

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

श्री भागचंद, लेखा सदस्य, के समक्ष
BEFORE: SHRI BHAGCHAND, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 502/JP/2012
निर्धारण वर्ष / Assessment Year : 2008-09

Sumit Kumar Shah, M/s Krishna Textiles, Madhu Vatika, 5 th crossing, Nahargarh Road, Chandpole Bazar, Jaipur.	बनाम Vs.	Income Tax Officer, Ward 4(1), Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AGBPS 2224 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ ITA No. 441/JP/2015
निर्धारण वर्ष / Assessment Year : 2008-09

Sumit Kumar Shah, M/s Krishna Textiles, Madhu Vatika, 5 th crossing, Nahargarh Road, Chandpole Bazar, Jaipur.	बनाम Vs.	Income Tax Officer, Ward 4(1), Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AGBPS 2224 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ ITA No. 422/JP/2015
निर्धारण वर्ष / Assessment Year : 2008-09

Income Tax Officer, Ward 4(1), Jaipur.	बनाम Vs.	Sumit Kumar Shah, M/s Krishna Textiles, Madhu Vatika, 5 th crossing, Nahargarh Road, Chandpole Bazar, Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AGBPS 2224 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Manish Agarwal (CA)
राजस्व की ओर से / Revenue by : Shri Ajai Mallik (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 15/09/2017
उदघोषणा की तारीख / Date of Pronouncement : 20/09/2017

आदेश / ORDER

PER: BHAGCHAND, A.M.

ITA No. 502/JP/2012 is quantum appeal of assessee for the A.Y. 2008-09 against order of Id. CIT(A)-II, Jaipur dated 27/03/2012 and the appeal No. 441/JP/2015 and 422/JP/2015 are cross appeals filed by the assessee and the revenue emanates from the order of the Id. CIT(A)-II, Jaipur dated 06/02/2015 pertaining to the assessment year 2008-09 for partly sustaining/deleting penalty U/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred as the Act).

2. All the appeals were heard together and for the sake of convenience and brevity, being disposed off by this common order.

3. ITA No. 502/JP/2012 for the A.Y. 2008-09.

The brief facts of the case are that the assessee is an individual and he filed return of income on 30/09/2008 declaring income of Rs. 1,94,480/-. The case was selected for scrutiny under CASS. The assessee was deriving income from business and profession and income from other sources. The assessee do its business of Bandhej and silk sarees in proprietary concern Krishna Textiles. The Assessing Officer during assessment proceedings noticed that the assessee has incurred

damage of stock of Rs. 27,50,650/-, out of which Rs. 1,50,000/- covered by sale of damaged goods and the balance amount of Rs. 26,00,650/- was debited to P&L account. The assessee submitted that the stock was damaged due to rains which was further damaged by the rats also. These goods became irreparable, therefore, the assessee has to sale these damaged goods at heavy loss. It was also submitted that these goods were not insured, therefore, the damage could not be recovered from insurance company. The Assessing Officer made the addition to the income of the assessee. The Id. CIT(A) has confirmed the action of the Assessing Officer and now the assessee is in appeal before the ITAT by taking following grounds of appeal:

- "1. That on the facts and in the circumstances of the case and in law, the Id. CIT(A) grossly erred in sustaining a disallowance of Rs. 26,00,650/- on account of loss due to damage of stock.*
- 2. That on the facts and in the circumstances of the case and in law, the Id. CIT(A) grossly erred in sustaining a disallowance of Rs. 26,34,815/- U/s 40(a)(ia) of the Income Tax Act, 1961.*
- 3. That the appellant craves leave to add, amend, alter, modify, substitute or delete any ground or grounds of appeal on or before the hearing of the appeal."*
4. Ground No. 3 of the appeal is general in nature and does not require any adjudication, therefore, the same is dismissed.

5. Ground No. 2 of the appeal was not pressed at the time of hearing, therefore, the same stands dismissed as not pressed.

6. The only issue remains for consideration is against sustaining the addition of Rs. 26,00,650/- which was claimed on account of loss due to stock damage by rain. The assessee was engaged in the business of Sarees on wholesale basis mainly sarees of bandhej and silk. The books of accounts of the assessee were subject to audit as per provision of section 44AB of the Act. The assessee was maintaining regular books of account and method of accounting was also employed regularly on year to year basis. While pleading on the behalf of the assessee, the Id A.R of the assessee has submitted that the assessee had incurred a loss of Rs. 26,00,650/- due to damage of stock of sarees. The assessee sent silk sarees for dying / printing job work to two job workers namely Mohammed Shafi Prop. M/s. Mohammed Shafi Dyers and Shri Praveen Chippa Prop. M/s. Aarti Enterprises in the month of September, 2007 and December, 2007 respectively. During the relevant period, the assessee's mother was suffering from severe illness and subsequently she died. On account of preoccupation with the illness of mother of assessee, the assessee asked the job workers to retain the sarees in their possession for some time but in the mean time, there was untimely rains and due to improper care by these job workers, the stock of sarees

got damaged at their premises. The damaged stock was not in a position to be repaired, therefore, to cover up the loss, this damaged stock was sold for Rs. 1.50 lacs to Shri Ram Ratan Singh, Kanpur. This genuine business loss was allowable to the assessee which has been denied to assessee by the revenue authorities on surmises and conjectures. In support of damages goods, the assessee has submitted copy of confirmation and affidavit of M/s. Mohammed Shafi Dyer, copy of job work bills of M/s. Mohammed Shafi Dyer, copy of confirmation, affidavit and job work bills of M/s. Aarti Enterprises, copy of affidavit of Gulzar Ahmed (Transporter) who transported the damaged goods, copy of affidavit of Shehzad (another pheriwala) who was also present during the sale of damaged goods to Ram Ratan Singh, Kanpur. Assessee also submitted his address and identity proof. Copy of sale bill of damaged stocks in the name of Ram Ratan Singh, Kanpur was also filed. Copy of newspapers where classified advertisement printed in Kanpur to trace Ram Ratan Singh, Kanpur the buyer of damaged goods on various dates were also filed. The assessee has also filed copies of news in local news papers showing rainfall in month of September & December, 2007. The assessee has also filed copy of reply given by meteorological department dated 06.09.2011 mentioning the places where the rain gauges were kept in Jaipur City during relevant period. Copy of death certificate of

assessee's mother and medical certificate, hospitalization certificate issued by Santokbha Durlabhji Hospital etc. were also filed. Affidavit of the assessee narrating entire facts and circumstance with regard to damage of stock was filed. Thus the assessee was able to establish beyond any doubt that the assessee's mother was seriously ill during the relevant period and her health kept on deteriorating and ultimately she died. All these facts were placed on the record even the news regarding the death of assessee's mother in Rajasthan Patrika on 15/11/2007 was also placed on record. The Id AR has also submitted that due to busyness of the assessee in medical treatment of his mother, the assessee could not lift the goods from the premises of the job workers and due to rains and improper care by the job workers pre and post rains, the stock of sarees were damaged at the premises of the job workers. The Ld. AO has failed to appreciate the business expediency in disposal of damaged stock. With the passage of time it lost value. The assessee sold the entire goods to the pheriwala namely Ram Ratan Singh, a resident of Kanpur for Rs. 1,50,000/- in cash who offered the highest price of damaged goods to the assessee. The appellant does not have the complete address of the buyer as the assessee had no regular dealing with him and these damaged goods were sold in cash on as is whereis basis. In spite of it, the appellant made his best possible effort

to locate the buyer of damaged goods by making advertisement in various local newspapers of Kanpur on various dates but he could not be located after a span of more than three years. However, affidavit of another pheriwala Shehzad who was in contact with the appellant and was present at the time and place of disposal of damaged goods to the Ram Ratan Singh, was submitted who confirmed the sale of damaged stock by the appellant, which remained uncontroverted. Since, damaged goods were sold by the assessee under business expediency in cash, therefore, as per general business practice selling dealer is not expected to ask about the detailed particulars such as address of the customer more particularly when the goods were not sold on credit and the buyer was not a regular customer, thus no adverse interference should be called for regarding the non availability of purchaser of damaged goods. Further, the Ld. AO has relied upon meteorological report (hereinafter referred to as "Met Report") for the year under consideration and observed that there was no rainfall in the month of December, 2007 and January, 2008 except on 03.12.2007 when there was a meager rainfall of 0.6 mm and such a meager amount of rainfall was not sufficient to cause any damage to the stock which was kept under a tin shade. In this regard it is submitted that the met-report cannot be made the sole basis for denying the claim for damage of goods by ignoring the other

evidences because the met-report is merely an indicator of the average rainfall at a particular place in a particular day. It is not an exact measurement of rainfall in a particular area (colony / locality) of a city. The met-department measures rainfall through its instrument called rain gauge which is placed at a particular place for measuring the average rainfall in that city. It is not possible to place rain gauges in each and every locality / colony of the city for arriving at the average rainfall for that city. For Jaipur District the rain gauges are placed at Jaipur Airport, Bassi, Chaksu, Chomu, Kotputli, Paota and Phagi (RTI application & reply furnished at paper book page no. 64 to 65). It is humbly submitted that average rainfall for Jaipur is measured through rain gauge at Jaipur Airport whereas the diameter of Jaipur City is more than 30 Kms. It normally happens that differential rains is received by different colonies / areas which depends upon various factors such as the location and point of intersection of the clouds. It even happens that some are of Jaipur may receive no rain whereas in some other area of Jaipur there may be heavy rains. This fact is also supported by the news flashed in various local newspapers of Jaipur for the period under consideration wherein it is clearly evident that on a particular day some parts of Jaipur received heavy rains whereas some parts received low or no rains. The relevant details have been furnished as under:-

S.No.	Particulars	Paper Book Page No.
1.	<u>DainikBhaskar: 09.09.2007: Page No. 3</u> The news flashed that in Jaipur City some areas received heavy rainfall, some areas received low rainfall whereas the other parts of Jaipur received no rains. As per the news Vidyashram & JLN Marg received heavy rains whereas Malviya Nagar (which is not even one kilometer away from Vidyashram & JLN Marg) received low rainfall and other parts of Jaipur received no rains.	77
2.	<u>Rajasthan Patrika: 16.09.2007 : Page No. 3</u> The news flashed that in Jaipur city some areas received heavy rainfall, some areas received low rainfall whereas the other parts of Jaipur received no rains. As per the news Jagatpura received heavy rains whereas other areas received low / no rains.	78
3.	<u>Rajasthan Patrika : 08.09.2007 : Page No. 3</u> Similar news of Differential rains	79
4.	<u>Dainik Bhaskar</u> Similar news of Differential rains	80
5.	<u>Dainik Bhaskar</u> Similar news of Differential rains	81

From the above, it can be reasonably be concluded that even if the met-report shows a particular figure of rainfall or no rainfall in Jaipur city on a particular day, yet there is always a possibility that in some area of Jaipur (may be the premises of job worker) there might be a heavier rainfall. Hence, the Ld. AO grossly erred in solely relying upon the met-report in denying the claim of damaged stock thereby ignoring the other material evidences on record despite when the met-report also shows rainfall in that period. Further, the Ld. AO has rejected these vital

evidences and contention of the assessee on mere assumption and presumption by making following allegation:-

1. The assessee did not get any insurance cover on stock:

Though the assessee could not take the insurance cover, however in absence of stock insurance, genuine loss incurred by the assessee supported by documentary evidences cannot be denied.

2. Non availability of buyer of damaged stock and sale bill does not bear TIN No., Registration No. etc.:

As submitted earlier, the assessee made every best possible effort to locate the buyer at his end and copy of sale bill was also submitted by the assessee. However, after a lapse of more than 3 years the buyer could not be traced. As regards to discrepancy noted in sale bill it was submitted by the assessee that he assessee is dealing in a commodity which is not subject to VAT etc. thus he was not registered with the sale tax department and goods were also sold to non registered dealer, therefore, TIN No. of selling as well as purchasing dealer were not mentioned on the invoice.

3. Extract dates or challans of sending the stock to job workers were not available:

It was submitted by the assessee in assessment proceedings as well as appellate proceedings that the assessee was not retaining the challans after receiving the goods from the job workers. The mere fact that exact dates of sending the goods to job workers was not available, it cannot be presumed that goods were not damaged in the possession of job workers,

more particularly when both the job workers have categorically admitted the damage of stock of sarees when they were in their possession.

4. Change of month by Aarti Enterprises from January 2008 to December, 2007, it may be other month also:

In this regard it was submitted that it can be happened due to some error / confusion on the part of job worker which was later rectified by the party itself, therefore, the observation of the Ld. AO based on assumption and presumption, thus same deserves to be ignored.

5. Assessee is so naive in his business that not kept information about the safety of goods at the premises of the job workers:

As submitted earlier that due to prolonged illness / hospitalization / death of appellant's mother in exceptional circumstances, the assessee could not attend properly his business, which fact the Ld. AO has failed to appreciate.

6. The assessee dispatched the goods for job work to job workers in bulk instead of in small quantities:

It is a general practice in highly competitive market that quantities are to be sent in bulk for job work to reduce the cost and other incidental charges. Further assessee is a wholesaler and looking to the Dewali season ahead, large quantity was sent in the month of Sept.-07 and likewise looking to the marriage season in January and February large quantity of sarees were sent to the job workers. It is the decision of a businessman which further also depends upon business

expediency prevailing at that time, thus observation of the Ld. AO are baseless deserves no credence.

7. Job workers stated that the stock was kept under Tin shades whereas there was no tin shade as well as not enough space to store huge stock:

In this regard it is submitted that the inspection was done after 3-4 years of the event whereas during the year under appeal tin shade as well as enough storage space was there at the premises of job workers and this fact was duly confirmed by the respective job workers in their affidavit and never denied the fact of damage of goods.

All the allegations of the Ld. AO were duly rebutted by the assessee during the course of assessment proceedings as well as appellate proceedings vide submission made 04.10.2011 (APB 94-101) and it was further submitted that the meteorological department's report obtained by the Ld. AO from the meteorological department on 13.12.2010 confirmed rains in months of September & December, 2007, when the goods were damaged at the job workers premises but, the Ld. AO concluded no rains and made the disallowance. Having rains during this period is further confirmed by news in local newspapers of various dates showing photographs and news of rains in September-December, 2007 (66-76). In case of M/s. Mohammed Shafi Dyers, heavy rains were shown in meteorological report till 16/09/2007 whereas the Ld. AO alleged that the job work was not finished before 24/09/2007 when there were no rains.

It is further submitted that during the appellate proceedings on the direction of the Ld. CIT(A) the Ld. AO submitted remand report dated 20.03.2012 (APB 107-110). In remand proceedings, Ld. AO recorded the statements of Shri Praveen Chipi Prop. of M/s Aarti Enterprises (APB 123-155) and Shri Gulzar Ahmed transporter on 19.03.2012 (APB 115- 112). All the allegations / observation made by the Ld. AO in remand report were rebutted by the assessee before the Ld. CIT (A) vide submission made on 26.03.2012 (APB 137-141). However, the Ld. CIT (A) has rejected the contention of the assessee and sustained the addition by making following observations:-

1. The appellant and proprietor of M/s. Mohammad Shafi Dyers have deliberately avoided compliance before the Ld. AO and son of Sh. Mohammed Shafi did not deliberately give the complete address of their factory.
2. The Ld. AO has exposed the contradiction in the statement of Shri Gulzar Ahmed, tempo driver and Shri Praveen Chippi proprietor of M/s. Aarti Enterprises.
3. Shri Praveen Chippi, proprietor of M/s. Aarti Enterprises has categorically admitted before the Ld. AO that stock sent to him for processing was not damaged.
4. Shri Praveen Chippi had replied after verifying his records / bill book and not out of his memory and opportunity to allow cross examination to Shri Praveen Chippi would not make claim of the assessee as genuine.

All the aforesaid observations of the Ld. CIT (A) do not find force in view of following facts:-

1. During the course of remand proceedings the summons u/s 131 were issued requiring personal presence of the persons on the very immediate next working day and some reasonable time must be given for personal presence as the person might be preoccupied in some urgent personal or business work. Mohammad Shafi could not personally attend the proceedings as he was out of Jaipur to Sawai Madhopur and summon was served on his relatives in response to which his son Rayees attended the proceeding and sought adjournment. He has given affidavit and submitted a letter through speed post requesting the Ld. AO to give another date (APB 142-143). However, the Ld. AO has not allowed further opportunity and wrongly mentioned in the remand report that summon remained uncomplied with.

2. As regard to the observation of Ld. CIT (A) that the son of the Mohammed Shafi Dyers did not give address of their factory, it is submitted that his father at that time was out of town, and it is a common fact that a ordinary man is try to avoid to give details before the income tax authority thus in the absence of his father, he did not give the address of their factory, however attended the proceedings and sought the adjournment thus observation of the Ld. CIT (A) deserves to be ignored.

Further in case of the assessee, it is submitted that the assessee was at Delhi due to some important preoccupied work and sought the adjournment though speed post (APB 136) but the Ld. AO alleged that the assessee willfully opted not to attend the proceedings without any basis. It is, therefore, submitted that no proper opportunity was provided by the Ld. AO in the remand proceedings and drawn adverse inference as

per his own sweet will thus observation of the Ld. CIT (A) deserves to be ignored and excluded.

3. The Ld. AO mentioned in the remand report that there was contradiction in the statement of Gulzar Ahmed and Praveen Chippi in respect of the place from where sarees were lifted by Praveen Chippi for printing. It is humbly submitted that there may be minor contradiction for the reason that the statement were based on human memory which has its own limitation and the matter under consideration is four to five years old when enquiries were made from both of them. However, the place of lifting of sarees for printing job work is not at all relevant for the issue under consideration. The assessee takes services of various tempowalas for transportation of goods and is not solely dependent on Gulzar Ahmed. Hence, the number of trips made by Gulzar Ahmed, per day trip, capacity of the tempo etc. are not relevant at all in respect of the issue under consideration.
4. As regards to statement recorded in case of Shri Praveen Chippi it is submitted that statement were recorded on oath by the Ld. AO and however only first three pages were signed by her and on last page, signatures of the Ld. AO is not there and signature of one "Lachi Singh" appears at the end page (APB 135) who is neither the person who is recording the statement on oath nor the person whose statement are recorded. In case of recording of statement on oath the signature of both the parties are required. Hence the statement recorded are doubtful, bad in law and cannot be relied upon.

5. In reply to question 30 (APB 129) Shri Praveen Chippi also accepted the fact that stock of sarees were damaged due to rain.
6. For packing of sarees in jute bags, it is submitted that Praveen Chippi categorically said in reply to question No. 47 (APB 133) that he had not used any packing material for sarees. Hence, it can be inferred that sarees were not packed in jute bags.
7. The Ld. AO had mentioned in the remand report that sarees were washable with normal water whereas Praveen Kumar Chippi has no were stated that the sarees were washable.
8. For variation in the month of delivery of goods, it is submitted that the event occurred four to five years ago and human memory is limited. Shri Praveen Chippi was under extreme mental pressure when statements were recorded as he stated in reply to Q.No. 32 (APB 129-130) that he received goods in the month of May, 2007, and the returned them in March, 2008, whereas the goods were lying with him for three months. These three things cannot happen simultaneously. He does not remember all things and was under mental pressure and such minor and irrelevant variations could not be made basis to made such a huge disallowance.

It is further submitted that the Ld. CIT (A) has sustained the addition merely on the basis of statement of Praveen Chippi recorded in the remand proceedings, however the error and omissions in his statements has already been explained above. Further, Praveen Chippi in his

affidavit accepted that goods were damaged at his premises due to rain.

In this regard reliance is placed on following case laws:-

Right to cross-examination

Kind attention of your honour is invited to the judgment of Hon'ble Supreme Court in the case of CCE Vs. Andaman Timber Industries reported in 2015 (324) ELT 641 wherein it

- “6 According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disvuted the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them.
7. As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the Adjudicating Authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the price list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above.”

Further, reliance is placed on the judgment of Hon'ble Allahabad High Court in the case of CCE Vs. Shyam Traders reported in 2016 (333) ELT 389 wherein, the above mentioned judgment of Supreme Court in Andaman Timber Industries was followed and the requirement of allowing cross-examination of witnesses was held as indispensable for adjudication.

39 TW 21 4 CIT Vs. Bhanwar Lai Murwatiya (Raj. High Court, Jodhpur)

Whether addition can be made on the basis of statements in a case wherein no opportunity of cross examination was allowed to the assessee ? - Held No.

Laxmanbhai S. Patel Vs. CIT [ITR No. 41 of 1997, Dated 22-07-2008] (Guj.)

The legal effect of the statement recorded behind the back of the assessee and without furnishing the copy thereof to the assessee or without giving an opportunity of cross- examination, if the addition is made, the same is required to be deleted on the ground of violation of the principles of natural justice.

It is thus humbly submitted that the meteorological report could not be solely made basis for denying the legal claim of damage of goods as relied by the Ld. AO by ignoring the other evidence because the meteorological report was merely and indicator of average rain fall at a particular place / city in a particular day and not a exact measure of rainfall in a part of a city, therefore, addition made by the Ld. AO based on assumption and presumption and further based on wrong appreciation of facts deserves to be deleted and the loss of stock claimed by the assessee deserves to be allowed more particularly when the assessee has submitted every plausible evidence to support his

claim and loss suffered by the assessee is genuine looking to the facts and circumstance of case.

7. On the other hand, the Id Sr. DR has relied on the orders of the authorities below.

8. I have heard both the sides on this issue. I have also considered the various decisions relied upon by both the sides. The assessee is dealing in business of Bandhej and silk sarees and the assessee was regularly sending his sarees for dying and printing job work. This was a regular feature of the assessee's business. The assessee claimed the loss on account of damage of stock of sarees due to rain, which was denied by the revenue. The assessee in support of claim of damage of goods has submitted confirmation and affidavits from both the job workers namely Mohammed Shafi Prop. M/s. Mohammed Shafi Dyers and Shri Praveen Chippa Prop. M/s. Aarti Enterprises. Copies of bills raised by these job workers were also submitted. The affidavit of transporter Shri Gulzar Ahmed, who transported the damaged goods were also submitted. An affidavit of witness namely Shri Shehzad, who was present during the sale of damaged goods to Shri Ram Ratan Singh of Kanpur was filed. The identity proof with address of Shehzad was also filed, which is placed at page No. 46 and 47 of the paper book. The

copy of sale bill placed at page No. 48 of the paper book was also submitted. Copy of Dainik Jagran newspaper dated 08/09/2011 placed at page No. 49 of the paper book and copy of the necessary information published in Khoji Narad on 08/09/2011 is also placed at page No. 50 of the paper book wherein the assessee has given an advertisement to the public to give information regarding Shri Ram Ratan Singh of Kanpur to whom the assessee has sold these goods. Similarly such classified advertisement were also given in the newspaper namely 'Rashtriya Sahara' on 10/09/2011 to 12/09/2011, which are placed at page No. 53 to 55 of the paper book. Thus the assessee has made necessary efforts to locate Shri Ram Ratan Singh of Kanpur to whom the goods were sold to establish his claim. The assessee has also submitted copies of news papers which has reported regarding rainfall in the month of September and December, 2007 in Jaipur. The assessee has also submitted necessary evidences like copy of death certificate of assessee's mother and medical certificate for her hospitalization issued by Santokbha Durlabhji Hospital to establish that during the relevant period, the assessee was busy in medical treatment of his mother and due to which he could not lift the goods from the premises of the job workers. All these facts and circumstances suggest that the assessee has suffered genuine loss on account of rain by damaging stock of sarees. He had

submitted sufficient evidences to establish the business loss occurred on account of rain at the premises of the job workers. Therefore, the disallowance of the loss suffered by the assessee was not justified. Accordingly, addition of Rs. 26,00,650/- is deleted.

9. Assessee's appeal in ITA No. 441/JP/2015 and revenue's appeal in ITA No. 422/JP/2015 are with regard to partly sustaining/deleting penalty U/s 271(1)(c) of the Act.

These are the cross appeals with regard to partly deleting/sustaining the penalty levied U/s 271(1)(c) of the Act. Since the assessee's appeal in quantum, addition has been allowed, therefore, the appeal of the assessee is allowed and the appeal of the revenue stand dismissed.

10. In the result, ITA No. 502/JP/2012 and 441/JP/2015 are allowed and ITA No. 422/JP/2015 is dismissed.

Order pronounced in the open court on 20/09/2017.

Sd/-

(भागचंद)

(BHAGCHAND)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 20th September, 2017

*Ranjan

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

1. अपीलार्थी/The Appellants- Shri Sumit Kumar Shah, Jaipur.
2. प्रत्यर्थी/ The Respondent- The ITO, Ward 4(1), Jaipur.
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त(अपील)/The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 502/JP/2011, 441 & 422/JP/2015)
आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar