



IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: A: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.7427/Del/2018
Assessment Year: 2015-16

The ACIT, Circle-47(1), New Delhi	vs.	Ashish Bansal, 18, Fatehpuri, Chandni Chowk, Delhi PAN AALPB 2800 Q
(Appellant)		(Respondent)

For Revenue :	Shri Kanav Bali, Sr. DR
For Assessee :	Shri Ved Jain, Adv. Ms. Supriya Mehta, CA

Date of Hearing :	24.03.2023
Date of Pronouncement :	02.06.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order of CIT(A)-16, New Delhi dated 30.08.2018 for AY 2015-16.

2. The grounds raised by the Revenue read as under:-

"1. The Ld. CIT (Appeal) erred both in law and on facts of the case in deleting the addition of Rs. 1,72,35,965/- made on account of low GP rate as GP rate in year under consideration, i.e. A. Y. 2015 - 16 was 0.41% as compared to GP rate of 8.59% in A. Y. 2014 - 15.

2. The Ld. CIT(Appeal) erred both in law and on facts because he deleted the gross profit addition of Rs. 1,72,35,965/- merely on the grounds that books were not rejected without appreciating the fact that it is a case where there is substantial fall of gross profit in this year in comparison to assessee's own gross profit in last year and assessee failed to adduce any cogent reason for the same, as held in case of G.V (God Vishnu) Rice Unit vs. CIT Karnal (2013) 37 taxman.com 320 (P & H).

3. The Ld. CIT (Appeal) erred both in law and on facts in deleting the GP addition of Rs. 1,72,35,965/- only on the ground that books of account of assessee were not rejected without realizing that power of Ld. CIT(A) are co-terminus with that of Assessing Officer

as held in case of CIT vs.Jansampark Advertising and Marketing Pvt. Ltd. (2015) 56 taxman.com 286 (Delhi) and he could have rejected books if he so left.

4. That the appellants craves leave add, amend or alter any grounds of appeal.

3. The Id. Sr. DR, supporting the first appellate order, submitted that there was a significant rise in the turnover of the jewellery segment of the business, but, there was a substantial reduction in the GP rate which was very abnormal in the normal course of jewellery business. He also pointed out that in the similar trade with almost same turnover; other traders in the market generally have GP around 1% which clearly shows that there was a leakage of revenue in the business of the assessee from the tax angle. It was difficult to quantify the exact figure of leakage, therefore, the AO was right in applying the GP rate of 1% to the turnover of the assessee. The Id. Sr. DR also pointed out that the Id.CIT(A) has granted relief to the assessee without any justified reasoning and basis, therefore, the impugned first appellate order may kindly be set aside by and the order of the AO may be restored.

4. Replying to the above, the Id. Counsel of the assessee drew our attention to the relevant part of the first appellate order and submitted that as per the provisions of section 145(3) of the Act, where there is a doubt regarding the correctness or completeness of books of accounts of the assessee or where the accounting method prescribed under the Act (cash or mercantile) or the income computation and standards prescribed under the Act have not been followed by the assessee, the A.O. may reject the books of accounts of the assessee and resort to best judgment assessment for ascertaining the taxable income of the assessee. The Id. Counsel also pointed out that in the present case, the AO, without complying with the requirement of section 145(3) of the Act, has proceeded to estimate the income of the assessee under best judgment assessment by taking 1% of the total turnover as against 0.41% as declared by the assessee, therefore, the Id.CIT(A) was right in deleting the addition made by the A without any basis. The Id. Counsel finally submitted that the impugned first appellate order may kindly be sustained by dismissing the appeal of the Revenue. The Id. Counsel also placed reliance on the various judgments and submitted that the low gross profit rate can at best be a reason for making inquiry, but, it cannot be the sole basis for making an addition. In this regard, he placed reliance on the judgment of the Hon'ble Madras High Court in the case M/s Teno Doors Private Limited vs. ACIT, 2018 (12) TMI 411-Madras High Court.

5. On careful consideration of the above rival submissions, first of all, we note that the Id.CIT(A) has granted relief to the assessee with the following observations and findings:-

"8. The appellant has also challenged the estimation of the gross profit at 1% by the AO. The appellant in this regard has submitted that the AO has not given any justification for the 1% rate estimated by him. He has simply stated in the assessment order that assesses in similar trade have declared 1% gross profit, however he has not quoted any comparable instance in this regard. Accordingly, the appellant contended that the rate of gross profit charged by the AO is outcome of his surmise and conjectures.

9. On perusal of the facts of the case, observations of the A in the assessment order and submissions made by the appellant, it is noticed that the appellant has substantially increased his turnover of jewellery segment from Rs. 8,23,17,258/- in the earlier year to Rs. 292, 13,49,955/- in the year under consideration. The AO in the assessment order has doubted the profit resulted from the said business strategy on the ground that there is substantial decrease in the profit margin and traders in the similar trade are declaring higher margin of 1%. Here it is noticed that other than these two grounds the AO in the assessment order has not pointed any discrepancy or error in the books of accounts of the appellant neither has he doubted the correctness or completeness of the books.

10. In this regard, I am of the view that the AO was not justified in ignoring the gross profit declared by the appellant without doubting the correctness, completeness and fairness of the books of accounts of the appellant or by finding any defects/discrepancies in the submissions made by the appellant. It is not the case of the AO where the assessee has not maintained the books of accounts or there are discrepancies and errors in the books of accounts due to which completeness and correctness of the books of accounts is in doubt. Also there is no finding of the AO in the assessment order that appellant has failed to submit the requisitioned documentary evidences and explanations with respect to claims made in the return of income arising from books of accounts maintained by him.

11. As per the provisions of section 145(3), where there is doubt regarding the correctness or completeness of books of accounts of the assessee or where the accounting method prescribed under the Act (cash or mercantile) or the income computation and standards prescribed under the Act have not been followed by the assessee, AO may reject the books of accounts of the assessee and resort to best judgment assessment.

12. In the present case of the appellant the AO in the assessment order has not given any finding complying with conditions given in section 145(3) of the Act. Further it is noticed from the paper book submitted by the appellant that the AO has carried out verification of the books of accounts of the appellant by calling in details and explanations with respect to sales, purchases, debtors, creditors, expenses debited in the books of accounts, stock sheet (quantitative detail), VAT return etc. However, he has not pointed out even a single error/discrepancy in the detail and documentary evidences submitted by the appellant. Accordingly, he was not justified in doubting the profit margin declared by the appellant.

13. In view of the facts discussed above that the AO has not pointed out any defect/discrepancies in the books of accounts and there is no concrete basis for estimation of G P rate at 1%, the estimation of G P rate made by the AO is not sustainable and addition on account of same of Rs. 1,72,35,965/- is directed to be deleted."

6. The Assessing Officer noted that during the year the assessee earned business income from whole sale trading of gold & silver bullion, manufacturing and sale of gold ornaments, income from business and income from other source. In para 1 the Assessing Officer noted that AR of assessee attended the case from time to time and filed written submission and supportive documents which were placed on record. In para 2 of the order the Assessing Officer noted that the accounts of assessee were audited and copy of audit report in Form 3CD was furnished during assessment proceedings which were placed on record. Thereafter, in subsequent para the Assessing Officer noted that the GP rate from 9.59% in AY 2014-15 (earlier AY) was significantly reduced to 0.52% in present AY 2015-16 with a higher turnover. The assessee show cause by the Assessing Officer and asked to provide working of GP and NP rate for three items separately viz. silver & gold bullion, manufacturing and sale of gold ornaments. From the reply of assessee the Assessing Officer noticed that for jewellery segment there was reduction in GP rate from 8.59% to 0.41% in present assessment year. The Assessing Officer being not satisfied with the GP rate declared by the assessee estimated the GP rate on jewellery segment @ rate of 1% of turnover in listed of 0.41% declared by the assessee and made impugned addition which was deleted by the Id. CIT(A).

7. From relevant part of first appellate order, we further note that the Id. first appellate authority in para 5 noted the facts of the case and findings recorded by the Assessing Officer and noted that the Assessing Officer being not satisfied by the submission made by the appellant estimated gross profit @ rate of 1% and made addition of Rs. 1,72,35,965/- in the gross profit of jewellery segment on the ground that the reduction in GP rate in comparison to the immediately preceding assessment year 2014-15 is quite significant and abnormal and the Assessing Officer observed that the other assessee in the similar trade have declared GP @ rate of 1% of turnover and he made addition in the hands of assessee.

8. The Id. CIT(A) noted the contention of the appellant and in subsequent para 7 observed that the assessee explaining the reason for steep fall in the GP rate it was submitted that the turnover of assessee during year under consideration has increased from Rs 8.23 cr to 292.13 cr during FY 2014-15 and under business strategy of appellant the assessee increased turnover by reducing the margin so that the total net profit could be increased. The Id. CIT(A) after noting the submissions of the assessee noted that the Assessing Officer was not justified in ignoring the gross profit declared by the appellant without doubting the correctness, completeness & fairness of the books of accounts of appellant by finding any defects/discrepancies in the submissions made by the appellant. The Id. CIT(A) categorically noted that it is not the case of the Assessing Officer that the assessee has not maintained books of accounts or there were

discrepancies and error in the books of accounts and due to which completeness and correctness of the books of accounts was in doubt. It is pertinent to note that the Assessing Officer has not disputed the financial statements and books of accounts of assessee which were duly audited by the competent auditor and there is no finding in the assessment order that the appellant has failed to submitted requisition documentary evidences and explanation with respect to claims made in the return of income arising from books of accounts maintained by him.

9. From the assessment order, we clearly note that the Assessing Officer noted factum of filing of submissions of assessee along with supportive document and also noted that the accounts of assessee were duly audited and copy of audit report in Form 3CD was furnished during assessment proceedings which were taken on record from the assessment order we are unable to see any findings of the Assessing Officer regarding raising any doubt on the completeness or correctness of the books of accounts of assessee or pointing out any defects or discrepancies therein and the Assessing Officer has not invoked provisions of section 145(3) of the Act to reject books of accounts of assessee. The sole ground/allegation taken by the Assessing Officer for enhancing GP rate from 0.41% to 1% of turnover is that there was significant rise in the turnover of jewellery segment but the GP rate was reduced abnormally.

10. It is a well accepted principle tax jurisprudence that the Assessing Officer cannot sit on the arm chair of a businessman assessee to replace his business strategy by his own whims and fancies. When the assessee took decision to reduce GP rate with an intention to fetch high turnover resulting into increase in the total net profit and under this strategy the assessee under took turnover of 34 times in comparison to the immediately preceding year taking sky high increase in the turnover which resulted into reduction of GP rate to 0.41%. From the copy of the three years comparative chart with breakup of jewellery segment, bullion segment and Job work segment it is clear that when the turnover of assessee was less than the GP rate was 8.59% and when the assessee under business strategy increase the turnover to 34 times to Rs 292.13 crore then the GP rate was reduce to 0.41% the GP rate of other segments such as artificial jewellery, semi precious stones and job work also faced marginal changes but the Assessing Officer only noted abnormal fall in GP rate of jewellery without pointing out any defects or discrepancies in the audited books of accounts of assessee and this approach without any other positive material or evidence, only on standalone basis is not correct and justified. In view of foregoing, we are compelled to hold that the Id. CIT(A) was right in deleting addition made by the Assessing Officer without any justified reasoning and cogent basis. Thus, we declined to interfere with the findings arrived by Id. first appellate authority as we are unable to seen any ambiguity, perversity or any

valid reason to interfere with the findings of the Id. CIT(A). Accordingly, grounds of revenue being devoid of merits are dismissed.

11. In the result, the appeal of revenue is dismissed.

Order pronounced in the open court on 02.06.2023.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER
Dated: 02nd June, 2023.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi