

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

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री भागचंद, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 880/JP/2011
निर्धारण वर्ष / Assessment Year : 2008-09

The ACIT, Circle-7, Jaipur.	बनाम Vs.	M/s J.K. Jewelers, International A-36, Govindi Takhteshalhi Road Jawahar Lal Nehri Marg, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAEFJ 9839 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 908/JP/2016
निर्धारण वर्ष / Assessment Year : 2008-09

M/s J.K. Jewelers, International A-36, Govindi Takhteshalhi Road Jawahar Lal Nehri Marg, Jaipur.	बनाम Vs.	The DCIT, Circle-7, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAEFJ 9839 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.L. Poddar (Adv.)
राजस्व की ओर से / Revenue by : Shri Neena Jeph (JCIT)

सुनवाई की तारीख / Date of Hearing : 21/02/2018
उदघोषणा की तारीख / Date of Pronouncement: 28/03/2018

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

These are two appeals one of the Revenue is directed against the order dated 01.07.2011 of Id. CIT(A), Jaipur arising from assessment order passed u/s 143(3) of the Act and another by the assessee is directed against the order dated 19.09.2016 of CIT(A), Jaipur arising from reassessment order passed u/s 147 r.w.s. 143(3) of the Act for the assessment year 2008-09.

2. The original assessment order was completed by the AO u/s 143(3) of the Act on 16.12.2010 whereby the AO made an addition of Rs. 1,19,58,445/- on account of purchases made by the assessee from 12 parties treating the same as not genuine. On appeal, the Id. CIT(A) deleted the addition/disallowance made by the AO except an addition of Rs. 3,00,000/- on this account. Thus, the Revenue has filed the present appeal. In the meantime the Assessing Officer reopened the assessment by issuing a notice u/s 148 on 30.03.2015 whereby proposed to assess a further income of Rs. 1,33,94,163/- on account of purchases made by the assessee from Adi Impex. The Assessing Officer in the reassessment proceedings rejected the books of account u/s 145(3) and made an addition by estimating the profit of the assessee at

25% the purchases of Rs. 2,45,02,247/-. On appeal against the reassessment order/addition the Id. CIT(A) restricted the addition to 15% of such purchase as against 25% made by the AO. Thus, the assessee is aggrieved by the impugned order and filed the present appeal.

3. Grounds raised by the Revenue as well as assessee in these appeals are as under:-

Revenue's Ground

"On the facts and in the circumstances of the case the Ld. CIT(A) has erred in

(i) The CIT(A) has erred in law and on facts and in perversity, restricted the addition of Rs. 1,19,58,445/- made on account of purchases from 12 different parties, none of which was produced for examination/verification before the A.O. despite repeated requests.

(ii) The CIT(A) has erred in law and on facts and in perversity, held that the genuineness of stated purchases had been established and that the restriction of the disallowance to Rs. 3 lacs would suffice even when genuineness of the purchases was not established.

(iii) The CIT(A) has erred in law and on facts and perversely, held that the acceptance of the sales by the AO, justified the purchases, even while ignoring the possibility of inflated purchases"

Assessee's Ground

"1. Under the facts and circumstances of the case the order passed by the learned Assessing Officer u/s 148/143(3) of the Income Tax Act, 1961 and confirmed the Learned CIT(A) is void ab-initio deserves to be quashed.

2. Under the facts and circumstances of the case the Learned CIT(A) has erred confirming the re-opening of assessment u/s 148 as valid on the basis of issue of alleged unverifiable purchases which has already been considered and addition has been made in the order passed u/s 143(3) of the Income Tax Act, 1961.

3. Under the facts and circumstances of the case the Learned CIT(A) has erred sustaining the addition of Rs. 36,75,337/- out of 15% of total alleged bogus purchases of Rs. 2,45,02,247/- without considering the submission of the assessee.

4. The assessee craves your indulgence to add amend or alter all or any grounds of appeal before or at the time of hearing."

4. We have heard the Id. DR as well as the Id. AR and considered the relevant material on record. The Revenue is aggrieved by the order of the Id. CIT(A) in the first round of assessment whereby the assessee is aggrieved the order of the Id. CIT(A) in the reopening of the assessment. The assessee firm is deriving income from export of precious and semi precious stones including export of gold and silver jewellery. In the original assessment passed u/s 143(3) the AO doubted the purchases made from 12 parties and when the assessee could not produce the suppliers for examination, the AO treated the purchases to the extent of Rs. 1,33,94,163/- as not genuine and disallowance the

same. On appeal, the Id. CIT(A) after considering the relevant facts as well as evidences produced by the assessee before the AO in support of the purchases made from these 12 parties has adjudicated the issues in para 2.3 as under:-

"2.3. I have carefully considered the facts of the issue under consideration, observations of the AO and also the submissions made by Ld. AR in this regard. Before going into the merits of the rival stands, the primary claim of the appeal that the present issue has already been dealt and decided by the Hon'ble ITAT, Jaipur bench, in their favour, in the past, was examined. On perusal of the relevant orders of A.Y. 2006-07 & 2007-08, it is transpired that the Hon'ble ITAT has deleted the addition made by the AO of entire or part of such purchases, made almost from same suppliers, which are involved in current year. While giving the relief to the appellant, the Hon'ble bench has held that once the sales are accepted then the addition cannot be made while terming the corresponding purchases as bogus in nature. Under such circumstances, the Hon'ble bench has laid down the principle that any addition can be made, only on the basis of the adequacy of the trading results shown of current year viz. shown in the past period. While disposing the appeal for A.Y. 2006-07, the Hon'ble ITAT deleted the addition of entire purchases made u/s 69C of the Act and restricted the same, up to the gap of the higher GP ratio shown in the past then shown is the relevant year. Similarly while deciding the appeal of A.Y. 2007-08, the Hon'ble bench has deleted the addition made of 25% of such purchases. Similarly in view of the fact that the GP in the relevant year was offered at higher side then the previous year, the Hon'ble ITAT made adhoc

addition of Rs. 1,00,000/- to cover-up the discrepancies found i.r.o. relevant purchases.

With the above background, if the facts and circumstance of the current year are match with the A.Y. 2006-07 & 2007-08, they would be found identical in all manners. So much, so that most of the suppliers of goods are common in both the assessment years and also that the GP the current year is better then the last year. Accordingly, while respectfully following the guidelines and verdict of the Hon'ble tribunal, it is held that the AO was not reasonable and justified, while disallowing the entire purchases of the appellant, which were indisputability utilized for making export sales of the relevant period. Accordingly the addition of Rs. 1,19,58,445/- is found untenable on the facts and merits also and thus found disallows to be deleted. Similarly in view of the fact that the GP rate of the current year (i.e.18.55%) is better then the previous year (17.36%), therefore, while following the foot prints of the decision of the Hon'ble ITAT Bench, in the appellant case for A.Y. 2007-08 and also the fact of the increased turnover of the current year, an adhoc action of Rs. 3,00,000/- is sustained to take care of all the incrementing aspects, related to the issue under consideration, if any consequently, this ground of appeal is partly upheld."

Thus, it is clear that the Id. CIT(A) while deleting the addition made by the AO has followed the decision of this Tribunal in assessee's own case for the assessment year 2007-08. It is also not disputed that the assessee is an exporter of precious and semi precious stones as well Jewellery therefore, when the export of goods is not in dispute then the

purchases of the corresponding quantity cannot be doubted except the cost of purchase which might have been inflated by the assessee. However, it is not the case of the A.O. that the assessee has inflated the purchases in comparison to the prevailing market price of the goods. Therefore, when the GP rate of the current year declared by the assessee at 18.55% is better than the earlier assessment year at 17.36% which has been accepted as finally decided by this Tribunal in deleting the addition made by the AO then no addition is called for on this account. Hence, as far as the Revenue's appeal is concerned in the absence of any contrary material or fact we do not find any error or illegality in the impugned order of the Id. CIT(A).

5. As regards the appeal of the assessee since, the Assessing officer in the reassessment proceeding has rejected the books of account u/s 145(3) of the Act therefore, only course of action left with the AO is to estimate the income of the assessee on some reasonable and proper basis. The Assessing Officer instead of applying GP rate as declared by the assessee in the past as a proper bench mark for estimation of the income, has made a disallowance of 25% of the purchases made from certain parties. The Id. CIT(A) though restricted the disallowance to 15% of such purchases however, once the books of account are

rejected u/s 145(3) of the Act the AO ought to have estimated the income by applying proper and reasonable GP rate. The past history of GP rate declared by the assessee is a proper guide for estimation of income. We further note that it is settled proposition that the rejection of books of accounts would not ipso facto lead to addition if the, GP declared by the assessee for the year under consideration is in the line with the past history of the assessee or more than the GP declared in the earlier years. Thus, the rejection of books of accounts need not necessarily result in an addition to the income of the assessee. The Hon'ble Jurisdictional High Court in case of CIT vs. Clarity Gold (P) Ltd. vide its decision dated 19.09.2017 in D.B. ITA No. 125/2014 to 128/2014 has held that average GP of 12% which is in line with the GP shown by the identical industries shall be applied in the case of the assessee. We further note that the Coordinate Bench of this Tribunal in case of DCIT vs. M/s Gems Paradies in ITA No. 747/JP/2012 and CO No. 65/JP/2012 vide order dated 26.12.2017 has considered an identical issue in para 5 as under:-

"5. We have considered the rival submissions as well as relevant material on record. The revenue is aggrieved by the impugned order by the Id. CIT(A) whereby the addition made by the AO equivalent to 25% of the unverifiable purchase was restricted by applying the GP addition @ 25.50%. We are of the

considered view that once the books of account are rejected by the AO then, the only course of action left with the AO is to assess the income of the assessee on the basis of estimate and best judgment. The Assessing Officer after rejection of books of account has further made addition of 25% of tainted sales to the books result which is not permissible when the AO resorted invoke the provisions of section 145(3) of the Act. Thus, this action of the AO is contrary to the decision of rejecting the books of accounts. Accordingly, we do concur with the view of the Id. CIT(A) in applying the GP rate for assessment of the income of the assessee after the rejection of books of account. This Tribunal comprising the same combination in case of CIT vs. Allied Gems Corporation in ITA No. 794/JP/2011 vide order dated 15.12.2017 considering then an identical issue has held in para 5 as under:-

"5. We have considered the rival submissions as well as relevant material on record. The Assessing Officer rejected the books of account by invoking the provisions of section 145(3). The issue of rejection of books of accounts is involved in the cross objection filed by the assessee, therefore, we deal with this issue while deciding the cross objection. Once, the books of accounts are rejected by the AO the only course of action left to the AO is to assess the income of the assessee on the basis of best judgment and GP rate is considered as proper and reasonable basis and guidance for the best judgment. Once, the books result are rejected the Assessing Officer cannot proceed to make an addition to the income offered by the assessee as per books result. However, the AO in the case of the assessee instead of applying the GP rate made on addition@ 25% of the purchases to the book results. This act of the Assessing officer itself contradicts the decision of rejecting the books of accounts and books result. The Tribunal in assessee's own case for the assessment year 2006-07 has considered this issue and upheld the order of the Id. CIT(A) in para 2.20 and 2.30 as under:-

"2.20 Hence, there are certain concerns for which Revenue got evidence in the form of statement recorded in respect of such

parties, opening balance is Rs. 37,06,175/- while the closing balance is Rs. 42,81,496/-. It means that there is an accretion of amount of Rs. 5.75/- lacs. It means that to this extent, accretion in purchase is without supporting the correct bills. Of course, total opening balance of all parties is Rs. 1,15,43,782/- and the closing balance is Rs. 1,33,36,193/-. However, looking to the accretion in the closing balance of the concerns for which Revenue has material, the addition confirmed by the Id. CIT(A) is reasonable.....

.....
2.30 The Hon'ble P & H High Court in the case of Uplakesh Metal Industrial V CIT 177 taxman 298 held that issue decided by this is in the realm of appreciation evidence. The find of Tribunal as mentioned in this judgment is as under:-

"However, in our opinion the observation of the Assessing Officer that the assessee was prima facie required to prove the genuineness of the transaction and identity of the creditors is not misplaced because there is no distinction laid between the trade creditor and the non-trade creditor and we are further of the opinion that in case the assessee claims liability of payment to the trade creditors shown in the balance-sheet, the assessee is definitely required to prima facie prove the identity of the trade creditors as well as the genuineness of the transaction. In this case, admittedly the assessee has neither been able to disclose the complete addresses of the trade creditors nor is able to give the complete addresses of the consignors nor the name has been mentioned on the challan forms, so the verification of the same by the Assessing Officer became totally impracticable on account of lack of this complete information supplied by the assessee. It means that the assessee failed in establishing the genuineness of the so called trade creditors appearing in its books of account. We are further of the opinion that since in the instant case of the assessee, the point under consideration before us is regarding the

genuineness of the liability amounting to Rs. 1,75,26,586 shown by the assessee in its balance-sheet as trade creditors, so it was not relevant for us to consider as to whether the purchases made by the assessee were genuine or not or to whether the assessee has inflated those purchases or not. It is also not material to consider whether the GRs from sale-tax department were verified or not, so, the CIT(A) on considering these points was not justified in deleting the impugned addition without discussing as to whether the liability of trade creditors shown by the assessee in the absence of furnishing complete addresses of trade creditors/consignors and the payment vouchers was genuine or not."

While evaluating the material collected by the Revenue on the touch stone on human probability and considering the accretion in the closing balance in respect of parties for which Revenue has material in the form of statement. We felt that the Id. CIT(A) was reasonable in confirming the addition of Rs. 5.00 lacs. Hence both the grounds of assessee as well as Revenue are dismissed."

We further noted that when the corresponding sale is not in dispute then the question is only regarding the correct amount of purchases and verification of the same. The Id. DR has relied upon the various decisions of Hon'ble Gujarat High Court however, we find that in all those decisions there was a finding of facts that the assessee inflated the purchases upto 25% and therefore, it was not a case of non verification of the purchase and rejection of books of accounts but the fact was established in the investigation that the assessee inflated the purchase price and accordingly the addition of 25% being inflated purchases was made and upheld by the Tribunal which was again upheld by the Hon'ble High Court. On the contrary in the case of the assessee the AO not given any finding of inflated purchases by the assessee but doubted the very transaction of purchases due to non production of these parties before the AO. The AO has not given the finding that the prices of the goods was inflated by the

assessee but the AO doubted the genuineness of the purchases on the ground that the suppliers were found to be accommodation entries providers. When the AO rejected the book results u/s 145(3) of the Act, then the AO after rejection of the books of account can proceed to make the assessment on the basis of best judgment instead of resorting make the addition to the book results. Accordingly, in the facts and circumstances of the case and in view of the decision of this Tribunal in assessee's own case for A.Y. 2006-07 we do not find any error or illegality in the orders of the Id. CIT(A) in restricting the addition to the average GP rate based on the past history. Hence, the grounds raised in the Revenue appeals are rejected being without any substance or merits."

Accordingly, in view of the above facts and circumstances of the case and the decision of this Tribunal in case of ACIT vs. M/s Allied Gems Corporation (Supra) the grounds raised by the Revenue in this appeal are without any substance or merits."

Accordingly, we set aside the orders of the authorities below and delete the addition confirmed by the Id. CIT(A) when the GP declared by the assessee for the year under consideration is more than the GP for the earlier assessment which was accepted by this Tribunal. Though the assessee has raised other grounds regarding the validity of reopening however, once the appeal of the assessee is decided in favour of the assessee on the merits and the addition is deleted then, the legal issue raised by the assessee becomes academic in nature and accordingly we do not propose to go into the same.

In the result, the appeal of the Revenue is dismissed and the appeal of the assessee is allowed.

Order pronounced in the open court on 28/03/2018

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

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 28/03/2018.

*Santosh.

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

1. अपीलार्थी / The Appellant- ACIT/DCIT, Circle-7, Jaipur.
2. प्रत्यर्थी / The Respondent- M/s J.K. Jewelers, International, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 880/JP/2011 & 908/JP/2016}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar