

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F' : NEW DELHI

BEFORE SHRI G.D.AGRAWAL, VICE PRESIDENT AND
SHRI RAJPAL YADAV, JUDICIAL MEMBER

ITA No.4126/Del/2010
Assessment Year : 2007-08

Shri Prem Chand,
10519/1, Gali No.4,
Motia Khan, Paharganj,
New Delhi – 110 055.
PAN : ACQPC0858A.
(Appellant)

Vs. Income Tax Officer,
Ward-39(4),
New Delhi.

(Respondent)

Appellant by : Shri Salil Agarwal, Advocate.
Respondent by : Shri J.S.Minshas, DR.

ORDER

PER G.D.AGRAWAL, VP :

This appeal by the assessee is directed against the order of learned CIT(A)-XXVIII, New Delhi dated 29th June, 2010 for the AY 2007-08.

2. In his appeal, as many as twelve grounds are raised by the assessee. However, at the time of hearing before us, it is stated by the learned counsel that the major dispute in this appeal is with regard to the addition made under Section 68 of the Income-tax Act, 1961 amounting to ₹72,00,500/- and addition on account of low gross profit amounting to ₹4,66,500/-. He stated that during the course of assessment proceedings on 24.12.2009, the Assessing Officer asked the assessee to produce all the creditors on 29.12.2009 alongwith their books of account, bank statements and other documentary evidence in support of their having given loan to the assessee. That the time of just less than a week allowed by the Assessing Officer was inadequate

to produce the creditors. He submitted that if the matter is set aside, the assessee is ready to produce the creditors before the Assessing Officer.

3. With regard to the addition for gross profit also, the learned counsel submitted that the Assessing Officer has not properly appreciated the facts. He also submitted that the factual finding of the Assessing Officer with regard to sharp decline in the gross profit rate is incorrect. The learned counsel stated that if a chance is given to the assessee, he will be able to bring the correct facts on record before the Assessing Officer and establish that the gross profit disclosed by the assessee is reasonable and that the assessee has maintained regular and proper books of account which should be accepted.

4. The learned DR, on the other hand, relied upon the orders of authorities below and stated that adequate opportunities were allowed to the assessee and, therefore, the additions made by the Assessing Officer and sustained by learned CIT(A) should be sustained.

5. We have carefully considered the arguments of both the sides and perused the material placed before us. The major addition is with regard to cash credit. The relevant finding of the Assessing Officer at page 3 of the assessment order reads as under:-

“Therefore, now the onus was on the assessee to prove the genuineness and existence of the alleged cash creditors M/s Garg Associates, Shri Umesh Garg, and M/s Sugandh Spices. The assessee was therefore, required on 24.12.2009 to produce all these three parties on 29.12.2009 and again on 30.12.2009 along with their books of accounts, bank statements and other

documentary evidence in support of their having given loan to Shri Prem Chand. However, the assessee failed to produce the above mentioned alleged cash creditors and in turn failed to prove the genuineness and existence of the alleged cash creditors M/s Garg Associates, Shri Umesh Garg, and M/s Sugandh Spices.”

6. From the above, it is evident that on 24.12.2009, the Assessing Officer asked the assessee to produce the creditors on 29.12.2009 and again on 30.12.2009. Thus, the total time allowed by the Assessing Officer is only six days. In our opinion, the same cannot be said to be an adequate opportunity.

7. With regard to the trading addition of ₹4,66,500/-, the finding of the Assessing Officer is as under:-

“It is noticed that the average GP rate varies from 3.7% in February, 2007 to 15% in November, 2006. The abnormal variation in the GP rate within the current year, sharp decline in GP rate from 15.34% in the previous year to 8.1% in the current year and the fact that complete books of accounts were not produced by the assessee is a valid reason for rejecting the trading results shown by the assessee. Taking into account all the above mentioned facts it will be justifiable to apply GP rate of 11.51% by increasing the GP rate as shown by 3.5%. Therefore, a trading addition of Rs.4,66,500/- is to be made to the declared income of the assessee on account of showing low GP rate, since the assessee has concealed particulars of income on furnished inaccurate particulars of his income in terms of section 271(1)(c) of the Income Tax Act relating

the trading results of his business, it is held that it is a fit case for imposing penalty u/s 271(1)(c) of the Income Tax Act, 1961."

8. From the above, it is evident that the Assessing Officer made the addition merely on the ground of low gross profit rate. In our opinion, the low gross profit rate can be a reason for making an enquiry but, it cannot be the sole basis for making the addition. The trading result can be rejected only if the condition prescribed under Section 145 for the rejection of books of account or the method of accounting is fulfilled. The Assessing Officer has not recorded the finding that the books of account of the assessee are required to be rejected in terms of Section 145. However, since we are setting aside the issue relating to cash credit, we deem it proper to set aside the order of the Assessing Officer with regard to gross profit addition also. The Assessing Officer will examine the assessee's books of account and if he finds that the books are liable to be rejected as per the provisions of Section 145, then only, he will proceed to reject the trading result and estimate the gross profit at a reasonable and fair rate. Needless to mention that the Assessing Officer will allow adequate opportunity to the assessee of being heard.

9. In the result, the assessee's appeal is deemed to be allowed for statistical purposes.

Decision pronounced in the open Court on 31st August, 2012.

Sd/-

**(RAJPAL YADAV)
JUDICIAL MEMBER**

Sd/-

**(G.D.AGRAWAL)
VICE PRESIDENT**

Dated : 31.08.2012

VK.

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1. Appellant : **Shri Prem Chand,**
10519/1, Gali No.4,
Motia Khan, Paharganj,
New Delhi – 110 055.
2. Respondent : **Income Tax Officer,**
Ward-39(4), New Delhi.
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar