

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

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA. No. 530/JP/2018  
निर्धारण वर्ष / Assessment Years : 2013-14

Shri Vikash Dugar D-275, Dugar House, Todermal Marg, Banipark, Jaipur.	बनाम Vs.	The ITO, Ward-3(2), Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: ABXPD 6164 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (C.A.)  
राजस्व की ओर से / Revenue by : Smt. Punam Rai (DCIT)

सुनवाई की तारीख / Date of Hearing : 30/07/2018  
उदघोषणा की तारीख / Date of Pronouncement : 07/08/2018

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-I, Jaipur dated 09.03.2018 for the Assessment Year 2013-14 wherein the assessee has taken the following sole ground of appeal as under:-

*"1. The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs. 19,30,214/- by treating the amount payable to sundry creditors M/s Blue Bird Overseas (Rs. 9,45,200/-) and M/s Madhav Krishna Jewellers (Rs. 9,85,014/-) as non-genuine by not*

*appreciating the various evidences filed by the assessee in support of the genuineness of creditors."*

2. Briefly the facts of the case are that the assessee is engaged in the trading of Gems & Jewellery under his proprietor concern M/s Vikas Exports. During the course of assessment proceedings, the Assessing Officer on perusal of the audited balance sheet of the assessee for A.Y. 2013-14 noticed certain sundry creditors and in order to verify the same, the assessee was asked to submit postal addresses of the sundry creditors. The AO issued notices under section 133(6) to various creditors, however, in respect of M/s Madhav Krishna Jewellers and M/s Blue Bird Overseas, no reply to notice issued U/s 133(6) of the Act was received. Thereafter, the AO issued notices in the name of proprietors of these two concerns on the addresses available in PAN database. However, there was again no response from these creditors even to the subsequent notices issued U/s 133(6) of the Act. Thereafter, the AO deputed his Inspector to make field enquiry regarding the actual business activities of these two concerns. The Inspector vide his report dated 18.02.2016 reported that there exists no Plot No. 1087 in Chitrakoot, Vaishali Nagar, Jaipur in the name of M/s Blue Bird Overseas and in respect of M/s Madhav Krishna Jewellers also, the Inspector reported that no firm is being run on the given address. Subsequently the assessee was confronted regarding non-traceability of these two parties and proposed addition of Rs. 19,30,214/-. The AO thereafter held that the amount outstanding in the name of these two concerns are not verified and the same was accordingly treated as non genuine and brought to tax in the hands of the assessee stating that in Gems

and jewellery business, it is common practice that sales vouchers are issued by bogus business entities without any actual business activities.

3. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) who has confirmed the said additions and his findings are reproduced as under:-

*"(iii) I do not find any merit in the contention of the appellant that if the purchases are genuine, how can the credit balances lying in the account of sundry creditors been genuine when the credit in the account has flown from the same purchase bills which were found to be genuine. It may be mentioned that if the purchases are accepted by the AO, it does not mean that the sundry creditors stands proved automatically. It has already been mentioned earlier that the result of enquiries made by the AO including the spot verification was confronted by the AO to the appellant but the appellant could not prove the genuineness of these sundry creditors. It is to be noted that from the profit and loss account of the appellant for the year under consideration, that during the year declaration it has made purchases to the tune of Rs. 49,11,794/- whereas, as on 31.03.2013, the sundry creditors were to the tune of Rs. 2.49 Crore i.e. the sundry creditors were approximately five times the purchases made by the appellant during the year under consideration. It is pertinent to mention here that in the case of M/s Vardhman Exim Linkers, it was observed by the AO in the assessment order that as per the copy of account filed before it, that the appellant has shown outstanding credit balance of Rs. 2,43,144/-, whereas, as per the confirmation received from the said party, no amount was outstanding from the appellant. It may be mentioned that in its written submissions, it has been accepted by the appellant that the purchase of Rs. 2,43,144/- made by it from M/s Vardhman Exim Linkers was adjusted twice. This fact itself*

*shows that the sundry creditors under consideration were not genuine.*

*(iv) Therefore, in view of the above discussion and looking to the facts and circumstances of the case, it is held that the AO was justified in making addition of Rs. 19,30,214/- on account of sundry creditors, not being genuine and thus, the addition made by the AO is hereby sustained."*

4.1 During the course of hearing, the Id. AR of the assessee has submitted that both the lower authorities have confirmed the addition in respect of the credit balance in the account of M/s Madhav Krishna Jewellers and M/s Blue Bird Overseas solely on account of non service/ reply of notice sent to them u/s 133(6) and the report of the Inspector by ignoring the following evidences which proves the genuineness of purchases made from these two parties:-

(a) Copy of the purchase bill which contains their TIN/ PAN and also the complete address. These purchases were made on 04.02.2013 & 02.02.2013, i.e. just before end of the year and therefore, amount were outstanding at the end of the year.

(b) Copy of the certificate of registration given by Commercial Tax Department to these two parties.

(c) Confirmation given by these parties. The confirmation was filed with the AO on 15.12.2015.

(d) Copy of PAN card of the proprietor of these concerns wherein their permanent address is mentioned.

(e) Payment to both the parties is made by account payee cheque on 31.10.2013 as mentioned on the bill itself and also in the confirmation.

4.2 It was submitted by the Id AR that the lower authorities have not disputed the veracity of TIN/ PAN of these persons and the payment to them by account payee cheque. As per the PAN database, address of the proprietor of M/s Madhav Krishna Jewellers is Shop No. 108, Yatim Khana Building, Opposite Municipal Office, Ahmednagar and address of the proprietor of M/s Blue Bird Overseas is D-189, Pavan Path, Hanuman Nagar, Vaishali. There is no finding of AO that notice u/s 133(6) issued at this address is not served to them. The report of the Inspector states that in case of M/s Blue Bird Overseas, no Plot No. 1087 in Chitrakoot, Vaishali Nagar exists whereas the correct Plot No. is 10/87, Chitrakoot, Vaishali Nagar. In fact the report of the Inspector was confronted to A/R vide order sheet entry dt. 23.02.2016. In response to same, A/R of assessee vide letter dt. 23.02.2016 submitted that the assessee is not available and would be coming back on 15.03.2016 when the cross verification of these parties, if at all required after considering the various documents furnished can be arranged. However, without considering the same AO framed the assessment on 29.02.2016.

4.3 It was submitted by the Id AR that even the Id. CIT(A) has not considered the above documents and evidences furnished by the assessee and has confirmed the addition by holding that assessee could not prove the genuineness of the purchases whereas from the documents referred above, the genuineness of the purchases is fully established. Before the Ld. CIT(A), the assessee has also furnished the

evidence that the goods purchased through these bills has been exported. However, even after providing all these evidences, the Ld. CIT(A) has not at all commented or given any adverse finding in respect of the documents produced by the assessee. Thus, the addition made by the AO and confirmed by Ld. CIT(A) is only on surmises & conjectures and without appreciating the material available on record in a correct perspective.

4.4 In support, the reliance was placed on the decision of the Hon'ble Gujarat High Court in case of PCIT Vs. Tejua Rohitkumar Kapadia (*in Tax Appeal No. 691 of 2017 order dt. 18.09.2017*) wherein it was held that purchases cannot be treated as bogus if (a) they are duly supported by bills, (b) all payments are made by account payee cheques, (c) the supplier has confirmed the transactions, (d) there is no evidence to show that the purchase consideration has come back to the assessee in cash, (e) the sales out of purchases have been accepted & (f) the supplier has accounted for the purchases made by the assessee and paid taxes thereon. The SLP against this decision has been dismissed by Hon'ble Supreme Court vide order dated 04.05.2018. The facts of the case of assessee are similar and therefore, the addition made by the lower authorities is uncalled for. Reliance was also placed in case of M/s Beauty Tax (earlier Florals India) vs. DCIT (*in ITA No. 508/JP/2016 dated 10.04.2017*) wherein on identical facts, addition was deleted. In view of the above, the addition made by the AO and confirmed by Ld. CIT(A) be directed to be deleted.

5. The Id. D/R is heard who has vehemently argued the matter and relied on the finding of the lower authorities.

6. We have heard the rival contentions and perused the material available on record. It is the contention of the Id AR that various documents in support of the purchase transactions were duly submitted during the course of assessment proceedings were not considered by the AO and even during the appellate proceedings, the Id CIT(A) has not taken cognizance of the said documents. It was further contended that during the appellate proceedings, the assessee has furnished the evidence that these purchases were subsequently exported during the year. However, we find that there is no finding which has been recorded by the lower authorities examining these documents so submitted by the assessee in support of his purchase transactions. Further, we note that there seems to be some confusion on the correct address of these two concerns and their proprietors and as a result, the notices issued by the AO u/s 133(6) were not complied with and even the Inspector could not locate their business premises. In the entirety of facts and circumstances of the case, we deem it appropriate that the matter is remanded back to the file of the AO to examine the same afresh, after providing reasonable opportunity to the assessee.

In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 07/08/2018.

Sd/-

(विजय पाल राव)  
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member  
जयपुर / Jaipur

Sd/-

(विक्रम सिंह यादव)  
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

दिनांक / Dated:- 07/08/2018.

**\*Santosh**

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

1. अपीलार्थी / The Appellant- Shri Vikash Dugar, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward- 3(2), 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. 530/JP/2018 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar