

IN THE INCOME TAX APPELLATE TRIBUNAL
JAIPUR BENCH "SMC", JAIPUR
**BEFORE Dr. S. SEETHALAKSHMI, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**
ITA No. 1117/JPR/2024 (A.Y. 2017-18)

Bela Jain,

6 Banger Dharamshala, Bajariya,

Sawai Madhopur – 344 001.

PAN No.: ABMPJ 4057B

..... Appellant

Vs.

ITO, Ward (1),

Sawai Madhopur – 344 001.

..... Respondent

Appellant by	:	Mr. Rajendra Sisodia, Adv., Ld. AR
Respondent by	:	Mr. Gautam Singh Choudhary, JCIT- Ld. Sr. DR (Through V.C.)
Date of hearing	:	21/11/2024
Date of pronouncement	:	25/11/2024

ORDER

PER GAGAN GOYAL, A.M:

This appeal by assessee is directed against the order of Ld. Addl.CIT/JCIT (A), Mysore dated 07.08.2024 passed u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2017-18. The assessee has raised the following grounds of appeal:-

1. *The Ld. CIT (A) has erred in confirming the trading addition made by the AO notwithstanding the fact that trading addition cannot be made without rejecting the books of accounts.*

2. *The Ld. CIT (A) has erred in confirming the trading addition made by the AO by applying an arbitrary rate of 4% without any basis.*

3. *The Appellant reserves its right to add, amend/modify the grounds of appeal."*

2. The brief facts of the case are that the assessee individual filed her return of income on 27-10-02017 u/s. 139 of the Act, declaring total income at Rs. 4,24,350/-. Case of the assessee was selected under CASS and a notice u/s. 143(2) of the Act was issued vide dated: 09-08-2018. During the scrutiny it was observed by the AO that there is a substantial down fall in the results declared by the assessee as compared to the results of previous year, hence applied the N.P. rate @ 4% (Almost similar to previous year) and assessed the income of the assessee at Rs. 12,80,554/- against the declared results of Rs. 5,74,353/-.

3. The assessee being aggrieved with this order of the AO preferred an appeal before the Ld. CIT (A), who in turn confirmed the action of the AO and sustained the addition on account N.P. rate enhancement. The assessee being further aggrieved preferred the present appeal before us. We have gone through the order of the AO, order of the Ld. Addl.CIT/JCIT (A), Mysore and submissions of the assessee along with grounds taken before us.

4. It is observed that the Ld. Addl.CIT/JCIT (A), Mysore vide para 4 of his order observed as under:

Date of hearing of notice	Date of compliance fixed	Date of Response	Mail-ID to which the notices issued and delivered as per income
---------------------------	--------------------------	------------------	---

			tax portal
31-01-2021	15-02-2021	No Response	Jambu2011@gmail.com
15-09-2021	30-09-2021	No Response	Jambu2011@gmail.com
21-02-2024	26-02-2024	No Response	Jambu2011@gmail.com
01-03-2024	08-03-2024	07-03-2024	Mahesh.baj6@gmail.com
25-07-2024	29-07-2024	No Response	Mahesh.baj6@gmail.com

Based on above, the Ld. Addl.CIT/JCIT (A), Mysore decided the matter almost on ex-parte pattern and followed the line of the AO, while confirming his order against the assessee. The only submission made by the assessee was dated: 07-03-2024. The same has been observed by us vis-à-vis documents and explanations submitted before us.

5 It is observed that the claim of the assessee before us and the Ld. Addl.CIT/JCIT (A), Mysore remained unchallenged by the Revenue, that during the assessment proceedings the assessee had submitted complete set of book of accounts comprising all purchases, stock register, cash book, bank book, other ledgers and audited financial statements etc. Apparently the query of the AO about difference in results of the concerned year vis-à-vis preceding year is relevant, but that can't be the sole basis for making any addition by applying N.P. Rate of preceding year without applying the provisions of section 145 of the Act. As in this case it is clearly visible that no show cause has been issued by the AO for application of section 145 of the Act and there is no action visible to us which confirms that defects in the books of the assessee has been pointed out, which justifies the application of N.P. Rate @ 4%.

6. Apparently, five opportunities were given to the assessee as mentioned (supra) but based on the assessee's submission dated: 07-03-2024, the Ld. Addl.CIT/JCIT (A), Mysore was duty bound to ask for a remand report from the AO to establish the facts of the case and to ascertain the contentions of both the sides. Considering the facts discussed above, we are not in agreement with the view taken by the AO and decision of the first appellate authority. Hence both the orders set-aside and the appeal of the assessee are allowed.

7. **In the result, the appeal of the assessee is allowed.**

Order pronounced in the open court on 25th day of November 2024.

Sd/-

(Dr. S. SEETHALAKSHMI)
JUDICIAL MEMBER

Jaipur, दिनांक/Dated: 25/11/2024

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., Sr.DR., ITAT,
5. गार्ड फाइल/Guard file.

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Jaipur

	Details	Date	Initials	Designation
1	Draft dictated on PC on	25.11.2024		Sr.PS/PS
2	Draft Placed before author	25.11.2024		Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS/PS
7.	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date of Dispatch of order			