

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted Through Virtual Court)

**Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 367/Rjt/2018
Assessment Year: 2013-14**

M/s. Vaibhav Cotton Company, A-39, Marketing Yard, Rajkot PAN No: AAJFV1677M (Appellant)	Vs	The Income Tax Officer, Ward-2(1)(5), Rajkot (Respondent)
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Assessee Represented: None
Revenue Represented: Shri K.L. Solanki, Sr.D.R.

Date of hearing : 20-07-2023
Date of pronouncement : 26-07-2023

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the appellate order dated 12.07.2018 passed by the Commissioner of Income Tax (Appeals)-2, Rajkot arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2013-14.

2. The Grounds of Appeal raised by the Revenue are as follows:

1.0 The grounds of appeal mentioned hereunder are without prejudice to one another:

2.0 The learned CIT(A) erred on facts as also in law in confirming rejection of books of account of the appellant. Book results of the appellant may kindly be accepted.

3.0 The learned CIT(A) erred on facts as also in law in confirming estimation of Gross Profit at 0.37% as against actual 0.12% and thereby confirming addition of Rs. 51,41,560/-. The addition may kindly be deleted.

4.0 Your Honor's appellant craves leave to add, amend, alter, or withdraw any or more grounds of appeal on or before the hearing of appeal.

2.1. The brief fact of the case is that the assessee is a Firm engaged in trading of Farm Products. For the Assessment Year 2013-14, the assessee filed its Return of Income on 31-12-2013 declaring total income of Rs.3,69,370/-. During the appellate proceedings, the A.O. issued show cause notice to the assessee that the assessee had shown a turnover of Rs. 206 crores and Gross Profit of Rs.24,99,285/- (i.e. 0.12%). The assessee also reported other income of Rs. 64,50,657/-. The assessee was requested to furnish the item-wise, month-wise, purchase and sales details of registered purchases alongwith ledger and supportive evidence, Gross Profit/Net Profit ratio of the previous two years, ledger account of sundry creditors and sundry debtors. As the assessee failed to furnish the above details why the books of accounts should not be rejected and Gross Profit should be considered as 1% of the sales. To this show cause notice, the assessee failed to offer any explanation. Therefore the Assessing Officer considered the Gross Profit at 0.37% as admitted by the assessee from the earlier Assessment Year 2012-13 and

estimated the income of the assessee as Rs.51,41,560/- and demanded tax thereon.

3. Aggrieved against the same, the assessee filed an appeal before Ld.CIT(A), who confirmed the additions observing as follows:

“...The assessee during appellate proceeding has argued that Assessing Officer has not found any fault with the audited books of accounts of assessee and has rejected books of accounts without any basis. The assessee has cited various decision in support of claim that rejection of books of accounts duly audited was not justified. Similarly, the assessee has contended that the estimation of G.P at 0.37% was not justified, as the turnover of assessee has increased decreasing the profit margin.

Having considered facts and circumstances of the case I find that the assessee has not produced any details in response to questionnaire issued by the Assessing Officer. He has been blatantly non cooperative in the assessment proceeding and had avoided scrutiny assessment. The said audited books of account have not been produced for verification. In these facts and circumstances the results declared by the assessee could not have been accepted as sacrosanct by the Assessing Officer when the said books of accounts and the supporting evidences were not subjected to scrutiny due to non-cooperation of the assessee. Rejection of book results is therefore fully justified. The case laws cited by assessee are distinguishable as in the present case the assessee did not produce books of accounts for verification and the claim that no defect in books of accounts was found is simply circular reasoning. The assessee cannot take advantage of his non-compliance by not producing the books of accounts and then claiming that no defect in books of accounts was found. The action of Assessing Officer of rejecting books results therefore calls for no interference.

As regards the quantum of estimation of G.P., I find that A.O. had initially issued show cause notice of estimation at 1% but finally he has estimated G.P. at 0.37% which is comparable to the case of assessee for earlier years. Therefore, the basis of estimation of G.P. 0.37% by the Assessing Officer is quite reasonable. Moreover, Assessing Officer has not disturbed any of the expenses claimed by assessee even though they were not subjected to verification on account of non-compliance by the assessee. In my considered opinion and in the facts and circumstances of the case, the estimation of G.P. at 0.37% which is based on the assessee's own results in earlier years and without making any other disallowance, is fully justified. In view of above discussion the action of Assessing Officer calls for no interference and grounds of appeal are rejected.”

4. Aggrieved against the same, the assessee filed an appeal before us. Today is the 6th time of hearing of the above appeal, None appeared on behalf of the assessee. Even in the previous hearing, there is a Letter of Authority in favour of R.N. Vekariya & Associates, Chartered Accountants in Rs. 100/- Stamp (Invalid Authority, since

appropriate Stamp duty payable is Rs. 300/-). Neither the assessee nor the Representative appeared for the above appeal and no adjournment sought by the assessee in all the previous hearings. This clearly proves that the assessee is not interested in pursuing the above appeal. So with the assistance of Ld. Sr. D.R., we are adjudicating the above appeal.

4. Ld. Sr. D.R. Shri K.L. Solanki appearing for the Revenue supported the order passed by the Lower Authorities and submitted that the Ld. A.O. has considered Gross Profit ratio of 3.7% as admitted by the assessee for the earlier Assessment Year 2012-13 for the present Assessment Year. The assessee failed to furnish any details, therefore the additions does not require any interference and assessee appeal is liable to be dismissed.

5. We have given our thoughtful consideration and perused the materials available on record. Both before the Assessing Officer as well as before the Ld. CIT(A), the assessee failed to furnish any details in support of its claim of actual Gross Profit at 0.12%. Further it is seen from the order of the Ld. CIT(A) that this is the second round of appeal before this Tribunal. In the earlier round, the Co-ordinate Bench of this Tribunal vide order dated 31-10-2017 in ITA No. 257/Rjt/2017 restored the appeal to the file of the Ld. CIT(A) to adjudicate it on merits. However in the second round of appeal before the Ld. CIT(A), the assessee failed to produce any details in support of its claim.

5.1. The Hon'ble Delhi High Court in the case of CIT Vs. Motor General Finance Ltd. reported in [2002] 254 ITR 449 (Delhi) held as follows:

"When the assessee fails to produce documents or evidence in connection with the matter at issue, and adverse inference, in terms of section 114 of the Evidence Act, could be drawn to the effect that had those documents been produced, they would have gone against the interest of the assessee."

5.2. Further in view of the non-cooperative attitude of the assessee before the Lower Authorities and second round of litigation before this Tribunal, we have no other choice than to confirm the order passed by the Lower Authorities. Thus the grounds raised by the assessee are hereby rejected.

6. In the result, the appeal filed by the Assessee is hereby dismissed.

Order pronounced in the open court on 26-07-2023

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 26/07/2023

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
राजकोट