

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'B (V.C)' JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 1047, 1048, 1049 & 1050/JP/2019
निर्धारण वर्ष/Assessment Years : 2009-10, 2012-13, 2013-14 & 2014-15

M/s Kedia Exports Pvt. Ltd., Jaipur	बनाम Vs.	Assistant Commissioner of Income Tax, Circle-01, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACK7591B		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

आयकर अपील सं./ITA. No. 1066, 1067, 1068 & 1069/JP/2019
निर्धारण वर्ष/Assessment Years : 2009-10, 2012-13, 2013-14 & 2014-15

Dy. Commissioner of Income Tax, Circle-01, Jaipur	बनाम Vs.	M/s Kedia Exports Pvt. Ltd., Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACK7591B		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by : Sh. S. R. Sharma &
Sh. Rajnikant Bhatra (CA)
राजस्व की ओर से / Revenue by : Ms. Chanchal Meena (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 09/06/2020
उदघोषणा की तारीख / Date of Pronouncement : 19/06/2020

आदेश / ORDER

PER BENCH

These are cross appeals filed by the assessee and the Revenue against the order passed by the Id. CIT(A)-1, Jaipur dated 27/06/2019

for A.Y 2009-10, 2012-13, 2013-14 & 2014-15 respectively. Since common issues are involved, all these appeals were heard together and disposed off by this consolidated order.

2. For the purposes of present discussion, with the consent of both the parties, matter pertaining to A.Y 2009-10 was taken as a lead case wherein the respective grounds of appeal are as under:-

ITA No. 1047/JP/2019

"1. That on the facts and in the circumstances of the case the Id. CIT(A) is wrong, unjust and has erred in law in not accepting plea of the appellant that proceedings initiated by the assessing officer u/s 148 of the Income Tax Act, 1961 and consequent assessment made u/s 147/143(3) is wrong and bad in law.

2. That without prejudice to the ground No. (1) above on the facts and in the circumstances of the case the Id. CIT(A), is wrong, unjust and has erred in law in upholding addition to the extent of Rs. 4,62,549/- by applying G.P rate of 11.50% on declared sales which addition was made by the assessing officer on account of alleged unverifiable purchases of Rs. 50,79,735/- after rejecting books of accounts of the appellant under section 145(3) of the I.T. Act, 1961."

ITA No. 1066/JP/2019

"1. Whether on the facts and circumstances of the case and in law the Id. CIT(A) was justified in restricting the addition of Rs. 12,69,933/- to Rs. 4,62,549/- against the bogus purchases disallowed by the AO following Hon'ble Supreme Court's decision on bogus purchases in the case of Vijay Proteins Pvt. Ltd.?"

2. Whether on the facts and circumstances of the case and in law the Id. CIT(A) was justified in deleting the additions made on the basis of corroborative information received from Investigating

Wing, Mumbai which is a law enforcement agency under the Ministry of Finance and accordingly the case falls under exception clause 10(e) of Circular 03 of 2018 dated 20.08.2018 ?”

3. Briefly stated, the facts of the case are that the assessee filed its return of income declaring loss of Rs. 6,51,298/- which was processed u/s 143(1) of the Act. Subsequently, notice u/s 148 was issued on 08.03.2016 and in response to the said notice, the assessee filed its return of income declaring the loss as declared in the original return of income. Subsequently, notice u/s 143(2) was issued and assessment was completed u/s 147 read with section 143(3) dated 14.10.2016. As per the AO, the assessee has made bogus purchases of Rs 50,79,735/- from M/s AADI, M/s AVI & M/s Keriya which are group concerns of Sh. Rajendra Kumar Jain as per the information gathered by investigation wing, Mumbai. Accordingly, the assessee's books of accounts were rejected u/s 145(3) of the Act and 25% of purchases were disallowed and an addition of Rs. 12,69,933/- was made in the hands of the assessee company.

4. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) who has upheld the rejection of books of accounts and has estimated GP rate of 11.5% which would result in gross profit of Rs. 36,49,755/- against gross profit of Rs. 31,87,206/- shown by the assessee company. Hence, the addition was restricted to Rs. 4,62,549/- as against Rs. 12,69,933/- made by the AO and partial relief was allowed to the assessee. Against the said findings of the Id. CIT(A), both the Revenue and the assessee are in cross appeal before us.

5. Firstly, regarding the Revenue's appeal, the tax effect involved is Rs. 1,42,928/- and thus question of maintainability of the appeal of the Revenue arises for consideration.

6. The Id DR has submitted that the case falls under exception as per clause 10(e) of Circular no. 03 of 2018 dated 20-08-2018 as the case was reopened u/s 148 basis information received from Investigation Wing, Mumbai and therefore, the present appeal has been preferred by the Department and the same should therefore be heard on merits and not dismissed on account of low tax effect.

7. Per contra, the Id AR submitted that in view of the circular No. 3 of 2018, the appeal of Revenue is not maintainable and the same doesn't fall in any of the exceptions as so stated in the said CBDT Circular. Further, Id. AR has placed reliance on the decision of the Co-ordinate Bench in case of DCIT vs M/s Gehlot Motors Pvt Ltd (*ITA No. 1165/JP/2019 dated 29/11/2019*).

8. Heard both the parties. In this regard, we refer to the CBDT directive dated 20th August 2018 by which it has carved out several exceptions to its Circular No. 3 of 2018 dated 11th July 2018 relating to the withdrawal/ non-filing of appeal by the Department in low-tax effect appeals. The CBDT has specified several instances where appeals have to be filed and prosecuted despite their low-tax effect. The contents thereof read as under:

"All the Principal Chief Commissioners of Income Tax

*Subject: Amendment to para 10 of the Circular No. 3 of 2018
dated 11.07.2018-reg:*

Madam/Sir,

Kindly refer to the above.

2. The monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/ appeals before Supreme Court have been revised by Board's Circular No. 3 of 2018 dated 11.07.2018.

3. Para 10 of the said Circular provides that adverse judgments relating to the issues enumerated in the said para should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 thereof or there is no tax effect. Para 10 of the Circular No. 3 of 2018 dated 11.07.2018 is hereby amended as under:

"10. Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect:

(a) Where the Constitutional validity of the provisions of an Act or Rule is under challenge, or

(b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or

(c) Where Revenue Audit objection in the case has been accepted by the Department, or

(d) Where addition relates to undisclosed foreign income/ undisclosed foreign assets (including financial assets)/ undisclosed foreign bank account.

(e) Where addition is based on information received from external sources in the nature of law enforcement agencies such as CBI/ ED/ DRI/ SFIO/ Directorate General of GST Intelligence (DGGI).

(f) Cases where prosecution has been filed by the Department and is pending in the Court.”

4. The said modification shall come into effect from the date of issue of this letter.

5. The same may be brought to the knowledge of all officers working in your region.

6. This issues with the approval of the Hon'ble Finance Minister.”

9. The exception 10(e) which has been referred by the Id DR relates to cases where addition is based on information received from external sources in the nature of law enforcement agencies such as CBI/ ED/ DRI/ SFIO/ Directorate General of GST Intelligence (DGGI). Though the Investigation Wing has its separate functions and jurisdictions, there cannot be any dispute that both administratively and functionally, the Investigation Wing of the Department is part of Income Tax Department and is therefore clearly not an external law enforcement agency *qua* Income Tax department and that too, as specified in the aforesaid exception. Therefore, in the instant case, where the matter has been reopened based on information received from Investigation Wing and the assessment has been completed by the Assessing officer where the matter under appeal has tax effect less than the prescribed limit, it will continue to be governed by low tax effect circular issued by the CBDT which is binding on the Revenue and the same is the consistent position of this Bench and other Benches of the Tribunal.

10. In light of the same, the present appeal filed by the Department is dismissed on account of low tax effect given that the matter is not covered by any exceptions so specified.

11. Now coming to the assessee's appeal. During the course of hearing, the Id. AR submitted that no basis has been given by the Assessing Officer for rejecting the books of accounts and invoking the provisions of section 145(3) of the Act. It was submitted that during the course of assessment proceedings, the assessee has submitted sample purchase bills for the said purchases so made by the assessee and has also submitted that the payment has been made by account payee cheque. However, based on alleged statement of Directors of M/s Rajendra Jain Group of companies, the Assessing Officer has alleged that the assessee has obtained bogus accommodation entry from three concerned as mentioned in the assessment order. It was submitted that the assessee's objection to cross examine the Directors of Rajendra Jain Group of companies was not considered by the AO as well as by the Id. CIT(A) and merely basis the statement recorded by the third party, the books of accounts have been rejected and addition has been made in the hands of the assessee company.

12. Further, during the course of hearing, a chart showing the turnover and gross profit rate for the past years declared by the assessee company was submitted by the Id AR and the contents thereof read as under:-

Asstt. Year	Turnover (Rs)	Gross Profit (Rs)	G.P. Rate
2006-07	22827562	2189727	9.59%
2007-08	24854921	2662725	10.71%
2008-09	29762344	3078965	10.35%
2009-10	31737004	3187206	10.04%
2010-11	33275606	3316481	9.97%
2011-12	40091039	4066802	10.14%
2012-13	37851082	4001432	10.57%
2013-14	43115259	3882876	9.01%
2014-15	52389998	4999500	9.54%

It was submitted that the average GP rate of last 3 years comes to 10.22% which is very close to GP rate of 10.04% declared by the assessee for the year under consideration and the Id. CIT(A) has wrongly estimated the GP rate of 11.5% ignoring the past history of the assessee company. Further, Id. AR has placed reliance on the decision of the Co-ordinate Bench in case of Sh. Sunder Das Sonkia, Jaipur vs. ITO, Jaipur (*ITA No. 1126/JP/2018 dated 15/04/2020*). It was accordingly submitted that the additions so sustained by the Id CIT(A) should be deleted and necessary relief may be granted to the assessee company.

13. Per contra, the Id. DR submitted that the Assessing Officer has clearly recorded a finding that the assessee has obtained bogus accommodation entry from three concerns of Rajendra Jain Group of

companies and the said reasoning is sufficient enough to reject the books of accounts u/s 145(3) of the Act. It was accordingly submitted that the contention of the Id. AR that no basis has been given by the AO while rejecting the books of accounts is not factually correct and the findings of the Id CIT(A) where he has upheld the rejection of the books of accounts may be confirmed. As far as reliance on the past history of the assessee in estimating GP rate is concerned, it was further submitted that given that the assessee company has obtained accommodation entries in all these years, the past history is not totally reliable and the Id. CIT(A) is more than reasonable in estimating the GP rate at 11.5% and no further relief should be granted to the assessee company. The Id. DR further relied on the order of the lower authorities.

14. We have heard the rival contentions and perused the material available on record. For the year under consideration, the assessee has declared total turnover of Rs. 3,17,37,004/- with a gross profit of 10.04%. The A.O. has considered the purchases to the tune of Rs. 50,79,735/- made from these three parties as unverifiable. The A.O. consequently rejected the books of account of the assessee by invoking provisions of Section 145(3) of the Act and made disallowance of 25% of the aforesaid purchases. Hence, the A.O. has made addition of Rs. 12,69,933/-. Though, the assessee has challenged the action of the A.O. before the Id. CIT(A), however, the Id. CIT(A) has confirmed/upheld the disallowance made by the A.O. by observing that the assessee failed to establish the genuineness of the purchases made from these parties. It is pertinent to note that the even if the A.O. has doubted the genuineness of the purchases from these parties, once the

books of account of the assessee are rejected by invoking provisions of Section 145(3) of the Act, the A.O. is bound to frame the assessment on best assessment as per provisions of Section 144 r.w. Section 145(3) of the Act. Therefore, after rejection of books of account, the A.O. is required to estimate the income of the assessee on some reasonable and proper basis. It is a settled proposition as held by the Hon'ble Rajasthan High Court in number of cases that for estimation of income of assessee after rejection of books of account, past history of the assessee or history of the similarly situated other businessman is considered as a proper and reasonable basis. In the case in hand, the assessee has undisputedly declared GP for the year under consideration at 10.04% whereas the GP declared by the assessee in the preceding three years is as under:

A.Y	Turnover (in Rs.)	Gross profit (in Rs.)	GP (in%)
2006-07	22827562	2189727	9.59%
2007-08	24854921	2662725	10.71%
2008-09	29762344	3078965	10.35%

The GP so declared in the earlier years is not in dispute as there is no finding that in the past, the assessee has obtained any accommodation entries as in the instant year and therefore, the contention of the Id DR that the past history cannot form the basis for estimating current year GP cannot be accepted. Once the past year results have attained finality and not in dispute, the same can form the basis for estimating the GP rate for the current year. It is clear from the details of the GP declared by the assessee for the preceding three years that the average of past three years of GP declared by the assessee comes to 10.22%.

Thus, the GP declared for the year under consideration at 10.04% is lower than the average GP declared by the assessee in preceding three years by 0.18%. The rejection of books of account by invoking provisions of Section 145(3) of the Act shall lead to estimation of income of the assessed based on some reasonable and proper criteria. Since the average of past history of GP declared by the assessee is considered as a proper and reasonable basis for estimation of income for the year after rejection of books of account, therefore, the GP is estimated at 10.22% as against GP declared by the assessee at 10.04% for the year under consideration and differential trading addition equivalent to GP rate of 0.18% on declared turnover is upheld and the appeal of the assessee is partly allowed.

15. Now coming to appeals for other years, namely, A.Y 2012-13, 2013-14, 2014-15, both parties fairly submitted that facts and circumstances of the case are exactly identical to facts and circumstances of the case in A.Y 2009-10 and similar contentions have been advanced by both the parties.

16. Firstly, we find that all the appeals filed by the Revenue are below the prescribed threshold for filing the appeals and are not covered in the exception category, hence, all these appeals filed by the Revenue for respective assessment years are dismissed on account of low tax effect for detailed reasoning given supra in context of A.Y 2009-10.

17. In respect of assessee's appeals, for A.Y 2012-13, the assessee has declared GP of 10.57%. If we consider the average GP for past 5 years which has been declared and accepted by Revenue and has

attained finality, excluding A.Y 2009-10 where GP so declared has not been accepted by the Revenue on account of accommodation entries, it comes to 10.15%. Thus, the GP declared by the assessee is more than the average GP of past years and even where the books of accounts are rejected, no trading addition is called for and the appeal of the assessee is thus allowed.

18. In respect of assessee's appeal for A.Y 2013-14, the assessee has declared GP of 9.01% which is lower than the average GP for past 5 years which comes to 10.15%, computed after excluding GP declared for A.Y 2009-10 and A.Y 2012-13, the GP is thus estimated at 10.15% as against GP sustained by the Id CIT(A) at 11.50% and GP of 9.01% declared by the assessee for the year under consideration and differential trading addition equivalent to GP rate of 1.14% on declared turnover is upheld and the appeal of the assessee is partly allowed.

19. In respect of assessee's appeal for A.Y 2014-15, the assessee has declared GP of 9.54% and we consider the average GP for past 5 years, it comes to 10.15%, computed after excluding GP declared for A.Y 2009-10 and A.Y 2012-13 and A.Y 2013-14, thus the GP for the year is estimated at 10.15% as against GP sustained by the Id CIT(A) at 11.50% and GP of 9.54% declared by the assessee for the year under consideration and differential trading addition equivalent to GP rate of 0.61% on declared turnover is upheld and the appeal of the assessee is partly allowed.

20. In the result, respective appeals of the Revenue are dismissed, and the appeal of the assessee for A.Y 2012-13 is allowed and for other years, the appeals are partly allowed in light of aforesaid directions.

Order pronounced in the open Court on 19/06/2020.

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 19/06/2020.

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- M/s Kedia Exports Pvt. Ltd., Jaipur
2. प्रत्यर्थी / The Respondent- ACIT, Circle-01, 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. 1047, 1048, 1049, 1050, 1066, 1067, 1068 & 1069/JP/2019 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar