

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

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 339/JP/2019
निर्धारण वर्ष/Assessment Years : 2012-13

Shri Anil Kumar Garg 60, Rajmal Ka Talab, Chandi Ki Taksal, Jaipur.	बनाम Vs.	The ITO, Ward-5(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACXPG 9568 Q		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Vedant Agarwal (Adv.)
राजस्व की ओर से/ Revenue by : Smt. Monisha Chaudhory (Addl.CIT)

सुनवाई की तारीख/ Date of Hearing : 13/10/2021
उदघोषणा की तारीख/ Date of Pronouncement : 21/10/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-1, Jodhpur (Camp at Jaipur) dated 18.12.2018 pertaining to assessment year 2012-13 wherein the assessee has taken the following grounds of appeal:-

"1. On the facts & circumstances of the case, Ld. AO grossly erred in rejecting the books of accounts by invoking the provisions of Section 145(3) of the Act.

2. On the facts & circumstances of the case, Ld. Lower authorities grossly erred in making and confirming addition of Rs.

90,785/- by unlawfully declaring the purchases of Rs. 3,63,139/- as bogus purchases & applying 25% of profit thereon.

3. On the facts & circumstances of the case Id. Lower authorities grossly erred in making and confirming lump sum disallowance of Rs. 20,000/- out of certain expenditures."

2. In ground No. 1, the assessee has challenged the rejecting of books of account by invoking the provisions of Section 145(3) of the Act. During the course of hearing, the Id. AR of the assessee has not pressed the ground No. 1. Hence, the same is dismissed as not pressed.

3. In ground No. 2, the assessee has challenged the confirmation of addition of Rs. 90,785/- by declaring purchases of Rs. 3,63,139/- as bogus purchases and applying 25% profit thereon.

4. During the course of hearing, the Id. AR submitted that the assessee is engaged in the business of manufacturing and export of gems and jewellery in the name of M/s A.K. Exports. During the year under consideration, on a total turnover of Rs. 1,38,49,375/-, the assessee has shown gross profit of Rs. 34,34,282/- which gives a G.P @ 24.80%. It was submitted that all the purchases are genuine and bills of purchases containing TIN No. and PAN No. were dully submitted before the Assessing Officer and the same have been incorporated in the stock register and have been used for manufacturing jewellery. The payments have been made through account payee cheque and further, the sales have not been disputed by the Assessing Officer. It was

accordingly, submitted that there is no basis for the AO to treat the purchases as bogus and disallow 25% of the said purchases.

5. Per contra, the Id. DR submitted that it is no doubt through that the assessee has made purchases from M/s Red rose Enterprises, however in order to verify the said purchases, summons U/s 131 were issued which were return unserved with the report that the said concern was not found at the given address. It was accordingly submitted that the mere facts that the payment has been made by the account payee cheque does not prove that the assessee has proved the genuineness of the purchases so made by it. It was accordingly submitted that the AO disallowed 25% of the bogus purchases which is approximately equally to the G.P. shown by the assessee and the same has rightly been confirmed by the Id. CIT(A) and therefore, the said order should be confirmed.

6. We have heard the rival contentions and perused the material available on record. We find that the Assessing officer has rejected the books of accounts by invoking the provisions of section 145(3) and the same are not under dispute before us. Therefore, where the books of accounts have been rejected, the appropriate course of action for the AO is to estimate the gross profit in the hands of the assessee on some reasonable basis and in this regard, the past history has been stated to provide reliable and reasonable basis for estimating gross profit in the hands of the assessee. In this regard, reference can be drawn to the

decision of the Coordinate Bench in case of ACIT vs. M/s Allied Gems Corporation (794/JP/11, 795/JP/2011 and 716/JP/2012 dated 15.12.2017) wherein it was held that where the books of accounts have been rejected, the Id. CIT(A) was correct in restricting the addition to the average G.P rate based on the past history and the relevant findings read as under:

"5. We have considered the rival submissions as well as relevant material on record. The Assessing Officer rejected the books of account by invoking the provisions of section 145(3). The issue of rejection of books of accounts is involved in the cross objection filed by the assessee, therefore, we deal with this issue while deciding the cross objection. Once, the books of accounts are rejected by the AO the only course of action left to the AO is to assess the income of the assessee on the basis of best judgment and GP rate is considered as proper and reasonable basis and guidance for the best judgment. Once, the books result are rejected the Assessing Officer cannot proceed to make an addition to the income offered by the assessee as per books result. However, the AO in the case of the assessee instead of applying the GP rate made on addition@ 25% of the purchases to the book results. This act of the Assessing officer itself contradicts the decision of rejecting the books of accounts and books result. The Tribunal in assessee's own case for the assessment year 2006-07 has considered this issue and upheld the order of the Id. CIT(A) in para 2.20 and 2.30 as under:-

"2.20 Hence, there are certain concerns for which Revenue got evidence in the form of statement recorded in respect of such parties, opening balance is Rs. 37,06,175/- while the closing balance is Rs. 42,81,496/-. It means that there is an accretion of amount of Rs. 5.75/- lacs. It means that to this extent, accretion ITA No.794& 795/JP/11, 716/JP/12 CO 76& 77/JP/11, 60/JP/12 ACIT vs. M/s Allied Gems Corporation 8 in purchase is without supporting the correct bills. Of course, total opening balance of all parties is Rs. 1,15,43,782/- and the closing balance is Rs. 1,33,36,193/-. However, looking to the accretion in the closing balance of the concerns for which Revenue has material, the addition confirmed by the Id. CIT(A) is reasonable

2.30 The Hon'ble P & H High Court in the case of Uplakesh Metal Industrial V CIT 177 taxman 298 held that issue decided by this is in the realm of appreciation evidence. The find of Tribunal as mentioned in this judgment is as under:- "However, in our opinion the observation of the Assessing Officer that the assessee was prima facie required to prove the genuineness of the transaction and identity of the creditors is not misplaced because there is no distinction laid between the trade creditor and the non-trade creditor and we are further of the opinion that in case the assessee claims liability of payment to the trade creditors shown in the balance-sheet, the assessee is definitely required to prima facie prove the identity of the trade creditors as well as the genuineness of the transaction. In this case, admittedly the assessee has neither been able to disclose the complete

addresses of the trade creditors nor is able to give the complete addresses of the consignors nor the name has been mentioned on the challan forms, so the verification of the same by the Assessing Officer became totally impracticable on account of lack of this complete information supplied by the assessee. It means that the assessee failed in establishing the genuineness of the so called trade creditors appearing in its books of account. We are further of the opinion that since in the instant case of the assessee, the point under consideration before us is regarding the genuineness of the liability amounting to Rs. 1,75,26,586 shown by the assessee in its balance-sheet as trade creditors, so it was not relevant for us to consider as to whether the purchases made by the assessee were genuine or not or to whether the assessee has inflated those purchases or not. It is also not material to consider whether the GRs from sale-tax department were verified or not, so, the CIT(A) on considering these points was not justified in deleting the impugned addition without discussing as to whether the liability of trade creditors shown by the assessee in the absence of furnishing complete addresses of trade creditors/consignors and the payment vouchers was genuine or not." While evaluating the material collected by the Revenue on the touch stone on human probability and considering the accretion in the closing balance in respect of parties for which Revenue has material in the form of statement. We felt that the Id. CIT(A) was reasonable in confirming the addition of Rs. 5.00 lacs. Hence both the grounds of assessee as well as Revenue are dismissed." We further noted that when the corresponding sale is

not in dispute then the question is only regarding the correct amount of purchases and verification of the same. The Id. DR has relied upon the various decisions of Hon'ble Gujarat High Court however, we find that in all those decisions there was a finding of facts that the assessee inflated the purchases upto 25% and therefore, it was not a case of non verification of the purchase and rejection of books of accounts but the fact was established in the investigation that the assessee inflated the purchase price and accordingly the addition of 25% being inflated purchases was made and upheld by the Tribunal which was again upheld by the Hon'ble High Court. On the contrary in the case of the assessee the AO not given any finding of inflated purchases by the assessee but doubted the very transaction of purchases due to non production of these parties before the AO. The AO has not given the finding that the prices of the goods was inflated by the assessee but the AO doubted the genuineness of the purchases on the ground that the suppliers were found to be accommodation entries providers. When the AO rejected the book results u/s 145(3) of the Act, then the AO after rejection of the books of account can proceed to make the assessment on the basis of best judgment instead of resorting make the addition to the book results. Accordingly, in the facts and circumstances of the case and in view of the decision of this Tribunal in assessee's own case for A.Y. 2006-07 we do not find any error or illegality in the orders of the Id. CIT(A) in restricting the addition to the average GP rate based on the past history. Hence, the grounds

raised in the Revenue appeals are rejected being without any substance or merits."

7. In the instant case, the average gross profit for the past two assessment years as available on record comes to 25.18% as against 24.80% declared by the assessee. Therefore, the addition to the extent of differential of 0.38% is sustained and the remaining addition sustained by the Id CIT(A) is hereby directed to be deleted. In the result, the ground of appeal is partly allowed.

8. In ground No. 3, the assessee has challenged the lump sum disallowance of Rs. 20,000/- out of certain expenses claimed in its profit/loss account. During the course of hearing, the Id. AR submitted that these expenses relates to telephone, mobile, vehicle running & maintenance and depreciation on car and submitted that all these expenses were reasonable and incurred for business purposes only and no specific expenditure has been identified by the Assessing Officer which is not related to the assessee's business. It was accordingly submitted that the disallowance so confirmed by the Id. CIT(A) may kindly be deleted.

9. Per contra, the Id. DR has relied on the lower authorities and submitted that during the course of assessment proceedings, the Assessing Officer on perusal of tax audit report noted that the tax auditor has reported that "it is not possible to identify the personal

element involved, if any, in the telephone expenses and running and maintenance expenses incurred during the year". Accordingly, the Assessing Officer has disallowed an amount of Rs. 20,000/- only out of total expenditure of Rs. 1,82,510/- on account of personal and non business used. It was accordingly submitted that considering the above facts and circumstances of the case, the nature and involvement of the assessee's business, the Id. CIT(A) has rightly upheld the disallowances of Rs. 20,000/- to cover possible leakage on account of personal expenses. It was accordingly submitted that there is no infirmity in the order so passed by the Id. CIT(A) and the same may be confirmed.

10. We have heard the rival contentions and perused the material available on record. We find that the expenses have been disallowed purely on an adhoc basis and the same is directed to be deleted. In the result, the ground of appeal is allowed.

In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 21/10/2021.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)

(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 21/10/2021.

*Santosh

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

1. अपीलार्थी / The Appellant- Shri Anil Kumar Garg, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-5(1), 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. 339/JP/2019 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar