

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. 617/JP/2014
निर्धारण वर्ष / Assessment Year : 2007-08

M/s Design Core, 225, Lakshmi Complex, M.I. Road, Jaipur.	बनाम Vs.	Income Tax Officer, Ward 2(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAefd 2504 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Mahendra Gargieya (Adv)
राजस्व की ओर से / Revenue by : Smt. Poonam Rai (DCIT)

सुनवाई की तारीख / Date of Hearing : 19/01/2018
उदघोषणा की तारीख / Date of Pronouncement : 08/02/2018

आदेश / ORDER

PER: BHAGCHAND, A.M.

This is an appeal filed by the assessee emanates from the order of the Id. CIT(A)-I, Jaipur dated 27/06/2014 for the A.Y. 2007-08.

2. The assessee is a firm engaged in the business of civil contractorship and also in interior decoration, designing, drawing etc. on turnkey basis and also through consultation. During the year, the contract receipts were Rs. 4,75,29,475/- out of which Rs. 4.20 crores were from M/s Idea Tele Communication Limited (A TATA Group Co.) and the balance being from Shree Cement Limited. The Assessing

Officer doubted the purchases from Shankar Trading Co. and SK Enterprises, on the basis of enquiry carried out by issuing summons U/s 131 of the Income Tax Act, 1961 (hereinafter referred as the Act), which was not served on these firms concerns and addition was made at Rs. 39,04,150/- towards unverifiable purchases. The Id. CIT(A) has confirmed the action of the Assessing Officer.

3. Now the assessee is in appeal before the ITAT by taking following grounds of appeal:

- “1. The impugned additions and disallowances made in the order u/s 143(3) of the Act dated 31.12.2009 are bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence, the same kindly be deleted.*
- 2.1 **Rs.39,04,150/-:** The Id. CIT(A) erred in law as well as on the facts of the case in holding that the claimed purchases remained totally un-proved or have not been established at all. The finding so recorded is completely contrary to the facts, submissions and other evidences available on record. The disallowances so made by the AO and being confirmed by the Id. CIT(A), is being totally contrary to the provisions of law and facts of the case, the same kindly be deleted in full.*
- 2.2 The Id. CIT(A) further erred in law as well as on the facts of the case in recording an incorrect finding of fact that the appellant surrendered Rs.40,00,000/- on account of unverifiable purchases as personal expenditures wrongly booked in account. Such finding being a misreading and incorrect, kindly be quashed and ignored.*
- 2.3 The Id. CIT(A) further erred in law as well as on the facts of the case in holding that the confirmation dated 21.06.2014 given by one of the buyers namely M/s S.K. Enterprises, was an additional*

evidence and none of the conditions specified u/r 46A were fulfilled and consequently, not admitting the same. Such a finding run completely contrary to the admitted fact that in the remand proceedings, the AO made enquires completely back of the assessee without giving any opportunity at all to the assessee hence, the Id. CIT(A) seriously erred in not admitting the additional evidence as also in considering the remand report which suffers from the gross violation of principal natural justice. Hence, the remand report may kindly be ignored and the subjected evidences kindly be admitted, considered and obliged.

3. **Rs.25,260/-:** *The Id. CIT(A) also erred in law as well as on the facts of the case in confirming the disallowance u/s 40A(3) of the Act of Rs.25,260/- being 20% of total purchases of Rs.1,26,294/- being the payment made in cash to M/s United Iron Traders, Udaipur. The disallowances so made by the AO and being confirmed by the Id. CIT(A), is being totally contrary to the provisions of law and facts of the case, the same kindly be deleted in full.*
4. **Rs.75,000/-:** *The Id. CIT(A) also erred in law as well as on the facts of the case in confirming the disallowance u/s 40(a)(ia) of Rs.75,000/- on account of the alleged contravention of Sec.194C. The disallowances so made by the AO and being confirmed by the Id. CIT(A), is being totally contrary to the provisions of law and facts of the case, the same kindly be deleted in full.*
5. *The Id. AO erred in law as well as on the facts of the case in charging interest u/s 234B, 234D(1) and in withdrawing interest u/s 244A(3). The appellant totally denies it liability of charging of any such interest. The interest, so charged and the withdrawal of interest being contrary to the provisions of law and facts, kindly be deleted in full.*
6. *The appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing.”*

4. Grounds No. 1 and 6 of the appeal are general in nature and does not require any adjudication.

5. Ground No. 4 of the appeal was not pressed during the course of hearing, therefore, the same stands dismissed as not pressed.

6. Ground No. 5 of the appeal is regarding charging interest which is consequential and mandatory in nature, therefore, the same is also not required to be adjudicated.

7. In the grounds No. 2.1, 2.2 and 2.3 of the appeal, the issue involved is regarding disallowance of Rs. 39,04,150/- towards the unproved purchases. On this issue, the Id AR, while pleading on behalf of the assessee, has submitted as under:

1. Before proceedings to make submissions on merits of the grounds taken, it is very essential to submit that why the assessee has agitated the disallowance of Rs.39,04,150/- even though it had already offered some income on 17.12.2009 (PB 29). In fact, such an offer was made under the factual background that the Id. AO commenced the assessment proceedings in the month of Jan., 2009 through letter dated 5th Jan., 2009 and continued thereafter, time to time. A detailed query letter was issued on 07.08.2009 wherein vide para 6, the Id. AO required the assessee to furnish the details of the parties from whom purchases of more than Rs.1 Lac were made. While making preparation, it came to notice that some mistakes might have been committed in as much as some of the purchases of construction

material might have been charged to the works account as against the personal capital expenses of the partners of the present assessee firm. Since the construction of their office building was also going on in the same very financial year and the work at the site of the client M/s Idea was also going on simultaneously, it could possibly happen that a part of some cost of the office construction might have been charged to the revenue of assessee firm by a bonafide mistake and clerical error on the part of the accounts department. Hence as a matter of precaution, a note (PB-28) was appended below the statement of purchases furnished to the Id. AO, reading as under:

“Some purchases perhaps from these parties () stood wrongly charged to the expenses, though pertained to personal capital expenditure of partners. Hence such purchases of Rs.40 lacs approx, is added to our declared return income. Detailed letter follows. Revised tax comes to Rs.1438053/- after adjustment of credits, balance of Rs.3,01,670/- is being paid with revised return.”*

The same was submitted to the Id. AO letter dated 17.12.2009 (PB 29). In the meanwhile, the jurisdiction stood transferred to a different officer. The present AO further commenced the proceedings. Merely alleging that some discrepancies were noticed, he impounded the complete books of account and other records on 26th Aug., 2009 and since then it continues in his possession. However, it was sufficient to create and intensify tension in the mind of the partners of the assessee firm. Limitation being near, the Id. AO was otherwise pressing hard for compliance of various requirements and in particular to produce the two suppliers. Therefore, the Id. AO himself was in a haste. On the other hand, the partners were already out of station due to their professional work and therefore, it was not possible to trace the sellers for the transactions which have already taken place almost three years back. Otherwise also, these parties having completed the

transactions, it was not binding upon them and the assessee was always at the mercy of third party. There was no time to look into the various records. The accountant employed was semi-qualified and non-professional and there were possibilities of some mistakes etc. Due to continued impounding, neither the assessee was able to reconcile the mistakes, if any nor the Id. AO was in position to permit opportunities due to pressure of time barring assessment.

Therefore, looking to the time constraint, the tension and pressure developed, on the basis of whatever material available with the assessee, it was though fit and in a larger interest, to avoid penal and other severe consequences, to make an offer of additional income of an estimated/adhoc amount of Rs.40,00,000/- (approx.) for taxation. Such an offer was made with a view to buy peace and to avoid possible litigation with the department and was subjected to the condition that no penalty and prosecution proceedings would be initiated against the assessee.

However, when after the completion of the assessment the assessee could look into the accounts and other record with a patience and tried to remove deficiencies, if any and based on the information gathered from the inspections carried out during the hearing, it reached to a firm conclusion that the offer of additional income made at a huge amount of Rs.40 Lacs with a huge tax, was wrongly made as was not at all required. The decision to make such offer at the relevant point of time was the need of the hour. However, for the above reason and also when the assessee found from the assessment order that the Id. AO has nowhere accepted the offer which was made nor he honoured the conditions and rather alleged the same to be an

afterthought and even initiated penalty proceedings also. Hence, the assessee had to take his steps back.

Once an offer made was not accepted, the assessee is also not bound by the offer so made and hence, free to agitate the addition/disallowance. Otherwise also the merits of the assessee's case were not weak and it was only time constraint and other circumstances it offered.

The law is settled that *admission is an extremely important piece of evidence but it cannot be said that it is conclusive. Moreover, it is open to the assessee who made the admission to show that it is incorrect and the assessee should be given a proper opportunity to show that the books of accounts do not disclose the correct state of facts* as was held in Pullangode Rubber Produce Co. Ltd. v/s State of Kerala & Others (1973) 91 ITR 18 (SC).

Moreover, there cannot be any estoppel against the statute. Therefore, even if the assessee has made some commitment, it cannot work as an estoppel and if the assessee still feels aggrieved of the addition made by the AO, he can agitate in the appeal. Kindly refer Sanjay Tandon (individual) v/s ACIT (2008) 119 TTJ 277 (Lucknow). Also refer Raghava Health Care Ltd. v/s CIT (2008) 14 DTR 341 (Visaka).

The case of CIT v/s M. Pyngrope (1993) 200 ITR 106 (Guj.) approved of the right of the assessee to prefer an appeal though assessment was made on the basis of return filed by the assessee, holding that Sec. 246(1) of the Act is very wide. In Nirmala L. Mehta's case (2004) 269 ITR 1 (Bom) observed "*There cannot be any estoppels against the statute, Article 265 of the Constitution of India in unmistakable terms provides that no tax shall be levied or collected except by authority of*

law. Acquiescence cannot take away from a party the relief that he is entitled to where the tax is levied or collected without authority of law". In CWT v/s Apar Limited (2002) 175 CTR 312(Bom) maintained the right of appeal when return was filed under protest, without prejudice to its legal rights as according to the assessee the disputed asset was not chargeable to tax. In Mayank Poddar (HUF) v/s WTO (2003) 181 CTR 362 (Cal) permitted an appeal when the assessee had included certain asset in his return under mistake, admission or misunderstanding of the assessee, would not justify taxability.

The Id. CIT(A) however has not at all considered the above facts and the case laws and wrongly alleged that since the appellant could not prove the purchases hence offered the same to tax, which is completely contrary to the facts. The assessee offered the income completely on a different grounds as evident from letter dated 7.12.2009 (PB-29).

On merits:

2.1 Accounts not rejected: It is not disputed that the assessee has maintained complete books of accounts consisting of cash book, journal, ledger, bank books, Bills and vouchers for expenses which were produced. The purchase and work contract receipt were also produced. The accounts are audited u/s 44AB of the Act. There was no adverse remark by the Id. Auditor (PB 1-20). Notably the Id. AO, feeling satisfied with the same, has not invoked Sec.145. This contention, when seen in the light of the other factual and legal submissions, it will be found that the Id. AO by his own admission (i.e. by not rejecting accounts) was not justified yet to suspect and disallow the claimed purchases.

2.2 Allegations/objections of the CIT Appeals: The objection of the Id. CIT(A) that where the purchases are totally unproved, there is no question of estimating the GP/NP rate, is not tenable and is against the various judicial pronouncement. In fact, the Hon'ble ITAT Jaipur has been taking a consistent view in the case of the jewelers where allegations of bogus purchases were made that the best way of ascertaining the income was to reject the account and to ascertain the estimate the fair GP/NP rates. In the case of Kachwala Gems vs. JCIT (2007) 288 ITR 0010 (SC)

"Accounts—Rejection—Estimation of GP rate—Books of account of the assessee rejected by the AO pointing out several defects including doubt regarding genuineness of certain purchases and low GP rate—IT authorities have given cogent reasons for rejection of books of account—There is no reason to take a different view—In a best judgment assessment there is always a certain degree of guesswork—AO having estimated the GP of the assessee on the basis of a comparable case, and the CIT(A) and the Tribunal having successively reduced the same, there is no arbitrariness on the part of IT authorities"

In the above case the Hon'ble Apex Court, noticing the defect of not proving the purchases held application of S.145 justified. Hence, where accounts are not found correct complete, S.145(3) requires the rejection of the account. Further the law is well settled that once the accounts are rejected the only course is to make a fair estimation of income by applying suitable GP/NP rates.

3. Sellers identified and existed: The AO's main allegation was that the claimed purchases of Rs.39,04,150/- made from two sellers (Shankar Trading Co. and SK Enterprises) were not verifiable, is factually incorrect, as evident from further submissions.

3.1.1 The material on record clearly shows that both the sellers were existing and fully identifiable parties as the claimed purchases are duly

supported by purchase bills which bear complete name and address. The sellers are duly registered firms with the sales tax authorities and having TIN No. However, since accounts are impounded, the same are within the possession of the Id. AO. In absence of the report of the Id. Inspector it is difficult to judge its veracity. After a lapse of 3 years a party may not continue at the same address. In absence of contrary material, with TIN No. their identity can't be denied simply because they were not found, no attempt was made when assessee requested.

3.1.2 On this aspect, it was submitted before the Id. CIT(A) as under:

"4. Assessee Discharged Onus: The Id. AO alleged that the summons issued u/s 131 came back un-served. The enquiry made through the Inspector who reported that there was no trace of the subjected suppliers at the given address. Further, the assessee was asked to produce these parties but failed. It is submitted that the time given was very short. The AO's letter was received only on 19.12.2009 for compliance on 21.12.2009 (PB 30), practically leaving no time. Those sellers were not available at that time. As regards their production it was specifically requested vide letter dated 21.12.2009 reproduced at page 3 para 7 of the order that the assessee had already made all the possible efforts to convey and ensure the presence of the sellers however, having no power of law, the Id. AO was also requested to summon them u/s 131 of the Act.

The Id. AO did not appreciate that the assessee did his best as was practically possible within his control. It is quite natural that after a lapse of substantial time (3 years), it is not necessary that the suppliers still remain under the dictating terms of the buyer. The powers of the Civil Court have been purportedly conferred by the legislature upon the Id. AO u/s 131 of the Act, which must have been used effectively, where the circumstances so warrant in the interest of natural justice. One can understand that these parties once having completed the transactions were not under any obligation to co-operate with the assessee and the assessee on the other hand could not have used his muscle powers to produce them before the Id. AO. The Id. AO though issued summons and some enquires is stated to be done. But no serious steps appears to have been taken in as much as he could have even imposed penalty of Rs.10,000/- for each failure of the witness to comply with the summon. The report of the Inspector of the non-availability of the sellers, taken

help by the Id. AO, was also not confronted to the assessee. The Id. AO was otherwise pressing because the cases were getting time barred. Therefore, he was himself in haste. On the other hand, the partners were out of station due to their professional work and therefore, it was not possible to trace the suppliers for the transactions which have already taken place almost three years back. Otherwise also, the parties having completed the transaction, it was not binding upon the third and outer party to always be at the disposal of the assessee to present as and when called. Therefore, the Id. AO could not have expected the assessee to present the suppliers at any moment of time the Id. AO wanted.

The Id. AO appears to have effectively taken up the scrutiny assessment only at the fag end of the year. The books were impounded in August, 2009, however, it was only in Dec., 2009 that too after passing of half of the month, the assessee was asked to make compliances. It appears that the Id. AO was having a preconceived notion or was predetermined to make is allowances. This is evident from the fact that despite making a request to issue summons, no action was taken by him. Hence onus laid upon the assessee stood discharged and the claimed purchases therefore, must have been treated as genuine. Kindly refer Jhaver Bhai Bihari Lal & Co. v/s CIT (1985) 154 ITR 591 (Pat). It was held that cash credit – refusal by ITO to issue summon u/s 131 – revenue’s onus whether discharged – certificate creditor produced – law enjoins the issuance of summons in case certificate purported to have been granted by such creditors are produced before AO. Also kindly refer Vijeta Cement Pvt. Ltd. v/s JCIT (2000) 24 TW 223 (JP)."

3.1.3 The AO, in the remand report stated that the letters were issued in the name of the two suppliers as also their respective landlords however; none of these persons were found at the given address therefore, he concluded the genuineness of the subjected transactions of purchases remained doubtful. In this connection it was submitted before the Id. CIT(A) as under:

"1.1 *At the outset, it is submitted that the enquiry so made and the conclusion drawn has no sanctity in as much as the fact of sending letters and the fact of remaining the same un-served, was never confronted to /made known to the assessee. Otherwise also on the face, it appears abnormal that even the two landlords, who had let-out the properties to these suppliers, were not found available. The AO*

has not alleged that those landlords have sold off the properties and gone somewhere else nor any enquiry appears to have been made from the neighbours. On the contrary, when the assessee tried to contact Shri Santosh Prop. of M/s S.K. Enterprises at the given address, he was found available and even rather confirmed the fact of supply of material to the assessee. A confirmation, duly attested, is enclosed in support. (PB-93)

Thus, the enquiry conducted by the AO, has not served the purpose but, at the same time, it is also a fact that even if this enquiry has not brought anything in favour of the assessee, also (at the same time) no adverse inference could be drawn from the said enquiry.

- 1.2 Another aspect to be considered is that the two suppliers are very small traders of building material. They are not the supplier of any reputed brand or established suppliers so as to continue at the given address for a long period running into years. Therefore, the assessee after having received the entire payment and after the close of the transaction, was not at all required to keep a continued watch on these two suppliers so as to produce them at any moment, the department wants them to be produced nor those suppliers are under any such obligation. The nature of trade is also such which support this contention.*
- 1.3 Otherwise also, after a lapse of a long period of seven years from the date of transaction, it is highly improbable that the persons would be found available at the given address or even if they are found available, we cannot expect them to reply out of memory with a mathematical precision. Under these peculiar facts and circumstances therefore, a circumspect view of the entire matter/all the facts of the case are required to be considered."*

The Id. CIT(A) however, did not appreciate the counter comments judiciously. He even ignores the fact that from the remand report itself the facts of existence of the two suppliers was admitted, once it was stated that they were paying rent. He wrongly refused to consider confirmation of S.K. Enterprises, because the same was filed before in remand proceedings due to non-opportunity in assessment proceedings.

4. Purchases duly established: The purchase consideration towards the purchases made from these two suppliers, were admittedly paid through by account payee cheque only, which fact is evident from the findings recorded by the Id. AO itself at page 2 para 4 based on the bank enquiry got made by him however, the Id. AO never confronted with the result of the enquiry so conducted with the bank.

The Id. AO however, ignored this vital fact on certain allegations. At the outset, we may submit that the Id. AO never confronted before making these allegations but noticed only from the impugned assessment order. Hence, our submission follows:

- (i) He alleged that the bank accounts were opened by the suppliers just prior to receipt of cheques from the assessee. It is submitted that the assessee itself normally prefers to make payment only through a/c payee cheques to have a better accounting and internal control and therefore, in these cases, also the assessee strongly insisted upon the suppliers that the payment due to them, could be made only by a/c payee cheque and it is under this compulsion only, these parties opened the bank accounts otherwise they wanted and rather insisted that the payment be made in cash only. In any case, it was an only a part of regular business activity and nothing wrong.
- (ii) Payments to both the suppliers could be made at the close of the year: It is submitted that as a matter of general practice, the assessee had been making payments to most of the concerned parties whether suppliers or others, within a period of 2 to 3 months. However, in this case firstly, the payments were delayed due to the late opening of the bank accounts by the sellers as stated above. Secondly, the assessee itself was running short of funds and received substantial payment very late in the year e.g. in the month of Feb., 2007, Rs.90 Lacs were

received from Idea [kindly ref copy of ledger a/c (PB 32-33)] which also delayed further payments. Consequently, both the sellers could be paid at the close of the year.

- (iii) The third allegation being that the material shown to have been purchased through bills, was not normally of the type being used in interior decoration. It is submitted that the Id. AO is not an expert nor he has carefully gone through all the bills nor he referred the matter to the Departmental Valuation Officer (DVO). Towards the contract receipt of Rs.4.75 crore, the receipts from Idea was Rs.4.02 crore and purchases of material of Rs.3.10 crore was made. To justify the nature of material purchased and consumed at the site of Idea, a detailed note was submitted. A copy of one of the work order is however enclosed (PB 38-70) for a better appreciation. We may clarify that the assessee's responsibility was not confined to interior decoration only but a substantial amount of civil work was also involved and there was a composite contract of labour and material. The Id. AO appears to get confused in as much as he has compared the purchases of building material with the nature of assessee's work as interior decorator only and ignored that substantial civil work was also involved.
- (iv) His further allegation was that as soon as cheques were cleared from suppliers bank accounts, cash was withdrawn. It is submitted that the assessee is not concerned with this fact. The Id. AO has not established that cash so allegedly withdrawn, had come back to the assessee. It was for the sellers how to run their business. Otherwise also, the delayed payment by the assessee to these parties must have hard pressed the suppliers to make onward overdue payment to their respective suppliers and therefore, as soon as there was credit, availability was withdrawn.

This is nothing but a suspicion in the mind of the Id. AO who gave unwarranted stress to this issue. But the substance is that he failed to establish that the withdrawal of cash so made, came back to the assessee itself. There is absolutely no whisper on this aspect. It is useful to refer the case of Padam Singh Chauhan (2008) 215 CTR 303 (Raj).

- 5.1 Contract receipts admitted: The entire receipts of Rs.4.75 crores were duly accounted for and the Id. AO also accepted the same. Needless to say that to achieve such a huge contract receipt, the assessee must have made purchases. Therefore, there is no reason to doubt these transactions. More so, when the AO never denied/disapproved requirement/consumption of such material.
- 5.2 Better results: The subjected expenditure directly affects the net profit/ NP rate and therefore, a reasonable course may be to look at the declared trading results of this year vis a vis past history.

A perusal of the comparative chart hereunder shall reveal that the ratio of purchases of raw material to the receipts this year at 66% is in accordance with the past. Notably the assessee declared much better NP rate at 4.64% against 2.05% in the last year. This very fact itself strongly suggests that there is absolutely no reason to doubt the purchases made from these two particular parties. More so when the Id. AO himself could not reach to a conclusion in as much as the enquiry though initiated by him but was left half way. In any case, the Id. AO completely failed to bring any contrary material to disprove the claimed purchases. We have already submitted that the claimed purchases are supported by purchase invoice, the nature and volume of purchases are not abnormal and lastly, the overall declared results support the contention. The admitted civil construction was not

possible without subjected material. Hence, purchases have to be accepted if not from the claimed source then from the others. But cannot be denied.

A.Y.	CONTRACT RECEIPTS (A)	PURCHASES (B)	B/A (%)	N.P	N.P. RATE
2005-06	Rs.1,59,84,389/- (PB 34)	Rs.96,25,113/- (PB 34)	60.22%	Rs.1,62,083/-	1.07%
2006-07	Rs.1,94,00,540/- (PB 36)	Rs.93,65,715/- (PB 36)	48.28%	Rs.3,96,758/-	2.05%
2007-08	Rs.4,75,29,475/- (PB 15)	Rs.3,14,07,414/ - (PB 15)	66.08%	Rs.22,06,766/-	4.64%

5.3 In this connection it was submitted before the Id. CIT(A) as under:

"2.1 Though it is pertinent to note that the AO has not denied the fact of contract receipts and the very fact of execution of the contracts undertaken by the assessee nor the AO has expressed his dissatisfaction over the ratio of consumption of material purchased (under dispute) to turnover (66.08%) or upon a better NP rate of 4.64% declared by the assessee. Needless to say that it is not the contract receipt which are to be taxed but it is only the income arising there from i.e. after reducing all the expenditures viz the cost of labour, material, direct/indirect expenses etc. and thus, it is only the net profit which is to be considered. By admitting the fact of contract receipt and taxing the same the AO has otherwise admitted the incurrence of the subjected purchases as well more particularly, when no contrary evidence was brought by the Assessing Officer on record, which could negate the claim of purchases made by the assessee.

2.2 It is further submitted that the client Idea Cellular Limited is a national level company belonging to a reputed TATA Group and one has to believe that the bills raised by the assessee must have been passed only after due satisfaction of the client as regards the quality of the materials supplied by these suppliers and consumed by the assessee. Therefore, simply for want of verification from these two suppliers, to conclude that the assessee did not make any purchases, is nothing but a suspicion.

2.3 *Otherwise the subjected items are very low cost items. The partners of the assessee firm are themselves professionals being Architect & Engineers and work conscious of the quality, the value of the material and the requirement as well. The work order contains very minute details and if at all, the assessee wanted to inflate the cost, he could have selected high value items as against choosing these low value items. Thus, what appears is nothing but a suspicion in the mind of the AO."*

Thus, this was not a case of bogus purchase like jewelers where the seller itself denied. Here the AO did not establish so. But the Id. CIT(A) did not appreciate the submissions judiciously.

6. Supporting Case Laws: In the cases of jewelers where disallowances were made on account of alleged unverifiable/bogus purchases, the Hon'ble Jaipur Bench of ITAT has been taking a consistent view and the department also has taken a stand that where the fact of sales/export stands admitted, the claim of purchases cannot be denied. Kindly refer:

(i) Shubh Laxmi Exports vs. ITO (2008) 10 DTR 0281(JP) (Trib.)

(ii) M/s Sambhav Gems Ltd. Vs. ACIT 36 Taxworld 254

(iii) CIT vs. M.K. Brothers (1986) 52 CTR (Guj) 228 : (1987) 163 ITR 249 (Guj)

(iv) CIT v. Nikunj Eximp Enterprises (P.) Ltd. (2013) 216 Taxman 171 (Mag.) (Bom.)(HC) Sale to government department-Alleged bogus purchases-Sales not doubted, merely because suppliers not appeared before the Assessing Officer or Commissioner (Appeals), purchases cannot be disallowed.

(v) Rajesh P Soni V/s ACIT 100 TTJ 892 (Ahd) Where purchases are properly recorded in books of account and supported by authenticated purchases bills/ vouches payments were made through banking channel, the sales against these purchases not doubted. No addition can be made merely because he suppliers cannot be located.

(vi) In Gujrat High Court in Judgement reported at (2013) 356 ITR 451 CIT Vs. Simit P. Seth held as under: -

"In the present case, the Commissioner of Income-tax (Appeals) believed that when as a trader in steel the assessee sold certain quantity of steel, he would have purchased the same quantity from some source. When the total sale is accepted by the Assessing Officer, he could not have questioned the very basis of the purchases. In essence, therefore, the Commissioner (Appeals) believed the assessee's theory that the purchases were not bogus but were made from the parties other than those mentioned in the books of account."

- 7.1 On the other hand, alternatively even assuming for a moment that the subjected purchases of Rs.39,04,150/- was not genuine and the same is reduced from the purchases, the NP would go up from 4.64% to 13.05% which is beyond imagination and not at all possible in this line of trade.
- 7.2 In the alternative, without prejudice to the other contentions, it is submitted that assuming the subjected purchases remained unverified; at the worst the accounts could be rejected. Once accounts are rejected the only course available is to make a fair estimation which may or may not require any addition to the declared results. Rejection of accounts doesn't necessarily require any addition as held in the case of CIT v/s Gotan Lime Khaniz Udyog 256 ITR 243 (Raj). In the facts of the present case, even the accounts are rejected, no further addition is required as the declared NP rate is already better than the earlier years.
- 7.3 After considering similar facts only this Hon`ble ITAT in Anuj Kr. Varshney applied 15%.

Thus, under the totality of facts and circumstances, there was no reason to doubt and disallow the claimed purchases in absence of contrary material and when accounts were not rejected. Alternatively,

the trading results being better no disallowance was called for. Hence the same please be deleted or reduced suitably.

8. The Id. CIT(A) has wrongly denied admission and consideration of the additional evidence submitted before him being the confirmation from S.K. Enterprises, it is submitted that the settled legal is that proposition that the powers of the first appellate authority are very wide and co-terminus with those of the AO and what AO can do, he can do and what AO fail to do, that also he can do. Kindly refer Kanpur Coal Syndicate 53 ITR 225 (SC). Section 251 and 252 of the Act has also been worded keeping the same spirit, as also rule 46A. Section 250 (4) empowers the CIT (A) to make further inquiries on its own or to direct the AO to make further inquiry and to report him. The embargo put on his power u/r 46A (1) & (2) has also been loosened by sub-rule 4, which also empower the CIT (A) to direct the production of any document/the examination of witness, to enable him to dispose of the appeal. Thus, the legislative intent is quite clear that the CIT(A) should not straight away reject, evidence/s filed before him under rule 46A (1). The powers of CIT (A), as submitted above are also to be interpreted in the context of the amended law, wherein, he is no more empowered to restore back any matter which was available earlier u/s 251 (1) (a), necessitating a compulsory admission of the evidence before him in the interest of justice. This matter has been dealt with elaborately in CIT vs. K. Ravindranathan Nayyar (2003) 184 CTR 46 (Ker.), which has held that the CIT (A) was not justified in rejecting the admission of confirmatory letter straight away on the plea that the evidence was not filed before the AO (at pg-47, pr-6). This ratio squarely applies on the facts of the present case. Kindly refer our w/s to CIT(A) (PB 84 & 90) that AO did not provide sufficient time.

However, because of this invalid action such evidence deserve consideration here itself by the Hon`ble ITAT and hence the same kindly be considered and the appeal be decided here itself.

8. On the other hand, the Id DR has vehemently supported the orders of the authorities below.

9. The Bench have heard both the sides on this issue and also taken into consideration various case laws relied upon. The total contractual receipts were of Rs. 4.75 crores out of which Rs. 4.20 crores were from M/s Idea Tele Communication Limited (A TATA Group Company) and the balance from Shree Cement Limited. Thus, almost all the contractual receipts were from the companies of repute. The net profit for the year under consideration was comparatively better than immediate preceding year as it was 4.64% while it was 2.05% in the immediate preceding year. Although, two suppliers of material were not responding to the income tax enquiries as the summons were return unserved. In the Inspector's enquiries, these parties could not be traced out. The Assessing Officer disallowed whole of the amount of purchases debited in the name of these concerns. The payments were made through the banking channels by account payee cheques to these concerns. The assessee has done the contractual work to satisfy the contractual obligations to these reputed concerns M/s Idea Tele Communication

Limited and Shree Cement Limited. There is no allegation that assessee had not performed its contractual obligation to the satisfaction of the clients. Had it been the case then the assessee could not have realized the whole of its contract receipts. Thus, there is no denial of the fact that the assessee has not discharged the contractual obligations. Since the assessee could not produce these parties during the assessment proceedings and at the later stage but payments were made by banking channels. The net profit is better than preceding years. Considering these entire factual matrix, the bench is of the view that the whole of the purchases from these two concerns should not have been disallowed. Only part of it as estimated income on these unverifiable purchases shall be sufficient to pluck the leakage of revenue. The ITAT, Jaipur Bench in various decisions had considered such issue of unverifiable purchases and it has considered 15% of such purchases as reasonable and fair to estimate the profit element on such unverifiable purchases. The ITAT, Jaipur Bench in the case of Anuj Kumar Varshney Vs ITO in ITA No. 187/JP/2012 order dated 22/10/2014 has considered the disallowance and held as under:

“8.6 We have heard the rival contentions of both the parties and perused the material available on the record. As discussed in above cases, the material available on record established that in Jaipur, a rampant practice is in vogue to get and issue accommodation bills

of purchases to deflate the profit. The learned Assessing Officer made disallowance @ 25% of such bogus purchases on the basis of decision in the case of Sanjay Oil Cake Industries and Vijay Protein Ltd. (supra). In our view the 25% disallowance appears to be higher side, therefore, keeping in view of the facts of the assessee's case as well as other cases as discussed above, we feel that 15% disallowance out of bogus purchases is reasonable on unverifiable purchases and will meet the ends of justice. The rejection of books of account is justified. The assessee gets relief partly."

Considering all these factual and legal position, the addition to the extent of 15% of purchases is sustained and balance is directed to be deleted.

10. In the ground No. 3 of the appeal, the issue involved is confirming the disallowance of Rs. 25,260/- U/s 40A(3) of the Act being 20% of total purchases. The Id. CIT(A) has confirmed the action of the Assessing Officer.

11. While pleading on behalf of the assessee, the Id AR has submitted that it is factually incorrect that the assessee made payment in cash. In fact, the payments referred to by the Id. AO are general adjustments only as evident from the fact that such payments are entered through Journal Vouchers but not through Cash Vouchers. The Id. Auditor also did not report any such violation the Id. AO without going into details

and the accounts, made the disallowance on mere surmise and conjunctures.

12. On the other hand, the Id DR has supported the orders of the authorities below.

13. The Bench have heard both the sides on this issue. The Id. CIT(A) has confirmed 20% of the total purchases. There is no contrary material on record not to sustain such addition. Hence, the same is confirmed. This ground of appeal is dismissed.

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

Order pronounced in the open court on 08/02/2018.

Sd/-
(भागचंद)
(BHAGCHAND)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 08th February, 2018

*Ranjan

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

1. अपीलार्थी / The Appellant- M/s Design Core, Jaipur.
2. प्रत्यर्थी / The Respondent- The ITO, Ward 2(2), 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. 617/JP/2014)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar