

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. 143/JP/14

निर्धारण वर्ष/Assessment Year : 2009-10

The Asstt. Commissioner of Income Tax Circle-6, Jaipur	बनाम Vs.	Kishore Singh Gehlot (HUF), C-1A, Prithviraj Road, C- Scheme, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN No. AABHK 5774 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

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

सुनवाई की तारीख / Date of Hearing : 13.02.2017
घोषणा की तारीख / Date of Pronouncement: 15/02/2017.
आदेश / ORDER

PER SHRI VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the Revenue against the order of Ld. CIT(A)-II, Jaipur dated 3.12.2013 for A.Y 2009-10 wherein the Revenue has taken following grounds of appeal:

- (1) (a) *Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) has erred in deleting the addition of Rs. 21,83,749/- on account of disallowance of alleged refunds to customers.*
(b) *Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) has erred in holding the provisions of section 40A(3) are not applicable in respect of expenditure incurred by way of refund to customers.*
- (2) *Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) has erred in deleting the addition of Rs. 18,82,000/- on account of disallowance of financial service charges.*

(3) *Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) has erred in the addition of Rs.1,58,000/- on account of commission on sale of implements.*

2. In respect of ground No.1, briefly the facts of the case are that the A.O on review of the ledger account of the assessee's customers noticed that some amount have been advanced by the customers for the purchase of tractors, then loan amount is credited to the customer's account, thereafter, expenses on account of tractor registration, insurance and processing charges for loan are charged and debited to the customers account. The credit balance in the customer accounts are thereafter refunded in cash to the customers after a few months. In respect of 21 cases, refund amount exceeds Rs. 20,000/- totalling to Rs. 5,39,360/-. The assessee didn't maintains any receipts from the customers regarding the amount refunded to him. With these observations, the AO confronted the matter to the assessee on 24.10.2011 stating that these expenses incurred in cash exceeding to Rs.20,000/- is in violation of provisions of section 40A(3) of the IT Act, 1961. After considering the assessee reply and nature of entries made in the books of account of the assessee, the AO held that the refund amount has generated due to discount and revision of price by issuing credit note in favour of the customers and after deducting charges for registration, insurance and loan processing charges. Thus, the nature of refund is expenditure on account of discount allowed to the customers for different reasons. Any refund in cash of amount exceeding Rs. 20,000/- is in violation of provisions of section 40A(3) of the IT Act, 1961. Thus Rs. 5,39,360/- is inadmissible for the two reasons one expenditure incurred in violation of section 40A(3) and second there is no evidence with the assessee that the amount was infact refunded to the customers. Thereafter, total refund amount of Rs. 21,83,749/- (includes the refund of Rs. 5,39,360/)

forming part of the expenditure resulted due to discount and rebate allowed to the customers by issue of self made credit notes was disallowed by the AO.

2.1 Being aggrieved, the assessee carried the matter in appeal before the Id CIT(A) who after considering the assessee's submissions has given his findings as under:

"I have considered the facts of the case, assessment order, appellant's written submission, AO's remand report and appellant's rejoinder. Assessing Officer disallowed amounts refunded to the customers on the ground that the same is not verifiable and no vouchers for such payments were kept by the appellant. During the appeal proceedings, appellant submitted that complete vouchers were maintained and the refund amount is as per the ledger account of the customers. Appellant submitted ledger accounts and vouchers which were forwarded for AO's report by my predecessor. On verification of these vouchers and details, assessing Officer pointed out that in some of the vouchers, customer's signature is not there. It was also pointed out by the AO that Revenue Stamp is not put where payments exceeds Rs. 5,000/-. Appellant submitted that after discount, the money received from the customers became refundable and the same is refunded as per ledger account details in each case. As regards customer signature not there in some vouchers, appellant submitted that only in some cases it might not be there otherwise most of the vouchers carried customer's signature. The revenue Stamp is only a technical requirement, violation of which will not make any payment doubtful.

I have gone through the list of persons to whom excess money received was refunded. Appellant received booking advance in cash. Thereafter, loan is taken by the customer which is credited in his account. Against this advance and loan, sale bill and discount etc. are debited and net amount received in excess is refunded. The details of customers are available and therefore it cannot be said that the recipients are not identifiable. Since the refund is given mostly to the farmers against excess money received, it is refunded in cash as most of them may not have bank accounts. Considering the fact that the refund given to the customers is based on ledger accounts and AO did not find fault with any of the entry in the ledger accounts therefore refund based on such ledger

accounts cannot be questioned. Refund is of the balancing figure which is arrived at by certain debit and credit entries. If these debit and credit entries are not found to be incorrect, balancing figure cannot be questioned. Appellant also argued that this is the practice being followed since last many years and assessing officer did not make any disallowance in earlier years. Considering the facts of the case and no mistake found in the ledger accounts representing transactions with the customers, I do not find any merit in disallowance of refund of excess money received from customers.

Assessing Officer also submitted that some of the payments were made in cash in excess of Rs. 20,000/- in violation of section 40A(3) which are disallowable. Appellant submitted that disallowance of section 40A(3) can be made in respect of expenditure claimed and not against any other payment. Since the refund is on account of excess money received on sale of goods, disallowance under section 40A(3) will not be applicable. Accordingly the assessing officer's argument in this regard is not tenable. The disallowance made by the assessing officer is accordingly deleted."

2.2 The Ld. AR of the assessee submitted that adhoc advance amount and further amounts are received from a customer. Amount taken on loan from the Bank/financial institutions is received and is duly credited in the account of the customer. On account of acute competition, rate difference/discount has to be given to the customer and credit note is issued for such rate difference. Excess of such collection is refunded to the customer. The amount is refunded by voucher duly receipted by the customer. The amount refundable is verified, approved by the Manager and thereafter payment is made by the Cashier against receipt. The entire refund is duly supported by supporting material and contemporary entries have been made in the books. Similar refunds have been made in the past years. It is a regular feature. In similar circumstances refund made during the past years have not been added or disallowed. Assessment for the assessment year 2006-07 was scrutiny assessment u/s 143(3) of the Act. No such disallowance was made in the said assessment year

or in the earlier assessment years. The Id. Assessing Officer wrongly recorded that the assessee maintains no receipts from the customers resulting the amount refunded to him. We are submitting herewith details of refund payments along with date, name of the customer and amount of refund. Copy of refund vouchers is also submitted. On perusal, your honour, shall find that it contains signatures of the customer, Manager and the Cashier. The amount of refund varied for different customers. As mentioned earlier, the Ld. AO has wrongly recorded that no documentary evidence available with the assessee to prove that the sum was refunded to the respective customers. The Id. AO has disallowed a sum of Rs. 5,39,360/- being refund in cash for amount exceeding Rs. 20,000/- being in violation of provisions of section 40A(3) of the Act is unattracted. There is no valid reason to disallow the said sum of Rs. 5,39,360. As submitted herein above, balance of the amount is also duly supported by supporting payment voucher duly signed by the customer, approved by the Manager and actual cash paid by the cashier. The Ld. CIT(A) considering the above submissions of assessee and after verifying the facts has rightly deleted the addition which is just and correct in law.

2.3 The Id DR is heard who has taken us through the findings of the AO and relied upon the said findings.

2.4 We have heard the rival contentions and perused the material available on record. The Id CIT(A) has given a finding that the amount has actually been refunded and the list of such customers to whom the amount has been refunded is identifiable and the same has been verified by him along with documentary evidence. The said findings remain uncontroverted before us. In terms of quantum and nature of refund, the same depends upon various

factors such as initial advance received from the customers, loan approved and credited to the customer account, value of sales recorded, various charges debited to the customer account and off course, the rate difference and discount allowed to the customers. The same will vary from customer to customer and from product to product sold by the assessee. In absence of a specific finding, it is difficult to generalise that in all cases, the refund has arisen only on account of discount offered to the customer as held by the AO. It is only in a particular situation where the cash advance alongwith loan amount equals the sales and other charges, it can be said that the balancing figure relates to discount offered to the customer. In light of above, we confirm the order of the Id CIT(A) and sustain the deletion of addition made by the AO. In the result, ground no. 1 of Revenue is dismissed.

3. In respect of ground no.2, the brief facts of the case are that the Assessing Officer has stated that the assessee has claimed financial service charges of Rs. 18,782,000/- (Rs. 32,000/- pertains to the earlier year). As explained by the assessee that these expenses have been incurred to facilitate the customers in taking loans from the banks for the purchase of tractors. Such expenses are not supported by any voucher and mostly deducted at a uniform rate of Rs. 15,000/- per customer and comprises of following:

<u>Nature of expenditure</u>	<u>Amount (Rs)</u>
1. Jeep Fare(for Field inspection, documentation & Physical verification)	6000
2. Legal and Advocate expenses	3000
3. Stamping charges	1500
4. Typing & Stationary charges	1000
5. Refreshment	1500
6. Entertainment	<u>2000</u>
Total	<u>15000</u>

The assessee was asked to justify the admissibility of expenses of Rs. 18,82,000/- on account of financial charges. In response, the assessee submitted that to take the loan from the Nationalized banks, the formalities are quite cumbersome so the village customers want the services of our salesman. We have to incur expenses through our salesman and the same is debited to financial service charges. The estimated amount varies from Rs. 10000 to 20000 which was paid to them. The AO thereafter held that from the ledger account of the customers, it is apparent that expenses towards processing charges, insurance and registration are charged arbitrarily without any uniformity. No relaxation is allowed to the customers, each and every kind of expenses are charged. Under such circumstances, it cannot be presumed that the assessee has incurred expenditure of Rs. 15,000/- per customer to help them in getting loans. Moreover, such expenses are not supported by any kind of documents to establish its genuineness. From the details of expenses given by the assessee and reproduced above it is very much apparent that expenses are taken in round figure with the intent to inflate the expenses. In view of the above facts and circumstances of the case considering the nature and in the absence of evidence, financial charges of Rs. 18,50,000/- pertaining to the year under consideration and Rs.32,000/- pertaining to earlier year total Rs. 18,82,000/- was disallowed by the AO.

3.1 Being aggrieved, the assessee carried the matter in appeal before the Id CIT(A) who after considering the assessee's submissions has given his findings as under:

"I have considered the facts of the case, assessment order, appellant's written submissions, AO's remand report and appellant's rejoinder. Assessing Officer disallowed financial charges paid by the appellant for

arranging loans for customers. Appellant submitted that these are reimbursement of expenses incurred by salesman for pushing the sales to various customers situated in remote places. Appellant submitted details of salesman with customer and amount of reimbursement. Appellant also submitted vouchers signed by the respective salesman giving details of nature of expenses incurred. Appellant mentioned the method through which these payments were verified by management. The AO submitted that some of the vouchers are not bearing signature and revenue stamp. AO also submitted that the vouchers of actual expenses incurred by the employees were not submitted. Since salesmen's vouchers containing details of expenses were only submitted. Vouchers for actual expenses incurred by the salesmen were not submitted, it is very difficult to verify the complete business purposes of these expenses. However, it is not in dispute that appellant made the payment to his salesmen by way of reimbursement of expenses and therefore prima facie expenses are allowable. However in the absence of actual expenditure vouchers from salesmen, the verification of expenses is not possible. In view of this, part disallowance of these expenses for want of verification is required. Accordingly, disallowance of 20% of these expenses will be reasonable and hence the same is confirmed. The disallowance made by the AO is confirmed to the extent of 20% for want of verification."

3.2 The Id. AR of the assessee submitted that for promotion of sales, the assessee has employed salesmen, who visit the territorial area, search out prospective customers, canvas them and then bring the customer for booking of the order. Such salesmen on the sale effected is given incentive apart from the reimbursement of the expenditure incurred by him in various account. Heads of such expenditure are placed by the salesmen before the Cashier who satisfy himself, seeks approval from the Manager and thereafter payment is actually made. Such payments are fully supported by vouchers. We are submitting herewith details of financial services expenditure along with date, name of the salesmen, name of the customer and the amount reimbursed. Copy of the payment vouchers bearing signatures of the recipient salesmen, Cashier and Manager is submitted. The amount varies from Rs 8000 to Rs

20000 looking to the distance covered, jeep fare and other actual expenditure as detailed on page 6 of the impugned assessment order. There is no valid reason for the disallowance of expenditure actually incurred. Similar expenditure has been incurred in the past years and as submitted herein before have been always allowed.

The Id AR further submitted that the AO has wrongly understood the nature of expenditure. He has mentioned as to charging of processing charges from the customers. It may be clarified that processing charges have been debited to the customers account in some cases and that amount has been transferred to K.S. Capital Services Private Ltd. for their processing charges of finance by Kotak Mahindra Bank. The recipient company is assessed to income tax and the amount so transferred stands duly credited in their accounts and considered in their assessment. Such processing charges are not for all customers, it is only in respect of such customers who have availed off the finance by Kotak Mahindra Bank. Insurance and registration charges are charged on actual basis, not arbitrarily. The reimbursement amount paid to the salesmen is for the specific expenditure incurred by them and such expenditure has not been charged from the customers. It is the nature of sales promotion expenses. The payment to the salesmen is actual and not inflated. As submitted herein above, the payment voucher is prepared by the Cashier, on satisfaction is approved after verification by the Manager and then payment is made by the Cashier, after obtaining signatures of the concerned salesmen. The Ld. CIT(A) after considering the above submissions of assessee held part disallowance @ 20% of these expenses for want of verification against which assessee had filed no appeal. The Ld. CIT(A) has rightly deleted the addition which is just and correct in law.

It was further submitted that the Id. AO thereafter completed the assessment u/s 143(3) for A.Y. 2011-12 & 2012-13 (A.Y. 2010-11 completed u/s 143(1) having similar facts and entries in accounts and vouchers) according to findings of Id. CIT(A) and made assessments of assessee HUF in accordance thereto .

3.3 The Id DR is heard who has taken us through the findings of the AO and relied upon the said findings.

3.4 We have heard the rival contentions and perused the material available on record. The expenses under consideration are sales promotion expenditure which are paid to salesman for pushing the sales to various customers situated in remote places. The details of salesman with customer and amount of reimbursement, vouchers signed by the respective salesman giving details of nature of expenses incurred and the method through which these payments were verified by management were submitted and verified by the Id CIT(A). At the same time, in the absence of actual third party expenditure vouchers from salesmen supporting their respective claims, disallowance of 20% of these expenses was held reasonable and disallowed by the Id CIT(A) for want of verification. In this factual matrix, firstly, the incurrance of expenditure for business purposes cannot be disputed. Secondly, one can debate about the basis of 20% disallowance and whether the same is reasonable or not. In this regard, we were informed by the Id AR that the Revenue has accepted the said position of 20% disallowance in subsequent years while completing the assessments u/s 143(3) for A.Y. 2011-12 & 2012-13. In light of that, where the facts and circumstances are same and the Revenue has accepted the said position in subsequent years, we don't feel it would be appropriate to unsettle

the position. We accordingly confirm the order of the Id CIT(A). Ground no. 2 of the Revenue is thus dismissed.

4. In respect of ground no.3, the brief facts of the case are that in respect of sale of implements amounting to Rs. 31,60,000/-, the assessee has submitted that bills for implements are issued to help the customers in getting loan of higher amount. In fact no such sales are made. Therefore, a reverse entry to this effect is made in the books of accounts. The assessee has not made any purchase of the implements and only sale bills have been issued to enable the customers to get higher amount of loan. As per AO, if the contention of the assessee is accepted, it is also a fact that a business man would never issue a bill without making any charge from the customers. There is another possibility that such implements could have been sold through some other dealer or implements. In either case, the assessee would get some remuneration for the service rendered by him. In view of this fact it was assumed by AO that the assessee has received 5% commission on the total sales booked for implements resulting into addition of Rs. 1,58,000/- (31,60,000 x 5/100) to the income of the assessee.

4.1 The findings of the Id. CIT(A) is as under:

"I have considered the facts of the case, assessment order and appellant's written submission. Assessing officer made the addition of 5% of Bill amount of equipments on the ground that appellant must have earned this much commission for facilitating customers in getting loan of higher amount. Appellant submitted that he has not received any money or commission for the facility provided to the customers. For making sales in the competitive environment, all these facilities are required to be provided to the customers for which no separate charges are made. The addition made by the AO is completely presumptive without any basis. I agree with the appellant that income cannot be presumed.

There are several decisions in which courts have held that income has to be real and not presumptive. Since there is no basis to presume that appellant must have earned commission at 5%, the addition cannot be sustained. This ground is accordingly allowed."

4.2 The Ld. AR of the assessee submitted that many customers in order to avail of higher loan facility require the assessee to issue bill for sale of implements. However, they do not purchase such implements in actuality and, therefore, credit voucher is again issued. No actual sale has been effected. It is only a debit and credit entry not resulting in any profit. The Id. AO after discussion in para 8 of its order has assumed and presumed that the bill has been issued after making a charge. He has indulged in the surmise, that a business man would never issue a bill without making any charge from the customers. He has not found any customer complaining that any charge has been made for such entry. There is no truth in the said claim and there is no evidence in support of it. It is without evidence and material. The Id. AO has further observed that there is another possibility that such implements could have been sold through some other dealer of implements. It is the surmise and conjecture, without any material or evidence. The Id. AO has not found as to such assumed sale to any other dealer. We are submitting herewith details of such implement sale/return alongwith date, invoice number, name of the party, amount alongwith date, credit note and the amount squaring up such debit. In actuality a sale of Rs. 60,000/- was made on 31.3.2009 vide invoice No.351 to Shri Ramavtar. Such amount of Rs. 60,000/- has been duly shown as sale and profit earned thereon stands duly considered in the trading account. We are submitting herewith such details of reversal entry of Rs. 31 Lacs. We submit the addition is based on surmise, conjectures, doubts, suspicious without any material or evidence. The Id. CIT(A) considering the above

submission and after verifying the facts has rightly deleted the addition which is just and correct in law.

4.3 We have heard the rival contentions and perused the material available on record. The AO has made the subject addition towards earning commission income by the assessee without any material/evidence and is thus on a presumptive basis. Mere suspicion or probability of earning commission income cannot form the basis for bringing the amount to tax in the hands of the assessee. There has to be something positive and tangible to substantiate the said position taken by the Revenue which unfortunately is not apparent in the present case. In light of above, we do not see any infirmity in the order of the Id CIT(A) which is hereby confirmed. Ground no. 3 of the Revenue is thus dismissed.

In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 15/02/2017.

Sd/-

(KUL BHARAT)
न्यायिक सदस्य / Judicial Member

Sd/-

(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Jaipur

Dated:- 15/02/2017

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

1. अपीलार्थी / The Appellant- The ACIT, Circle-6, Jaipur
2. प्रत्यर्थी / The Respondent- M/s Kishore Singh Gehlot, Jaipur
3. आयकर आयुक्त / CIT -2, Jaipur
4. आयकर आयुक्त(अपील) / The CIT(A) -2, Jaipur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 143/JP/2014)

आदेशानुसार / By order,
सहायक पंजीकार / Assistant. Registrar.

