

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

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
AND  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.6864/Del/2019  
Assessment Year: 2014-15

Jyoti C/o, Sumer Garg & Co. E-501A, GDITL Northex Tower, Plot No. A-9, Netaji Subhash Place, Pitampura, Delhi-110034, Delhi. (PAN: AGQPJ2216D)	vs .	Income-tax Officer, Ward-41(4), New Delhi.
(Appellant)		(Respondent)

For Assessee:	Ms. Mansi Jain, CA
For Revenue :	Shri G. R. Nirwan, Sr. DR

Date of Hearing :	12.09.2023
Date of Pronouncement :	19.10.2023

**ORDER**

**PER GIRISH AGRAWAL, Accountant Member:**

This appeal filed by the assessee is against the order of Ld. CIT(A)-34, New Delhi dated 20.06.2019 against the assessment order passed by ITO, Ward-41(4), New Delhi u/s. 144 of the Income-tax Act, 1961 (hereinafter referred to as the "Act") for AY 2014-15 dated 15.12.2016.

2. Assessee has raised five grounds of appeal out of which only ground nos. 2 and 3 are contested in the present appeal. Ground nos. 1,

4 and 5 are not pressed. Accordingly, ground nos. 1, 4 and 5 are dismissed as not pressed.

3. Ground nos. 2 and 3 taken by the assessee are reproduced as under:

*“2. That the Ld. AO erred in law and on facts in making and the Ld. CIT (A) erred in confirming the addition of Rs. 323772/-on account of trading results in the facts and circumstances of the case. The addition is unwarranted and unjustified particularly when no deficiency has been pointed out in the audited financial statements and books of account were not rejected.*

*3. That the Ld. AO erred in law and on facts in making and the Ld. CIT (A) erred in confirming the addition of Rs. 250000/-on account of unsecured loan raised from M/s. Shree S.R. Traders in the facts and circumstances of the case. The appellant had furnished confirmed copy of account with PAN, address, ITR and copy of ledger account of appellant in the books of the creditor along with copy of tax audit report and audited financial statement of the creditor showing outstanding amount in the name of the appellant in his balance sheet.”*

4. Facts in brief are that assessee is an individual having business of trading in mobile phones, mobile SIM cards and recharge coupon of Bharti Airtel Ltd. She filed her return on 08.09.2014, reporting total income of Rs.6,92,690/-. In the course of assessment proceedings, Ld. AO noted from the perusal of P&L Account that assessee has declared gross profit of Rs.22,50,098/- on total sales of Rs.23,83,21,381/- giving a Gross Profit (GP) rate of 0.94% and Net Profit (NP) rate of 0.38% as against GP rate of 1.08% and NP rate of 0.43% in the immediately preceding year. Thus, Ld. AO noted that there is a fall in the GP rate and NP rate compared with the preceding year. According to the Ld. AO, since assessee failed to explain the reasons for this fall, he adopted a GP rate of 1.5% as against 0.94% reported by the assessee. He thus, made an addition of Rs.13,24,723/- to the trading results of the assessee.

4.1. Ld. AO further noted that assessee has raised unsecured loans which included loan from M/s. Shree S. R. Traders of Rs.2,50,000/- and

required the assessee to establish identity and creditworthiness of the loan creditor and genuineness of the transaction. In absence of satisfying explanation from the assessee, ld. AO made the addition of Rs.2,50,000/- u/s. 68 of the Act.

4.2. In the first appeal, before the Ld. CIT(A), assessee made a detailed submission justifying the fall in GP rate. She also submitted all the relevant documentary evidence relating to the loan creditor. Considering the submissions made by the assessee, Ld. CIT(A) reduced the GP rate adopted by ld. AO of 1.5% to 1.08% as reported by the assessee in the immediately preceding year. Thus, Ld. CIT(A) gave partial relief and sustained the addition of Rs.3,23,772/-. On the second issue of loan creditor, Ld. CIT(A) sustained the addition by noting that assessee failed to furnish copy of bank account of the creditor and that the loan has not been repaid.

5. Before us, Ld. Counsel for the assessee submitted that GP rate has been estimated without pointing out any defect in the books of account which have been duly audited. According to the assessee, GP margin has reduced from preceding year due to cut-throat competition and the assessee resorting to generate higher volume of turnover. Ld. Counsel submitted a comparative chart to demonstrate that the gross margin rate has reduced but the actual turnover and gross profit has increased. The said comparative chart is reproduced as under:

Gross Profit			Net Profit			Turnover		
AY 14-15	AY 13-14	↑	AY 14-15	AY 13-14	↑	AY 14-15	AY 13-14	↑
2250098	1593403	41 %	900462	635751	41 %	238321381	148166447	61 %

5.1. Ld. Counsel further submitted that in absence of rejection of books of account by the Ld. AO, GP rate cannot be estimated. At best, Ld. AO could have made disallowance of certain expenditure but the GP rate or the NP rate cannot be tinkered upon without pointing out defects in the audited books of account. Ld. Counsel placed reliance on several judicial precedents including the decision of Coordinate Bench of ITAT, Delhi in the case of Satyapal Gupta Vs. ACIT in ITA No. 5212/Del/2018 dated 17.08.2023.

5.2. On the second issue relating to unsecured loan creditor, Ld. Counsel submitted that all the documentary evidences have been placed on record which included confirmation letter, acknowledgement of Income-tax return, financial statements and ledger account of the loan creditor. It was also demonstrated that the same corresponding amount is duly accounted and reported in the financial statements of the loan creditor. According to the Ld. Counsel, all the documentary evidence placed on record have not been disproved by the Ld. AO by conducting any enquiry on the same. Assessee has duly discharged her primary onus as contemplated u/s. 68 of the Act in respect of this loan creditor and, therefore, no addition can be made in this respect.

6. Per contra, Ld. Sr. DR has placed reliance on the orders of the authorities below.

7. We have heard the rival contentions and perused the material available on record. From the submissions made before us, we take note of the fact that turnover of the assessee has increased when compared with the preceding year, by almost 61%. Further, we note that the financial statement of the assessee are duly audited which are on record and have been considered by the Ld. AO in the course of assessment

proceedings. We also take note of the fact that Ld. CIT(A) has restricted the GP rate by adopting it from the immediately preceding year at 1.08% whereas the assessee is contesting before us to retain the reported GP rate of 0.94% based on duly audited books of account and financial statement.

7.1. From the perusal of the orders of the authorities below, we note that nothing has been pointed out in respect of defects in the books of account. Provisions contained in section 145 have not been invoked. Merely on the basis of comparison of GP with the preceding year, addition has been made in the hands of the assessee. It is a well accepted principle of tax jurisprudence that AO cannot sit in the arm chair of a businessman to replace his business strategy by his own whims and fancies. When the assessee took decision to reduce GP rate with an intention to fetch high turnover, resulting into increase in the total net profit, such strategic move by the assessee cannot be doubted without proper reasoning and justification, more particularly, in absence of rejection of books of account. The approach adopted by the authorities below in absence of any positive material or evidence is not correct and justified. Considering the facts on record and the circumstances as discussed above, we are compelled to delete the addition made in respect of GP rate and retain the GP rate reported by the assessee in her audited financial statement. Accordingly, ground no. 2 taken by the assessee is allowed.

8. On the second issue relating to addition in respect of loan creditor, we have gone through the evidences placed on record which evidently fulfils the compliance requirement u/s. 68 of the Act. We also take note of the fact that the submissions and evidence placed on record by the

assessee have not been controverted and disproved discussed above. Considering these facts on record and the submissions made before us, we delete the addition of Rs.2,50,000/- made in respect of loan creditor M/s. Shree S. R. Traders. Accordingly, ground no. 3 taken by the assessee in this respect is allowed

9. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 19.10.2023.

Sd/-  
(Chandra Mohan Garg)  
Judicial Member

Sd/-  
(Girish Agrawal)  
Accountant Member

Dated: 19<sup>th</sup> October, 2023.

JD. Sr. P.S

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A) -34, New Delhi
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi