

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 70/JP/2023
निर्धारण वर्ष/Assessment Years : 2018-19

Kunan Mal Kalu Ram Jain and Company A-14 , Mandi Yard, Newai, Tonk	बनाम Vs.	ITO, Tonk
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAFFK 5166 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Mahendra Gargieya (Adv.) &
Sh. Devang Gargieya (Adv.)
राजस्व की ओर से / Revenue by : Smt Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 26/07/2023
उदघोषणा की तारीख / Date of Pronouncement: 24/08/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee and is arising out of the order of the National Faceless Appeal Centre, Delhi dated 26/08/2022 [here in after (NFAC)/ Id. CIT(A)] for assessment year 2018-19 which in turn arise from the order dated 23.03.2021 passed under section 143(3) r.w.s 143(3A) & 143(3B) of the Income Tax Act, by National e-Assessment Centre, Delhi.

2. In this appeal, the assessee has raised following grounds: -

“1. The impugned additions and disallowances made in the order u/s 143(3) dated 23.03.2021 are bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be deleted.

2. Rs. 2,64,708/-: The Id. CIT(A) erred in law as well as on the facts of the case in confirming the trading addition on account of low Gross profit and net profit. The additions so made and confirmed being totally contrary to the provisions of law and facts of the case, kindly be deleted in full.

3. The learned CIT erred in law and facts of the case in confirming the impugned addition made by the AO by applying higher NP rate of 4% as against the declared NP rate of 1.75%. The additions so made and confirmed being totally contrary to the provisions of law and facts of the case, kindly be deleted in full.

4. Rs. 10,992/- The Id. AO erred in law as well as on the facts of the case in charging interest u/s 234D of the Act. The appellant totally denies its liability of charging of any such interest. The interest, so charged, being contrary to the provisions of law and facts, kindly be deleted in full.

5. The appellant prays your honour to add, amend or alter any of the grounds of the appeal on or before the date of hearing.”

2.1 At the outset of the hearing the bench noted that the registry pointed out that there is a delay of 113 days. Apropos to this delay in filing this appeal the Id. AR of the assessee submitted as under:

“The humble assessee most respectfully begs to submit as under:

1. That in the aforesaid matter, the Id. CIT(A), Tonk passed the impugned order on dated 26.08.2022, which was received on dated 26.08.2022 by the AR of the assessee. Accordingly, the appeal was to be filed on/before 26.10.2022 however, the same has been filed on dated 16.02.2023. Thus, delay of 113 days has occurred.

2. Reasonable Cause exist in this connection, it is humbly submitted that the appeal papers were duly prepared by the counsel of the assessee and were sent to the local counsel Shri Shyam Lal (FCA). Unfortunately however, Shri Akash proceeded on an outstation journey during the relevant period and the papers could not be forwarded to the assessee. As soon as Shri Akash came back, he immediately got the paper signed

and sent it to the counsel at Jaipur and accordingly the appeal was filed . But this resulted into a minor delay of 2 days.

2.2. That pertinently, the filing fees of Rs. 500/- was already deposited long back on 19.01.2023 that is a month before the due date .Thus, the assessee was quite serious to file the appeal.

3. That in support of the aforesaid facts, affidavit of the of assessee is enclosed with this application and marked as “Annexure – A”

4. That the applicant is a layman not very conversant with the complex tax laws and because of the circumstances stated above, the delay so caused was beyond her control but was bonafide and unintended. The assessee was not going to gain any benefit because of the delayed finding and her conduct was not contumacious.

5. Supporting Case Laws: It is submitted that the Hon'ble Supreme Court in the case of Collector, Land & Acquisition v. Mst. Katiji & Others (1987) 167 ITR 471 (SC) has advocated for a very liberal approach while considering a case for condonation of delay. The following observations of the Hon'ble Court are notable:

"The legislature has conferred the power to condone delay by enacting section 5 of the Limitation Act 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression sufficient cause' employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which sub serves the ends of justicethat being the life-purpose of the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But, the message does not appear to have percolated down to all the other Courts in the hierarchy."

