

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'SMC-1' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
(THROUGH VIDEO CONFERENCING)

ITA No.2967/DEL/2018

[A.Y 2009-10]

Ram Prakash Rustogi, C/o M/s. Prabhu Dayal Prem Prakash, Shop No.150, Nai Anaj Mandi, Rewari	Vs.	ITO Ward-2 Rewari
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Appellant by : Sh.Rajiv Saxena, Advocate
Sh. Shyam Sunder, Advocate
Respondent by : Sh. R. K. Gupta, Sr. DR

Date of Hearing	:	16.09.2020
Date of Pronouncement	:	17.09.2020

ORDER

PER N. K. BILLAIYA, AM:

1. This appeal by the assessee is preferred against the order of the CIT(A), Rohtak dated 01.02.2018 pertaining to A.Y. 2009-10.
2. Facts on record show that this is the second round of litigation. In the first round when the quarrel travelled up to the Tribunal, the Tribunal vide order dated 14.08.2015 in ITA No.1059/Del/2019 has

restored the appeal to the files of the CIT(A) with a direction to re-examine the dispute with fresh evidences.

3. Pursuant to the directions of the Tribunal the CIT(A) heard the appeal and decided the issue afresh against which the assessee is before me.

4. I find that vide order sheet entry dated 21.08.2019 the Tribunal has asked the DR to call for a remand report from the AO on the details/ documents submitted by the assessee.

5. The first dispute relates to the difference in parties account namely Sultan Singh Dharampal Rs.25834/- and Rishi Bardana Company Rs.5133/-. I find that during the remand proceedings the representative of the assessee withdrew this ground and, therefore, the AO could not make any comment nor could verify the details.

6. Considering the concession given by the assessee before the AO, I do not find any reason to interfere with the findings of the CIT(A) this addition is accordingly sustained and ground No.2 is dismissed.

7. Ground No.3 relates to the addition of Rs.3,52,834/- on account of diversion of income to the following persons :-

1. Smt. Shobha Rustagi Rs.101509/-

2. Smt. Shashi Rustagi Rs.1,15,503/-

3. Smt. Kamlesi Rustagi Rs.135822/-

8. Briefly stated the facts of this issue are that the aforementioned persons were doing business through the assessee and the assessee was

purchasing and selling goods on their behalf. Therefore, whatever commission income earned by these persons was given to them. However, The AO was of the firm belief that the assessee is diverting his profit to his family members and accordingly made the additions. Documentary evidences were furnished by the assessee during the remand proceedings and the AO accepted the transaction with Smt. Shashi and Kamlesh Rustagi. However, in the case of Smt. Shobha Rustagi the AO was of the opinion that only commission income of Rs.27070/- can be considered in her hand and balance of Rs.74439/- pertain to the assessee.

9. Before me the Counsel for the assessee reiterated that these persons are doing business through the assessee in their own name and, therefore, any commission earned by them is their income and not of the assessee. DR supported the findings of the CIT(A).

10. I have given a thoughtful consideration to the underlying facts. I fail to understand why the family members were doing business through the assessee when they could have done the commission business in their own name. The assessee is a simple dealer in grains and obviously does not have any big brand name of his own but simply purchasing and selling grains through “mandi”, the same could have been done by these three persons also. These transactions in the name of the family members of the appellant raise doubts on the genuineness of the transactions.

11. I further fail to understand how the AO has conceded the issue in respect of Smt. Shashi Rustagi and Smt. Kamlesh Rustagi. In my considered opinion the transactions in the name of the family members appear to be sham transaction and is a clear case of the income of the assessee being diverted in the name of the family members. Therefore, I do not have any hesitation in sustaining the addition of Rs.352834/-

12. Ground No.3 is accordingly dismissed.

13. Ground No.4 relates to the addition of Rs.58480/- being the difference in the value of closing stock of Bajra commodity.

14. Facts on record show that the assessee has valued closing stock at the average rate of Rs.750 p. quintals. However, the AO adopted the rate of Rs.936 p. quintal thereby disturbing the method of valuation consistently followed by the assessee from past many years.

15. In my considered opinion the AO should not have disturbed the method of valuation followed by the assessee consistently from past years. Merely because the assessee has not maintained stock register with quality wise details cannot justify the AO in discarding the method of valuation adopted by the assessee consistently.

16. In my considered opinion looking into the nature of the business of the assessee non maintenance of quality wise details is not so fatal to justify the disturbance in the basis of valuation of closing stock. Considering the facts of the case I do not find any merit in this addition and I accordingly direct the AO to delete the addition of Rs.58480/-.

17. Ground No.5 relates to the addition of Rs.93863/- being 10% of the total expenses debited in the P & L account.

18. Underlying facts in this issue are that the assessee could not support the expenditure with proper bills and vouchers and the AO made disallowance of 20% on ad-hoc basis on finding that most of the expenditure were incurred in cash. The CIT(A) restricted the disallowance to 10%.

19. Before me the counsel reiterated what has been stated before the lower authorities and the DR supported the findings of the CIT(A).

20. I have carefully considered the orders of the authorities below. I find that during the assessment proceedings the assessee did not produce complete record and even in the remand proceedings complete bills and vouchers were not produced. In my considered opinion looking to the

nature of expenses, business of the assessee and the place of business, ad-hoc disallowances of 5% should meet the ends of justice, hence, I direct the AO to restrict the disallowance to 5% of the expenditure claimed by the assessee.

21. Ground No.5 is accordingly partly allowed.

22. Ground No.6 and 7 relates to estimation of gross profit. During the course of scrutiny assessment proceedings assessee was asked to furnish the comparative GP and NP rate of last three years alongwith current year. The assessee furnished the details from which the AO noted that for A.Y. 2007-08. The GP rate was 0.98%, A.Y. 2008-09 the GP rate was 1.66% and in the year under consideration i.e. A. Y.2009-10 the GP rate is 1.09%.

23. Taking a leaf out of this the AO adopted the GP rate of the immediately preceding year at 1.66% and made the addition of Rs.206220/-.

24. Assessee carried the matter before the CIT(A) but without any success.

25. Before me the counsel reiterated what has been stated before the lower authorities and DR supported the findings of the AO.

26. I have given a thoughtful consideration to the orders of the authorities below. Merely because there is a slight drop in the GP rate would not justify the addition on this count. The fact of the matter is that the appellant is doing business in food grains, oil feed and other allied goods on commission basis and, therefore, it would be impossible for a business man in this line of trade to match the profitability with preceding years. Moreover in the immediately assessment year 2008-09 the gross turnover of the assessee was Rs. 86.50 lacs which has jumped to 3.21 crores during the year under consideration this also justifies the slight fall in the GP rate. I, therefore, do not find any merit in this addition and accordingly direct the AO to delete the addition of Rs.206220/-.

27. Ground No.6 and 7 taken together are allowed.

28. Ground No.8 relates to the addition Rs.28,560/- on account of alleged interest charged on interest free advances to the family members.

29. During the course of assessment proceedings the AO noticed that the assessee has advanced Rs.150300/-to Pradeep Rustagi and Rs.40,100/- to Neeru Rustagi who happened to be the family members. The AO further found that the assessee has paid interest on unsecured loans and, therefore, charged interest at the rate of 15% par annum on

the aforementioned interest free advances and made the addition of Rs.285600/-.

30. Assessee agitated the matter before the CIT(A) but without any success.

31. Before me the counsel for the assessee stated that the assessee was having sufficient interest free advances to the family members and, therefore, no adverse inference should be drawn.

32. Per contra the DR strongly supported the findings of the AO.

33. I have carefully considered the orders of the authorities below. From the balance sheet I find that the capital account show the balance of Rs.656350/- out of which the assessee has given interest free advances of Rs.190400/-. It is true that the assessee has some unsecured loans on the liability side of his balance sheet, but I find that no interest have been paid by the assessee on the unsecured loans taken by him and only bank interest of Rs.16902/- has been debited to the P & L account. Considering the facts in totality I do not find any merit in this addition and accordingly direct the AO to delete the addition of Rs.28560/-.

34. Ground No.8 is accordingly allowed.

35. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 17.09.2020.

Sd/-
[N. K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 17.09.2020

Neha

Copy forwarded to:

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

Asst. Registrar
ITAT, New Delhi

Date of dictation	17.09.2020
Date on which the typed draft is placed before the dictating Member	17.09.2020
Date on which the typed draft is placed before the Other member	17.09.2020
Date on which the approved draft comes to the Sr.PS/PS	17.09.2020
Date on which the fair order is placed before the Dictating Member for Pronouncement	17.09.2020
Date on which the fair order comes back to the Sr. PS/ PS	17.09.2020
Date on which the final order is uploaded on the website of ITAT	17.09.2020
Date on which the file goes to the Bench Clerk	17.09.2020
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	