

IN THE INCOME TAX APPELLATE TRIBUNAL
“DB” BENCH, JODHPUR
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

ITA No. 297/Jodh/2017

(A.Y: 2009-10)

Tarachand Jain G.S. Punjawat & Co. CA, 101-Gold Coast Appt, 58- New Fatehpura, Udaipur-313001, Rajasthan.	Vs.	ACIT, Cir-1, Udaipur, Rajasthan.
PAN/GIR No. : ABPPJ878K		
Appellant	..	Respondent

Assessee by :	Mr. Devendra Punjawat.AR
Revenue by :	Ms. Nidhi Nair, JCIT -DR

Date of Hearing	14.08.2023
Date of Pronouncement	17.08.2023

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals)-I, Udaipur passed u/s 143(3) r.w.s147 and 250 of the Income Tax Act, 1961. The assessee has raised the following grounds of appeal:

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1. *That the learned Commissioner of Income Tax (Appeals)Udaipur has erred in confirming the addition made by the AO amounting to Rs.237669/disregarding the fact that the reassessment proceedings initiated were illegal & void ab initio.*

2 *That the order is defective & bad in Law as ground no 2 raised by the assessee has not been disposed.*

3 *That your petitioner reserves the right of addition & alteration in the grounds of appeal at the time of hearing.*

2. The brief facts of the case are that, the assessee is engaged in the business of export of marbles slabs. The assessee has filed the return of income for the A.Y 2009-10 on 30.09.2009 disclosing a total income of Rs. 12,39,640/- and the return of income of income of was processed u/s 143(1) of the Act. Subsequently the case was selected for scrutiny and the assessment u/s 143(3) of the Act was completed with the assessed total income of Rs.13,62,070/-. Subsequently the Assessing Officer (A.O) after recording the reasons for reopening has issued notice u/s 148 of the Act. In compliance to notice the Ld. AR of the assessee appeared from time to time and submitted the details. The AO has provided the reasons to the assessee and the objections were filed and were disposed off by the A.O. The AO on perusal of the facts and information

found that in the original assessee, the A.O has estimated the net profit @8% on the total sales and Since the assessee has disclosed the interest income on FDRs under income from other sources and is was excluded in the original proceedings, the A.O has made an addition of Rs. 2,37,669/- and assessed the total income of Rs. 15,99,740/- and passed the order u/s 143(3) r.w.s147 of the Act dated 26.06.2014.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the AO and has confirmed the validity of assessment u/s 148 of the Act and sustained the addition made by the AO and dismissed the assessee appeal. Aggrieved by the order, the assessee has filed an appeal before the Honble Tribunal.

4. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in not considering the facts that in the original assessment, the A.O has considered this information and has estimated the income and again making an addition amounts to double taxation

and further it's a change of opinion and the reassessement is bad in law and prayed for allowing the appeal. Contra, the Ld. DR supported the order of the CIT(A).

5. We heard the rival submissions and perused the material on record. The sole dispute issue envisaged by the Ld. AR that the CIT(A) has erred in not considering the facts that the assessee has filed all the relevant details before the AO in the original assessment and the assessment was completed u/s 143(3) of the Act. Where the AO has observed that the assessee has disclosed the net profit @ 7.32% whereas the AO has estimated the income @ 8% and the differential income was taxed. The Ld.AR submitted that the Interest income was credited to profit & Loss account and the net profit @ 7.32% worked out but the A.O has estimated the profit @8%. We find that the assessee in the computation of income has excluded the interest income under the head Income from Business and disclosed separately under Income from other sources and cannot be disputed. Hence on the same set of facts which were available before the A.O in the original assessee and the income was

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estimated @ 8%. Whereas in the reassessment proceedings, the A,O has made the addition of interest income being the change of opinion on the same set of facts available in the scrutiny assesment. Since the assessee has made a full disclosure of material information in the original assessment proceedings and no new material or information was found by the A.O but it is only a mere change of opinion. Accordingly considering the facts, circumstances and the provisions of the Act, the order of the CIT(A) is set aside and direct the A.O to delete the addition and we allow the grounds of appeal in favour of the assessee

6. In the result the appeal filed by the assessee is allowed.

Order pronounced in the open court on 17.08.2023.

Sd/-

(DR DIPAK P RIPOTE)

ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)

JUDICIAL MEMBER

Jodhpur Dated 17.08.2023

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. Concerned CIT
5. DR, ITAT, Jodhpur
6. Guard file.

//True Copy//

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आदेशानुसार/ BY ORDER,

(Asst. Registrar)
ITAT, Jodhpur