

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

श्री विजय पॉल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 59/JP/2018
निर्धारण वर्ष / Assessment Years : 2013-14

M/s Pradeep Kumar Contractor, Jodha Ka Bas, Yaya, Chirawa, Jhunjhunu	बनाम Vs.	The Assistant Commissioner of Income Tax, Circle, Jhunjhunu
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAGFP9445C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Manish Agarwal (CA)
राजस्व की ओर से / Revenue by : Smt Shanmuga Priya (JCIT)

सुनवाई की तारीख / Date of Hearing : 06/03/2018
उद्घोषणा की तारीख / Date of Pronouncement : 08/03/2018

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-03, Jaipur dated 30.11.2017 for Assessment Year 2013-14 wherein the assessee has taken the following sole ground of appeal:

"1. On the facts and in the circumstances of the case, Id. CIT (A) has grossly erred in upholding the trading addition of Rs. 5,22,521/- out of addition of Rs. 10.00 lacs made by the Id. AO on ad hoc basis, arbitrarily. Appellant prays that the addition so confirmed is excessive and high in view of the comparable cases in same line of business and

past history of the appellant. Thus the Net profit declared by appellant may please be accepted and the consequent additions deserves to be deleted."

2. Briefly stated facts of the case are that the appellant is a partnership firm engaged in the business of civil construction. The return of income was filed declaring total income of Rs. 93,59,550/-. While completing the assessment u/s 143(3) of the Act, the AO rejected the books of accounts invoking the provisions of sec 145(3) of the Act, and made a lump sum addition of Rs. 10,00,000/- to the income declared by the assessee.

3. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A), who upheld the rejection of books of accounts and restricted the addition to Rs. 5,22,521/- by applying GP rate of 18.39% i.e. average of GP rate of impunged assessment year 2013-14 (18.15%) and that of immediately preceding assessment year 2012-13 (18.63%). The relevant finding of the Id CIT(A) is reproduced as under:-

"Therefore considering the above observation and cited case laws, I am the view that Assessing Officer rightly applying the provision u/s 145(3) of the I.T. Act. Accordingly, I upheld the action of the Assessing Officer to rejection of the books of accounts.

The next issue the estimation of profit, in this year Gross Profit was 18.15% and last year Gross Profit was 18.63%. Thus average of the two years comes 18.39%. Thus I adopt the Gross Profit rate 18.39%, the Gross Profit comes to 4,05,21,715/-. The appellant shown Gross Profit comes of Rs. 3,99,99,194/-. Thus addition comes Rs. 5,22,521/-.

Accordingly, I confirm the addition of Rs. 5,22,521/- and balance amount of Rs. 4,77,479/- is deleted. This grounds are partly allowed."

4. During the course of hearing, Id. AR submitted that the appellant is a partnership firm engaged in the execution of civil contract work mainly awarded by Government Department. The books of the appellant are duly audited and were produced before the Id. AO, during the assessment proceedings. The AO rejected the books of the appellant and invoked the provisions of sec 145(3). These findings of the Id. AO were further accepted by the Id. CIT(A) also, thereby upholding the invoking the sec. 145(3), in case of the appellant. The main objection raised by AO was that no stock register and site-wise accounts were maintained and further all expenses were not supported with proper vouchers or some of the vouchers were self-made.

In this regard, it was submitted that the appellant undertakes civil construction contracts awarded by the State Government, which are executed at different sites. The books of accounts of the appellant are duly audited and nothing adverse have been pointed out by the auditors in their audit report. The Id. AO while rejecting the books have observed that, certain expenditures were not supported with proper vouchers. Since assessee was not in a position to provide 100% vouchers for sand, stone and greet as work is carried out at different sites and further in view of the nature of business of the appellant, it was not possible to maintain quantitative stock register. At the same time, it was submitted that issue of rejection of books of accounts is not being agitated before the Tribunal.

5. It was further submitted by the Id AR that rejection of books of accounts by itself would not be sufficient to make addition to the total income so far as Id. AO has failed to bring on record any material discrepancy in the books of accounts by way of suppression of sales, inflation of expenditure or incorrect valuation of the closing stock. The closing stock of the assessee has been accepted by the Chartered Accountant while auditing the accounts and determining the value of the closing stock u/s 44AB.

6. It was further submitted that, the provisions of sec 145 (3) were invoked in the earlier years as well, and the Hon'ble ITAT Jaipur Bench, in the AY 2006-07 as well as AY 2009-10 have deleted the additions made by Id. AO and thereby accepted the NP rate declared by the appellant by holding that since the results declared by the appellant was better than earlier years, there was no reason to disturb the declared results, even though the books were rejected.

In this regard, reliance is placed on Hon'ble Rajasthan High Court decision in the case of M/s Gotan Lime Khenji Udyog reported in 256 ITR 243, wherein it has been held that "the rejection of books of accounts u/s 145(3) does not always lead to an addition in every such circumstances, even if there is fall in the GP ratio as such."

7. On the merits of the case, it was submitted that Id. CIT(A) reduced the trading addition to Rs. 5,22,521/- by applying average of GP rates of current year and immediately preceding year. It is further submitted that each assessment year is different and due to market forces trading results of assessee are bound to change and so far as the variation in results is not substantial, results declared deserves to be

accepted. So far as the case of assessee is concerned, in the captioned assessment year, assessee attained the turnover of Rs. 22,03,46,471/- as against turnover of Rs. 9,21,88,597/- as declared in AY 2012-13, i.e. turnover of assessee increased by 139% in comparison to previous year. As against such substantial increase in turnover, GP rate of assessee has marginally reduced by 0.48%. In fact, Gross profit of assessee in monetary terms has increased from 1,71,77,029/- to Rs. 3,99,99,194/-, i.e. by 132% in comparison to preceding year. It is also a matter of fact that N.P rate of assessee has increased from 9.23% to 10.87% which fact is grossly ignored. Your honours would appreciate that it is not possible to maintain identical GP rate in each and every assessment year.

In view of above, it is submitted that addition of Rs. 5,22,521/- confirmed by Id. CIT(A) by applying average GP rate of two years deserves to be deleted more particularly when overall trading of assessee in monetary terms have improved substantially.

8. The Id DR has vehemently argued the matter and relied upon the order of the lower authorities.

9. We have heard the rival contentions and perused the material available on record. The rejection of books of accounts u/s 145(3) is not disputed by the assessee. The limited issue under consideration relates to what should be the reasonable gross profit rate once the books of accounts have been rejected. The AO has made a lump sum addition of Rs 10 lacs and the Id CIT(A) has applied an average G.P rate of 18.39% by considering the current year declared G.P of 18.15% and earlier year G.P of 18.63%. The Hon'ble Rajasthan High Court in case of

CIT vs Gupta K.N Construction Co 116 DTR 377 as well as other recent decisions in similar cases has held that the best guide in case of fair estimation is past history of the assessee and directed to apply last five years average for the purposes of determination of fair estimation of profits. Applying the same in the instant case, average of last five years G.P rate which has attained finality should be considered for determining the average G.P. Where the declared G.P rate of 18.15% is higher than the average G.P so determined, no further adjustment will be required to the declared profits even where the book results of the assessee have been rejected. Given that only G.P of last two years are available on record, the matter is set-aside to the file of the AO to determine the average G.P of last five years, compare it with declared G.P and determine the adjustment, if so required, taking into considerations above discussions.

In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 08/03/2018.

Sd/-

(विजय पॉल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 08/03/2018

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- M/s Pradeep Kumar Contractor, Jhunjhunu
2. प्रत्यर्थी / The Respondent- ACIT, Jhunjhunu
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. 59/JP/2018 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar