

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

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: HON'BLE SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./ITA No. 1159/JP/2024
निर्धारण वर्ष / Assessment Year : 2017-18.

Ratan Kumar Yadav, 129, Prop. Hotel Highway King, Delhi Road And Ajmer Road, Civil Lines, Suraj Nagar (East), Jaipur.	बनाम Vs.	Income Tax Officer, Ward 2(2) Jaipur.
स्थायी लेखा सं./जीआईआर सं./ PAN/GIR No. AALPY 6817 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.R. Sharma, CA &
Shri RK. Bhatra, CA

राजस्व की ओर से / Revenue by : Shri Gautam Singh Choudhary, JCIT D/R

सुनवाई की तारीख / Date of Hearing : 16/10/2024
उदघोषणा की तारीख / Date of Pronouncement : 18/10/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the assessee is directed against the order dated 11.07.2024 of Id. CIT (Appeals)-4, Jaipur passed under section 250 of the Income Tax Act, 1961 for the assessment year 2017-18. The grounds raised in the appeal are reproduced as under :-

1. That on the facts and in the circumstances of the case the Id. CIT (A) is wrong, unjust and has erred in law in confirming invoking provision of section 145(3) of the I.T. Act, 1961 by the Id. AO and in further upholding rejection of the declared result of the appellant's firm.

2. That the Id. CIT (A) is further wrong, and has erred in law in confirming application of GP rate of 29.57% on declared sales against declared GP rate of 28.18% resulting in confirming trading addition of Rs. 5,46,329/-.
3. The appellant craves permission to add to or amend to any of grounds of appeal or to withdraw any of them.

2. The brief facts of the case are that the appellant is an individual and running a restaurant under the name and style of M/s Hotel Highway King at road side. The appellant maintains complete books of accounts, bills and vouchers. The said books of accounts were audited and copies of audited statement of accounts were submitted along with copy of audit report u/s 44 AB of the IT Act, 1961. It is evident from the assessment order itself that the learned AO has not pointed out / noticed any defect and deficiency and / or, no unrecorded sales, purchases and expenses were found. The learned AO invoked the provision of section 145(3) of the IT Act, 1961 for the reason that the appellant has not maintained a register for raw material. After rejecting the books of accounts by invoking the provision of section 145(3) of the IT Act, 1961, the learned AO applied an average GP rate on the basis of preceding year i.e. 2016- 17 and the assessment year 2017-18 (under appeal) made an addition of Rs. 5,46,329/-, vide para 3 at page No. 4 of the impugned assessment order. Aggrieved by the order of Id. AO, the assessee preferred appeal before theld. LD. CIT (A). The Learned CIT(A) confirmed the action of the learned AO and up held the rejection of the books of accounts and confirmed the trading addition of Rs. 5,46,329/- made by the learned AO.

Against the said order of the CIT(A), the appellant filed this instant appeal before the Tribunal on the grounds raised hereinabove.

3. Before me, the Id. A/R of the assessee reiterated the submissions as made before the revenue authorities. The Id. A/R filed his ground-wise written submissions as under :-

" First and Second grounds of appeal

The issues involved in first and second grounds are almost identical, inextricably interlinked or in fact interwoven and the facts and circumstances are almost common, therefore, common submissions are made. The said grounds of appeal are challenging, the invoking of provision of section 145(3) of the IT Act 1961 and the trading addition of Rs. 5,46,329/- is made to the declared trading results. In this connection, it is submitted that it is evident from the assessment order that there was neither change in the method of accounting employed and accepted by the department in all the preceding years nor in the valuation of inventory. The closing stock of immediately preceding year has been brought forward as opening stock of the assessment year under appeal and the same has been accepted by the learned AO. No specific defect and / or deficiency has been pointed out by the learned AO. Further, looking to the nature of the appellant's business, it is not practically possible to maintain a day-to-day stock register of the items consumed in preparation of the various dishes, eatable items, tea, coffee, etc. having petty sale value(s) of Rs. 100/-, 200/-, 400/- etc. etc. Thus, the learned AO asked the appellant to produce the details which are not practically possible in the line of appellant's business. In view of the above facts and circumstances of the case, the provisions of section 145(3) are inapplicable in appellant's case ref. **[2005] 279 ITR 457 (Calcutta) in case of Ashoke Refractories (P) Ltd. Vs CIT held that "Section 145 of the Income-tax Act, 1961 – method of accounting – Rejection of accounts –**

Assessment years 1990-91 and 1991-92 – whether in absence of stock register or failure to maintain item-wise stocks in stock register, books of account could not be rejected unless there was a finding or opinion either that records were incorrect and incomplete or that method of accounting applied was such that income could not be deducted from accounts maintained by assessee – Held, yes.”

- 3(ii) Further, it is also a known fact that in no business specifically in the restaurant business, there cannot be exactly a same rate of gross profit in every year. Because in restaurant trade, each items yield different-different rate(s) of GP and the overall GP of a year depends on the maximum sales of particular item(s). It is also worthwhile to submit here, if any business man declared trading result same in every year (i.e. same GP) than, the said case is more doubtful then the assessee in who’s case there occurs variation in GP rates year to year. It is also verifiable from the assessment order that learned AO compared GP rate with immediately preceding year and not for 3 years. The appellant submits herein below comparative figures of turnover and GP rate in 3 years including the assessment year under appeal :-

Assessment Year	Turnover (Rs)	GP ((Rs.)	GP Ratio (%)
2015-16	32559436	9143849	28.08
2016-17	29659704	9178525	30.95
2017-18	39304217	11077344	28.18

As per above particulars, it is evident that the GP rate in the assessment year under appeal is better than the assessment year 2015-16. But, the GP rate in the year under assessment is decreased by 2.77% in comparison to the immediately preceding year, whereas, the turnover of the appellant has

increased by more than 33% in comparison to the said immediately preceding year. It is a known fact of every trade that the slight decrease in GP rate is attributable to the increased turn over. Thus, the learned AO has only considered one side of the trading account ignoring the another main side turnover. In this regard, it is further submitted that now it is a finally settled position of law that merely because there is some deficiency in books of accounts or merely because rejection of books of accounts does not lead to addition to return income. The submissions are drawing support from the following case laws :-

" Ref : [2002] 256 ITR 243(Rajasthan) in case of CIT Vs Gotan Lime Khanij Udhyog held that "Section 145 of the Income-tax Act, 1961 – method of accounting – Rejection of account – Assessment year 1986-87 – Whether section 145(1)/(2) as amended with effect from 1-4-1997, does not mean that rejection of books of account of an assessee must yield to different conclusion in computation of income as returned by assessee on basis of accounts made by it employing any other method of accounting – Held, yes – Assessee's trading accounts were not backed up with quantitative and qualitative stock details – Assessing Officer invoked provisions of section 145, increased GP rate and made substantial trading addition – Tribunal, however, deleted additions – Whether merely because there is some deficiency in books of account or merely because there is rejection of books of account, it must necessarily lead to additions to returned income – Held, no "

Ref : [2021] 131 taxmann.com 331 (Jaipur – Trib.) in the ITAT Jaipur Bench 'B' in case of Sanjay Agarwal Vs. ITO, Ward-3(3), Jaipur held that "Section 145 of the Income-tax Act, 1961 – Method of accounting – Estimation of income (GP rate) – Assessment year 2012-13 – Whether once books of account are rejected, Assessing Officer has to

estimate profits based on his judgment and either past year results or comparative profits declared in similar line of trade in same commodity would be a guiding factor – Held, yes.

However, there was an exceptional circumstances as assessee's turnover increased by almost 130 times and, thus, past year results were not reflective of state of affairs of current affairs, and past year results could not be made a guiding factor. Whether trading addition made by Assessing Officer estimating higher GP rate was to be deleted – Held, yes [Para23] [In favour of assessee]"

In view of the above facts and circumstances of the case, the impugned trading addition made by the learned AO may kindly deserves to be deleted. "

4. On the contrary, the Id. D/R supported the orders of the revenue authorities.
5. I have heard the rival submissions, perused the material on record and gone through the orders of the revenue authorities. The AO has rejected the books of accounts of the appellant on the ground that there was decline in gross profit rate in comparison to immediately preceding assessment year and the appellant did not maintain raw material register. It has been contended by the Id. A/R that considering the nature of business of the assessee, it is practically not possible to maintain day to day stock item-wise and even in past no such records were maintained and therefore, the AO has rejected the books of accounts on wrong footings. The AO has also stated that the GP rate of the assessee has declined from 30.95% to 28.18% and such fact has also been considered by him for rejecting the books of accounts. It has been the submission of the Id. A/R that in restaurant business the assessee deals in various

types of perishable food items and GP rate on such items varies. There is no straightaway formula to work out universal GP rate on all items and the over all GP depends upon composition of different items sold by the assessee. The Id. A/R has further stated that the AO compared the GP rate of this year with GP rate of immediately preceding year whereas he was required to consider GP rate for assessment year 2015-16 and as per the details submitted the average GP rate for three years viz. 2015-16, 16-17 and 17-18 works out to 29.07%. He has also submitted that the turnover of the assessee has recorded an increase of over 33% in comparison to immediately preceding year and it is a known fact of every trade that slight decrease in GP rate is attributable to the increased turnover. Therefore, the AO has only considered one side of the trading account ignoring the other main side turnover. In support of his contention he has further relied on the following case laws :

Ref : [2002] 256 ITR 243(Rajasthan) in case of CIT Vs Gotan Lime Khanij Udhog held that "Section 145 of the Income-tax Act, 1961 – method of accounting – Rejection of account – Assessment year 1986-87 – Whether section 145(1)/(2) as amended with effect from 1-4-1997, does not mean that rejection of books of account of an assessee must yield to different conclusion in computation of income as returned by assessee on basis of accounts made by it employing any other method of accounting – Held, yes – Assessee’s trading accounts were not backed up with quantitative and qualitative stock details –

Assessing Officer invoked provisions of section 145, increased GP rate and made substantial trading addition – Tribunal, however, deleted additions – Whether merely because there is some deficiency in books of account or merely because there is rejection of books of account, it must necessarily lead to additions to returned income – Held, no ”

- (i) Ref : [2021] 131 taxmann.com 331 (Jaipur – Trib.) in the ITAT Jaipur Bench 'B' in case of Sanjay Agarwal Vs. ITO, Ward-3(3), Jaipur held that "Section 145 of the Income-tax Act, 1961 – Method of accounting – Estimation of income (GP rate) – Assessment year 2012-13 – Whether once books of account are rejected, Assessing Officer has to estimate profits based on his judgment and either past year results or comparative profits declared in similar line of trade in same commodity would be a guiding factor – Held, yes.***

However, there was an exceptional circumstances as assessee's turnover increased by almost 130 times and, thus, past year results were not reflective of state of affairs of current affairs, and past year results could not be made a guiding factor. Whether trading addition made by Assessing Officer estimating higher GP rate was to be deleted – Held, yes [Para23] [In favour of assessee]

I find sufficient force in the arguments of the Id. A/R for non maintenance of the raw material register, which is impossible to be maintained in restaurant business. The decline in GP rate is also very minimal in comparison to average GP for last three years considering an increase of over 33% in the turnover as compared to immediately preceding year. Therefore, the decision of the Id. CIT (A) is reversed and application of

provision of section 145(3) is quashed and addition in the income for Rs. 5,46,329/-on account of application of GP rate of 29.57% is hereby deleted.

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

Order pronounced in the open court on 18/10/2024.

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 18/10/2024.

Das/

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

1. अपीलार्थी / The Appellant- Ratan Kumar Yadav, Jaipur.
2. प्रत्यर्थी / The Respondent- The ITO Ward 2(2), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 1159/JP/2024}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

