

AO cannot take the position of business man to ascertain GP ratio

The ITAT, New Delhi in ***The ACIT, Circle-47(1), New Delhi v. Ashish Bansal [ITA No.7427/Del/2018 dated June 2, 2023]*** dismissed the Appeal of the Revenue Department and held that the Commissioner has correctly deleted the addition made by the Assessing Officer who merely by comparing industry gross margin and assessee's gross margin added the differential margin to the income of the assessee without analysing business strategy of the assessee.

Facts

Ashish Bansal ("**the Respondent**") is engaged in the business of wholesale trading of gold and silver bullion, manufacturing and selling gold and gold made ornaments. For the Assessment Year 2015-16 the gross profit rate ("**GP Rate**") of Respondent reduced to 0.41% as compared to GP Rate of 8.59% in the Assessment Year 2014-15, while the turnover has increased from INR 8.23 crores to INR 292 crores in Assessment year 2015-16 when compared to Assessment year 2014-15. The Assessing Officer ("**the AO**") issued a Show Cause Notice ("**SCN**") ordering to provide separate working of Gross Profit, Net Profit of silver, gold bullion and manufacture of gold ornaments.

The Respondent in its reply *inter alia* stated that the reason for steep fall in his GP rate was due to change in business strategy by decreasing Gross margin which resulted in higher turnover.

The AO was not satisfied with the GP Rate declared by the Respondent and made addition of INR 1,72,35,965/- by taking GP Rate as 1% instead of 0.41%, adjusting it with the industry Gross margin.

Aggrieved by addition made by the AO, the Respondent filed an appeal before the Commissioner of Income Tax (Appeal) ("**CITA**") who vide Order dated August 30, 2018 ("**the**

Impugned Order”) deleted the addition made by the AO, without doubting the correctness, completeness and fairness of the books of the Respondent.

Aggrieved by the Impugned Order the Revenue Department filed an appeal before the ITAT.

Issue:

Whether the AO has power to make addition in income of the Respondent by best judgment method without understanding the business strategy of the Respondent?

Held:

The ITAT, New Delhi in ***ITA No.7427/Del/2018*** held as under:

- Stated that, the AO has not pointed out any defects or discrepancies in the audited books of accounts and has only on the basis of the reduction in GP rate made addition of INR 1,72,35,965/- in income of the Respondent.
- Observed that, it is well accepted principle of tax jurisprudence that the AO cannot sit on the armchair of the businessman to replace his business strategy by his own whims and fancies.
- Noted that, it was the Respondent’s business decision to reduce the GP rate with an intention to fetch high turnover resulting into increase in the total net profit.
- Held that, the CIT(A) vide the Impugned Order has correctly deleted the addition made by the AO of INR 1,72,35,965/- to the income of the Respondent.
- Dismissed the Appeal of the Revenue.

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