

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

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 479/JP/2019
निर्धारण वर्ष / Assessment Year : 2015-16

Assistant Commissioner of Income Tax, Circle-01, Kota	बनाम Vs.	Shiv Edibles Ltd. 237/A, Talwandi, Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAICS0274K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Sh. A. S. Nehra (Addl. CIT)
निर्धारिती की ओर से / Assessee by : Sh. Mahendra Gargieya (Adv.)

सुनवाई की तारीख / Date of Hearing : 23/06/2021
उद्घोषणा की तारीख / Date of Pronouncement: 14/07/2021

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This is an appeal filed by the Revenue against the order of Id. CIT(A), Kota dated 11.01.2019 for A.Y 2015-16.

2. At the outset, it is noted that the matter was disposed off by the Co-ordinate Bench vide its order dated 09.12.2019. Subsequently, the assessee moved an miscellaneous petition and the same was disposed off by the Co-ordinate Bench in MA No. 66/JP/2020 dated 05/04/2021 and the relevant finding of the Co-ordinate Bench are contained at para 9 of its order which reads as under:-

"9. In view of the aforesaid discussions and in the entirety of facts and circumstances of the case, we deem it appropriate that

the order so passed by the Coordinate Bench in ITA No. 479/JP/2019 be recalled and matter be heard afresh for the purposes of adjudication of ground of appeal taken by the Revenue relating to deletion of addition of Rs 1,88,80,279 out of total addition of Rs 2,28,55,077 after providing opportunity to both the parties to present its case."

3. The appeal of the Revenue was thus recalled for a fresh hearing and accordingly, the same has come up for adjudication before us.

4. The Revenue in its appeal has taken the following grounds of appeal.

"1. On the facts and in the circumstances of case, the Id. CIT(A) has erred in deleting addition of Rs. 1,88,80,279/- out of total addition of Rs. 2,28,55,077/- made by the AO after rejecting of books of accounts u/s 145(3) without appreciating the facts discussed by the AO in the assessment order."

5. Briefly the facts of the case are that the assessee company is engaged in the business of processing of oil seeds and refining of crude oil for edible use. The assessee has filed its return of income on 30th September, 2015 declaring total income of Rs. 4,26,55,330/-. During the scrutiny assessment, the AO noted that the assessee has shown GP at 2.57% on total turnover of Rs. 496,84,95,171/- as against GP at 3.16% declared for the assessment year 2014-15. The AO proceeded to examine the reasons of low GP declared by the assessee for the year under consideration. He has also issued show cause notice to the assessee asking as to why the books of account of the assessee should not be rejected. Finally, the AO rejected the books of account of the assessee on

the ground that the assessee has not maintained quality-wise stock register and consequently the value of the closing stock cannot be ascertained correctly and genuineness of the profit shown by the assessee in its books of account are not verifiable. The AO has also cited the reasons for rejection of books of account that various expenses claimed by the assessee are not subject to verification for want of proper vouchers and also due to cash payments of these expenses. After rejection of books of account, the AO has estimated the income of the assessee by applying average GP of three years which includes preceding two years and current year. Thus applying the average GP @ 3.03%, the AO has estimated the income of the assessee resulting in an addition of Rs. 2,28,55,077/-. The assessee challenged the action of the AO before the Id. CIT (A). So far as the issue of rejection of books of account, the Id. CIT (A) has upheld the action of the AO rejecting the books of account under section 145(3) of the Act. As regards the trading addition, the Id. CIT (A) has not accepted the estimation of income by the AO by applying GP rate at 3.03% and accepted the GP declared by the assessee as reasonable except some addition on account of discrepancies pointed out in the accounts which have resulted in addition @ 0.08%. Thus the Id. CIT (A) has applied the GP at 2.65% as against the declared GP of 2.57% of the assessee. Consequently, the Id CIT(A) has made the addition to the extent of Rs. 39,74,797/- as against the addition of Rs. 2,28,55,077/- made by the AO. Aggrieved by the impugned order of the Id. CIT (A), the Revenue has filed the present appeal.

6. Before us, the Id. D/R has submitted that after rejection of books of account under section 145(3), the AO is required to frame the assessment on the basis of best judgment and estimate the income of the assessee on some proper and reasonable basis. He has further contended that it is

settled proposition of law as held by the Courts that the past history of GP declared by the assessee is reasonable and proper guidance for estimating the income. In support of his contention, he has relied upon the decision of Hon'ble Jurisdictional High Court in case of CIT vs. Gupta KN Constructions, 371 ITR 325 (Raj.) and Clarity Gold Pvt. Ltd. vs. PCIT, 102 taxmann.com 421. It was submitted that the GP rate adopted by the AO for estimation of income is very reasonable and proper. He has referred to the comparative details of GP declared by the assessee for last 3 years and submitted that if the average of the last 3 years is computed, it will be 3.03% which has been duly applied by the AO as against 2.57% declared by the assessee. Thus the Id. D/R has contended that the Id. CIT (A) has reduced the GP to 2.65% as against GP of 3.03% determined by the AO and deleted the addition of Rs 1,88,80,279/- without giving any reason and basis for reducing the GP to 2.65% and therefore, the order of the Id CIT(A) may be set-aside and the order of the AO be confirmed.

7. Per contra, the Id. A/R of the assessee has submitted that even after rejection of books of account under section 145(3), it is not mandatory on the part of the AO to make the trading addition but the AO has to make an honest estimation of income keeping in view the material available on record, local knowledge and repute of the assessee. In support of his contention, he has relied upon the decision of Hon'ble Jurisdictional High Court in case of CIT vs. Gotan Lime Khaniz Udyog, 256 ITR 243 (Raj.). Thus the Id. A/R has submitted that mere rejection of books of account need not necessarily lead to addition to the returned income. The Id. A/R has further contended that there are various reasons for declaring low GP as it has been consistently declining for last few years due to the market conditions and fluctuations of price of raw material as well as finished goods. He has further contended that due to recession in the international

market and sluggish economic conditions, there is fall in gross margin of agriculture products which has resulted in decline in GP rate. Thus the Id. A/R has contended that without considering the surrounding circumstances and reasons for decline in the GP rate, the addition made by the AO is highly arbitrary and not justified. The sluggish demand of the products is faced by the industry as a whole where the demand from the foreign market is substantially reduced. Therefore, under these economic conditions and background, there is a drop in the turnover of the assessee as well as the GP. On the contrary, there is an increase in the cost of raw material and cost of manufacturing in comparison to the preceding years which has directly affected the reduction of GP for the year under consideration and our reference was drawn to a chart submitted as part of written submissions (Para 7.2). Thus the Id. A/R has submitted that the Id. CIT (A) has rightly appreciated the reasons for decline in the GP rate by giving a clear finding and has deleted the addition of Rs 1,88,80,279/- and therefore, the order of the Id CIT(A) be confirmed.

8. It was further submitted that the Tribunal had earlier decided the instant appeal of the Revenue vide its order dated 09.12.19, however, the same was thereafter recalled vide their subsequent order dated 05.04.2021 in MA no. 66/JP/2020. In the misc application, basically two issues were involved. Firstly, the reasons behind lower GP rate and secondly, applicability of the two decisions of the Hon'ble Rajasthan High Court. Regarding reasons behind decline in gross profit for the year under consideration, it was reiterated that the same was on account of decrease in the sales realization as compared to last year and the additional cost of Husk incurred this year, which is also explained by way of a chart placed on record showing the figures in absolute terms based on the Tax Audit Report and Audited Accounts. It was submitted that there has been a

decrease in the sales realization to the extent of Rs 13.92 crore. However, since there was also a reduction in the purchase cost by Rs 11.67 crore, after reducing the same, there is still a net reduction in the sales realization by Rs 2.23 crore which explains the fall in GP of 0.45% (out of 0.60%) declared this year. That apart, this year the assessee had also incurred additional cost of Rs 1.64 crore on Husk which has further resulted in the decrease of the GP and considering this total reduction comes to 0.78%. It may be clarified that the figures of cost and sale price have been taken on average basis and some other minor items were also there (not considered here being not material) hence, this broadly and sufficiently explains the entire fall of 0.60% in the GP rate this year. This strongly supports the contention that the past history and in particular the last year results, was not comparable and therefore the AO seriously erred in taking an average of the last years even though not exactly comparable.

9. Regarding the two decisions of the Hon'ble Rajasthan High Court in case of CIT vs. Gupta K N Constructions, 371 ITR 325 (Raj.) and Clarity Gold Pvt. Ltd. vs. Principal CIT 102 taxmnn.com 421(Raj), it was submitted that no doubt, the past history is also one of the guiding factor to be considered in the cases of making a fair estimation but at the same time, firstly, one must ensure that past history is similar and not distinguishable, secondly, the inference there from has to be drawn and applied honestly while considering the past history (which has not been done in this case) and thirdly, if there are other relevant considerations viz. comparable case (similar trader/businessman) or the knowledge of the industry, having a direct impact over the profitability, such factors must also be considered for making a fair estimation. Thus, the Id. AO could not and should not have confined himself to the past history alone. In the aforesaid two decisions, the Hon'ble High Court has never said that

despite their being a change in the facts & circumstances, even then the AO would be justified taking insight from the past history alone. The Hon'ble High Court has merely held that in the case of estimation, one has to consider the past history of the assessee or the history of the similarly situated businessman/traders, whereas, in the present case, it is an admitted fact on record that there was an additional item in the nature of direct cost incurred on husk as explained earlier which makes the past years results not exactly comparable. Moreover, there was a continuous decline in the GP and NP rate because of the world-wide recession in the trade. These facts have clearly made the current year to be completely distinguishable and non-comparable with the past history of the assessee. This is evident from the observation of the Hon'ble Rajasthan High Court in the case of Gupta K N Constructions (supra) in para 9, reading as under:

".....but in a case where the provisions of section 145(3) are invoked, one has to consider either the past history of the assessee or history of similarly situated other businessmen/ traders." The assessment order is totally silent about similarly situated other traders/businessmen showing the net profit over and above what the assessee had shown and compared by the Assessing Officer and no evidence has been brought on record as to how the Assessing Officer was justified in applying the net profit rate at 13.7 per cent....."

Again thereafter the Hon'ble Rajasthan High Court in para 18 of the above decision, referred to the case of CIT v. Inani Marbles (P.) Ltd. [2009] 316 ITR 125/ [2008] 175 Taxman 56 (Raj.) and also the Delhi High Court in the case of Action Electricals v. Dy. CIT [2002] 258 ITR 188/ [2003] 132 Taxman 640 and thereafter observed that:

"We have already referred to hereinabove that the Assessing Officer has failed to bring on record any comparable case so as to justify any estimation/addition...."

10. It was submitted that similar is the view taken by the Hon'ble Rajasthan High Court in the case of Clarity Gold (Supra). It is well settled that only a similar can be compared with the similar. It is said that an apple can be compared with an apple but not with an orange. The same principle is applied on fair estimation as well. Further, reliance was placed on the commentary of Chaturvedi & Pithisaria's, Seventh Edition, 6th Volume, Pg no. 9065, which reads as under:

"Other things being equal, profits estimated during an earlier year may, in a proper case, guide the estimation of profits of a subsequent year. But the earlier estimate can have relevance only if the conditions in which the business activity of the later period is conducted are so similar to those of earlier period that it would be reasonable to infer that the proportion between the turnover and the profits remains unaltered [P.(Venkanna v. CIT, (1969) 72 ITR 328, 330 (Mys). Also see, Steelsworth Ltd. V. CIT, (1968) 69 ITR 366 (Assam); Gopinath Naik v. CIT, (1936) 4 ITR 1, 23 (All); CIT v. Kameshwar Singh, (1933) 1 ITR 94, 106 (PC); Diwan Chand v. CIT, (1934) 2 ITR 382 (Lah); Badri Shah Sohan Lal v. CIT, (1936) 4 ITR 387 (Lah); Paras Das Munna Lal v. CIT, (1937) 5 ITR 523 (Lah); CIT v. Abdul Aziz Sahib, (1939) 7 ITR 647 (Mad); Ganeshi Lal Chhappan Lal v. CIT, (1941) 9 ITR 81 (All)].

11. In the instant case, it was submitted that it cannot be denied that the assessee did submit before the AO that due to recession in the international market and sluggish economic conditions, there was an

overall continuous fall in the gross margins of the agricultural products. In addition to the extra cost of husk, otherwise also the sales realization, as compared to the past, stood reduced (as already demonstrated above). The Id. AO, on one hand conveniently ignored the distinguishing features but also failed to bring on record any comparable case of any other similarly situated businessman/trader. The Id. CIT (A) rightly took note of these changed facts and circumstances of the case and the findings of the Id CIT(A) are just and proper which may be confirmed and the appeal of revenue be dismissed.

12. We have heard the rival submissions and perused the material available on record. The issue of rejection of books of account by invoking the provisions of section 145(3) by the AO is not before us in the present appeal of the Revenue as the Id. CIT (A) has upheld the rejection of books of account. Further, we find that the Id. CIT (A) while sustaining the part addition has given the finding that it would consider an increase in the GP just on the basis of discrepancies pointed out in the accounts and not for any other reasons up by 0.08%. Once the said finding of the Id. CIT (A) is not in dispute, then the discrepancy which was detected by the AO and also taken as the basis of increasing the GP by the Id. CIT (A) is not under challenge by the assessee then the discrepancies as pointed out by the AO and Id. CIT (A) are sufficient for leading to the conclusion that the book results of the assessee are not presenting a correct state of affairs and business results. Since the issue is not involved in this appeal therefore, we do not go into the merits of the rejection of books of account. Thus after the rejection of books of account, the AO is duty bound to frame the assessment on best judgment under the provisions of section 145(3) read with section 144 of the IT Act.

13. It is settled proposition of law that the best judgment assessment has to be framed by considering the material on record and the income has to be estimated on a reasonable and proper basis. The Courts have held that either the past history of the assessee or history of similar situated assessee in the same line of business could be considered as a reasonable and proper guidance for estimation of income. Further, the Courts have also held that the past history can have relevance where the conditions in which the business activity of the later period is conducted are similar to those of earlier period in which case it would be reasonable to infer that the proportion between the turnover and profits remains unaltered. In other words, the test of comparability has to be applied either vis-à-vis assessee's own past history or past history of similar situated assessee on the assumption that there was no significant changes and the variations in the business conditions and the environment in which the business was being conducted. Where there are significant changes in the business conditions and the environment vis-à-vis past years, the past history may not provide an appropriate benchmark and in such situations, it may be more appropriate to consider the current year profitability data of other assesseees operating in similar line of business and in the similar changed business conditions and environment as that of the assessee and compare with the assessee's current year profitability figures and determine appropriate variation. The same is also in line with transfer pricing methodology which though relevant for international transactions and specified domestic transactions but the broad principles therein can be equally applied in situations of estimation of profits on a reasonable basis.

14. In the case of assessee, the AO has taken the average GP by considering the GP declared by the assessee for the past assessment years 2013-14 to 15-16 as under :-

A.Y.	G.P. rate
2013-14	3.38%
2014-15	3.16%
2015-16	2.57%
Total	9.11
Average 9.11/3	3.03%

15. Thus the AO has worked out the GP for 3 years including the year under consideration which clearly defies the general principle of comparability with past years results wherein the current year GP has to be compared with average GP of past years only which has attained finality. Further, there is no finding given by the AO as to how the earlier year results are comparable in the sense whether the operations in the earlier years were conducted under similar business conditions and environment as in the current year. The assessee in his submissions before the AO has stated that due to sluggish economic conditions, there is continuous fall in gross margins over the past years which have continued during the year resulting in reduced gross margins. Here, it is relevant to note that the AO has accepted declared gross profit of 3.38% (with slight modification) in A.Y 2013-14 and 3.16% in A.Y 2014-15 demonstrating the sluggish economic conditions as compared to earlier years gross profit of 4.56% in A.Y 2012-13 and 4.96% in A.Y 2011-12 but at the same time, has not accepted gross profit of 2.57% for the year under consideration which clearly shows inconsistency on part of the AO in terms of comparability of past year results without factoring in sluggish business environment as duly pointed out by the assessee. Another distinguishing feature, which we have noticed, is increase in average cost of purchase by Rs 19.47/- mainly on account of purchase of soya husk for

the first time during the year under consideration which again makes the past years data not exactly comparable. We therefore, find that the said approach of the AO in blindly applying the past year history cannot be held to be reasonable and appropriate for estimating the profits. Further, there is no discussion and finding of the AO regarding past years or even current year data of other assessees in the similar line of business operating under same and/or similar business environment with which the results of the assessee could have been compared.

16. The Id. CIT (A) while deleting the addition made by the AO has however appreciated the facts of the case in right perspective given a similar finding. He held that while the assessee's G.P. rate is lower as compared to 2 preceding years, there is also a substantial decrease in turnover as compared to the immediately preceding year. He held that there are cycles of ups and downs in various sectors of economy and it is important for the AO to examine this issue. A fall in GP for the assessee may be coupled with a general recession in that sector and hence profits of all the peers may have dipped. Similarly, the year may represent an exceptional year wherein all the peers have made exceptional profits. Hence, while examining gross margins, the AO should not only compare the past margins of the assessee but also the current year margins of other assessees engaged in similar business. This would give an insight into the actual profit margins during the year under reference and would be a correct guide for estimation of profits. He held that no business can have a minimum threshold G.P every year just to satisfy the whims of the Assessing Officer and the working of the A.O. is more theoretical and mathematical than cogent or real. He accordingly didn't agree with the estimated increase in G.P. rate to 3.03% done by the AO as against

2.57% shown by the assessee. We see no justifiable reasons in interfering with the said findings of the Id CIT(A).

17. In view of the aforesaid discussions and in the entirety of facts and circumstances, we upheld the order of the Id CIT(A) and ground of appeal so taken by the Revenue is dismissed.

In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court on 14/07/2021.

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाई)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 14/07/2021

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- ACIT, Circle- 01, Kota
2. प्रत्यर्थी / The Respondent- Shiv Edibles Ltd, Kota
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. 479/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar