

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री भागचन्द, लेखा सदस्य एवं श्री कुल भारत, न्यायिक सदस्य के समक्ष
BEFORE: SHRI BHAGCHAND, AM AND SHRI KUL BHARAT, JM

आयकर अपील सं./ITA No.657/JP/2016
निर्धारण वर्ष/Assessment Year : 2011-12.

Shri Mukesh Kumar Meena, S/o Late Makhan Lal Meenaaa Village & Post Thanagazi, District- Alwar, (Raj.)	बनाम Vs.	The Income Tax Officer, Ward 4(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. BCUPK 0255 J		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri M.L. Borad (Advocate)
राजस्व की ओर से/ Revenue by: Shri R.A. Verma (Addl.CIT)

सुनवाई की तारीख/ Date of Hearing : 24.10.2017.
घोषणा की तारीख/ Date of Pronouncement : 30/11/2017.

आदेश/ ORDER

PER SHRI KUL BHARAT, JM.

The appeal by the assessee is directed against the order of Ld. CIT(Appeals)-
2, Jaipur dated 22.03.2016 pertaining to Assessment Year 2011-12.

The assessee has raised the following grounds of appeal:-

- "1. That the learned CIT[A] erred in sustaining the rejection of books of accounts u/s.145(3) of the I.T. Act, 1961, which sustenance of rejection of books of accounts u/s.145(3) of the I.T. Act is most arbitrary, unjust and untenable in law.
2. That the learned CIT[A] erred in sustaining application of GP rate of 20% applied by the AO as against GP rate of 17.40% declared by the assessee, which sustenance of application of GP rate of 20% is most arbitrary, unjust and untenable in law and in the alternative highly excessive w.r.t. facts and circumstances of the case.
3. That the learned CIT [A] erred in upholding the addition of Rs.24,00,000/- made by the AO u/s.69A of the I.T. Act as unexplained money, which upholding of the addition u/s. 69A of the I.T. Act of Rs.24,00,000/- by the learned CIT[A] as unexplained money is most

arbitrary, unjust and untenable in law and in the alternative highly excessive w.r.t. facts and circumstances of the case.

4. That the learned CIT[A] failed to appreciate that the assessee, by way of establishing the identity of Shri O.P. Gupta on whose behalf the assessee in the capacity of power of attorney holder of Shri O.P. Gupta collected royalty of Rs.24,00,000/- from different persons for making payment to mining department and also narrating sequence of events which proved beyond doubt the availability of cash amount of Rs.24,00,000/- with the assessee, had discharged the burden of proof which lay upon him.
5. That sustaining by the learned CIT [A] of the addition of Rs.5,00,000/- made by the AO u/s. 69A of the I.T. Act in regard to amount of Rs.5,00,000/- given to the assessee by Shri Vijay Kumar Meena for making on his behalf a DD of Rs.5,00,000/- to be tendered alongwith application for allotment of liquor shop is most arbitrary, unjust, untenable in law and in the alternative excessive w.r.t. facts and circumstances of the case.
6. That sustaining by the learned CIT [A] of the addition of Rs.3,00,000/- made by the AO u/s. 69A of the I.T. Act in regard to amount of Rs.3,00,000/- taken by the assessee from his wife Smt. Sunita Devi is most arbitrary, unjust, untenable in law and in the alternative excessive w.r.t. facts and circumstances of the case.
7. That the learned CIT [A] erred in sustaining the addition of Rs.2,40,000/- made by the AO u/s. 68 of the I.T. Act as unexplained credits in regard to unsecured loans taken from various parties aggregating to Rs.2,40,000/- (however each loan is below Rs.20,000/-) taken by the assessee from 13 persons having PAN, which sustenance of additions of Rs.2,40,000/- u/s.68 of the I.T. Act is most arbitrary, unjust, untenable in law and in the alternative excessive w.r.t. facts and circumstances of the case.
8. That the learned AO failed to appreciate that the assessee had duly discharged his burden of proof which lay upon him by submitting a list of names, addresses and PAN of all the 13 petty loan creditors.
9. That the learned CIT [A] erred in sustaining disallowance @ 10% of expenses incurred on conveyance, business promotion and staff welfare on the ground of personal use, which sustenance of disallowance @10% of above expenses is most arbitrary, unjust and untenable in fact and in law and in the alternative excessive.

10. That while sustaining additions of unexplained credits and specific disallowance of expenses the learned CIT [A] failed to appreciate the judicial consensus that when profit has been estimated by applying a particular G.P. rate and books being rejected u/s. 145(3) of the I.T. Act no separate addition can be made towards unexplained credit and disallowance of specific item of expenses.
11. That the appellant craves leave to add, alter, amend or substitute one or more ground of appeal as and when necessary."

2. Briefly stated the facts are that the case of the assessee was picked up for scrutiny assessment and the assessment u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the Act) was framed vide order dated 28/03/2014. While framing the assessment the Assessing Officer rejected the books of accounts on the ground that the assessee did not issue separate bill in respect of each sale. As per practice adopted by the assessee, for the sales made during a day, one consolidated entry of sale is made in the cash book. Thus, the cash sales recorded in the books depends on the sweet will of the assessee. As such possibility of leakage of revenue by recorded less sales, cannot be ruled out. Further, the Assessing Officer observed that no stock register or quantity details of the goods traded are available. In the absence of daily stock records it cannot be ascertained whether whole of the goods purchased during the year have been included in sales or not? Assessing Officer observed that there is a difference in the figure of sales uploaded while filing the e-return and the figure of sales recorded in the audited books of a/c. Therefore, he was of the view that books of accounts maintained by the assessee are not reliable and the correct profits of business cannot be deduced therefrom and proceeded to estimate the profits. The Assessing Officer adopted 20% of the gross profits against

the gross profits of 17.40% declared by the assessee. The assessing Officer further made addition by invoking the provisions of Section 69A of Rs. 24,00,000/-, Rs. 5,00,000/- and Rs. 3,00,000/- in respect of the loans received from Shri O.P. Gupta, Shri Vijay Kumar Meena, Shri Hawa Singh Meena and Smt. Sunita Devi. The Assessing Officer further made addition on account of unexplained cash credit of Rs. 2,40,000/- u/s 68 and made addition of Rs. 1,40,000/- on account of disallowance out of expenses for personal use. Against this, the assessee preferred an appeal before Ld. CIT(A), who after considering the submissions partly allowed the appeal. Thereby, the disallowances which were made for the personal use were restricted to 10% as against Rs. 1,40,000/- added by the Assessing Officer, rest other additions were sustained. Now, the assessee is in further appeal before this Tribunal.

3. Ground no. 1 is against rejection of books of accounts and **Ground no. 2** is against adopting the gross profit @ 20% as against 17.40%. Since both grounds are inter-connected hence are being disposed of together.

3.1 Ld. Counsel for the assessee reiterated the submissions as made in the written submissions. He contended that assessee has regularly kept and maintained books of accounts and on the basis of these books of accounts final accounts i.e. Balance sheet, trading account, profit & loss account etc. have been prepared and the same stand filed before the lower authorities. He further contended that the books of accounts were audited by the Chartered Accountant and tax audit report in form No. 3CB, 3CD with schedules and annexure were also filed with the AO. He contended that each and every entry in the books of accounts is supported by bills & vouchers. He submitted that assessee being a dealer of liquor is regulated by the

Excise Department, the maximum retail selling price for IMFL and beer is also fixed by the State Excise Department. He further contended that sale of liquor by the assessee is subject to frequent check by the authorities of the State Excise Department. Besides statements with regard to sale and purchase are periodically submitted by the assessee to the Excise Department. There is neither change nor variation in the system of accounting maintained by the assessee in the year under appeal. He further submitted that the assessing Officer has not recorded a clear finding that the, accounts so filed suffers from specific defects. In the absence of specific defects, the AO ought not to have rejected the trading results. Moreover, the AO failed to appreciate the fact that during the year under appeal there was increase in sale. Hence, the gross profit fell little bit. He submitted that it is a settled position of law that merely non-maintenance of stock register is not a sufficient reason to reject the books of accounts.

3.2 On the contrary, Ld. D/R opposed the submissions and submitted that the Assessing Officer who justified in adopting the past year's results declared by the Assessee.

3.3 We have heard the rival contentions, perused the material available on record. The Assessing Officer rejected the books of accounts and estimated the profit by observing as under:-

"3.2 I have considered the averments made by the Ld. A/R. It is a common practice in liquor trade that entire sales are made in cash for which no individual sale bills are issued. The consolidated sale of a day recorded in the cash book does not have particulars of the goods sold Even though purchases have been made from govt. undertaking, sales made by the assessee are not

open to verification. On this ground alone various Tribunals and High Courts have held that provision of section 145(3) do apply in liquor cases. The cases relied upon by the Id. A/R are not relating to liquor cases and hence not relevant as far as the case of assessee is concerned.

3.3 As regards legal position on the subject, in the case of Action Electricals vs. DCIT (258 ITR 188), Hon'ble Delhi High Court has observed as under:-

"We are unable to persuade ourselves to agree with Ld. Counsel for the assessee. Section 145(2) of the Act empowers the Assessing Officer to make a best judgment assessment when he is not satisfied about the correctness or completeness of the accounts of the assessee. It is not possible to categorize various types of defects which may render rejection of books of account of an assessee on the ground that the accounts are not complete or correct. Each case has to be considered on its own peculiar effects, having regards "to the nature of business. Though it is to that the absence of stock register in a given situation may not per se lead to an inference that the accounts are incomplete or false: The absence of such a register, coupled with other factor like fall in profits, etc. may lead to an inference that the accounts are not correct."

The Hon'ble Allahabad High Court in the case of Awdhesh Pratap Singh Abdul Rehman and Brothers vs. CIT (210 ITR 406) has held —

"where the absence of a stock register, cash memos, etc., coupled with other factors like vouchers in support of the expenses and purchases made not being forthcoming and the profits being low, may give rise to a legitimate inference income that all is not well with the books and the same cannot be relied upon to assess the income, profits or gains of an assessee. In such a situation, the authorities would be justified to reject the account books under section 145(2) of the Act and to make the assessment in the manner contemplated in those provisions."

The Hon'ble Supreme Court in the case of Chhabil Das Trubhuwandash Shah Vs. CIT 59 ITR 733 (SC) has held that in absence of quantitative tally, the fall in margin of profit cannot be explained. The Rajasthan High Court in the case of Ghasiram Todarmal Vs. CIT reported in 196 ITR 329 has held that if the stock register maintained by the assessee does not reflect the true state of affairs of the articles consumed or produced, the action of rejection of Books of account ;s just. Here, the assessee even does not maintain the stock register.

3.4 Now coming to estimation of gross profit, in the cases of Kansara Bearings Pvt. Ltd. vs. ACIT (270 ITR 235)(Raj) and Ajay Goyal vs. ITO (99 TTJ 164) it has been held that Past year profit declared by the assessee is the best guide for application of GP/ NP rate. As mentioned above in just preceding year the assessee had declared gross profits @ 19.41% on sales of Rs. 1,36,26,368/-. Even those gross profits have not been subjected to scrutiny u/s 143(3) of the I T Act. As per the govt. policy while fixing the M.R.P. of the products, retailers margin is considered at 20% of the sale price by the RSBCL and SGSSM through whom IMFL and CL is supplied to retailers. Considering all the relevant facts the sales of assessee are estimated at Rs. 1,75,00,000/- on which GP rate of 20% is applied to estimate assessee's profits of business. This will provide gross profits of Rs. 35,00,000/- against the declared profits of Rs. 29,52,155/-. The difference of Rs. 5,47,845/- is added to the income of the assessee."

This finding of the assessee was affirmed by the Ld. CIT(A). The Ld. CIT(A), has decided this issue by observing as under:-

"In the present proceedings, the appellant's main submission was that the assessee is bound to purchase IMFL and beer only from Rajasthan State Beverage Corporation Ltd. and the prices are fixed. Further, the retail trade price of the above products is also fixed. As per the excise liquor policy the

maximum retail selling price for IMFL and beer was also fixed by State Excise Department which in any way could not exceed 20% of margin/profit but retailer was free to sell it at a lower price. In view of the above, it was contended that gross profit could not exceed 16% (20/120x100). Further, the sale was subject to frequent check by the Inspectors and officers of the State Excise Department and monthly statement with regard to sale and purchase were submitted to the excise department. It was thus submitted that the assessee can realize a maximum of 16.68% of the RSBCL and hence the rejection and estimation of gross profit were not in order.

It is a fact that the sales are not vouched by proper bills and are completely in cash. Further, no stock details were maintained by the assessee. In the absence of these two important aspects, the books of account could not reflect the correct position of the affair and the rejection of books of accounts under section 145(3) of the I.T. Act, 1961 are thus upheld. Now coming to the aspect of gross profit to be adopted, the past history of the case is considered the best indicator as held in a number of judicial decisions. The assessee has returned a gross profit of 19.41% in the previous year i.e. Assessment Year 2010-11. Further, the assessee's submissions that only 16.68% maximum gross profit could be achieved due to the excise policy of fixing the margin at 20% on the purchase price, in similar circumstances, in the previous year, the appellant itself has shown a gross profit of 19.41%. When asked how this was possible, the appellant had no answer. Therefore, this submission of the assessee cannot be accepted since, appellant himself had returned a profit percentage of 19.41% in the previous year. The estimation of gross profit at 20% for this year is upheld. It is seen that the turnover over has been estimated by the Assessing Officer at Rs. 1,75,00,000/- against Rs. 1,69,62,946/- returned by the assessee. This has no basis as Assessing Officer did not bring on record and material to justify the increased turnover adopted by him, the turnover shall be taken at the value as returned by the assessee and rate of 20% applied on it as held by the Assessing Officer. This ground of appeal is partly allowed."

It is settled position of law that the Assessing Officer is empowered to reject the books of accounts, in the event if he is not satisfied about the correctness or completeness of the account of the assessee. The Assessing Officer may make an assessment in the manner provided under section 144 of the Act.

In our view, the Assessing Officer requires to satisfy himself about the correctness and completeness of the accounts. Admittedly, in the present case the assessee is engaged in the business of liquor which is regulated by the concerned Excise Department. The Assessing Officer has not made any enquiry from Excise Department with regard to quantity of liquor sold by the assessee. Moreover, the Assessing officer has not brought any material on record suggesting that the assessee was involved in selling liquor and not recording the same. Since, the purchase and sales are to be notified to State Excise Department as well, the AO has not brought any material suggesting that the State Excise Department has adversely reported about the sale and purchase. Under these undisputed facts, we are of the view that the Assessing Officer was not justified in rejecting the books of accounts. Further, even it is assumed that the books of accounts were not giving true picture of profit. The AO u/s 144 of the Act is under statutory duty to find out the profit declared by comparing with the similarly situated persons, if such information is not available in that event the Assessing Officer is required to deduce profit on the basis of average of last five years GP which is not done in this case. Hence, the action of the Assessing Officer rejecting the books of accounts is not justified. We therefore, direct the Assessing Officer to adopt gross profit @ 17.40% as declared by the

assessee, as in this year there is an increase in sales. Ground no. 1 and 2 of the assessee's appeal are allowed.

4. Now, coming to Ground Nos. 3 to 5. Ld. Counsel for the assessee reiterated the submissions as made in the written submissions. The submissions of the Ld. Counsel for the assessee are reproduced as under:-

GROUND OF APPEAL NO. 3 & 4

1. *That the assessee craves leave to reproduce verbatim the last four lines of para 5.2 of the assessee's assessment order for the year under appeal i.e. 2011-12 which are as under:-*

"It is settled position that in cases of cash receipts there is increased burden of proof on the assessee which he has not discharged. In absence of proper evidence, the cash receipt shown in the name of Shri O.P. Gupta is held unexplained. Accordingly, addition of Rs. 24,00,000/- is made in the income of assessee u/s 69A of the I.T. Act.

2. *That from reading the above referred last four lines of para 5.2 of the assessment order the Hon'ble Bench will very kindly note that the AO has made addition of Rs. 24,00,000/- to the income of assessee u/s 69A of the Income Tax Act.*
3. *That invoking the provision of Sec. 69A of the I.T. Act and making addition u/s 69A of the IT Act at Rs. 24,00,000/- are void ab initio and liable to be cancelled particularly on account of the reason that provisions of sec. 69A of the I.T. Act can be applied only in those cases where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of accounts, if any, maintained by him for any source of income, and the assessee offers no*

"in view of categorical denial by Shri Vijay Kumar Meena, it is clear that he had not given any cash to the assessee. The facts being so the amount of Rs.5,00,000/- shown in the cash book in his name is held to be unexplained and added to the income of assessee u/s. 69A of the I.T. Act"

2. That from reading the above referred para 6.3 of the assessment order the Hon'ble Bench will very kindly note that the A.O. has made addition of Rs.5,00,000/- to the income of assessee u/s.69A of the I.T. Act.

3. That invoking of provisions of sec.69A of the I.T. Act and making addition u/s.69A of the I.T. Act at Rs.5,00,000/- are void ab initio and liable to be cancelled particularly on account of the reason that provisions of sec.69A of the I.T. Act can be applied only in those cases where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of accounts, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the assessing officer satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of assessee of such financial year.

4. That the correct factual position is that the appellant assessee maintains regular books of accounts and the same are audited by a Chartered Accountant and moreover Tax Audit Report forms part of the original paper book at page no.21 to 31 filed by the appellant assessee on 23.5.2017 and amount of Rs.5,00,000/- mentioned above is duly recorded in the books of accounts maintained by the assessee and is duly reflected in the annexed balance sheet at page no.28 of the paper book. In support of it the assessee has already furnished audited filial accounts and Tax Audit Report in the

paper book page no.21 to 31. In the liability side of the audited balance sheet which is page 28 of the paper book it is clearly written as "receipt for DD Rs.13,00,000/-". The bifurcation of Rs.13,00,000/- is as under:

<i>i) Vijay Kumar Meena</i>	<i>Rs.5,00,000/-</i>
<i>ii) Hawa Singh Meena</i>	<i>Rs.5,00,000/-</i>
<i>iii) Smt.Sunita Devi</i>	<i>Rs.3,00,000/-</i>

NOTE: Addition of Rs.5,00,000/- on account of credit of Rs.5,00,000/- in the name of Hawa Singh Meena stands deleted by the learned CIT[Appeals] and the department is not in appeal against this relief given to the assessee by the learned CIT[A].

5. That as the above mentioned amount of Rs. 5,00,000/- in the name of Mr. Vijay Kumar Meena is duly recorded in the books of accounts maintained by the assessee provisions of sec 69A are not at all applicable in assessee's case and as such additions made u/s 69A of the IT Act by the AO and sustained by the learned CIT (Appeals) are liable to be cancelled. It is accordingly prayed that additions of Rs. 5,00,000/- may please be cancelled.

4.1 On the contrary, Ld. D/R opposed the submissions.

4.2 We have heard the rival contentions, perused the material available on record. The authorities below in respect of the addition made of Rs. 24,00,000/- by invoking the provision of Section 69A of the Act did not accept the explanation of the assessee that the said amount belonged to Shri O.P. Gupta. It is contended by the Ld. Counsel for the assessee that the amount is duly reflected in the books of accounts.

Therefore, he contended that the Assessing Officer has wrongly invoked the provision of Section 69A of the Act and the Ld. CIT(A) affirmed the action of the Assessing Officer without considering the fact that the impugned receipt is reflected in the books of accounts of the assessee. We find that the Ld. CIT(A) has rejected the contentions by stating that the assessee has only given some facts but no evidences. The AO made addition on the basis that no confirmation by Shri O.P. Gupta. It is seem that the assessee has filed a copy of Power of Attorney given by Shri O.P. Gupta in favour of the assessee. The assessee has also filed bank's statements reflecting the debit entry about the money re-paid to Shri O.P. Gupta. It is also noticed that the Assessing Officer has not issued any summon to Shri O.P. Gupta for the purpose of verification the correctness of claim of assessee. In the absence of proper enquiry by the Assessing Officer, in our view, the addition is unjustified. Therefore, after considering the totality of the fact we deem it appropriate to set aside this issue to the file of the Assessing Officer for the purpose of verification afresh. Therefore, these grounds are allowed for statistical purpose.

5. Now, coming to **ground no. 6**, Ld. AR reiterated the submissions as made in the written submissions. The submissions of the assessee are as under:-

GROUND OF APPEAL NO.6

1. That the assessee craves leave to reproduce verbatim para 8.2 of the assessee's assessment order for the year under appeal i.e. 2011-12 which is as under:

"Copy of allotment letter of liquor shop in the name of Smt. Sunita Devi Meena for the year 2009-10 has been filed during assessment proceedings. She has filed the ITR for AY 2011-12 manually on 31.3.2012 in ITR-4. It implies that the turnover of liquor shop run by her during the

relevant period was not auditable u/s.44AB of the I.T. Act. It is highly unbelievable that a person running a govt. allotted liquor shop does not have turnover of even sixty lac rupees and even does not have a bank account. Since she has not been produced, verification of facts regarding her capacity and genuineness of the transaction could not be carried out. Since availability of cash balance of Rs.3,00,000/- in her hands has not been proved, the amount of Rs.3,00,000/- shown in the cash book in her name is held to be unexplained and added to the income of assessee u/s.69A of the I.T. Act. "

2. That from reading the above referred para 8.2 of the assessment order the Hon'ble Bench will very kindly note that the A.O. has made addition of Rs.3,00,000/- to the income of assessee u/s.69A of the I.T. Act.

3. That invoking of provisions of sec.69A of the I.T. Act and making addition u/s.69A of the I.T. Act at Rs.3,00,000/- are void ab initio and liable to be cancelled particularly on account of the reason that provisions of sec.69A of the I.T. Act can be applied only in those cases where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of accounts, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the assessing officer satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of assessee of such financial year.

4. That the correct factual position is that the appellant assessee maintains regular books of accounts and the same are audited by a Chartered Accountant and moreover Tax Audit Report forms part of the original paper book at page no.21 to 31 filed by the appellant assessee on 23.5.2017 and

amount of Rs.3,00,000/- mentioned above is duly recorded in the books of accounts maintained by the assessee and is duly reflected in the annexed balance sheet at page no.28 of the paper book. In support of it the assessee has already furnished audited final accounts and Tax Audit Report in the paper book page no.21 to 31. In the liability side of the audited balance sheet which is page 28 of the paper book it is clearly written as "receipt for DD Rs.13,00,000/-. The bifurcation of Rs.13,00,000/- is as under:

<i>i) Vijay Kumar Meena</i>	<i>Rs.5,00,000/-</i>
<i>ii) Hawa Singh Meena</i>	<i>Rs.5,00,000/-</i>
<i>iii) Smt.Sunita Devi</i>	<i>Rs.3,00,000/-</i>

NOTE: Addition of Rs.5,00,000/- on account of credit of Rs.5,00,000/- in the name of Hawa Singh Meena stands deleted by the learned CIT[Appeals] and the department is not in appeal against this relief given to the assessee by the learned CIT[A].

6. That as the above mentioned amount of Rs. 3,00,000/- in the name of Smt. Sunita Devi is duly recorded in the books of accounts maintained by the assessee provisions of sec 69A are not at all applicable in assessee's case and as such additions made u/s 69A of the IT Act by the AO and sustained by the learned CIT(Appeals) are liable to be cancelled. It is accordingly prayed that above mentioned addition of Rs. 3,00,000/- may please be cancelled.

It is respectfully submitted that above mentioned additional written submissions are in addition to be submissions made by the appellant assessee in first written submissions dated 22.05.2017 filed with the paper books on 23.5.2017. It is requested that these written submissions may kindly be taken into consideration along with the first written submissions dated 22.05.2017 filed with the original paper book on 23.05.2017. The inconvenience caused to be Hon'ble Bench on account of filing of these additional written submission is regretted."

5.1 Ld. D/R opposed the submissions.

5.2 We have heard the rival contentions, perused the material available on record. It is seen that the addition was made by invoking the provisions of section 69A of the Act. It is demonstrated by the assessee that this transaction is duly reflected in the books of accounts. The assessee has also filed income tax return of Smt. Sunita Devi. Therefore, we are of the view that authorities below were not justified in making the addition. The AO is directed to delete the addition. Thus, Ground no. 6 is allowed.

6. Now, coming to **Ground no. 7 & 8**, Ld. Counsel for the assessee reiterated the submissions as made in the written submissions. Ld. Counsel for the assessee submitted that there is a petty transaction. The assessee has duly filed the relevant evidences.

6.1 Ld. D/R opposed the submissions.

6.2 We have heard the rival contentions; we find that the assessee has not furnished any supporting evidences. Therefore, these grounds of the assessee's appeal are dismissed.

7. Ground no. **9 & 10** are inter-connected.

7.1 Ld. Counsel for the assessee reiterated the submissions as made in the written brief. He contended that the disallowance is made on adhoc basis and highly excessive.

7.2 Ld. D/R opposed the submissions and supported the order of the authorities below.

7.3 We have heard the rival contentions, it is seen that the assessing Officer has made disallowance on the basis of surmises. Since, the disallowance is made on the basis of conjecture and surmises without basing the disallowance on material evidence. Therefore, we direct the AO to delete the addition. Ground no. 9 & 10 are disposed of in the terms indicated herein above.

8. **Ground no. 11** is general in nature and needs no separate adjudication.

9. In the result, appeal of the assessee is partly allowed for statistical purpose.

Order is pronounced in the open court on Thursday the 30th day of November 2017.

Sd/-
(भागचन्द)
(BHAGCHAND)
लेखा सदस्य / Accountant Member
Jaipur

Sd/-
(कुल भारत)
(KUL BHARAT)
न्यायिक सदस्य / Judicial Member

Dated:- 30/11/2017.

Pooja/

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

1. The Appellant- Shri Mukesh Kumar Meena.
2. The Respondent – The ITO Ward 4(2), Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 657/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar