

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.305/Asr/2019 A.Y.: 2010-11
I.T.A. No. 212/Asr/2017 A.Y.: 2013-14
I.T.A. No. 239/Asr/2018 A.Y.: 2014-15
I.T.A. No. 69/Asr/2019 A.Y.: 2013-14**

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| M/s J. P. Industries Muktsar Road, Jalalabad West. [PAN: AACFJ3546J] (Appellant) | Vs. | Dy. Commissioner of Income Tax, Circle-II, Bathinda. (Respondent) |
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| Appellant by | Sh.Ashwani Kalia, CA |
| Respondent by | Sh. Rajiv Wadhwa, Sr.D. R. |

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| Date of Hearing | 04.10.2023 |
| Date of Pronouncement | 09.11.2023 |

ORDER

Per:Bench:

A batch of 4 appeals of the same assessee were filed against the order of the Id. Commissioner of Income Tax (Appeals), Bathinda [in brevity the Id.CIT(A)]the order passed u/s 250(6) of the IT Act 1961, [in brevity the Act] for A.Ys.2010-11, 2013-14 & 2014-15. The impugned order was emanated from the order of the Dy

Commissioner of Income Tax, Circle-II, Bathinda (in brevity 'the AO') order passed u/s 143(3)/147 and 271(1)(c) of the Act.

2. At the outset all the appeals of the assessee are under a common issue and have the same factual backdrop. Only the appeal ITA No. 69/Asr/2019 is related to penalty u/s 271(1)(c). Rest all the 3 appeals are same factual backdrop and have common issue. Therefore, all the appeals are taken together, heard together and adjudicated together. For the sake of convenience, we taken ITA No. 305/Asr/2019 as lead case.

3. The assessee has taken the following grounds:

1. *The Ld. CIT(A) erred on facts and law in confirming the validity of the proceedings initiated by the AO u/s 147/148 because the notice u/s 148 was not served on the assessee in accordance with the provisions of section 282 of the Income Tax Act, 1961.*

2. *The Ld. CIT(A) erred on facts and law in confirming the validity of the proceedings initiated by the AO u/s 147/148 because no proper satisfaction as prescribed u/s 151 was recorded by the Pr. CIT that the case of the assessee was fit for issue of notice u/s 148.*

3. *The Ld. CIT(A) erred on facts and law in confirming the addition of Rs. 12,74,722/- without rebutting the explanation submitted by the assessee.*

4. *The Ld. CIT(A) erred on facts and law in confirming the addition of Rs. 15,00,000/- on account of alleged theka received from AMs Surinder Sat Agro Foods, Jalalabad without rebutting the explanation submitted by the assessee.*

5. *The Ld. CIT(A) erred on facts and law in confirming the addition of Rs. 7,56,140/- on account of alleged low GP rate without rebutting the explanation submitted by the assessee.*

6. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.”*

4. Brief fact of the case is that the survey was conducted in the business premises of the assessee and certain books of account and other documents impounded u/s 133A (3). The impounded books of account included ledger cash books for F.Y. 2009-10 which belongs to M/s Surinder Sat Agro Foods, a sister

concern of the assessee. Thereafter, the revenue has found different anomalies in the books of account of the assessee in relation to the Surinder Sat Agro Foods, a sister concern of the assessee. The assessment was completed and addition is confirmed u/s 69C amount to Rs.12,74,722/- for payment of cash to M/s Surinder Sat Agro Foods (in short SSAF) and Rs.15 lac related to undisclosed payment related to purchase of paddy which was added back with the total income of the assessee. Further the addition was made Rs.7,56,140/- related to the lower G.P. rate in relation to the preceding year. Aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) upheld the order of the Id. AO. Being aggrieved assessee filed an appeal before us.

5. The Id. AR vehemently argued and filed the written submission which are kept in the record.

Ground No. 1 and 2

6. Ground No. 1 and 2 is general in nature and not pressed.

Ground No. 3

7. The Id. AR vehemently argued related to addition amount of Rs.12,74,722/-. The difference payment to (SSAF) was made by the assessee and total cumulative figure was taken from the books and the seized documents. The Id. AR agitated the issue that the only the payment was taken but the withdrawal was not considered

by the Id. AO. The Id. AR submitted a written submission and as per **APB page -1**, the documents are bound that the only one-sided payment are considered not the withdrawal are considered.

8. The Id. DR vehemently argued and invited our attention in assessment order page 7 to 8 para 4 which is reproduced as below:

“4. It is observed that as per entries of impounded books of account, the assessee has paid certain amounts of cash to M/s Surinder Sat Agro Foods and the amounts have been credited to the account of the assessee. Perusal of ledger account of the assessee as per impounded books of M/s Surinder Sat Agro Food reveals that for the period from 10.10.2009 to 31.03.2010 a total amount of cash amounting to Rs. 12,74,722/- has been paid by the assessee to M/s Surinder Sat Agro Food. The assessee was required to explain source of the amount of Rs. 12,74,722/- paid in cash to M/s Surinder Sat Agro Food. The assessee has failed to explain the source of the amount paid in cash to M/s Surinder Sat Agro Food. The nature of these payments has also not been explained by the assessee. In the absence of any explanation/evidence the total amount of Rs. 12,74,722/- is treated to an unexplained expenditure of the assessee and the amount is deemed to be the income of the assessee u/s 69C of the Act. Hence the amount is added back to the returned income of the assessee. Penalty proceedings u/s 271(l)(c) of the Act for concealing particulars of income to that extent are initiated

[Add-Rs. 12,74,722/-]

Simultaneously”

9. The ld. DR further argued and placed that the said amount paid to the party by the assessee concern was not established during the time of assessment in appeal. So, the invoking provision 69C is proper and accepted.

Ground No. 4

10. Related the ground no. 4, the ld. AR further argued that the addition Rs.15 lac which is alleged to be credited on 31.03.2010 in the ledger of (SSAF) to the account of the assessee on account of Theka. The functional debit was allowed in the books but as well as the credit side was not given effect the contra entry so, the issue was not properly considered by the ld. AO and a general entry was missing by the accountant. All the issues are agitated before the ld. CIT(A). The ld. AR further invited our attention that on evident of debit entry Rs.10,40,000/- on dated 31.03.2010 for milling charges was duly credited in the manufacturing and trading account for year ended 31.03.2010. The ld. AR invited our attention in **APB pages 2 to 3** and the reflection of paddy milling charges Rs.10,40,000/- was duly reflected in the manufacturing and trading account. The ld. AR prayed that the issue was not properly considered by both the authorities.

11. The Id. DR further argued and invited our attention in appeal order related to both ground nos. 3 and 4 which are reproduced as below:

“7.2 I have given careful consideration to the contention above but find that the impounded page contain an entry on 31/03/2010 mentioning that "thekka J P Industries" and against this entry an amount of Rs. 1,500,000/- has been shown to be received by above-mentioned Surinder Sat AgroPoods which is clear indication that . the appellant has incurred this expenditure. In respect of impounded documents there is a strong presumption of their correctness and entries contained therein by virtue of section 292C of Income Tax Act. It was incumbent upon the appellant to explain the nature of entry and mere denial would not serve any purpose. The appellant also took a contention that for the assessment year 2013 - 14, CIT(Appeals) has deleted similar addition vide order dated 28/02/2017. A perusal of the said order shows that the difference was in that year the amount referred to was milling charges whereas during the year under consideration it is thekaa which means lease amount. There is no merit in the contention of the appellant that the entries do not pertain to il therefore the ground of appeal is dismissed.

Ground of Appeal No.-6:- The ground of appeal is directed against addition of Rs, 7,56,140/- by the AO on account of applying GIJ rate of 11.24 percent of total turnover as against the GP of 10.20 percent disclosed by the appellant. The appellant disclosed gross profit

10.20% and net profit 0.32%. The AO found from the account books of appellant that true profit cannot be deduced. So applied the gross profit rate as declared in last year i.e. 11.24% on total turnover. After calculation the difference of net profit worked out Rs. 7,56,140/-. The same was held as undisclosed profit by the AO and added back to the returned income.”

12. The Id. AR further argued and submitted the written submission the relevant paragraphs page 4 to 5 of the written submission is duly reproduced as below:

“GROUND NO.5

This ground is against the addition of rs.756140 by the AO on account of low g.p. rate. The Id.AO has made addition on the ground that in the preceding year the gp rate earned was 11.24% whereas in the year under appeal the g.p. rate is 10.20%. The addition has been made purely on adhoc basis. The Id.AO has made the addition simply on the basis of comparison of g.p. rate with the preceding year without taking into consideration the other aspects of the case.

REBUTTAL:

1 First of all it is submitted that the working of the assessee firm is absolutely different in the year under appeal as compared to the preceding year. During the year under appeal the assessee has mainly done trading of rice which is evident from the fact that purchases of paddy during the year is only Rs. 1856090 without there being any opening and closing stock of paddy. As against this the purchase of

paddy and milling of the same is to the tune of Rs.25265916 in the preceding year. This shows that during the year under appeal the assessee has done only trading of rice whereas manufacturing of rice is very negligible whereas in the preceding year the assessee has done substantially quantity of manufacturing. It is a known fact that in trading of bulk item like rice the margin of profit is low as compared to manufacturing.

2 *Further, it is submitted that during the year under appeal there has been quantum jump in the sales of the assessee due to the trading. Sale this year has gone upto Rs.7.23 crore against the sale of Rs.4.44 crore in the preceding year which shows jump of more than 62% with such a huge amount of trading in rice the g.p. rate is bound to be low as compared to preceding year.*

3 *In view of the above submissions it will be appreciated that marginal decrease of 0.32% in g.p. rate is very negligible in view of the reasons given above.*

4 *It may be submitted here that complete stock tally is maintained and all the quantitative figures giving variety wise details are given in Trading A/c itself. All the expenses debited to Trading A/c are duly vouched. G.P rate depends on so many factors especially in item like rice. Small variation of 1% is absolutely negligible especially keeping in view the factors highlighted above. Hence the addition of Rs.756140*

needs to be quashed made purely on adhoc basis without going into the facts of the case.”

Ground No. 5

13. The ground no. 5 is related to the addition of difference in GP Rs.7,56,140/-. The ld. AR placed that in preceding year the GP rate was 11.24 on turnover to in current year the GP rate is 10.20. The turnover was also duly in preceding year was 4.44 crore and in current years 7.23 crore. Only GP rate 0.32% has reduced so there is a reason for reduction of GP rate related to increase of turnover. However, the change of GP rate is very negligible. The ld. AR consider the submission and prayed for quashing the addition.

14. The ld. DR vehemently argued and relied on the order of the revenue authorities.

15. We heard the rival submission and considered the documents available in the record. Related to payment to party Rs.12,74,722/- is point of consideration that the source was not properly declared. Related to payment of addition of Rs.15 lac the ld. AR fully argued that this amount was related to receive of Theka and explanation was submitted but the overall the ld. AO passed the order without considering the submission of the assessee. Related to ground no. 3 and 4 both the

assessee and the revenue are agreed to remand back the matter to the file of the ld. AO for further consideration. Only related to this ground and on verification the addition related to ground no. 5 for addition of GP is very negligible and the turnover was duly increased in current year related to preceding year. So, the addition of GP Rs.7,56,140/- is duly deleted.

In the result, the **ground nos. 1 and 2** are not pressed. **Ground nos. 3 and 4** are allowed for statistical purposes. **Ground no. 5** is allowed, and **ground no. 6** is general in nature.

ITA No. 212/Asr/2017

16. The assessee has taken the following ground in this appeal which are as under:

“1. That the Ld. CIT(A), Bathinda erred on facts and law in confirming the additions of Rs. 18,28,940/- made by the AO vide order u/s 143(3) dated 28-03-2016.

2. That the Ld. CIT(A) erred on facts and law in confirming the action of the AO of applying the provisions of section 145(3) after rejecting the books of account despite the fact that no specific defect has been pointed out in the books of account which were produced during the course of assessment proceedings.

3. *Notwithstanding the above grounds of appeals, the Ld. CIT(A) erred on facts and law in confirming the addition of Rs.18,28,940/- on account of peak of the alleged cash flow of payments to M/s Surinder Sat Agro Foods without rebutting the contentions of the appellant. The explanation furnished during the course of assessment as well as appellate proceedings has been rejected without rebutting the same.*

4. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed of.”*

In the result, the grounds of assessee bearing **ITA No. 212/Asr/2017** is allowed for statistical purpose.

17. The ld. AR filed a written submission and as per the written submission the ld. AR further argued that the payments made to the party “SSAF” was duly withdrawal from Bank account of the assessee from SBI. In this respect the ld. AR submitted a copy of accounts with assessee and party in **APB-1** where the source are duly explained which are withdrawal from the current a/c of the assessee. The ld. AR argued that the entire issue was not considered by the ld. AO and without proper care and addition was made. The relevant documents are also enclosed in **Annexure 2 APB page 3 to 11.**

18. The ld. DR vehemently argued and relied on the order of the revenue authorities.

19. We heard the rival submission and consider the documents available in the record. Related to issue was a purely factual issue and the ledger copy is filed afresh before the bench which was never be filed before any of the authorities. So, the matter is remanded back to the file of the ld. AO for further consideration. Needless to say, the assessee should get a reasonable opportunity of hearing in set aside proceeding. In the result, the appeal of the assessee is partly allowed for statistical purposes.

ITA No. 69/Asr/2019

20. The assessee's ground in ITA No. 69/Asr/2019 has also been extracted as under:

“1. The Ld. CIT(A) erred on facts and law in confirming the penalty imposed by the AO u/s 271 (1)(c) without giving proper opportunity of hearing to the assessee.

2. The Ld. CIT(A) erred on facts and law in confirming the penalty imposed by the AO u/s 271 (1)(c) despite the fact that the AO failed to specify in the show cause notice that under which limb of section 271 (1)(c), the penalty proceedings were

initiated i.e. for concealing the particulars of income or furnishing inaccurate particulars of income.

3. *The Ld. CIT(A) erred on facts and law in confirming the penalty imposed by the AO u/s 271 (1)(c) without rebutting the explanation furnished by the assessee during the course of assessment as well as penalty proceedings.*

4. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.”*

21. This ITA 69/Asr/2019 is related to the penalty u/s 271(1)(c) amount to Rs.6 lacs of penalty. As the quantum appeal for assessment year 2013-14 is set aside to the file of the ld. AO. Accordingly, the penalty u/s 271(1)(c) is remanded back to the file of the ld. AO. The penalty will be levied after the considering the quantum. Accordingly, appeal of the assessee ITA 69/Asr/2019 is also allowed for statistical purposes.

22. As noted at the beginning of this order, the facts and issue in all these appeals are common. So,our observations qua in **ITA No.305/Asr/2019** is, *mutatis mutandis*, equally applicable to ITA No.212/Asr/2017, ITA No. 239/Asr/2018, ITA No.69/Asr/2019 are also.

23. In the result, all the appeals of the assessee bearing ITA No.305/Asr/2019, ITA No.212/Asr/2017, ITA No. 239/Asr/2018 and ITA No.69/Asr/2019 are allowed for statistical purposes.

Order pronounced in the open court on 09.11.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By Order