

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES (SMC), JAIPUR

श्री भागचंद, लेखा सदस्य, के समक्ष
BEFORE: SHRI BHAGCHAND, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 861/JP/2014
निर्धारण वर्ष / Assessment Year : 2011-12

Janta Construction Co., E-47, Road No. 2B, VKI Area, Jaipur (Raj).	बनाम Vs.	Income Tax Officer, Ward-4(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABFJ 0003 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Manish Agarwal (CA)
राजस्व की ओर से / Revenue by : Shri R.A. Verma (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 24/04/2017
उदघोषणा की तारीख / Date of Pronouncement : 28/04/2017

आदेश / ORDER

PER: BHAGCHAND, A.M.

This is an appeal filed by the assessee emanates from the order dated 14/10/2014 passed by the Id. CIT(A)-II Jaipur for the A.Y. 2011-12.

2. The assessee is a partnership firm, engaged in the work of civil contractor, executing contracts for government departments like PWD, Housing Board etc. For the year under consideration, return was filed declaring income of Rs. 6,49,000/-. The Assessing Officer assessed the income at Rs. 36,72,240/- by making various additions/disallowances.

3. The Id. CIT(A) allowed the appeal partly. Now the assessee is in appeal before the ITAT by taking following grounds of appeal:

- "1. That the Id. CIT(A) has erred seriously on facts in holding that the nature of contracts executed by the assessee have undergone significant change and hence past history of the assessee may not be a correct indicator.
2. That the Id. CIT(A) has erred seriously on facts in confirming addition in closing WIP for Rs. 5,32,072/-.
3. That the Id. CIT(A) has erred seriously on facts in confirming the disallowance of Rs. 9,98,282/- made by Id. A.O. on account of labour charges.
4. That the Id. CIT(A) has erred seriously on facts in confirming addition made by Id. A.O. on account of interest on IT refund for Rs. 59,448/- and interest on sales tax refund for Rs. 35,850/-.
5. That the Id. CIT(A) has erred seriously in law and on facts in confirming the disallowance of Rs. 3,58,064 made by Id. A.O. on alleged diversion of interest bearing funds for granting interest free advance."

4. Ground No. 4 of the appeal is not pressed, therefore, the same stands dismissed as not pressed.

5. In the grounds No. 1,2,3 and 5 of the appeal, the assessee has challenged the addition sustained by the Id. CIT(A) by way of disallowances out of labour expenses of Rs. 9,98,282/-, adding Rs. 5,53,072/- to the closing stock of Bitumen and disallowing interest

expenditure of Rs. 3,58,064 and thereby increasing the NP rate declared. During the assessment proceedings, the Assessing Officer invoked the provisions of Section 145(3) of the Income Tax Act, 1961 (in short the Act) by rejecting books of account on the basis that the assessee is not maintaining proper vouchers for various expenses, except Bitumen, no stock register was maintained and also site wise records of material and labour was not available. After invoking the provisions of Section 145(3) of the Act, the Assessing Officer made various disallowances out of expenses debited to P&L account. The Id AR submitted that the assessee is a civil contractor, engaged in construction of roads against contracts awarded by the government departments like PWD and Housing Board. The contracts are awarded through open tender advertised in public and open for all contractors, who participate in large number of each tender. The bid is opened in favour of the contractor, who submits the lowers bid. The rates on which work is awarded are based on the BSR which is a Basic Schedule Rate made and published by the State PWD for any kind of civil construction related work to be performed in the State of Rajasthan for various government departments and authorities. The assessee had done entire work in relation to the government departments only, which also undergone serious inspection by various government agencies and frequent redoing of the work is also a common feature

which results into extra cost which in turn affects the profitability adversely. In this line of business, it is not possible to maintain day to day stock register as work at various sites situated at distant places. The nature of material used in the execution of works like grit, sand, stone, bricks etc. is such that maintenance of day to day inventory is neither practical nor possible. The assessee is following the same method of accounting since inception and merely for non maintenance of day to day stock register, the provisions of Section 145(3) were invoked and various additions were made. Ld. AR also pleaded that even if provisions of Section 145(3) of the Act are invoked then only gross profit could have been estimated. In assessee's case the income declared for the year under consideration was in conformity with past history of assessee. In assessee's own case 8% N.P. applied subject to depreciation interest on capital and remuneration to partners. The Id AR relied on the decision of the Hon'ble Rajasthan High Court in the case of Gotan Lime Khaniz Udyog 256 ITR 243 for the proposition that mere rejection of books of account should not necessarily lead to an addition. The Assessing Officer without having any material in his possession and without bringing anything contrary on record through independent enquiries, additions were made arbitrarily only to increase the NP rate. The Id AR also submitted that in the preceding years, the assessment was completed U/s 143(3) of the Act

and also reached to the ITAT where NP rate declared by the assessee was accepted and the details of the same are as under:-

AY	Gross receipts	Net profit declared before depr. and payment to partners	NP Rate	NP Rate accepted by the CIT(A)/ Hon'ble ITAT
2008-09	88078982	7483744	8.50%	5.50%
2009-10	46166265	4141707.33	8.97%	NP rate accepted with further disallowance u/s 40(a)(ia)
2010-11	52624384	4748859	9.02%	9.02%
2011-12	25466376	2485737	9.76%	Relevant year under appeal

He further submitted that by considering the additions made by the Assessing Officer, the NP rate on the turnover of Rs.2,54,66,376/- comes to 17.18%, which is exorbitant in this line of business and such NP rate is never possible to be achieved and such additions are not realistic. He also relied on the following decisions:

- (i) 84 TTJ 693 ITO Vs. Chohtan Construction Co. (Jd.) 5th March, 2004.
- (ii) Kansara Bearings Pvt. Ltd. vs. ACIT reported in 270 ITR 235
- (iii) Collector Ram Sharma Vs. DCIT [ITAT (JPR) in ITA no. 771/Jp/2012
- (iv) Prashant Oil mill Vs. ITO [72 Taxmann.com 136 (Guj)]
- (v) 99 TTJ 164 Ajay Goyal Vs. ITO (Jd.)
- (vi) 5 ITR 170 (PC) CIT V/s Laxminarain Badridas
- (vii) 60 ITR 239 (SC) State of Kerala V/s Velukutty

(viii) 115 ITR 524 (SC) Brij Bhushan Lal Parduman Kumar, etc. V/s CIT, Haryana, Himachal Pradesh and New Delhi-III

Further he also pleaded that there was no need to disturb the declared results as the NP rate declared in the year under consideration was better than earlier years, which is 9.76% in comparison to 9.02% accepted by the Hon'ble ITAT in the immediate preceding year. He also pleaded that the Hon'ble Rajasthan High Court as well as Hon'ble ITAT have consistently taken a view that in the case of civil contractors where net profit rate is applied then further deductions for the depreciation, interest and remuneration paid to partners should be allowed. He further relied on the following case laws:-

1. CIT V/s Jain Construction Co. 245 ITR 527 (Raj. H/C)
 2. M/s Kiran Udyog V/s DCIT 34 TW 80 (Jpr, ITAT)
 3. Kalindee Rail NirmanEngg. Ltd V/s JCIT 25 TW 89 (ITAT, Jpr)
 4. Mohta Construction & Co. V/s ITO, 21 TW 257 (ITAT, JP)
 5. Khartaram Choudhary V/s ITO, 21 TW 6 (ITAT, Jaipur)
 6. ITO V/s. Gopalaram Premaram 24 TW 442 (ITAT Jodhpur)
6. The Id. Sr.DR has relied on the orders of the authorities below.
7. I have heard both the sides on this issue. The assessee has declared N.P. rate for the year under appeal was 9.76%, which was better than all of the three years i.e. assessment years 2008-09 to 2010-11. The ITAT in assessee's own case for the assessment year 2005-06 to

2008-09 has accepted the gross profit rate as declared by the assessee. The ITAT in assessee's own case in the assessment year 2010-11 has also accepted the declared NP rate of 9.02%. The relevant portion of the ITAT order is reproduced hereunder:-

"2.4 *We have heard the rival contentions and perused the material available on record and have gone through the order and finding of the Id. CIT(A). In the past, the Coordinate Benches have taken a consistent view that NP rate which should be considered for examination is NP rate before depreciation, interest and remuneration to partners. Nothing has been brought to your notice for deviating from the said settled position. Further, during the year under consideration, the NP rate before depreciation, interest and remuneration to partners is disclosed by the assessee at 9.02% which is on a progressive scale hence there is no basis to disturb the same. Secondly the expenses have been disallowed on an ad hoc basis. In absence of any specific finding of the A.O. whereby specific expenses/transactions have been held to be not incurred for the purposes of businesses, we are unable to accede to the position adopted by the A.O. Hence we do not see any infirmity in order of Id. CIT(A) which is confirmed. All the grounds taken by the revenue are dismissed.*"

Thus, the average net profit rate of the past years is lower than the current year. Once the books of account have been rejected then the

specific disallowance under various heads should not have been made and only the gross profit/net profit rate should have been estimated. Since the average N.P. rate of the past six years comes lesser than the declared N.P. rate of 9.76% for the year, therefore, I find merit in the contention of the assessee and on that basis, I direct to delete the addition made from various expenses. This view is also get support from the decision of the Hon'ble Rajasthan High Court in the case of CIT Vs. Popular Art Palace Ltd. (2017) 391 ITR 352 (Raj), wherein the Hon'ble High Court has held as under:-

"Held, that the adopting of gross profit by the Assessing Officer at 35 percent was high. The average of profit shown by the assessee from the year 1991-92 to 1996-97, was 31.4 percent and for that the estimate of 32 percent could be adopted instead of 35 percent by the Assessing Officer. The Assessing Officer was to make calculations by adopting estimated profit of 32 percent."

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

Order pronounced in the open court on 28/04/2017.

Sd/-

(भागचंद)

(BHAGCHAND)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 28th April, 2017

*Ranjan

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

1. अपीलार्थी / The Appellant- Janta Construction Co., Jaipur.

2. प्रत्यर्थी/ The Respondent- The ITO, Ward-4(2), Jaipur.
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त(अपील)/The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 861/JP/2014)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar