

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
SMC BENCH 'B', BANGALORE**

**BEFORE SHRI AK GARODIA, ACCOUNTANT MEMBER &**

ITA No.1626/Bang/2017 - Asst. Year – 2009-10  
ITA No.1627/Bang/2017 - Asst. Year – 2011-12  
ITA No.1628/Bang/2017 - Asst. Year – 2012-13

M/s G.J Pawar & Sons,  
Javali Sal,  
Hubballi-580 028.

. Appellant

**PAN No. – AAABFG2995F.**

Vs.

The Income-tax Officer,  
Warad-2(2),  
Hubballi.

. Respondent

Appellant by : Shri Tulajappa Kalburgi, Advocate

Respondent by : Shri Palani Kumar, Addl. CIT

Date of Hearing : 20-11-2017

Date of Pronouncement : 24-11-2017

**ORDER**

**ER SHRI AK GARODIA, ACCOUNTANT MEMBER :**

All these three appeals are filed by the assessee which are directed against three separate orders of CIT (A) – Hubli dated 03.04.2017 for A. Y. 2012 – 13 and dated 05.05.2017 for A. Y. 2009 – 10 & 2011 – 12. All these appeals were heard together and are being disposed of by this common order for the sake of convenience. This is worth noting that a defect memo was issued pointing out that Respondent's name mentioned in Form – 36 is incorrect. The name of respondent mentioned in the appeal memo is CIT (A), Hubballi. In spite of this, amended form 36 with correct name of respondent was not filed till the date of hearing on 20.11.2017. The appeals were heard and are being

disposed of by this common order and I have noted both names as of respondent i.e. the name of CIT (A) as per Form 36 and of the A.O. as per the assessment orders.

2. First I take up the appeal for A. Y. 2009 – 10 in ITA No. 1626/Bang/2017. Although the assessee has raised 7 grounds but at the time of hearing, only Ground No. 3 was argued and hence, remaining grounds are rejected as not pressed. In this regard, it is also noted that on pages 23 to 37 of the Appeal Memo, “Points urged” are appearing and in that also, there is no argument in respect of any other ground. Ground No. 3 reads as under:-

*(3) That the learned Respondent ought to have considered the fact that the appellant assessee has already taken into account the Gross Profit on undisclosed sales his revised return filed in response to notice under section 148 of the IT Act and an additional income of Rs. 92,303/- has already been offered in the revised return and as such there is no scope of making addition again. Thus, confirming of entire unaccounted sales as income of the appellant-assessee is erroneous.*

3. Learned AR of the assessee submitted that on pages 23 to 37 of the Appeal Memo, “Points urged” are appearing and the same should be considered particularly Para 10 of it.

4. I have considered the rival submissions. I find that the AO Hs started with the figure of income s. 172,691/- as per revised return of income. On page 58, the sales as per original return is noted at Rs. 19,94,257/- and as per revised return, it has increased to Rs. 23,31,841/- after considering undisclosed sales of Rs. 337,584/-. As per Para 10 of the “Points urged”, it is submitted that the assessee is covered by section 44AF and therefore, the taxable income cannot go beyond 5% of the turnover. This is true that section 44AF is applicable in this year of the assessee’s assessment because as per the AO also, the assessee is a retailer and the turnover is below Rs. 40 Lacs even after including unaccounted sales. The income declared by the assessee is rightly taxed by the AO and the same is more

than 5% of the turnover of Rs. 23,31,841/- after considering undisclosed sales of Rs. 337,584/-. Hence, in my considered opinion, no further addition on this issue is justified. I delete the same. This ground is allowed.

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

7. Now I take up the appeal for A. Y. 2011 – 12 in ITA No. 1627/Bang/2017. Although the assessee has raised 7 grounds in this year also but at the time of hearing, only Ground Nos. 4 & 5 were argued and hence, remaining grounds are rejected as not pressed. In this regard, it is also noted that on pages 22 to 36 of the Appeal Memo, “Points urged” are appearing and in that also, there is no argument in respect of any other ground. Ground No. 4 & 5 read as under:-

*“(4) That the learned Respondent fails to appreciate the fact that section 69C essentially deals with expenditure accounted as such and therefore, the addition under section 69C is erroneous since in appellant-assesee case the addition is not on an account of failure to explain the expenditure.*

*(5) That the learned Respondent fails to consider the finding in case of CIT v. P.D. Abrahm in ITA no. 323 of 2002 (Kerala HC) and Vivek Kumar that when seized document explains unexplained expenditure no addition is warranted.”*

8. Learned AR of the assessee submitted that on page 2 of the assessment order, it is noted that unaccounted sales of Rs. 69,72,342/- was found noted on the material impounded in survey and in the same document, unaccounted purchase is also noted at Rs. 71,90,401/- including accounted purchase of Rs. 27,48,718/-. He submitted that in respect of unaccounted sales, separate addition of Rs. 10,24,270/- is made by the AO and the assessee is not disputing the same but a separate addition of Rs. 38,84,131/- is made u/s 69C in respect of unaccounted purchases. He submitted that section 69C is applicable in a case where the assessee has incurred

expenditure but could not explain the source of it. He submitted that in the present case, unaccounted sales are more than unaccounted purchases and therefore, the source of it is explained and therefore, section 69C is not applicable. Learned DR of the revenue supported the orders of the authorities below.

9. I find force in the submissions of the learned AR of the assessee because in the present case, unaccounted sales is more than unaccounted purchase and therefore, the source of it is explained and therefore, section 69C is not applicable. Hence, I delete this addition. This ground is allowed.

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

11. Now I take up the appeal for A. Y. 2012 – 13 in ITA No. 1628/Bang/2017. Although the assessee has raised 7 grounds in this year also but at the time of hearing, only Ground Nos. 4 & 5 were argued and hence, remaining grounds are rejected as not pressed. In this regard, it is also noted that on pages 21 to 35 of the Appeal Memo, “Points urged” are appearing and in that also, there is no argument in respect of any other ground. Ground Nos. 4 & 5 read as under:-

*“(4) That the learned Respondent fails to appreciate the fact that section 69C essentially deals with expenditure accounted as such and therefore, the addition under section 69C is erroneous since in appellant-assessee case the addition is not on an account of failure to explain the expenditure.*

*(5) That the learned Respondent fails to consider the finding in case of CIT v. P.D. Abrahm in ITA no. 323 of 2002 (Kerala HC) and Vivek Kumar that when seized document explains unexplained expenditure no addition is warranted.”*

12. Learned AR of the assessee submitted that on page 2 of the assessment order, it is noted that unaccounted sales of Rs. 14,48,593/- was found noted on the material impounded in survey and in the same document, unaccounted purchase is also noted at Rs. 45,83,273/-. He submitted that the source of

unaccounted purchase was explained as noted by the AO on page 3 of the assessment order by stating that unaccounted sales of Rs. 14,48,593/-, Receipt of Rs. 872,400/- being refund of money lending advances and Rs. 22,69,810/- received as advance from customers total Rs. 45,90,803/- as against unaccounted purchase of Rs. 45,83,273/-. He submitted that in respect of unaccounted sales, separate addition of Rs. 383,877/- is made by the AO and the assessee is not disputing the same but a separate addition of Rs. 33,83,277/- is made u/s 69C in respect of unaccounted purchases. He submitted that section 69C is applicable in a case where the assessee has incurred expenditure but could not explain the source of it. He submitted that in the present case, the source is explained being unaccounted sales Rs. 14,48,593/-, Receipt of Rs. 872,400/- being refund of money lending advances and Rs. 22,69,810/- received as advance from customers total Rs. 45,90,803/- as against unaccounted purchase of Rs. 45,83,273/-. and therefore, section 69C is not applicable. Learned DR of the revenue supported the orders of the authorities below.

13. I find force in the submissions of the learned AR of the assessee because in the present case, the source is explained being unaccounted sales Rs. 14,48,593/-, Receipt of Rs. 872,400/- being refund of money lending advances and Rs. 22,69,810/- received as advance from customers total Rs. 45,90,803/- as against unaccounted purchase of Rs. 45,83,273/-. The AO has not pointed out any mistake in these contentions. He has stated on page 5 of the assessment order that there is deposit of Rs. 12.75 Lacs in the current account in KVG Bank and therefore, unaccounted sales stands utilized in that bank deposit but on the same page, he has noted that it was explained before him that this deposit of Rs. 12.75 Lacs in the current account in KVG Bank is already accounted in the books of account and there is no comment of the AO in this

regard. Hence, I accept that the source of unaccounted purchases is explained and therefore, section 69C is not applicable. Hence, I delete this addition. This ground is allowed.

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

15. In the combined result, all three appeals of the assessee are partly allowed.

Order pronounced in the open court on the date mentioned on the caption page.

Order pronounced in the open court on **24<sup>th</sup> November, 2017.**

**Sd/-**  
**(AK GARODIA)**  
**ACCOUNTANT MEMBER**

Vms.

Bangalore

Dated : 24/11/2017

Copy to :

1. The Assessee
2. The Revenue
3. The CIT concerned.
4. The CIT(A) concerned.
5. DR
6. GF

By order

Sr. Private Secretary, ITAT, Bangalore.

1.	Date of Dictation .....
2.	Date on which the typed draft is placed before the dictating Member .....
3.	Date on which the approved draft comes to the Sr. P. S. ....
4	Date on which the order is placed before the dictating Member for pronouncement .....
5.	Date on which the order comes back to the Sr. P.S. ....
6.	Date of uploading the order on website .....
7.	If not uploaded, furnish the reason for doing so.....
8.	Date on which the file goes to the Bench Clerk .....
9.	Date on which order does for Xerox & endorsement .....
10.	Date on which the file goes to the Head Clerk.....
11	The date on which the file goes to the Assistant Registrar for signature on the order.....
12	The date on which the file goes to the dispatch section for dispatch of the Tribunal order.....
13	Date of dispatch of order.....