

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.122/Jodh/2022
(ASSESSMENT YEAR- 2010-11)**

Aravali Trading Company, 154, Near Bus Stand, Merta City, Nagaur, Rajasthan-341510	Vs	ITO, Ward-1, Nagour (Rajasthan)
(Appellant)		(Respondent)
PAN No. AABFA7735M		

Assessee By	Shri Kishan Goyal, CA
Revenue By	Shri S.M.Joshi, JCIT DR
Date of hearing	20/03/2023
Date of Pronouncement	21/03/2023

ORDER

PER KUL BHARAT, J.M.:

The assessee has filed this appeal challenging the order dated 18.07.2022 passed by the Ld. CIT(A), National Faceless Appeal Centre (“NFAC”), Delhi for the assessment year 2010-11.

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

1. *“The Authorities below have seriously erred in law and in facts while making/sustaining the assessment order in appellate proceeding, particularly when neither notice of hearing was served on appellant nor submission of appellant was considered which is lying on records.*

2. That Ld CIT(A) has passed the appellate order in gross violation of natural justice behind the back of appellant.

3. In the alternative and without prejudice to above ground we may kindly be permitted to raise following ground

TRADING ADDITION ... Rs. 20,04,121/-

a. That Authorities below erred in law and in facts while making Trading addition of Rs. 20,04,121/-.

b. That Authorities below has seriously erred in facts and in law, while making Trading addition, without any reason, any material, any basis and/or any specific details/defects in the books of account to support his unjustified action, and also could not found any defect in the declared trading result and/or in the books of accounts as maintained by the appellant in the particular circumstances of the case.

c. That Authorities below erred in making the addition particularly when Authorities below has neither rejected the books of Accounts nor applied the provisions of Sec. 145(3) of The I.T.Act, in the circumstances of the case.

d. That Authorities below has estimate hypothetical G.P. Rate of 1% that too without any basis, formula and/or tenable method in the particular circumstances of the case, which should not be allowed to sustain so as to meet the ends of Justice

4. ADDITION OF EXCESS STOCK Rs. 39,97,250/-

5. ADDITION ON A/C OF SUPPRESSED SALE OF Rs. 43,95,509/- Rs. 43,955/-

a. That Authorities below erred in law and in facts while making addition for hypothetical excess stock found in different packing during the course of survey proceeding for Rs. 39,97,250/- as well as on account of shortage of stock found in different packing during the course of same survey proceeding and treated as hypothetically suppressed sale of Rs. 43,95,509/-and made addition of Rs. 43,955/- by applying hypothetical G P rate @ 1% on hypothetically presumed suppressed sale.

b. That Authorities below has seriously erred in facts and in law, while making the addition for so called discrepancies in the stock found excess/short in different packing of the same product, without making any adjustment of shortage/excess stock of same product and also without considering the explanations of the appellant, made the double addition once for so called excess stock found and again on account of shortage of stock found treated as suppressed sale, without any reason, any material, any basis and/or any specific details/defects in the books of account to support his unjustified action, and also could not found any defect in the declared trading result and/or in the books of accounts as maintained by the appellant in the particular circumstances of the case.

c. That Authorities below has seriously erred in facts and in law while making the hypothetical additions particularly when Authorities below has accepted the books of account of the appellant & declared stock as per books of account and neither rejected the books of Accounts under Sec. 145(3) of The I.T.Act nor found any tenable defects in the books of account as maintained by the appellant, in the circumstances of the case.

d. That Authorities below has erred in facts by not allowing the set-off/adjustment of excess stock with short stock and as such presumptive additions should not be allowed to be sustained so as to meet the ends of natural justice under the facts & circumstances of the case.

6. ADDITION ON A/C OF RATE DIFFERACE Rs. 50,000/-

a. That Authorities below erred in law and in facts while making addition on account of rate difference of Rs. 50,000/..

b. That Authorities below has seriously erred in law and in facts while making pure presumptive addition on account of rate difference that too on the basis of his own presumptive rate without any basis, formula and/or tenable method in the particular circumstances of the case, which should not be allowed to sustain so as to meet the ends of Justice.

7. DISALLOWANC U/s 40 (a) (ia)... Rs. 64,177/-

a. That Authorities below erred in law and in facts while applying section 40 (a) (ia) of the I T Act and disallowed Rs. 64,177/-.

b. That provisions of Sections 40(a)(ia) of the I T Act is not applicable in the facts & circumstances of the case particularly when provisions of section 194C of the I T Act is not applicable in the case of appellant in the facts & circumstances of the case..

8. ADDITION FOR UNEXPLAINED EXPENDITURE Rs. 84,000/-

a. That Authorities below erred in law and in facts while making addition of Rs. 84,000/- on account of unexplained expenditure.

b. That Authorities below has seriously erred in law and in facts while making pure presumptive addition on account of unexplained expenditure for salary expenses particularly by recoding statement behind the back of appellant and also without discharging the onus lying on him as required by the I T Act under the facts and circumstances of the case and also Ld AO has made these addition without acquiring the jurisdiction under the provisions of the I T Act and as such any addition made without jurisdiction should not be allowed to sustain & deserve to be deleted so as to meet the ends of justice.

c. That Ld AO has seriously erred in law & in facts while making the allegedly addition for unexplained expenses by making inquiry behind the back of appellant and also failed to provide proper opportunity to the appellant under the facts & circumstances of the case.

d. That Authorities below has made this alleged addition purely on the basis of hypothetical presumption, without any piece of tenable evidence and/or material in the facts & circumstances of the case

9. DISALLOWANC DEPRECIATION ON TRUCK Rs. 25,500/-

a. That Authorities below erred in law and in facts while disallowing the claim of depreciation on truck of Rs. 25,500/-.

b. That Authorities below has erred in restricting depreciation rate at 15% instead of 30% as claimed by the appellant.

10. ADDITION FOR UNEXPLAINED ENTRIES Rs. 600,212/-

11. ADDITION ON A/C OF TWO NOTE BOOKS Rs. 317,114/-

a. *That Authorities below erred in law and in facts, while making addition of Rs. 600,212/- on account of unexplained entries and while making addition of Rs. 317,114/- on account of entries in two notes books impounded during the course of survey proceeding.*

b. *That Authorities below has seriously erred in law and in facts while making hypothetical addition for unexplained entries as well as for two note books particularly when Ld AO failed to discharged the onus lying on him as required by the I T Act so as to prove the above amount represent the income of the appellant and also Ld AO has made these addition without , acquiring the jurisdiction under the provisions of the I T Act and as such any addition made without jurisdiction should not be allowed to sustain & deserve to be deleted so as to meet the ends of justice.*

c. *That Authorities below has made this alleged addition purely on the basis of hypothetical presumption, without any piece of tenable evidence and/or material in the facts & circumstances of the case and merely by brush aside the explanations submitted by appellant without rebutting by any tenable material and/or basis.*

That We may kindly be permitted, to reserve the right to amend, modify, alter and/or add new ground/s of the appeal at the time of hearing.”

3. Facts giving rise to the present appeal are that the assessee filed its return of income declaring total income at Rs.1,08,390/- on 07.10.2010. The case of the assessee was taken up for scrutiny assessment and the assessment u/s 143(3) of the Income Tax Act, 1961 (“the Act”) was concluded. Thereby, the Assessing Officer (“AO”) assessed income of the assessee at Rs.72,96.120/- after taking into consideration the discrepancies found during the course of survey conducted u/s 133A of the Act.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, sustained the addition *ex-parte* to the assessee.

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

6. At the outset, Ld. Counsel for the assessee submitted that no effective opportunity was given to the assessee by Ld.CIT(A). Therefore, he prayed that the impugned order may be set aside and the matter be restored to the file of Ld.CIT(A) for fresh adjudication.

7. On the other hand, Ld. JCIT DR opposed these submissions and supported the orders of the authorities below. He submitted that sufficient opportunity was granted to the assessee.

8. We have heard Ld. Authorized Representatives of the parties and perused the material available on record. We find that Ld.CIT(A) in para 5 of the impugned order, has noted that notice dated 13.03.2021 was served on the assessee vide e-mail in ITBA system. The assessee was required to furnish written submissions electronically on or before 29.03.2021. The appellant neither filed any submissions nor requested for adjournment in respect of this notice. Thereafter, Ld.CIT(A) issued further notices to the assessee but no submission was filed on behalf of the assessee. Hence, Ld.

CIT(A) proceeded to decide the appeal *ex-parte* to the assessee and sustained the addition. Considering the totality of the facts and material placed before us, we are of the considered view that for the sake of substantial justice and to sub-serve the principle of natural justice, the assessee should be given opportunity to represent its case. Therefore, the impugned order is hereby set aside and the grounds of appeal raised by the assessee are restored to the Ld.CIT(A) to adjudicate them afresh after providing adequate opportunity to the assessee to represent its case.

9. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 21.03.2023.

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

Amit Kumar

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

Asstt. Registrar
Jodhpur Bench