Prayer: It is, therefore, humbly prayed that this application may kindly be allowed by condoning the delay, taking a sympathetic view, in the interest of justice.

Any other order, which this Hon'ble ITAT deems fit and proper, be also passed in favour of applicant assessee.”

2.2. During the course of hearing, the Id. DR not objected to assessee's application for condonation of delay and prayed that Court may decide the issue as deem fit in the interest of justice.

2.3. We have heard the contention of the parties and perused the materials available on record. The prayer by the assessee for condonation of delay of 113 days has merit as the filling fees of challan has been paid by the assessee in time this shows the party to be serious in filling the appeal. Therefore, based on the reasons we concur with the submission of the assessee and condone the delay of 113 days in filing the appeal by the assessee in view of the decision of Hon'ble Supreme Court in the case of Collector, land Acquisition vs. Mst. Katiji and Others, 167 ITR 471 (SC) as the assessee is prevented by sufficient cause.

3. Succinctly, the fact as culled out from the records is that the assessee firm filed its return of income for the Asst. Year 2018-19 on 15.09.2018 declaring a total income of Rs. 2,06,150/-. This return was selected for scrutiny through CASS on the reason that "Turnover shown in ITR is substantially lower in comparison to turnover shown in GSTR 1 return; Low

income compared to large commission receipts; Turnover shown in ITR is substantially lower in comparison to turnover shown in GSTR 3b Return.” A notice u/s 143(2) of the Income –tax Act, 1961 was issued on 22.09.2019 and 142(1) along with detailed questionnaire on 02.12.2020. Some details were uploaded in compliance to the notice and another clarification letter also issued on 19.01.2021. All the required details/documents were submitted by the assessee through electronic platform. The same have been verified in detail. The firm is dealing with Kaccha Adatiya in agricultural commodities, sales of farmer’s products in adat (commission) and sales on commission basis on behalf of farmers and food grain trading. The difference between GSTR and ITR, all clarification put forth in the questionnaire have been explained properly. But on going through the profit margin as mentioned in the annexure G to form no. 3CD an abnormal reduction in percentage of GP and net profit is observed. The Id. AO noted that such a huge reduction cannot happen that too between two consecutive years. But the assessee did not give any explanation for the reduction in net profit. So a reasonable percentage of net profit is to be adopted for assessing the income. Hence, the net profit is computed at 4% of the turnover (1,17,96,559/-) i.e., 4,71,862/- as income of the assessee.

4. Aggrieved from the order of the Assessing Officer, assessee preferred an appeal before the Id. CIT(A)/NFAC. A propose to the grounds so raised the relevant finding of the Id. CIT(A)/NFAC is reiterated here in below:

“5. Decision

I have carefully considered the facts of the case. As per the findings of the AO in the case, it is noticed that as contended by the appellant disallowance of Business expenses and Sales receipts of Rs. 2,65,708/- was disallowed by the Assessing Officer for the assessment year 2018-19. The Assessing Officer, on careful consideration of the submission did not find the same acceptable. After intensive study of the case, the contentions of the appellant have been carefully examined. This order is being passed due to lack of concrete evidence and full facts of the case. All the grounds of appeal are dismissed.”

5. Feeling dissatisfied the assessee preferred the present appeal on the grounds as stated in para 2 above. The Id. AR appearing on behalf of the assessee has placed on record their written submission which is extracted in below;

“Brief Facts: The assessee Firm filed its Return Of Income of the AY 2018-19 on 15.09.2018 declaring Total Income of Rs. 2,06,150/-. The return was selected for scrutiny through CASS on the reason that *“turnover shown in ITR is substantially lower in comparison to turnover shown in GSTR-1 return and GSTR 3b Return; Low income compared to large commission receipts”*. The assessee is Kaccha Arhatiya and is also engaged in his own trading. During assessment proceedings, the AO found that the NP declared in last year was 6.66% whereas in this year it was 1.75% only. When asked, the assessee submitted detailed explanations and quantitative details with the purchase & selling rate etc.to justify the low NP rate of 1.75%. However, the AO didn't feel satisfied and alleging that no explanation was

submitted by the assessee, applied ad hoc NP rate of 4% and thus hereby, made trading addition of Rs. 2,65,708/- by applying higher NP rate, holding as under:

"5. But on going through the profit margin as mentioned in the annexure 'G' to 3 CD, an abnormal reduction in percentage of gross profit and net profit during the previous year and preceding previous year is evident.

6. The net profit was 6.66% of turnover during the preceding previous year and during the previous year relevant to A.Y 2018-19 was just 1.75%. Considering the nature of product like food grains and agricultural produce, there can be variation in rate and even loss due to long pending stock, transit etc., the Department can be bit lenient while assessing the income. Anyway, such a huge reduction cannot happen that too between two consecutive years. But the assessee did not give any explanation for the reduction in net profit. So a reasonable percentage of net profit is to be adopted for assessing the income. Hence, the net profit is computed at 4 % of the turnover (1,17,96,559/-) i.e., Rs.4,71,862/-."

In the first appeal, the Id. CIT(A) vide its order dated 26.08.2022 u/s 250, also confirmed the addition vide para 5 very summarily by mainly relying upon AO's finding only but there is no independent application of mind by him on the submissions, holding as under:

"I have carefully considered the facts of the case. As per the findings of the AO in the case, it is noticed that as contended by the appellant disallowance of Business expenses and Sales receipts of Rs. 2,65,708/- was disallowed by the Assessing Officer for the assessment year 2018-19. The Assessing Officer, on careful consideration of the submission did not find the same acceptable. After intensive study of the case, the contentions of the appellant have been carefully examined. This order is being passed due to lack of concrete evidence and full facts of the case. All the grounds of appeal are dismissed".

Hence this Appeal.

Submission:

At the outset it is submitted that the appellant has admittedly maintained complete books of accounts on day to day basis, the other subsidiary record showing the quantitative and financial details both The Purchase , Sale and expenses were duly supported by proper vouchers. The Accounts were even subjected to Tax Audit under S. 44AB of Act. Notably there was no adverse remark made by the Id. Tax Auditor in the Audit Report nor it is so alleged by the Id. AO. Needless to say that the accounts so maintained in the regular course of business has a binding evidentiary value u/s 145 of the Act r/w S.34 of The Indian Evidence Act,1872. Unless the assessing officer reject the books of accounts under cogent ground provided under section 145(3), he does not get any jurisdiction at all to make any variation in the declared results. In other words, S. 145 mandates the AO to accept the results based on the accounts.

No addition legally permissible unless accounts rejected:

There is a consistent view of various High Courts and Tribunals to this effect. Kindly refer:

1. M/s Bansilal Abirchand Spg. & Wvg. Mills 75 ITR 260 (Bom) (DPB1-2)
 - a. A finding has to be recorded as to the unacceptability of the method and irregularity of the method and irregularity of accounts kept.
 - b. The mere fact that percentage of dead loss of cotton is high in a particular year cannot lead to the loan inference that thereby there has been a suppression of the production in a spinning mill.
 - c. If it is not possible to keep such record (record of loss or wastage at subsequent stages) there was no other reason not to accept the book results of the records kept addition by way of estimate not permissible.
 - d. Merely by comparison of the percentage of loss in a particular year, we do not think it is possible to say with any reasonable certainty that the increase in the percentage of loss must be attributable and must lead to a reasonable inference of suppression of production of yarn.
 - e. Higher wastages alone was no ground for rejecting the claim for wastage

2. CIT vs. Maharaja Shree Umaid Mills Ltd. 192 ITR 565 (Raj.) (DPB 3-5)

"The Tribunal was justified in holding that since the books of account had not been rejected the mere fact that there had been a fall in the gross profit rate would not lead to the inference that the expenditure had been inflated. No question of law arose from the order of the Tribunal."

3. DCIT v. Mewar Textile Mills Ltd. 21 Tax World 821 (JP) (DPB 6-10)

"The AO has nowhere invoked the provisions of section 145(1) and if the provisions are not invoked then the estimate of profit is not possible in the eyes of law. No defect of any kind was pointed out by the AO"

4. Mohd. Umer v. CIT 101 ITR 525 (Pat) (Page 528) (DPB11-14)

"No finding was recorded by the departmental authorities as to the unacceptability of the method and irregularity of the account kept by the assessee. It is well settled that in the absence of such a finding recorded by the authorities, the book results cannot be ignored or brushed aside." "In the absence of any such finding, there being no reason germane to the unacceptability of the book results....."

5. Ajanta Constructions (P.) Ltd. Vs. ACIT XXII TW 606 (ITAT Jaipur)

"The maintenance of books of accounts in the normal course of business activities have to be taken as correct unless there are strong and sufficient reasons to indicate that they are unreliable."

6. DCIT Vs. Associated Stone Industries (Kotah) Ltd. XXII TW 155 (JP) held that

".....No additions can be sustained on this account. Books of accounts of the assessee was not rejected and no defect of any kind was found by the AO or by the CIT (A)."

7. Ghewarchand Vs. ITO - XXI TW 571 held that

"Therefore we hold that books of account maintained by the assessee were the books of account maintained in the regular course of business. Therefore, the income should be deduced on the basis of books of account maintained by the assessee."

8. Siddheshwari Cotton Mills P. Ltd. V CIT 117 ITR 953 at 957 (Cal)

Minor irregularities cannot be made a basis of the rejection of the books of accounts or of trading addition. Kindly refer Padampath Ramgopal 76 ITR 719 (SC).

Detailed reasons of low NP and GP were submitted before the Id. AO. The AO is factually incorrect to alleged that no expansion to this effect was filed in as much as vide letter dated 20.04.2022, para 3&4 (PB 5-6) this was fully explained. The same is reproduced hereunder.

"3. Assessee has shown GP and NP as actual basis which was decrease as compare to last year but in this business GP rate can not be maintained by the assessee. Assessee has shown GP rate 0.42% as compare to last year 10.41% as well as NP rate 1.75% has shown as compare to last year 6.66%

4. In A/s year 2018-19 Op. stock of mustard was Rs.36.70 per Kg. purchase was made by Rs 37.84 per Kg. and sales was made by Rs. 37.64 per Kg. This is reason of fall in GP because rate of sales and purchase was behind control of assessee. Rate of sales and purchase on depends on market at Mandi on the day of sales and purchase. In spite of this during A/s year 2017-18 purchase was made by Rs.37.29 per Kg. and sales are made by Rs.42.45 per Kg. Hence GP rate has increased as 10.41%. Hence this is actual GP rate. Assessee can not maintained GP rate same year to year. For your verification comparative chart of trading account for A/s year 2018-19 and 2017-18 are enclosed."

Again vide letter dated 08.08.2022, para 3&4 (PB 8-9) this was again explained. The same is reproduced hereunder.

"3. As regard mustard assessee has shown GP rate actual because assessee is a commission agent. He is not doing trading. For verification you may check enclosed mustard a/c in which purchases are made in March only and no sales in March 2018. Assessee has purchased goods for stock only. Market rate of mustard during the year not increased as compare to last year and as a result GP rate during the year is decrease which is not control in the assessee because market rate on agriculture commodities increases and decreases on supply and

demand basis or govt. policy of stock. Copy of purchase and sale account of mustard seed are enclosed for A/s year 2017-18 and 2018-19.

4. *As regards sonf a/c there was opening stock as on 01-04-2017 11328 Kg. by Rs.8,09,027/- Rs.7141 per Kg. and purchases was made whole year @ Rs.61.22 per Kg and sale was made by Rs.61.46 per Kg. hence loss was due to decreases in market price as compare to last year. For verification sonf purchase & sale a/c is being enclosed. Detail of purchase & sale of FY 2016-17 is also enclosed for verification of opening stock."*

Learned AO did not find any fault in the explanation so submitted. He nowever even rebutted /controverted the submissions made and the facts narrated therein by bringing any contrary evidence thereto. In other words the Id. AO without invoking S.145 without even rejecting the explanation towards low NP and GP furnished by the assessee, merely proceeding on suspension made the addition by apply ad-hoc NP rate of 4%. GP/NP are beyond control of the Assessee.

Even where the accounts are rejected or S. 145 is invoked the law mandates the AO to make a fair estimation providing cogent grounds however, in this case AO is completely silent as to why he adapted 4% NP rate for which there is absolutely no material made available.

In the case of CIT vs. Gotan Lime Khaniz Udyog 256 ITR 243 (Raj), it has been held that mere rejection of books of accounts need not necessarily lead to additions to the returned income. It was also held that the books of account , together with past history of the case as also material collected by the AO (of course, after confronting the assessee) should be considered for estimation of income.

In view of these facts and circumstances, detailed submissions and judicial guideline the entire additions impugned here deserves to be deleted."

5.1 The Id. AR of the assessee in addition to the written submission also argued that the Id. AO merely based on the comparison of previous year profit considered this year profit @ 4 %. The Id. CIT(A) has not considered the submission of the assessee and the order of the Id. CIT(A) is not speaking order. Even the Id. CIT(A) has not appreciated the fact that the Id. AO has disallowed or made addition is also not appearing. The assessee

has maintained complete books of accounts, quantitative details and also filed the tax audit report. There is no whisper in the assessment order about the mistake in the books of account. The Id. AO has not invoked the provision of section 145(3) the addition without rejecting the books of account cannot be made as held by the Rajasthan High Court in the case of CIT Vs. Maharaja Shree Umaid Mills Ltd. [192 ITR 565]. In the assessment proceeding the assessee explained the difference in GP vide letter dated 20.04.2022 and 08.08.2022 which the Id. AO has ignored while passing the order and even the order of the Id. CIT(A) is cryptic and non-speaking order.

6. The Id DR is heard who has relied on the findings of the lower authorities.

7. We have heard the rival contentions and perused the material placed on record. The bench noted that the assessee has filed the detailed explanation for the difference in GP by submission dated 20.04.2022 and 08.08.2022 the same is neither discussed by the Id. AO nor by the Id. CIT(A) while dealing with the facts of the case. The books of accounts of the assessee is duly audited by an independent chartered accountant. The assessee in detailed explained the reason behind the fall in the profit rate.

Even the quantitative details of the opening stock, purchases, sales and closing stock were given and the same is not disputed by the lower authorities. In spite of all these details placed on record and without finding fault on the record the action of the AO estimating the profit rate @ 4 % and that too without rejecting the books of account is not in accordance with the law. Even the Id. CIT(A) has not given any finding on the merits of the case. For estimating the profit without rejecting the books the jurisdictional high court in the case of CIT Vs. Maharaja Shree Umaid Mills Ltd. [192 ITR 565] has held that

“The other question about the fall in gross profit rate cannot be looked into in this case because the Inspecting Assistant Commissioner has not rejected the books of accounts of the assessee and without making this as a base, it could not be said that the expenditure had been inflated, which is a question of fact and in view of the finding of the Commissioner which is confirmed by the tribunal, the same cannot be allowed.”

Respectfully following the judgement of the jurisdictional high court and based on the discussion on facts recorded here in above, the ground no. 2 to 3 are allowed. Ground no. 1 and 5 being general in nature does not require any adjudication and ground no. 4 is consequential.

In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 24/08/2023.

Sd/-

(संदीप गोसाई)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठौड कमलेश जयंतभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 24/08/2023

*Ganesh Kumar, PS

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

1. The Appellant- Kunan Mal Kalu Ram Jain and Company, Tonk
2. प्रत्यर्धी / The Respondent- ITO, Tonk
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 70/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar