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

श्री कुल भारत, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI KUL BHARAT, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 963/JP/2016
निर्धारण वर्ष/Assessment Year : 2012-13

Assistant Commissioner of Income Tax, Circle-4, Jaipur.	बनाम Vs.	M/s Nirmal Glasstech Industries, F-370, Road No. 9F, VKI, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAGFN 8138 G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

प्रत्याक्षेपण/C.O. No. 46/JP/2016
(Arising out of आयकर अपील सं./ITA No. 963/JP/2016)

M/s Nirmal Glasstech Industries, F-370, Road No. 9F, VKI, Jaipur.	बनाम Vs.	Assistant Commissioner of Income Tax, Circle-4, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAGFN 8138 G		
प्रत्याक्षेपक/Objector		प्रत्यर्थी/Respondent

राजस्व की ओर से/ Revenue by : Shri R.A. Verma (Addl.CIT)
निर्धारिती की ओर से/ Assessee by : Shri P.C. Parwal (CA)

सुनवाई की तारीख/ Date of Hearing : 18/04/2017
उदघोषणा की तारीख/ Date of Pronouncement : 21/04/2017

आदेश/ ORDER

PER: KUL BHARAT, J.M.

ITA No. 963/JP/2016 filed by the revenue and C.O. No. 46/JP/2016 filed by the assessee arise against the order dated 22/08/2016 passed by the ld. CIT(A)-2, Jaipur for the A.Y. 2012-13.

2. The appeal of the revenue and the assessee's C.O. are being heard together and for the sake of convenience and brevity, a common order is being passed.

3. First we take revenue's appeal in ITA No. 963/JP/2016, wherein the revenue has taken only one effective ground of appeal, which is as under:-

> *"(i) Whether on the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs.99,48,209/- U/s 68 of the Act."*

4. Briefly stated facts of the case are that the case of the assessee was picked up for scrutiny assessment and the assessment U/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as the Act) was framed vide order dated 26/3/2015. While framing the assessment, the Assessing Officer made addition on account of disallowance of interest at Rs. 8,15,533/-, addition U/s 68 of the Act at Rs. 99,48,209/-, lump sum disallowance out of expenses at Rs. 3,00,000/- and disallowance of deduction claimed U/s 80IB of the Act at Rs. 7,23,299/-.

5. Being aggrieved by the order of the Assessing Officer, the assessee carried the matter before the ld. CIT(A), who after considering the submissions, partly allowed the appeal. While partly allowing the appeal, the ld. CIT(A) deleted the addition made by invoking the provisions of

Section 68 of the Act. However, confirmed the addition made on account of deduction U/s 80IB of the Act and restricted the disallowance of Rs. 2.00 lacs out of Rs. 3.00 lacs as made on disallowance of lump sum trading addition.

6. Now the revenue is in appeal and the assessee is in C.O. before us. The ld Sr.DR has supported the order of the Assessing Officer and vehemently argued that the ld. CIT(A) was not justified in deleting the addition. He submitted that as per the certificate of the banker, the amount was received by the assessee. He submitted that there is no business expediency whereby Mr. Nirmal Mundra might have given financial assistance to the assessee firm.

7. On the contrary, the ld AR Shri P.C. Parwal has vehemently supported the order of the ld. CIT(A) and reiterated the submissions as made in the written brief. Ld. Counsel submitted that the Assessing Officer has grossly erred in treating the transaction as belonging to the assessee. He submitted that the Assessing Officer disregarded the facts and well established accounting practices. He submitted that the capital account is under the ownership of the partner. If the partner has brought in fresh capital by raising funds from third party for which cheque was issued in the name of the firm, the partner's capital account would be credited and

the money shall brought to the bank of the firm. He submitted that there is no requirement of law or accounting principles and practices that the money should first come in the bank account of the partner and then from that bank account to the bank account of the partnership firm. He submitted that to save time and inconvenience, the partner was well within his right to make arrangement for direct remittance of the funds to the bank account of the partnership firm. He submitted that the fact that the amount is not the undisclosed income of the firm and is a foreign remittance received from M/s Gems Exports Ltd. on behalf of Nirmal Mundra is verifiable from the confirmation of Mrs. Mukesh Mundra on behalf of M/s Gems Exports Limited. He submitted that the ld. CIT(A) has rightly deleted the addition.

8. We have heard the rival contentions of both the parties, perused the material available on the record and also gone through the orders of the authorities below. We find that the ld. CIT(A) has given a finding of fact in paragraph No. 3.3 of his order, which is as under:-

> "3.3 I have considered the facts of the case, assessment order and the written submissions of the appellant. The Assessing Officer noticed that an amount of Rs.99,48,209/- has been added to the partners capital account in the firm. The Authorized Representative stated the same to have been received from M/s Gems Exports Ltd., Hong Kong which was a family concern of the partner's aunty Mrs. Mukesh Mundra, a confirmation from M/s Gems Exports Ltd., Hong Kong was filed. The Assessing Officer objected to the same being on plain paper

and signed by Mrs. Mukesh Mundra whereas the name printed on the same was of Shri Ashok Mundra. In response to further queries by the Assessing Officer, the assessee submitted foreign inward remittance certificate from the bank, the Assessing Officer did not accept the same holding that it was issued by the Central Bank of India and the beneficiary was M/s Nirmal Glasstech and not Shri Nirmal Mundra. Further, the Assessing Officer held that the Authorized Representative did not furnish either the balance sheet or the cash flow and only furnished an affidavit stating that the amount was received as financial assistance. It was concluded that the addition made in the capital account of Shri Nirmal Mundra is the unaccounted money of the assessee firm M/s Nirmal Glasstech Pvt. Ltd. and the same was treated as the income of the assessee under section 68 of the I.T. Act, 1961. It was further held that since nothing has been mentioned regarding interest the same can also be treated as gift received and can be added as the income of the assessee under section 56 of the I.T. Act, 1961.

In the present proceedings, the Authorized Representative submitted that Shri Nirmal Mundra partner of the assessee firm received the sum as financial assistance from M/s Gems Exports Ltd. Hong Kong, a family concern of his aunt, Mrs. Mukesh Mundra. It was also submitted that the assessee has already filed confirmation of financial assistance received and FIRC certificate as also an affidavit of Shri Nirmal Mundra stating that the same amount was received as financial assistance. Since the affidavit had not been accepted by the Assessing Officer as the balance sheet of M/s Gems Exports Ltd. had not been furnished, the Authorized Representative in the present proceedings, moved an application under rule 46A to admit additional evidence in the form of the balance sheet of M/s Gems Export Ltd. and the outward remittance advice issued by the HSBC bank. Considering the circumstances, the additional evidence were admitted and forwarded to the Assessing Officer for his comments. In the remand report received on 23.03.2016, relevant paras reproduced below, wherein he has rejected the documents stating that the same are not audited and authenticated and hence veracity cannot be ascertained.

> "Without prejudice to above, it is submitted that the assessee was provided sufficient opportunity to produce income details of M/s Gems Exports Limited, Hong Kong but the assessee failed to submit any details. Now the assessee has submitted details/ documents before your goodself in this matter it is submitted that these documents are not authenticated by anyone. These are not an audited documents. Veracity of these documents cannot be ascertained as inquiry regarding foreign companies can only be carried out by the DIT, FT & TR, New Delhi. As Hong Kong is not having DTAA with India therefore, any enquiry from Honk Kong is not possible.
>
> Under these circumstances it is submitted that these are only typed papers, not authenticated by anybody and not verifiable from any document, therefore, cannot be accepted. Under these circumstances the additions made by the AO deserve to be upheld.

It is seen that an amount of Rs. 17,31,600/- HKD has been sent to M/s Nirmal Glasstech as per the outward remittance advice issued by HSBC bank with transaction date 27.05.2011 and payment being received by Central Bank of India on 01.06.2011, as per details furnished by the assessee. Further, the accounts of M/s Gems Export Ltd. showing a turnover of HKD Rs.21,37,76,249/- have also been submitted and the amount appears in the balance sheet as 'amount due to a director'. In the remittance certificate of the bank, the purpose has been shown as financial assistance and it was submitted that this financial assistance is interest free and has not been repaid so far. Thus, the documents evidencing the remittance include the foreign inward remittance certificate of HSBC Bank, remittance advice and certificate from Central Bank of India where the amount has been received containing the entire details of the transaction.

The documents in respect of the party forwarding this financial assistance include confirmation of Mrs. Mukesh Mundra, affidavit of Nirmal Mundra, balance sheet of Gem Export Ltd. duly showing the entry and bank account of Gem Export Ltd. In view of the details as above which support the creditworthiness and the details of transaction, the amount received as financial assistance by Shri Nirmal Mundra appears to be genuine. The Assessing Officer disallowed the amount in absence of further details even though the bank certificate and confirmation had been provided to him in the

assessment proceedings and the details of M/s Gem Exports Ltd. and bank details during the remand proceedings. In view of the above details, the amount does not appear to be the undisclosed income of the firm itself as opined by the Assessing Officer. In view of the above, the addition made is deleted. This ground of appeal is allowed."

The above finding on fact is not rebutted by the revenue by placing any contrary material on record. We find merit into the contentions of the ld. Counsel of the assessee that the partner can bring fresh capital by raising funds from third party directly to the account of the firm. Therefore, we do not see any reason to interfere into the order of the ld. CIT(A) and the same is hereby confirmed. The ground raised in the revenue's appeal is dismissed.

9. Now we take C.O. of the assessee being C.O. No. 46/JP/2016. In the C.O., the assessee has raised following grounds of appeal:

"1. The ld. CIT(A) has erred on facts and in law in confirming the disallowance of claim of deduction U/s 8-IB of Rs. 7,23,299/-.

2. The ld. CIT(A) has erred on facts and in law in confirming the lump sum trading addition of Rs. 2,00,000/- to the trading results declared by the assessee."

10. Ground No. 1 of the C.O. is against disallowance U/s 80IB of the Act. The ld AR of the assessee has reiterated the submissions as made in the written submissions. The ld AR has submitted as under:-

1. It is submitted that the lower authorities have erred in not correctly interpreting the provisions of sub-section (1) and sub-section (3) of section 80-IB. It is an admitted fact that production or manufacturing began in November 2001 falling in financial year 2001-02.

2. 'Initial assessment year' as per sub-section (14) means the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce article or things. Going by this definition, the initial assessment year in the case of the appellant firm would be 2002-03. However, it does not disentitle the appellant to claim deduction u/s 80-IB(3) of the Act in assessment year 2012-13 for the following reasons:-

   (i) It is laid down in sub-section (1) that deduction shall be allowed **for such number of assessment years as specified in section 80-IB** (emphasis added). Sub-section (3) lays down that the amount of deduction shall be for a period of 10 consecutive assessment years beginning with the initial assessment year. There are two limbs of this beneficial provision. The first is that the deduction is available for ten consecutive assessment years. It means that once the assessee starts claiming the deduction then the benefit shall be available for continuous ten years without any break and gap. The assessee does not have an option to omit certain years and spread over the period of deduction for more than ten consecutive assessment years. The second limb is that the window to take benefit of the deduction opens from the initial assessment years. The opening of the window begins in the initial assessment year. It is, however, not mandatory under the existing law to claim the benefit of deduction necessarily in the initial assessment year. If the assessee has loss in the initial assessment year or the immediately succeeding year(s), the assessee may start claiming the deduction from the assessment year in which profits are earned. Once the cycle of claiming deduction has started, then the assessee has no option to go beyond ten consecutive assessment years reckoning from the year in which deduction was claimed for the first time.

   (ii)It is a beneficial provision. The benefit has been granted by the legislature to increase industrialization. It cannot be interpreted in a restrictive manner. Such interpretation will defeat the intention of the legislature. If the assessee has loss and has no occasion to claim the deduction, the assessee cannot be barred from claiming the deduction from the subsequent years.

   (iii) Sub-section (1), the source sub-section to allow the deduction, specifically lays down that the deduction shall be allowed for such number of assessment years (emphasis added) as specified in this section. As the deduction is

admissible for ten assessment years, the number ten cannot be reduced to a lower figure by adopting restrictive and narrow interpretation. The number is qualified only by the requirement that the ten assessment years should be consecutive. The expression number has been qualified by the word such. It means the number cannot be decreased on the ground that the assessee did not claim the deduction in the initial assessment year, for whatever reason.

(iv) There is no requirement of the provisions of sub-section (3) to include the initial assessment year in the block of ten assessment years is further proved by the language of sub-section (9) of section 80-IB. In sub-section 9, it is laid down that the deduction shall be for a period of seven consecutive assessment years, including the initial assessment year (emphasis added). It is abundantly clear that for the assessee claiming deduction in terms of the provisions of sub section (9), it is compulsory for the assessee to include the initial assessment year in the period of seven consecutive assessment years. If the assessee does not include the initial assessment year then he would be left with six consecutive assessment years only.

(v)The assessee has been claiming deduction in terms of the provisions of sub-section (3) in which it is not compulsory to include the initial assessment year in the period of ten consecutive assessment years. As submitted above, the expression beginning with merely opens a window and at the same time allow the assessee to start claiming deduction in a later year, though however once the claim is made it shall run for a period of ten consecutive assessment years.

(vi) That the appellant assessee has rightly claimed the deduction for the assessment year 2012-13 is further proved by the language of sub-section (2) of section 80E, where it is laid down that the deduction shall be allowed in respect of the initial assessment year and seven assessment years immediately succeeding the initial assessment year. No such language has been used by the legislature in sub-section (3) of section 80-IB of the Act. Thus, the appellant was well justified to start claiming deduction from assessment year 2003-04.

(vii) As per section 80-I(5), the deduction shall be allowed in respect of the assessment year relevant to the previous year in which manufacturing or production began (initial assessment year) and each of the seven assessment years immediately succeeding the initial assessment year.

(viii) In sub-section (2) of 80-IA it is specifically laid down that the deduction shall be for the first five assessment years.

From the provisions of the Act referred to above, the legislature had made it specifically clear that the initial assessment year necessarily forms part of the tax holiday period. The language of sub- section (3) of section 80-IB is liberal enough to allow the assessee to start claiming deduction from a year later than the initial assessment year. Comparisons of the language and the expressions used go to prove the above submission. Hence, the assessee has rightly claimed the deduction u/s 80-IB in the year under consideration.

In view of above, the AO be directed to allow the claim of deduction u/s 80-IB for the year under consideration.

11. On the contrary, the ld DR has vehemently supported the order of the ld. CIT(A).

12. We have heard the rival submissions of both the parties, perused the material available on the record and have also perused the orders of the authorities below. The ld. CIT(A) has given a finding on fact by observing as under:-

> *"4.3 I have considered the facts of the case, assessment order and the written submissions of the appellant. The assessee has claimed deduction U/s 80IB for an amount of Rs. 7,23,299/- as profits derived from eligible under taking Perfect Glass accessories the Assessing Officer disallowance the same as the initial assessment year being 2002-03 the deduction would have been claimed till assessment year 2011-12 and not 2012-13. The authorized representative contended that since the assessee had commenced the claim of deduction from assessment year 2003-04, it was eligible to claim the deduction upto the assessment year 2012-13. In view of the provisions of Section 80IB(3) and 80IB(14)(c) which defines the initial assessment year and*

also as the audit report itself certifies that the operation of the undertaking commenced from Nov, 2001 and thus the initial assessment year being assessment year 2002-03, the disallowance made by the Assessing Officer is correct and upheld. The ground of appeal is dismissed."

This finding of fact is not controverted by the ld. Counsel for the assessee, therefore, we do not see any reason to interfere in the order of the ld. CIT(A) as the entitlement of deduction would be from the assessment year 2002-03. Since in the audit report itself, it is certified that the operation of the undertaking commenced from November, 2001. Accordingly, this ground of the assessee's C.O. is dismissed.

13. Ground No. 2 of the C.O. is against confirming the ad hoc disallowance. The ld counsel for the assessee has submitted that there is no basis for making ad hoc disallowance. He reiterated the submissions as made in the written brief, which is reproduced hereunder:-

1. The assessee is maintaining day to day books of accounts. The same are subject to tax audit. The sales and purchases of the assessee are duly supported by the bills and vouchers. No expense in cash has been incurred in violation of the provisions of section 40A(3)of the Act. In running business, there is always need to incur some expenses in cash and it does not entitle the lower authorities to take an adverse view regarding the declared profits. The lower authorities have not pointed out any expense debited in the trading or profit and loss account which is not for the purposes of the business of assessee. The AO has not rejected the books of the assessee by invoking provision of section 145(3). The Rajasthan High Court in case of CIT Vs. Maharaja Shree Umed Mills Ltd. 192 ITR 565 has held that fall in gross profit rate cannot be looked into when AO has not rejected the books of account of the assessee and without making this as a base, it could not be said that the

expenditure had been inflated. Hence, the lump sum trading addition made by the AO and confirmed by CIT(A) is uncalled for.

2. The position of the sales and the gross profit for the year as compared to the earlier years is tabulated as under:-

A.Y.	Turnover	Gross Profit	G.P. Rate
2010-11	36871766	16281017	44.15%
2011-12	30314614	13501560	44.53%
2012-13	41875434	18469922	44.10%

It is normal business practice that assessee is mainly interested in volume of the profit earned instead of the rate. This volume can be achieved only by increasing the sales by reducing the margin. During the year assessee has increased sales from Rs.3.03 crores to Rs.4.18 crores and the overall gross profit has been increased from Rs.1.35 cr to Rs.1.85 crores though the G.P. rate has declined slightly by 0.43%. In the various cases it has been held that simply because there is decline in the G.P. rate due to substantial increase in the turnover, the trading addition is not justified. For this purpose reliance is placed on the following cases:-
Madan Lal V. Income tax Officer 99 TTJ 538 (Jd.)

It was held that the estimation of the income has to be made only on the basis of some logic and the past history is the best guide except in cases where the assessee is liable to explain that the figures of the past year can't be applied in the relevant year. The assessee has explained the fall in the G.P. rate by referring to steep increase in turnover which was achieved by reducing the selling price and giving more discount. Accordingly, it was held that the G.P. rate declared by the assessee could not be disturbed in the absence of any specific defect in the books of accounts.

CIT V. Gotan Lime Khaniz Udyog 256 ITR 243 (Raj.)
Mere rejection of books of accounts by resorting to section 145 did not necessarily lead to the addition to the returned income or a different figure of income. Hence simply because section 145 is applicable should not be acriteria for making trading addition more particularly whenpurchases and sales are fully vouched and no discrepancies as such was found in the books of accounts maintained by the assessee.

Malani Ramjivan Jagannath Vs. ACIT 207 CTR 19 (Raj.)
It was held that in each trading account, only four entries were there of opening stock and purchases on debit side, sales and closing stock on credit side. The quantum and value of purchases and sales had not been in dispute in as much as they were held to be fully vouched. Value of opening stock also cannot be disputed as it came from closing stock of previous year. The inventories of closing stock were also not found to be incorrect. That is to say actual stock position was not in dispute. The previous year's books of accounts were not found to be incorrect. In the face of

these undisputed facts and circumstances, the Tribunal could not have interfered with the order of CIT (A). In doing so, it had ignored all admitted facts in the face of which there was no occasion for the AO to have resorted to estimate method. There being no dispute about the sales and purchases, non maintenance of stock register lost its significance so far as arriving at GP rate is concerned. Therefore, the CIT(A) was right in his reasoning about admitted state of affairs. Resorting to estimate of GP rate was founded on no materiality. Mere deviation in GP rate cannot be a ground for rejecting books of accounts and entering realm of estimate and guesswork. Lower GP rate shown in the books of accounts during current year and fall in GP rate was justified and also admitted by the AO as well as CIT(A) as well as the Tribunal. Therefore fall in GP rate lost its significance. Having accepted the reason for fall in GP rate namely stiff competition in market and also that huge loss caused in particular transaction, neither the rejection of books of accounts was justified nor resorts to substitution of estimate GP by rule of thumb merely for making certain additions. Therefore, the findings arrived at by the Tribunals suffers from basic defect of not applying his mind to the existing material which were relevant and went to the root of the matter. When all the data and entries made in the trading account were not found to be incorrect in any manner, there could not have been any other result except what has been shown by the assessee in the books of accounts. Therefore, the order of the Tribunal cannot be sustained.

In view of above, the lumpsum trading addition of Rs.2,00,000/- confirmed by the CIT(A) is uncalled for and be deleted.

14. On the contrary, the ld DR has vehemently supported the orders of the authorities below.

15. We have heard the rival contentions of both the parties and perused the material available on the record. The Assessing Officer has not rejected the books of account. The assessee has been maintaining details. Ld. AR has relied upon the decision of the Hon'ble Rajasthan High Court in the case of CIT Vs. Maharaja Shree Umed Mills Ltd. 192 ITR 565 and in the case of Ramjivan Jagannath Vs. ACIT 207 CTR 19 (Raj), wherein it has been held that the gross profit rate cannot be looked into when the

Assessing Officer has not rejected the books of account of the assessee and without making this as a base, it could not be said that the expenditure has been inflated. In the present case, admittedly, the Assessing Officer has not rejected the books of account. He has not given the basis for making ad hoc disallowance, therefore, we direct the Assessing Officer to delete the disallowance. This ground of the assessee's C.O. is allowed.

16. In the result, the revenue's appeal is dismissed and the assessee's C.O. is partly allowed.

Order pronounced in the open court on 21/04/2017.

Sd/-	Sd/-
(विक्रम सिंह यादव)	(कुल भारत)
(Vikram Singh Yadav)	(Kul Bharat)
लेखा सदस्य / Accountant Member	न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 21st April, 2017
*Ranjan
आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- The A.C.I.T., Circle-4, Jaipur..
2. प्रत्यर्थी / The Respondent- M/s Nirmal Glasstech Industries, Jaipur.
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. 963/JP/2016 & CO 46/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar