on account of personal nature being 20% o Motor Vehicle Expenses of Rs. 71,689/-, Depreciation of Rs.78,393/- and Telephone Expenses of Rs. 65,108/- on the presumption that some of them may be of personal nature. That the appellant has filed he complete details of all the-expenses along with copies of bills and no adverse interference was observed by the Ld. CIT(A) has made the adhoc addition on account of presumption which was totally against the facts. That considering the business activities declared by the appellant amount of expenses claimed was justifiable and expended only for the business purpose. That even during the assessment proceedings u/s 143(3) by the Ld. Additional Commissioner of Income Tax Range-35, New Delhi for Asst. Year 2009-2010, No personal element was observed.*

10. *The appellant craves leave to add, alter, modify, any other matter."*

3. At the time of hearing, no one attended the proceedings on behalf of the assessee. It is seen from the records that there is no representation on behalf of the assessee since 03.11.2021. Under these facts, the appeal of the assessee

is taken up for hearing in the absence of the assessee and is being disposed off on the basis of material available on record.

BRIEF FACTS OF THE CASE

4. Facts giving rise to the present appeal are that the assessee filed its return of income declaring total income of Rs.10,01,340/- on 21.09.2011. The case was selected for scrutiny under AIR/CASS and the assessment u/s 143(3) of the Income Tax Act, 1961 ("the Act") was framed vide order dated 27.03.2014. The Assessing Officer ("AO") while framing the assessment, made addition of Rs.1,47,000/- in respect of income received from house property. The AO further made addition of Rs.11,81,020/- in respect of estimated profit. The AO found that there was a difference of Rs.1,11,639/- in the receipt disclosed in Form 26AS by the assessee. The difference of Rs.1,11,639/- was treated as job receipt not disclosed in P&L A/c. The AO further made addition of Rs.52,78,623/- in respect of unexplained sundry creditors and also on account of lower households drawings amounting to Rs.1,50,000/-. Further, adhoc disallowance was made in respect of miscellaneous expenses related to motor vehicle running expenses, depreciation on car, conveyance expenses, telephone expenses, miscellaneous expenses etc. on an amount of Rs.54,537/- @ 20% of total expenses of Rs.2,72,688/-.

5. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, partly allowed the appeal of the assessee. Thereby, Ld.CIT(A) sustained the addition in respect of income from house property, addition on account of estimated profit and deleted the addition in respect of sundry creditors of Rs.52,78,623/- and difference in TDS and receipts disclosed by the assessee in respect of adhoc disallowance of

other miscellaneous expenses. Disallowance in respect of motor car vehicle running and maintenance expenses were sustained by the Ld.CIT(A).

6. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal.

7. Apropos to grounds raised by the assessee in this appeal, Ld. Sr. DR supported the orders of the authorities below and submitted that there is no infirmity in the orders of the authorities below.

8. We have heard Ld. Sr. DR and perused the material available on record. The contention of the assessee is that Ld.CIT(A) erred in sustaining the addition by applying the previous year G.P Rate and in the year under consideration, the turnover of the assessee substantially increased by 25%. He further stated that there was substantial fluctuation in the copper prices. Similar grounds were raised in assessee's own case pertaining to AY 2009-10 and the Tribunal after considering the submissions, vide order dated 01.11.2016 had restored the grounds raised by the assessee to the file of AO for fresh consideration and examination after affording due opportunity of being heard to the assessee. The relevant contents of the order is reproduced as under:-

Ground No. 1 & 1.1 of the assessee

4. "We have heard the rival submissions and have carefully perused the relevant material on record. The Id. AR submitted that the Id. CIT(A) has grossly erred in sustaining addition of Rs. 1,09,201/- under the head 'house property' on account of expected rent and actual rent as charged by the assessee. The Id. AR pointed out that the Id. CIT(A) was incorrect in ignoring the basic fact that the Annual

Rental Value ['ARV' for short], as computed by the A.O was without any basis and was merely based on assumptions and surmises, as the rent so determined by the A.O was utter disregard of the municipal valuation of rent. He further submitted that the Id. C1T(A) also ignored another basic relevant fact that only ground floor of the property was let out whereas the A.O presumed that the entire property was let out by the assessee, thus the entire addition should be deleted.*

5. *Replying to the above, the Id. DR supported the order of the A.O and submitted that the action of the A.O is correct and rent shown by the assessee was much below than the prevailing market rates and the rent agreement submitted by the assessee was executed on a plain sheet of paper signed by the assessee himself as lessor and Shri Subash Chand Agarwal as lessee. The Id. Sr. Dr further submitted that as per Stamp Duty Act, any lease agreement which is for a period of one year or more, should be adequately stamped and duly registered. Therefore, the A.O was right in applying market rate for computing the ARV of the property. The Id. DR also contended that the A.O noticed that the rent of industrial properties in the similar area was between Rs. 20 to 25 per sq. ft per month during the year under consideration. Hence, the A.O was correct and justified in taking the minimum rent of Rs. 20 per sq. ft per month and thus the ARV came to Rs. 2,16,000/- per annum and the A.O was quite justified in making the addition in this regard.*

6. *On careful consideration of the above submissions, at the very outset, we observe that the issue of registration of lease deed is relevant for its admissibility in civil court proceedings. However, for the purpose of estimating ARV of a property, even an unregistered lease deed can be considered. From the assessment order, we observe that the A.O has not made any enquiry from the lessee Shri Subash Chand Agarwal and we are unable to see the basis of estimation of minimum rate of rent of Rs. 20 per sq. ft per month which was adopted by the A.O for estimation of ARV and for making*

addition in this regard. We also observe that from the copy of rent agreement appearing at pages 63 and 64 of the assessee's paper book clause (i) the area of rented premises was 50 gaj i.e. 50 yards which comes to 450 sq ft. and for making the said addition in para 4(b) of the assessment order, the A.O took area of 900 sq. ft and by applying minimum rate of rent at Rs. 20 per sq. ft per month without any basis, the A.O calculated the ARV of Rs. 2,16,000/- for making the impugned addition. We are of the considered opinion that the A.O firstly adopted incorrect area of rented premises which was double and further proceeded to make addition on the basis of estimation without any justified and reasonable and justified basis. We are in agreement with the contention of the Ld. DR that the A.O. is empowered to make addition @ which are prevailing in the similar area for similar kind of property but in the present case, the A.O adopted rate of Rs. 20/- per ft per month without any basis and we are unable to see any comparable example for making such estimation. Therefore, we are of the considered opinion that the A.O by taking incorrect area of rented premises and by considering estimated minimum rent rate, made addition which cannot be held as sustainable in the eyes of law. The A.O even did not verify and examine the lessee Shri Subash Chand Agarwal before doubting the rent which was received and declared by the assessee and offered to tax in the computation of income. In this situation, we are of the considered opinion that the addition made by the A.O in this regard carries perversity and incorrectness. Therefore, we demolish the same. Accordingly, Ground Nos. 1 and 1.1 of the assessee are allowed and the A.O is directed to delete the addition.

Ground Nos. 2 to 2.2 of the assessee and Ground Nos. 4.5, St 6 of the Revenue

7. Apropos these grounds, the Id. AR submitted that the Id. CIT(A) has erred in sustaining an addition of Rs. 5,84,198/- out of total disallowance made by the A.O on account of low gross profit rate. The Ld.AR submitted that the first appellate authority ignored the

basic fact that the books of accounts of the assessee were duly audited, which were produced before the A.O and all discrepancies as pointed out by the A.O were duly explained. The Id. AR submitted that the Id. CIT(A) failed to appreciate the basic undisputed fact that the average rate of gross profit rate for the preceding three F.Ys was 4.59% and in the impugned F.Y. gross profit rate was 5,15% which was much higher as compared to the average of three previous F.Ys. Therefore, the rejection of books of accounts u/s 145(3) of the Act was unjust and untenable in law and no addition can be made in this regard.

8. *The Id. CIT(A) wrongly applied the gross profit rate of the preceding A.Y for sustaining the part addition of the said amount. The Id. AR supported the first appellate order on the issue of part deletion of addition on account of low gross profit rate and submitted that the Id. CIT(A) properly compared the business results of the assessee with other comparables which were engaged in the different business processes and thereafter accepted that the A.O was not correct in comparing the result of the assessee with other comparables who were engaged in other business activities and processes and whose turnover was many times higher than that of the appellant. Therefore, part addition upheld by the Id. CIT(A) may kindly be deleted.*

9. *Replying to the above contentions of the assessee, the Id. DR submitted that the assessee has not objected to the rejection of books of account of the assessee and thus the Id. CIT(A) held that the A.O was duly justified in rejecting the assessee's books of accounts.*

10. *In view of the above rival submissions, we are of the considered opinion that the Id. AR has not seriously objected to the rejection of books of accounts. However, the main contentions and arguments of the assessee revolve around the contention that the Id. CIT(A) ignored the average gross profit rate of preceding three years and he*

was not justified in considering the results of the A.Y 2008-09 for restricting the addition made by the A.O.

11. *We observe that the rejection of books of accounts was made by the A.O by observing some substantial discrepancies in the books of account and after affording due opportunity of being heard to the assessee, the AO rejected the books of account by invoking the provisions of section 145(3) of the Act. Before us also, the assessee raised Ground No. 2.1 alleging the rejection of books of accounts. However, he could not satisfy us in which manner the A.O was incorrect in rejecting the books of accounts, especially when the A.O pointed out substantial discrepancies in the books of accounts of the assessee, such as, four times of production of copper wire has been made in March 2009 in comparison to May 2008 at the same power expenses and the same job work charges receipts. Besides this allegation, the A.O also noted that the power consumption expenses vis a vis production of copper wire and job work done was not proportionate to the production of copper wire. Therefore, he presumed that books of accounts have not been properly maintained. In view of the above, we uphold the action of the A.O in rejecting the books of accounts of the assessee u/s 145(3) of the Act and the first appellate authority was quite correct and justified in upholding the conclusion of the A.O.*

12. *In so far as the estimation of gross profit is concerned, the Id. CIT(A) adopted gross profit 5.46% which was declared by the assessee for A.Y 200-09, undisputedly the gross profit rate shown by the assessee for A.Y 2009-10 was 5.08% which was less Than 0.38% in comparison to the turnover of earlier year. In our considered opinion, when gross profit rate is estimate for a particular A.Y, then the A.O has two ways for estimating gross profit rate. Firstly by comparing gross profit rate of the assessee of the preceding and subsequent A.Y to the year under consideration and secondly, gross profit rate declared by other comparable cases of similar assessees. In the present case, since the assessee was regular in the same*

business from several earlier A.Ys, therefore, earlier and subsequent year gross profit rate was very well comparable with the A.O for estimation of gross profit rate for A.Y 2009-10. The A.O made voluminous addition of Rs. 94,37,836/- by taking gross profit rate of 11.22% by taking basis of M/s High Volt Electricals and the A.O completely ignored the gross profit rate declared by the assessee. and accepted by the Revenue during earlier and subsequent year. However, the first appellate authority took a balancing approach and restricted the disallowance to Rs. 5,84,198/- by applying gross profit rate of 5.46% which was declared by the assessee for earlier A.Y 2008-09. In the light of the above factual matrix, we are of the considered opinion that after rejection of books of accounts, by invoking the provisions of section 145(3) of the Act, gross profit rate of other similar entity cannot be made basis for making voluminous additions. Therefore, the first appellate authority was right in restricting the disallowance made by the A.O. However, we may point out that the Id. CIT(A) was not correct in taking gross profit rate of the immediately preceding A.Y 2008-09 for restricting the addition as available results of gross profit rate of preceding three years should have been considered for making estimation of gross profit rate of the year under consideration and for making any further addition, if required, on the facts and circumstances of the case. Therefore, this issue is restored to the file of the A.O for limited purpose that he A.O shall compare the gross profit rate of the immediately preceding three A.Ys and thereafter estimate the gross profit rate of A.Y 2009-10. Accordingly, Ground No. 2.1 of the assessee and ground nos. 4,5 and 6 of the Revenue are dismissed and Ground Nos. 2 and 2.2 of the assessee are allowed for statistical purposes for the limited purpose of estimating gross profit rate by the A.O as directed above.

Ground Nos. 3 and 3.2 of the assessee

13. Apropos these grounds, the Id. AR submitted that the Id. CIT(A) erred in taw and on facts in sustaining the addition of Rs.

17,05,799/- and Rs. 11,74,422/- on account of unexplained credit u/s 68 of the Act. The ld.AR submitted that the said amount pertained to M/s. Vaibhav Industries and M/s Viraj Industries which were trade creditors of the assessee and whose confirmations were filed before the A.O and the Id. CIT(A), without making any adverse enquiries from the authorities below, made addition on incorrect premises. The Id. AR vehemently contended that the first appellate authority ignored the basic fact that the goods purchased from the above parties were duly supported by Excise bills bearing their PAN and Excise Registration No. and which were duly intimated to the A.O and Id. CIT(A) and without making any verification and examination and without raising any doubt about the truthfulness of these documents, the authorities below made addition. The Id. AR further submitted that the assessee discharged its onus by establishing the identity of the above said alleged parties and as such, the addition so made by the A.O and sustained by the Id. CIT(A) has no legs to stand and is liable to be deleted.

14. *The Id. DR submitted that no confirmation was filed before the A.O and the A.O was right in treating the impugned amounts as unexplained income of the assessee. The Id. DR also pointed out that despite of several opportunities given, the assessee could not file satisfactory explanation and evidence to explain the issue. Therefore, the Ld.CIT(A) was correct in confirming the addition. However, the ld. DR fairly submitted that if it is found necessary, then the department has no serious objection if the issue is restored to the file of the A.O for fresh verification and examination.*

15. *On careful consideration of above submissions, we observe that the A.O made addition by treating the credit balances standing in the names of Vaibhav Industries and Viraj Industries as unexplained. The Id. CIT(A) also confirmed the addition so made by the A.O by observing that the assessee was asked to produce these parties for examination before the A.O and the assessee failed to do so. Therefore, he sustained the addition. From the assessment order, as*

well as the appellate order, we clearly observe that the main allegation of the authorities below is that the assessee could not produce these sundry creditors before the A.O. However, there is no deliberation regarding explanation and other allegations filed by the assessee in this regard. Therefore, in our considered opinion, the ends of justice would meet if the issue is restored to the file of the A.O for fresh consideration and examination after affording due opportunity of being heard to the assessee. Accordingly, Ground Nos. 3 to 3.2 of the assessee are restored to the file of the A.O for fresh adjudication with the direction that the A.O shall decide the issue de novo without being prejudiced with the earlier assessment orders and first appellate order.

Ground No. 4 of the assessee

16. *The Id. AR submitted that the Id. CIT(A) has erred in law and in facts in sustaining the addition of Rs. ,90,557/- on account of capital gain on sale of jewellery. The Id. AR reiterated the contentions as raised before the authorities below and submitted that the statement of affairs and balance sheet filed by the assessee before the A.O clearly shown by the assessee was valued at Rs. 2,20,984/- which was also declared by the assessee in VDI5, 1997 Scheme, therefore, no further addition could have been made in this regard.*

17. *Replying to the above, the Id. DR pointed out that if the assessee would have owned Other gold and jewellery also, then it should certainly have appeared in the balance sheet alongwith jewellery declared in VDIS, 1997 Scheme, therefore, the source of acquisition of gold jewellery weighing 416.06 gms remained unexplained and the A.O was quite justified in making addition and the Id. CIT(A) rightly upheld.*

18. *On careful consideration of above submissions., we observe that the A.O, by applying the prevailing market price of gold jewellery as on 31.3.1987 worked out the weight of jewellery declared by the. assessee assessment 860 gms. Sale price of 860 gms of jewellery was worked out at Rs. 10,08,219/-. After allowing indexed cost of*

this jewellery weighing 860 gms at Rs. 9,18,662/- the LTCG was worked out to Rs. 90,557 which v/as added to the total income of the assessee . The Id. CIT(A) also confirmed the addition so made by the A.O by observing that the assessee has not pointed out any mistake in the working nor any reasons have been advances as to how the A.O erred in working out the LTCG. From the assessment order, as well as the appellate order, we clearly observe that the main allegation of the authorities below is that the assessee could not point out any mistake or reason in the working out of the LTCG by the A.O. Therefore, in our considered opinion, the ends of justice would meet if this issue is also restored to the file of the A.O for fresh consideration and examination after affording due opportunity of being heard to the assessee. Accordingly, Ground No. 4 of the assessee is restored to the file of the A.O for fresh adjudication with the direction that the A.O shall decide the issue de novo without being prejudiced with the earlier assessment orders and first appellate order."

9. Therefore, following the same reasoning, grounds raised in this appeal by the assessee are restored back to the file of AO for fresh adjudication after affording due opportunity of being heard to the assessee. Thus, grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 16th November, 2022.

Sd/- ***Sd/-***

(N.K.BILLAIYA) **(KUL BHARAT)**
ACCOUNTANT MEMBER **JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI