

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

श्री भागचन्द, लेखा सदस्य एवं श्री कुल भारत, न्यायिक सदस्य के समक्ष  
BEFORE: SHRI BHAGCHAND, AM AND SHRI KUL BHARAT, JM

आयकर अपील सं./ITA No. 624/JP/2016  
निर्धारण वर्ष / Assessment Year : 2010-11.

The Asstt. Commissioner of Income-tax, Circle-Sawai Madhopur.	बनाम Vs.	Shri Sampat Kumar Jain, Prop. M/s Utsav Construction, Dei Distt. Bundi-324009.
स्थायी लेखा सं./जीआईआर सं./PAN No. ABJPJ 3169 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by: Shri S.L. Chandel (Addl. CIT)  
निर्धारिती की ओर से / Assessee by: Shri Anurag Kalavatia (Avocate)

सुनवाई की तारीख / Date of Hearing : 14.07.2017.  
घोषणा की तारीख / Date of Pronouncement : 04/08/2017.

आदेश / ORDER

PER SHRI KUL BHARAT, JM.

This Appeal by the Revenue is directed against the order of Ld. CIT (A), Kota, dated 14.03.2016 pertaining to Assessment Year 2010-11.

The Revenue has raised the following grounds of appeal :-

"On the facts and the circumstances of the case, the Ld. CIT(A) has erred in:-

- (1) Deleting addition of Rs. 92,19,029/- with respect to 40 Creditors shown under the head stone expenses (Gitti), GSB expenses and Hire Charges and crane loader expenses on the basis of the verification of only 10 creditors directed u/s 250(4) without examining the identity of the remaining creditors, their creditworthiness and genuineness of transitions;
- (2) Deleting addition of Rs. 2,36,994/- out of total addition of Rs. 3,36,994/- made by disallowing stone expenses;
- (3) Deleting addition of Rs. 2,20,066/- out of total addition of Rs. 3,36,994/- made u/s 37 by disallowing labour expenses;

- (4) Deleting addition of Rs. 3,05,455/- made u/s 37 by disallowing sand expenses;
- (5) Deleting addition of Rs. 76,978/- made u/s 37 by disallowing hire charges and crane loader expenses;
- (6) Deleting addition of Rs. 3,35,000/- out of total addition of Rs. 5,44,160/- made by disallowing JCB (Hot Mix Plant);
- (7) Deleting addition of Rs. 1,60,000/- made u/s 40A(3);
- (8) The appellant craves liberty to raise additional ground and to modify amend the ground of appeal at the time of hearing."

**2.** Facts in brief given rise to the present appeal are that, the case of the assessee was picked up for scrutiny assessment and the assessment was framed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the Act) vide order dated 25.03.2013. While framing the assessment the Assessing Officer made addition on account of disallowance of stone expenses liability of Rs. 56,18,294/-. The Assessing Officer further made disallowance u/s 37 of the Act to Rs. 3,36,994/-. The Assessing Officer further made addition by invoking the provision of Section 40A(3) of the Act and also made disallowance on various expenses i.e. Gitti expenses, side Clearing and also made addition by disallowing the Granular Sub base expense and disallowance of repair maintenance of Road expenses, Labour expenses, out of Diesel & Petrol expenses, Hire charges and crane loader & its liability etc. Thus, the Assessing Officer computed total income at Rs. 1,46,92,501/- against the income declared at Rs. 18,96,927/-. Aggrieved by this, the assessee preferred an appeal before Ld. CIT(A), who after considering the submission, partly allowed the appeal. While partly allowing the appeal, the Ld.

CIT(A) restricted the disallowance in respect of outstanding balances credited in the books of accounts to the extent to Rs. 1,98,458/-, and deleted the balance of Rs. 92,19,029/- treating as the same as explained.

**3.** Further the Ld. CIT(A) out of disallowance of Rs. 3,36,994/- in respect of Stone Expenses restricted the disallowance to the extent of Rs. 1 lacs. However, the Ld. CIT(A) confirmed the addition of Gitty Expenses of Rs. 11,975/-, Side Clearing of Rs. 33,674/-, Granular Sub Base Expenses of Rs. 97,162/- expenses on account of Repair Maintenance of Road Rs. 10,11,693/- and restricted the disallowance of out of Labour Expenses and confirm the Diesel and Petrol of Rs. 1,87,908/- , the Sand Expenses and its liability of Rs. 3,05,455/- deleted the out of Hire Charging and Crane Expenses of Rs. 76,978/-, in respect of disallowance of JCB expenses, the Ld. CIT(A) deleted the same however confirmed the disallowance on Telephone Expenses of Rs. 4,642/-, the Ld. CIT(A) also deleted the addition made on account of cash payment made to Shri Satya Narayan Nagar by invoking the provision of Section 40A(3) of the Act and the addition made on account of disallowance u/s 40A(3) to Rs. 12,252/-. Hence, Ld. CIT(A) partly allowed the appeal of the assessee.

**4.** Against this, assessee preferred the present appeal.

**5. Ground no. 1,** is against deletion of addition of Rs. 92,19,029/-.

5.1 Ld. Departmental Representatives submitted that the Ld. CIT(A), without appreciating the fact in right perspective, deleted the addition. Ld. D/R supported the order of the Assessing Officer on this issue.

5.2 However, the Ld. Counsel for the assessee submitted that the Ld. CIT(A) has called for Remand Report from the Assessing Officer and the Assessing Officer has not adversely reported in respect of these expenses.

5.3 We have heard the rival contentions, perused the material available on record and gone through the order of the authorities below. The Ld. CIT(A) has decided this issue as under:-

*"I have gone through assessee's submission and AO's findings.*

*The main basis of addition in this case was that the AO had issued notices for appearance to the various supply creditors outstanding at the end of the year for expenses etc. as claimed by the assessee pertaining to the earlier years. The main suppliers were those of stone, granular sub-base and creditors in respect of hire charges & crane loader expenses.*

*Besides the above, the AO also made addition on account of current year's purchases on the adhoc basis.*

*The AO had initially noticed that the assessee had produced only copy of ledger without any bills & vouchers. The confirmations produced were required to be test checked through statements of some of these creditors. Out of the various persons whom the AO has listed out for examination under different categories like stone purchases, granular sub-base and hire charges, crane loader & its liability, the assessee could not produce 2 persons namely Sh. Satya Narayan Nagar for stone purchase & Sh. Dev Karan for GSB expense. Sh. Satyanarayan Nagar gave statements contradictory to the assessee's version and Dev Karan verified the statement as per the assessee's version.*

*Based on the above finding, the AO, considering that the confirmation related to these expenses were bogus and fabricated, added the outstanding balances credited in the books of the assessee u/s 68 of the IT Act, 1961 as bogus credits.*

*Apart from the above addition, the assessing Officer also made a disallowance of 10% of the expenses of the current year in the absence of Bills & Vouchers u/s 37 from the expenses claimed under these heads.*

*Similar additions were made under the head of granular sub-base and its liability and in respect of hire charges outstanding along with part disallowance in the current year's expenses.*

*In the course of appellate proceedings, my predecessor CIT(A) noted that "the inquiry in this case was conducted at the fag end of the F.Y. the AO is therefore being directed to examine all the remaining creditor & report. These directions are being issued u/s 250(4) of Income Tax Act."*

*He further directed "Ask AO to examine all the creditors (remaining out the creditors selected by him). The examination should be in presence of 'A' or his A/R & 'A' should be allowed to cross examine them."*

*Consequent to a clarification sought by the AO ACIT sawai Madhopur, vide letter dated 12.02.2015, the CIT(A) again issued directions to the AO on 24.02.2015 to examine "any other creditors (total 10)."*

*Vide letter dated 23.03.2015, the ACIT Circle Sawai Madhopur reported that he had issued letters to 10 persons out of total creditors and also to produced the persons for cross examination who were already examined by the then AO.*

*Subsequently 9 persons appeared & their statements were recorded on oath and the assessee was also present then. Thus including the earlier 2 persons,*

*statements of 11 persons were recorded by the AO in all as per the compliance directed u/s 250(4) by my predecessor CIT(A).*

*A final report was received from the AO dated 08.12.2015 in which the AO has attached statements recorded by all the 9 creditors. All the persons have confirmed the account related transactions with the assessee sh. Sampat Kumar Jain. The creditors also mentioned that the accounts were duly maintained by the assessee & his accountant. He was also provided copies of identity documents, confirmed amounts & note diaries etc. which had details of accounts of these parties in the books of assessee.*

*In his forwarding letter, the AO has not commented adversely on the findings required to be verified on account of additions made in the original order. Apparently the creditors named by the assessee in the original list were not bogus if on test check basis statement of the 9 persons who were examined by the AO vide remand proceedings are to be considered. On his part the assessee has discharged the onus cast upon him.*

*Under the circumstances, except for those creditors who on cross examination by the AO either did not confirm the assessee's version or those who did not appear before the AO for examination viz. Sh. Ramdev Gurjar, the other creditors outstanding could be said to be verified on test check basis.*

*Thus out of the addition made by the AO under the following heads-*

*Stone & Gitti purchase outstanding Rs. 56,18,294/-*

*GSB expense outstanding Rs. 18,06,648/-*

*Hire Charges & Crane Loader Expenses outstanding Rs. 19,92,545/-*

*The following amount as are attributable to the above person amounting to Rs. 1,98,458/- is treated as unexplained. Disallowance of Rs. 1,98,458/- is accordingly confirmed. The Balance outstanding amount of Rs. 92,19,029/- is considered as explained and the disallowance made by the AO is accordingly directed to be deleted to that extent."*

5.4 From the above finding of the Ld. CIT(A), it is evident that the Ld. CIT(A) had asked for Remand Report and the Remand Report was furnished vide letter dt. 8/12/2015. The Report is enclosed in the **Paper Book Page No. 138-139**. The Assessing Officer has not commented upon the genuinity of expenses. The Assessing Officer has merely stated that GSB Expenses are of the nature of work contract which is liable to be TDS u/s 194C of the Act. Therefore, he recommended that these expenditures are liable to the disallowed u/s 40(a)(ia) of the Act. Further, he has submitted that machinery hire charges are also attributable to the TDS, but these expenses are below the limit which attracts TDS u/s 194-I of the Act. Admittedly, these expenses were not disallowed by invoking the provision of section 40(a)(ia) by the Assessing Officer in the Assessment Order. Therefore, the Ld. CIT(A) has also not accepted the contention of the Assessing Officer and there is no ground by the revenue in this respect. Therefore, it can be inferred that the genuinity of expenditure is not doubted by the AO. Under these facts we do not see any reason to interfere into the order of the Ld. CIT(A), same is hereby affirmed. Ground no. 1 of the Revenue's appeal is dismissed.

**6. Ground no. 2,** is against restricting the addition to the extent as 1 lacs out of the Stone Expenses.

6.1 Ld. Departmental Representatives supported the order of the Assessing Officer.

6.2 On the contrary, Ld. Counsel for the assessee supported the order of the Ld. CIT(A). The Assessing Officer has not given any specific instances in respect of absence of bills and vouchers. We find that, at the one hand Ld. CIT(A) is accepting the fact that there was absence of bills and vouchers on the other hand Ld. CIT(A) restricted the addition.

6.3 This approach of the Ld. CIT(A) is self-contradictory, therefore, same cannot be sustained in view of the fact that the assessee has not placed any bills and vouchers for supporting its claim. Hence, he restores the finding of the AO on this issue. On the other hand he restricted the disallowance on adhoc basis. Therefore, we set aside the order on this issue and confirm the finding of AO. This ground of Revenue's appeal is allowed.

**7. Ground no.3,** is against restricting the disallowance made out of the Labour Expenses.

7.1 Ld. Departmental Representatives supported the order of the Assessing Officer.

7.2 On the contrary, Ld. Counsel for the assessee supported the order of the Ld. CIT(A).

7.3 We have heard the rival contentions, the Ld. CIT(A) has restricted the disallowance on adhoc basis at the one hand he has confirmed that the assessee has not keeping proper record and the Assessing Officer has made disallowance @ of 5% of the total labour expenses that appears to be justified. Therefore, we set

aside the order of Ld. CIT(A) and restore the finding of the AO. This ground of Revenue's appeal is allowed.

**8. Ground no. 4** is against deletion of addition of Rs. 3,05,455/- made on account of disallowance on Sand Expenses.

8.1 Ld. D/R supported the order of the Assessing Officer.

8.2 Per contra Ld. Counsel for the assessee supported the order of the Ld. CIT(A).

8.3 We have heard the rival contentions, the Ld. CIT(A) decided the issue by following its order in respect of ground no. 2. Since ground no. 2 before Ld. CIT(A) is part of ground no. 1 in this appeal. Ground no. 1 has been dismissed. Therefore, this ground of the Revenue's appeal is also dismissed for the same reasoning.

**9 Ground no. 5** is against deleting the addition of Rs. 76,978/- made on account of disallowance of expenses to Hire Charges and Crane Loader Expenses.

9.1 Ld. D/R supported the order of the Assessing Officer and submitted that Ld. CIT(A) deleted the addition without appreciating the facts in right perspective.

9.2 We find that Ld. CIT(A) delete the addition in the basis, that Assessing Officer has not given specific instance. There is no dispute with regard to the fact that this expenditure was made on adhoc basis. Therefore, we do not see any reason into the finding of the Ld. CIT(A), same is hereby affirmed. This ground of Revenue's appeal is dismissed.

**10. Ground no. 6**, is restricting the addition made on account of disallowance of JCB (Hot Mix Plant) of Rs. 5,44,160/-

10.1 The Ld. CIT(A) has given a specific finding on fact which is read as under:-

*" I have gone through assessee's submission and AO's findings.*

*As regards Sh. Zakir Hussain being a creditor for outstanding Hot mix plant related expenses for Rs. 2,09,160/-, he had earlier denied any transaction with the assessee. Later on he failed to appear before the AO in the second round (His affidavit was submitted by the assessee as replacement for his physical presence). In his absence the addition made could not be said to be unjustified and accordingly the amount shown against his name is also considered not verified & the disallowance is confirmed. In view of the discussions above in respect of Ground No. 2, the balance addition of Rs. 3,35,000/- is directed to be deleted."*

10.2 Above finding on fact is not controverted by the Revenue. We do not see any reason to interfere into the finding of the Ld. CIT(A), same is hereby affirmed. This ground of Revenue's appeal is dismissed.

**11. Ground no. 7,** is deleting the addition of Rs. 1,60,000/- made by invoking the provision of section 40A(3) of the Act.

11.1 The Ld. Departmental Representatives supported the order of the Assessing Officer and submitted that Ld. CIT(A) was not justified.

11.2 On the contrary, Ld. Counsel for the assessee submitted that Ld. CIT(A) has based his finding on the basis of the revised statement of Shri Satya Narayan Nagar, it is not adversely commented by the Assessing Officer.

11.3 We have heard the rival contention, we find that Ld. CIT(A) considered the statement of Shri Satya Narayan Nagar who stated in the revised statement that no payment was made exceeding to Rs. 20,000/-. The Revenue has not placed any contrary material. Since the Assessing Officer has invoked the provision of Section

40A(3) on the basis of the statement of Shri Satya Narayn Nagar who subsequently retracted the statement and made a fresh statement. Under these facts, we do not see any reason to interfere into the finding of the Ld. CIT(A), same is hereby affirmed. This ground of Revenue's appeal is dismissed.

**12. Ground no. 8,** is general in nature and needs no separate adjudication.

13. In the result, appeal of the Revenue in ITA No. 624/JP/2016 is partly allowed.

Order is pronounced in the open court on Friday, the 04<sup>th</sup> day of August 2017.

Sd/-  
( भागचन्द )  
( BHAGCHAND )  
लेखा सदस्य / Accountant Member

Sd/-  
( कुल भारत )  
( KUL BHARAT )  
न्यायिक सदस्य / Judicial Member

Jaipur

Dated:- 04/08/2017.

Pooja/

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

1. The Appellant- Asstt. Commissioner of Income-tax, circle- Sawai Madhopur.
2. The Respondent –Shri Sampat Kumar Jain, Bundi-324009.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 624/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

