

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

श्री मनीष बोराड, लेखा सदस्य एवं डा० एस. सीतालक्ष्मी, न्यायिक सदस्य के समक्ष
BEFORE: SHRI MANISH BORAD, AM & DR. S. SEETHALAKSHMI, JM

आयकर अपील सं./ITA No. 110/JPR/2024
निर्धारण वर्ष / Assessment Years : 2017-18

Laxmikant Tak B-513 Panchsheel, Near Vinayak Complex, Makadwali Road, Ajmer	बनाम Vs.	DCIT, Circle-02, Ajmer.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAHPT 5195 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Sh. C. M. Agarwal
राजस्व की ओरसे / Revenue by: Smt. Monisha Chaudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 26/03/2024
उदघोषणा की तारीख / Date of Pronouncement: 28/03/2024

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal is filed by the assessee against the order of the National Faceless Appeal Centre, Delhi [herein after referred to as "NFAC"] dated 27.12.2023 for the assessment years 2017-18.

2. The assessee has raised the following grounds of appeal:-

“Ground No.1: That CIT (A) has erred on the facts and in law in not accepting the ground for completing the assessment by LD AO without issuance and service of notice under section 143(2) of the Act which is a mandatory requirement. In this case, notice under section 143(2) was issued by ITO, Ward -2(4) Jaipur on 29.09 .2018 after manually selecting the case for scrutiny. The ITO, Ward - 2(4), Jaipur had neither territorial nor pecuniary jurisdiction over the case of the appellant. Therefore, the assessment completed u/s 143(3) by ACIT, circle - 2, Ajmer on the basis of such notice u/s 143(2) is bad in law, void-ab-initio and deserves to be quashed.

Ground No 2: That ld CIT(A) is not justified in sustaining the trading addition made by LD AO of Rs.11,63,2981- by applying N.P. Rate of 3% without any basis whatsoever, as against N.P. Rate of 1.94% by the assessee. The ld. AO had applying the N.P. Rate of % has ignored the fact of increase in turnover and also N. P. Rate of 1.93%, 1.87% and 2.23% in the preceding 3 years. The appellant craves leave to add, amend or withdraw any of the grounds of appeals during the course of appellate proceedings. All the grounds of appeal are without prejudice to each other.

3. The brief facts of the case are that the assessee has e-filed his return of income for A.Y 2017-18 declaring total income of Rs. 20,99,210/- on 31.10.2017 vide acknowledgement no. 278922471311017. During the A.Y 2017-18 the assessee is engaged in the business of trading of liquor. Assessee had a wine shop at Sanjay Palace Agra and a country liquor shop at Pisangan, Ajmer during the year. The case was manually selected in scrutiny. Notice u/s 143(2) in this case was issued on 29.09.2018 by ITO, Ward 2(4), Jaipur. The case was transferred to ITO Ward 2(1), Ajmer on 24.06.2019. Subsequently, notice u/s 142(1) was issued on

24.06.2019 by ITO, Ward 2(1), Ajmer. Thereafter the case was transferred to ACIT, Circle-2, Ajmer on 10.07.2019 as the income of the assessee is more than 15 lacs. Another notice u/s 142(1) was issued along with query letter on 07.08.2019. Many other notices u/s 142(1) were issued by ACIT, Circle-2, Ajmer from time to time and assessee e-furnished his replies/submissions which have been examined and placed on record.

3.1 During the assessment proceedings, the assessee was asked to produce complete books of account along with all related purchase bills etc. It was noted that the books of account were not complete. Further on examination of the cash book it was seen that there were discrepancies in the cash book entries. Also it was noted by the A.O that the assessee had not submitted proof of certain expenses incurred on the last day of the financial year. A show cause notice for rejection of books of account was issued to the assessee on 19.12.2019. The assessee submitted a reply stating that he had submitted the wrong cash book and submitted a second cash book. The A.O did not accept the explanation of the assessee since the books had been audited and hence proceeded to reject the books u/s 145(3) of the Act. The A.O found that the assessee had shown the NP to turnover ratio in A. Y. 2013 - 14 , 2014-15 and 2015-16 as 2.23%, 1.87% and 1.93% respectively and in the

present year it was 1.94%. The A.O estimated the NP to Turnover ratio at 3 percent and made an addition of Rs 11,63,298/-.

4. Aggrieved, from the said order of assessment the assessee has filed an appeal before the NFAC who after hearing the contention of the assessee dismissed the appeal of the assessee by giving following findings on the issue:-

“6. Appellant Findings

The various grounds of appeal are adjudicated upon as below:-

7. Ground No.1: In this ground the appellant has contended that the ACIT Circle 2 Ajmer lacked the jurisdiction in completing the assessment since he did not issue the notice u/s 143(2) of the Act which was a mandatory requirement. The said notice was issued by the ITO Ward 2(4) Jaipur who neither had the territorial nor the pecuniary jurisdiction and hence the notice was null and void. Consequently the assessment completed on the basis of this notice was also null and void.

7.1 I have perused the assessment order and the submissions of the appellant. I am unable to agree with the contentions of the appellant. As per the assessment order the notice u/s 143(2) of the Act was issued by the ITO Ward 2(4) Jaipur on 29.09.2018. Subsequently, as per the assessment order, the case was transferred to the ITO Ward 2(1) Ajmer on 24.06.2019. Further due to the income of the assessee being above Rs 15 lakhs, since the pecuniary jurisdiction of the case rested with the ACIT, the case was transferred to him and the assessment was completed by the ACIT as well. In the instant appellate proceedings, the appellant has not submitted any evidence that any objection was raised before the ACIT Circle 2, Ajmer during the assessment proceedings. The fact of the matter is that if the appellant had any objection with regard to the jurisdiction, the issue should have been raised before the ACIT during the assessment proceedings itself. The fact that the appellant was duly represented by his Authorised Representative and complied with the many notices issued without raising any objections at that stage, it implies that the appellant had accepted the

change in the jurisdiction and had no objection to the case being finalized by the ACIT Circle 2 Ajmer. Since the appellant through his authorised representative had willingly participated in the assessment proceedings, and no objection were raised during the same, only because of the unfavourable assessment order the issue of jurisdiction cannot be raised at the present stage. Accordingly, the Ground of Appeal is Not Allowed.

8. Ground No. 2: In this ground the appellant has stated that the notice issued u/s 143(2) by ITO, Ward 2(4), Jaipur on 29.09.2018 (Saturday) was not served upon the appellant by the specified date i.e. 30.09.2018. Therefore, the assessment order passed on the basis of the time barred notice u/s 143(2) is bad in law and deserves to be quashed.

8.1 The appellant has not submitted any evidence to justify this claim during the instant appellate proceedings. The proof of the late service of the notice has not been furnished in the proceedings and without any evidence the allegation does not merit acceptance. Furthermore, as stated in para 7.1 if the appellant had any objection to the issue and service of notice, he should have raised these objections at the time of the assessment proceedings itself. No proof of having done so has been submitted in these proceedings. In the submissions the appellant has "NOT PRESSED" this ground and hence the Ground does not require adjudication.

9. Ground No 3: This ground has been raised against the action of the A.O in making an addition of Rs 11,63,2981- by applying N.P. Rate of 3 percent of the Turnover after rejection the books of account.

9.1 I have perused the assessment order and the submissions of the appellant. The A.O rejected the books of account because the cash book suffered from multiple discrepancies, and he refused to accept the revised cash book submitted. In this ground the appellant has not disputed or objected to the rejection of the books of account but only to the estimation of the NP/Turnover rate at 3 percent against the declared rate of 1.94%. I find that the A.O had sufficient grounds to reject the books u/s 145(3) on account of the discrepancies in the cash book. The assessee during the assessment proceedings stated that the accountant had submitted a "wrong cash book" and then submitted another cash book. This seems to suggest that the appellant was maintaining separate cash books with regard to the same business for the same year, and hence the carrying out of sales unrecorded in the books cannot be ruled out. Furthermore, the A.O has noted that certain expenses were incurred on the last date of financial year in cash which seemed out of the ordinary and for which no evidence was provided during the assessment proceedings. In view of all these factors, the

estimation of the NP @ 3 percent by the A.O for the instant assessment year is confirmed and the Ground of Appeal is Not Allowed.

10. Ground No 4: This ground has been raised against the action of the A.O in making an addition of Rs. 8,40,000/- u/s 69A of the Act on account of cash deposited in the bank account.

10.1 I have considered the assessment order and the submissions of the appellant.

Section 69A of the Act, entitled "Unexplained money, etc" reads as under -

Where in any year the taxpayer is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the taxpayer offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, then the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the taxpayer for such year

10.2 From a perusal of the provisions of section 69A it is clear that the following conditions are required to be met:-

- (i) The taxpayer is found to be the owner of any of any money, bullion, jewellery or other valuable article:
- (ii) such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income; and
- (iii) the taxpayer offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not satisfactory, in the opinion of the Assessing Officer

From the above it is seen that this section is to be invoked if the assessee is not maintaining books of account or if he is maintaining the books then the money should not be recorded therein. In this case the assessee has been maintaining books and the cash deposits made have been shown as sales in the books. The A.O while rejecting the books has not disputed the sales shown as part of the turnover which include the sales in cash made and has in fact computed the NP ratio @ 3 percent on the basis of this turnover. Accordingly, the provision of section 69A would not apply to this case.

10.3 Furthermore, it is seen that the A.O has not made any comparison of the cash sales or the cash deposits with the earlier years to show that the cash sales or deposits in the instant year are against the normal trend. The A.O has brought nothing on record to show that the amount of cash sales in the year is out of the ordinary and hence unexplainable. Hence, since an estimated addition of 3 percent of turnover which is higher than 1.94% disclosed by the assessee for the current year has already been made, these amounts of cash deposits would be part of the enhanced estimated turnover of 3 percent. In the absence of any specific material brought on record with regard to these deposits of Rs.8.40,000/- the separate addition u/s 69A of the act in addition to the higher estimation of turnover is deleted. The Ground of Appeal is Allowed.

11. Ground No. 5: This ground is against the levy of interest u/s 234B of the Act. The levy of interest is consequential, and hence this ground does not require adjudication.

12. Resultantly, the appeal preferred by the appellant is Dismissed.

5. As the appeal of the assessee was dismissed, the assessee filed the present appeal against the finding of the NFAC on the ground as reproduced hereinabove.

To support the various grounds so raised by the ld. AR of the assessee, has filed the written submissions and the same is reproduced herein below.

“Appeal against the order of CIT (A) Faceless A.Y. 2017-18

Assessee filed its return of income at 21, 71,513/- on dated 31.10.2017.

The case was selected for scrutiny manually by ITO 2(4) Jaipur and issued notice u/s 143(2) of the IT Act. In support of which notice issued u/s 143(2) of the IT Act on dated 29.09.2018 is enclosed

Address of assessee is clearly mentioned of Ajmer in the notice itself and thus jurisdiction lies with ACIT, Circle-2 only and who could validly issue notice u/s 143(2) of the IT Act

The case was suo moto transferred to Circle-2 Ajmer without any order passed u/s 127 of the Act by PCIT,-1 Jaipur to PCIT, Ajmer

The LD AO has made addition and LD CIT (A) has allowed one ground of appeal and dismissed others

Assessee is before your honor on the following grounds of appeal

Grounds of Appeal**Ground No.1:**

That CIT (A) has erred on the facts and in law in not accepting the ground for completing the assessment by LD AO without issuance and service of notice under section 143(2) of the Act which is a mandatory requirement. In this case, notice under section 143(2) was issued by ITO, Ward - 2(4) Jaipur on 29.09 .2018 after manually selecting the case for scrutiny. The ITO, Ward - 2(4), Jaipur had neither territorial nor pecuniary jurisdiction over the case of the appellant' Therefore, the assessment completed u/s 143(3) by ACIT, circle - 2, Ajmer on the basis of such notice u/s 143(2) is bad in law, void-ab-initio and deserves to be quashed.

Ground No 2:

That Id CIT(A) is not justified in sustaining the trading addition made4 by LD AO of Rs.11,63,2981- by applying N.P. Rate of 3% without any basis whatsoever, as against N.P. Rate of 1.94% by the assessee. The ld. AO had applying the N.P. Rate of % has ignored the fact of increase in turnover and also N. P. Rate of 1.93%, 1.87%and 2.23% in the preceding 3 years. The appellant craves leave to add, amend or withdraw any of the grounds of appeals during the course of appellate proceedings.

All the grounds of appeal are without prejudice to each other.

Ground No 1

That CIT (A) has erred on the facts and in law in not accepting the ground for completing the assessment by LD AO without issuance and service of notice under section 143(2) of the Act which is a mandatory requirement. In this case, notice under section 143(2) was issued by ITO, Ward - 2(4) Jaipur on 29.09 .2018 after manually selecting the case for scrutiny. The ITO, Ward - 2(4), Jaipur had neither territorial nor pecuniary jurisdiction over the case of the appellant' Therefore, the assessment completed u/s 143(3) by ACIT, circle - 2, Ajmer on the basis of such notice u/s 143(2) is bad in law, void-ab-initio and deserves to be quashed.

In the case of Rajendra Gupta v/s DCIT, Circle-1 Ajmer ITA No 1038/JP/2018 dated 26.04.2019 held in the identical case as under:-

“7. Thus, the assessment framed without issuing notice u/s. 143(2) of the Act is not valid and the same is liable to be quashed. In case of assessee the first notice u/s. 143(2) of the Act was issued by ACIT,CC- 1, Jaipur on 12-08-2016, however, the jurisdiction of the AO was already transferred from ACIT, Central Circle-1, Jaipur to ITO, Kisangarhw.e.f 25-04-2016 vide an order dt. 18-04-2016 passed u/s127 of the Act. The revenue has not disputed the factom of transfer of jurisdiction of assessing officer from ACIT, CC-1, Jaipur to ITO, Kisangarh vide order dt. 18-04-2016 passed u/s. 127 of the Act.

Therefore, the notice issued u/s. 143(2) dt. 12-08-2016 by the DCIT, Circle-1, Jaipur was not a valid notice as the said assessing officer was not having jurisdiction over the assessee and therefore, no jurisdiction was vested to him to issue notice u/s. 143(2) of the Act on 12-08-2016 on the assessee. It appears that to overcome the deficiency of notice issued u/s. 143(2), the DCIT, Circle-1, and Ajmer again issued notice on 3-11-2017. However, the said notice was issued beyond the period of limitation provided under the said section. As the limitation for issuing the notice u/s. 143(2) expired on 30-11-2016, notice issued on 03-11-2017 is not valid being beyond the period of limitation provided u/s. 143(2) of the Act. Hence, we find that these two notices are not valid and consequently, the assessment was framed by the AO without having any valid notice issued u/s. 143(2) of the Act. On our direction the ld. DR has produced before us the assessment record. On perusal of the assessment record, we find that other than these two notices dt. 12-08-2016 and 03-11-2017 there was no notice(s) issued u/s. 143(2).

Accordingly, in the absence of a valid notice issued u/s. 143(2), the assessment framed u/s. 143(3) is invalid and the same is liable to be quashed. The Hon'ble Delhi High Court in the case of Sunworld Infrastructure P.Ltd Vs. ITO, W 24(3), Delhi (supra), while considering an identical issue has held in paras 4 & 5 as under:-

“OFFICE OF THE INCOME TAX OFFICER WARD 69(1)(1), No. 14/3, 4th Floor, Rastrothana Bhavan (Opp. RBI Nrupatunga Road, Bangalore-560 001 F. No. TRF/ITO-W-6(1) (1)/2014-15 Dated: 16/12/2014 To Income Tax Officer, Company Ward-249(3), Central Revenue Building, IP Estate, New Delhi-11002

Madam/sir,

Sub: Transfer of scrutiny assessment records in the case of M/s. Sunworld Infrastructure Pvt. Ltd-reg.

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The above mentioned case was selected for scrutiny under CASS for A.Y 2012-13 & 2013-14 notices u/s. 143(2) was issued at the address available as per PAN data. On verification it is noticed that the jurisdiction of the vests with your office. Accordingly, case record is transferred herewith for necessary action at your end.

Yours faithfully,

(LOKESH)

Income-tax Officer, Ward-6(1)(1),
Bangalore”

4. It is evident from the aforesaid letter that it is only the records of the case which were transferred and if the case itself had been transferred, the same would have to be directed under section 127 of the said Act. No such order of transfer has been made and the above letter dated 16.12.2014 is indicative of the fact that the Bangalore Office of the Income Tax Department did not have jurisdiction in this case.

5. That being the position, the purported notice under section 143(2) on 10.09.2013 was one without jurisdiction and cannot be regard as a valid notice. The first notice, therefore, which was issued by an Officer having jurisdiction was on 24.12.2014.

This was issued clearly beyond the period of limitation which has been prescribed, i.e beyond 30.09.2013 in this case. As such, the impugned notice dated 24.12.2014 issued under Section 143(2) of the Act is barred by time. The same is quashed.”

8. Therefore, the notice issued after the prescribed period of limitation is not a valid notice. Similarly, the notice issued by the DCIT, Cir-1, Jaipur without having jurisdiction over the assessee was also not a valid notice. Hence, the assessment framed u/s. 143(3) in the absence of notice issued u/s. 143(2) of the Act is not valid and accordingly, the same is quashed. Since we have quashed the assessment framed u/s. 143(3) of the Act, therefore, we do not propose to go into the issue of addition as made by the AO.

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

In this regard the head note of the decision of Hon'ble ITAT, Jodhpur in the case of Jodhpur Sahakari Bhoomi Vikas Bank vs.ITO, reported in (2015) 53 taxmann.com 113 (Jodhpur-Trib.) is reproduced as under:-

“ Section 143 of the Income tax Act, 1961- Assessment- Issue of notice (Limitation)- Assessment Year 2007-08- Notice under section 143(2) was issued to assessee on 18-08-2008 by Dy. CIT, Circle-3 who had no jurisdiction over assessee's case- Realising that mistake, Dy. CIT, Circle-3 transferred file to ITO, Ward -3 who had jurisdiction over assessee's case and thereafter, on 26-08-2009, fresh notice under section 143(2) was issued to assessee- Whether since Dy. CIT, Circle 3 had no jurisdiction over assessee's case, notice issued by him/her was invalid and without jurisdiction and had to be treated as non est in eye of law- Held, yes- Whether valid notice issued by ITO, Ward-3 was dated 26-08-2009 which was clearly barred by limitation and assessment order framed consequent to this notice would also become invalid and barred by limitation- Held, yes {Para 4.2} {In favour of assessee}”

In this regard reliance is also placed on the following judicial pronouncements:-

1. Sukumar Chandra Sahoo vs.ACIT, ITA/Kol./2016, dated 27.09.2017 (ITAT- Kolkata).
2. Krishnendu Chowdhury vs.ITO, {2017}78 taxmann.com 89 (ITAT- Kolkata).
3. Sun World Infrastructure (P) Ltd. WP (C) 1741/2015 & CM NO. 3112/2015 Delhi High Court, DOJ-05-03-2015.
4. ITO vs. M/s NVS Builders (P) Ltd., ITA No. 3729/Del./2012, ITAT Delhi reported in (2018) 169 ITD 679 (Delhi- Trib.).
5. Sh. Parvinder Vir Hans V. ACIT, CO No. 04/ASR/2011, A.Y. 2007-08 (Arising out of ITA No. 88 (ASR)/2011 ITAT, Amritsar, DOJ. 01-02-2016.
6. M/s Lexmark International (India) Pvt. Ltd. v. DCIT/ACIT, ITA No. 72/Kol./2017, ITA No.235/Kol./2017 & ITA No.2058/Kol./2017 (ITAT- Kolkata) DOJ. 28-09-2018
7. ITO vs.Ashok Kumar Periwal ITA No. 339/Viz./2016 (ITAT- Vishakhapatnam).

In view of the facts of the case and the judicial pronouncements, the order passed by the DCIT, Circle-1, Jodhpur without issuing mandatory statutory notice u/s. 143(2) may kindly be quashed being invalid in the eyes of law.

Recently Honourable Andhra Pradesh High Court Vijay Nathulal Sharma vs Deputy Commissioner of Income Tax on 21 October, 2022 WRIT PETITION No.22111 of 2022

“16. In such scenario, the contention of the standing counsel for Revenue is that the writ petitioner when received notices and summons from Respondent No.1 did not raise objection concerning jurisdiction before Respondent No.1 and submitted himself to the jurisdiction of Assessing Officer and therefore he cannot now contend that the Assessing Officer had no jurisdiction to pass the order. In affect this argument conveys only the argument of convenience for Respondent No.1, and is not hinged on any principle either in a statute or in the precedent, brought to the notice of this Court by the Revenue to the affect that by mere responding to the notice issued by Respondent No.1 jurisdiction stood vested with Respondent No.1. It is well know that when statute prescribes the authority with whom the power is vested it is only that authority which can exercise that power. By consent of parties the statutory prescription cannot be waived nor vested with another authority. Though the plea of legal competency and jurisdiction was not raised by the writ petitioner before the assessing authority, this being a question of law going to the root of the matter, the same can be raised at any stage of the proceedings. Therefore, this argument of Revenue does not hold merit.”

It has further recently decided by Honorable ITAT Raipur in the case of Bharat Bhushan Verma v/s The Income Tax Officer-1(2),Raipur (C.G.) vide ITA No. 236/RPR/2023 on dated 11.10.2023 as under:-

“12. As the facts and the issues based on which jurisdiction has been assumed by the A.O, i.e. ITO-1(2), Raipur in the present case before me remains the same as were there before the Division bench in the case of Durga Manikanta Traders Vs. ITO (supra); therefore, I respectfully follow the same.”

Thus this ground may kindly be allowed

Ground No 2:

That ld CIT(A) is not justified in sustaining the trading addition made⁴ by LD AO of Rs.11,63,2981- by applying N.P. Rate of 3% without any basis whatsoever, as against N.P. Rate of 1.94% by the assessee. The ld. AO had applying the N.P. Rate of % has ignored the fact of increase in turnover and also N. P. Rate of 1.93%, 1.87%and 2.23% in the preceding 3 years.

That LD AO has estimated the NP rate without any basis. It is submitted that NP rate is to be applied by considering past history of the assessees .

The relevant decision on this issue is

ITA 187/JP/2012 Shri Anuj Kr. Varshney Vs ITO & Ors Revenue Authorities
CIT vs. Inani Marbles Pvt. Ltd. 316 ITR 125(Raj)

Wherein it has been held that preceding year's results constitute a good basis for working out the gross profit

Kansara Bearings Pvt. Ltd. Vs ACIT 270 ITR 235 (Raj HC) lump sum trading addition has been confirmed by the ITAT.

Shri Sindhuja Foods Pvt. Ltd. 16 DTR 278 (Raj) has held that where the assessee's books of account are rejected as it has shown bogus purchases but gross sale figure is not disturbed and the CIT (A) and Tribunal applied G.P. rate of last year for making the best judgment assessment. It cannot be said that relevant material evidence has not been considered by the ITAT or any irrelevant consideration has been taken into account by the Tribunal in reducing the addition made by the Assessing Officer in this behalf.

Thus, estimating the income based on the past history has the approval of the ITAT as well as higher courts

Honorable ITAT held in the case of Shri Habib Khan v/s The Pr.CIT vide 598/JP/2018 dated 11/12/2018 held average rate of past three years is the best guide for applying GP rate."

6. To support the contention so raised in the written submission reliance was also placed on the following evidence / records / decisions:

S. No.	Particulars	Page No.
1	Written Submission	1-9
2	Copy of notice u/s 143(2) of the IT Act	10
3	Copy of Rajendra Gupta vs DCIT, Circle-01, Ajmer ITA No. 1038/JP/2018 dated 26.04.2019	11-20
4	Copy of Bharat Bhushan Verma vs. ITO ITA No. 236/RPR/2023 dated 11.10.2023	21-44
5	Shri Habib Khan vs. The Pr. CIT vide 598/JP/2018 dated 11/12/2018	45-55

7. The ld DR is heard who has relied on the findings of the lower authorities.

8.

9. We have heard the contentions of the ld. DR and perused the material placed on record. The bench noted that the ld. AO has rejected books of accounts on account of fact that the assessee submitted two cash books and therefore, the books of accounts rejected the ld. AR of the assessee did not demonstrate as to why the said decision is not correct and therefore, we confirm the rejection of books of accounts by the ld. AO. Considering the various decisions cited including of jurisdictional High Court and ITAT. The bench noted that the assessee is praying that ld. AO has without any basis applied the NP rate of 3% and the assessee has disputed that estimation profit before us. We note that the ld. AR of the assessee has relied upon the judgment of Shri Habib Khan vs. Pr. CIT in ITA No. 598/JP/2018 dated 11/12/2018 wherein the Co-ordinate Bench has held that average rate of past three years is the base to apply the GP rate when the book results are rejected. The bench noted that the assessee has disclosed the profit in last 3 years are 1.93%, 1.87% and 2.23%. The average of last 3 years comes to 2.01% which we believe that will render the justice to the assessee. In terms of these observations, the appeal of the assessee is partly allowed and ld. AO is directed to compute the profit @ 2.01% after reduce the profit already offered by the assessee and therefore, considering that aspect of the matter, the ground No. 2

raised by the assessee is partly allowed. Since we have considered the arguments on merits ground no 1 is not decided as the ld. AR of the argued only on ground no 2.

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

Order pronounced in the open court on 28/03/2024.

Sd/-
(मनीष बोराड)
(Manish Borad)
लेखा सदस्य / Accountant Member

Sd/-
(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 28/03/2024

*Ganesh Kumar, PS

आदेश की प्रतिलिपिअग्रेहित / Copy of the order forwarded to:

1. The Appellant- Laxmikant Tak, Panchsheel Ajmer
2. प्रत्यर्था / The Respondent- DCIT, Circle-02, Ajmer
3. आयकर आयुक्त / The ld CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 110/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar