

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. 694/JP/2018  
निर्धारण वर्ष / Assessment Year :2015-16

Jai Nakoda Roadways Pvt. Ltd., 452, Patel Colony, Makhupura, Ward No. 29, Ajmer.	बनाम Vs.	Income Tax Officer Ward-2(2), Ajmer.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AACJ 7715 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ ITA No. 676/JP/2018  
निर्धारण वर्ष / Assessment Year :2015-16

Shri Agarsen Transways Pvt. Ltd., Framji Chowk, Nasirabad.	बनाम Vs.	Income Tax Officer Ward-2(3), Ajmer.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AAMCS 9338 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ ITA No. 677/JP/2018  
निर्धारण वर्ष / Assessment Year :2015-16

Amit Road Carrier India Pvt. Ltd. Hotel Shanti Palace, Panch Batti Chouraha, Nasirabad.	बनाम Vs.	Income Tax Officer Ward-2(3), Ajmer.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AAGCA 9562 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Dhiraj Borad (CA) &  
Shri M.L. Borad (Adv)  
राजस्व की ओर से / Revenue by : Shri Jai Singh (JCIT)

सुनवाई की तारीख / Date of Hearing : 13/09/2018  
उदघोषणा की तारीख / Date of Pronouncement : 17/09/2018

आदेश / ORDERPER: BENCH

These three appeals by the three different assessees are directed against the three separate orders dated 12/03/2018 of Id. CIT(A), Ajmer for the A.Y. 2015-16 respectively.

2. Since the issues raised in these three appeals are identical and arising from the similar facts and circumstances, therefore, for the sake of convenience, these three appeals were clubbed together for hearing and adjudication.

3. ITA No. 694/JP/2018 is taken as a lead case for the purpose of recording the facts and findings. In this appeal, the assessee has raised following grounds of appeal:

- “1. *The impugned order passed by the learned Commissioner (Appeals), Ajmer to the extent prejudicial to the appellant is bad in law and liable to be quashed.*
2. *That on facts and in the circumstances of the case and law applicable provisions of section 145(3) of the I.T. Act are inapplicable and consequently upholding by the learned Commissioner (Appeals) of rejection of book results u/s. 145(3) of the I.T. Act made by the AO is not valid and not in accordance with the provisions of law.*
3. *The learned Commissioner (Appeals) has erred in upholding the application of net profit rate of 1.5% as against declared N.P. rate of 0.19% and consequentially confirming the trading addition of Rs.21,12,644/- (addition made by the AO Rs.37,29,387/- minus addition deleted by Commissioner (Appeals) Rs. 16,16,743/-) to the*

*total income of the assessee company. On facts and circumstances of the case and law applicable, the sustenance of net profit rate of 1.5% as against declared NP rate of 0.19% and consequentially sustaining trading addition of Rs.21,12,644/- is erroneous and unjustified and in the alternative it is highly excessive.*

4. *That the appellant craves leave to add, alter, amend or substitute one or more grounds of appeal as and when needed."*

4. Ground No. 1 of the appeal is general in nature and has not been pressed by the assessee. The Id AR of the assessee made statement at bar that the assessee does not press ground No.1. Accordingly, ground No. 1 of the appeal is dismissed being general and not pressed by the assessee.

5. Ground No. 2 of the appeal is regarding rejection of books of account U/s 145(3) of the Income Tax Act, 1961 (in short the Act). The assessee is a private limited company and engaged in providing transportation work of different parties through the third party vehicles. Thus the assessee is not having any vehicle or lorry but only working as a intermediary in providing transportation service to the clients by hiring the vehicles from third owners. The assessee filed return of income through e-filing on 29/9/2015 declaring total income of Rs. 3,11,790/-. In the scrutiny assessment, the Assessing Officer on examination of the books of account, bills and vouchers has observed that the assessee had paid total freight of Rs. 15,95,77,213/- to number of voluminous truck/trailer

owners and most of the freight have been paid in cash to the vehicle drivers. From the vouchers, the complete details of the recipient regarding their identity, address or confirmation of owners of the vehicles were not ascertainable. The assessee produced self made vouchers, thus the Assessing Officer noted that it is not clear whether the recipient owner of the trucks has accounted for this entire cash payment or not. The assessee produced a copy of the ledger as appearing in the books of account for verification of the payments made to the truck/trailer owners. The Assessing Officer issued notice U/s 133(6) of the Act to 11 parties to whom the assessee paid the freight charges. The said notices were issued on 07/12/2017 and required the information up to 15/12/2017. Only two response were received by the Assessing Officer out of 11 parties and therefore, the Assessing Officer has proceeded to reject the books of account of the assessee U/s 145(3) of the Act. The Assessing Officer then applied a N.P. rate of 2.5% to estimate the income of the assessee and consequently assessed the total income of the assessee at Rs. 40,41,860/- as against the returned income of Rs. 3,11,790/-.

6. The assessee challenged the action of the Assessing Officer before the Id. CIT(A) and contended that the rejection of books of account is not justified and sustainable when the Assessing Officer has not pointed out any specific defects in the books of account and only objection of the

Assessing Officer is regarding the claim of payment of freight charges to the truck/lorry owners. The Id. CIT(A), though, confirmed the rejection of books of account, however, the income estimated by the Assessing Officer by applying N.P. rate @ 2.5% was restricted to 1.5%. Hence, the Id. CIT(A) has partly granted relief to the assessee on the quantum of the addition.

7. Before us, the Id AR of the assessee has submitted that the assessee has been maintainable proper and regular books of account which has been audited by the qualified auditors and therefore, when no defect was pointed out by the auditor in the books of account as well as no specific defect was pointed out by the Assessing Officer in the books of account then the rejection of the same is not warranted as per provisions of Section 145(3) of the Act. The Id AR has further submitted that even regarding the freight payment, the assessee produced the details of the vehicle owners together with PAN of each and every owner and on the basis of those details, the Assessing Officer issued notice to the vehicle owners at the address taken from the PAN details from the official record without asking the assessee to furnish the present address of these parties. The Id AR has also pointed out that the Assessing Officer has issued these notices U/s 143(2) of the Act on 07/12/2017 giving very short time period to the parties to file their reply up to 15/12/2017 and

thereafter the Assessing Officer has passed assessment order on 26/12/2017. The Id AR has pointed out that the truck owners/drivers are illiterate persons and could not reply the notices issued by the Assessing Officer U/s 133(6) of the Act. Though, most of these parties have filed their reply after the assessment order was passed which was not considered by the Assessing Officer. Thus, the Id AR has submitted that the Assessing Officer has completed the assessment in a hurried manner without giving sufficient time to the assessee as well as these parties to file the reply. Hence, the Id AR has submitted that when no specific defect was pointed out by the Assessing Officer in the books of account and only doubted the payment of freight then the same cannot be a reason for rejection of books of account. The assessee has duly produced the details and proved the identity of the recipient of the payment. The Id AR has further submitted that about 70 to 80% of the freight payment was made through cheques and only 20 to 25% of the payment was in cash and therefore, in the peculiar nature of the business of the assessee, the cash payment is inevitable to the small vehicle owners who have only one vehicle in their individual capacity. Even otherwise when the freight receipts and payments are matching then the claim of freight payment cannot be doubted. The assessee does not have own vehicles for transportation but transportation is done by giving sub-contract to the

persons owning the vehicles used for transportation and therefore, the assessee is earning only some commission in the entire activity and transaction. Bills have been raised on the parties which is not in doubt. These bills are raised through the vehicle owners and therefore whatever freight received from the parties by the assessee, the same has been directed credited to the vehicle owner's account after deducting the margin/commission of the assessee, which is considered as income of the assessee. Thus, when the transactions are matching regarding receipt and payment of the freight for each and every bill as well as vehicle then the claim of freight payment is otherwise cannot be disallowed or doubted. The Id AR has submitted that the Assessing Officer and the Id. CIT(A) has followed the decision of this Tribunal in the case of Om Prakash bansal Vs. ITO order dated 05/6/2015 in ITA No. 734/JP/2012 whereas the facts of the said case are distinguishable and the finding in the said case is specific to the facts of the said case and cannot be applied in general and particular to the case of the assessee. In the said case, the assessee did not issue or maintain any receipt or voucher and was involved in transportation of cement. He has referred to the order of the Id. CIT(A) and submitted that the Id. CIT(A) has admitted the fact that the assessee have been maintaining books of account and produced the record of the vehicle number and Registration certificate. The ledgers

of each person to whom the freight charges have been paid by the assessee has been maintained on the basis of vehicle number and name appearing in the registration certificate of the vehicle. The Id. CIT(A) has accepted the fact that each payment of freight can be linked to the freight income booked by the assessee of that particular trip. Therefore, once the assessee has proved the direct nexus between the freight receipt and freight payment as well as a particular trip then the claim of freight payment cannot be doubted and a reason for rejection of books of account. In support of his contention, he has relied upon the various decisions including the decision of the Hon'ble Supreme Court in the case of CIT Vs. Padamchand Ramgopal (1970) 76 ITR 719 (SC) and submitted that the Hon'ble Supreme Court has observed that insignificant mistakes cannot be a ground for resorting to Section 145 of the Act. He has also relied upon the decision of Hon'ble Punjab & Haryana High Court in the case of Telelinks Vs. CIT, Bhatinda order dated 20/11/2014 in ITA No. 269/2014 and submitted that when the assessee declared NP rate is not less than the average N.P. declared in the past then there is no reason for making any addition.

8. On the other hand, the Id DR has submitted that the assessee has paid the freight charges in cash and has not maintained complete record in the books of account regarding the recipient of the freight charges,

therefore, the Assessing Officer found various defects in the books of account. Most of the vouchers are self made and the notices issued U/s 133(6) of the Act by the Assessing Officer were not responded by nine parties out of eleven, therefore, the Assessing Officer has rightly rejected the books of account of the assessee. He has relied upon the orders of the authorities below.

9. We have considered the rival submissions as well as relevant material on record. There is no dispute that the assessee has carried out the business activity of transportation of goods by giving sub-contract to the persons owning vehicles. The assessee does not own any vehicle for transportation and hence the income of the assessee is in the shape of margin/commission on the freight receipt from the clients and freight paid to the vehicle owners. The Id. CIT(A) has accepted the fact that the freight received by the assessee has a direct nexus with the freight paid by the assessee for a particular trip and therefore, freight income and freight payment for a particular trip is maintaining as per the regular books of account, which is not in dispute. The Assessing Officer has questioned the claim of freight charges payment by the assessee on the ground that the assessee has made the payment of freight in cash for which the assessee has produced self made vouchers and therefore, in absence of confirmation from the recipient, this claim of the assessee was

not acceptable. We note that the entire payment of freight is not in cash but only the part of the payment is in cash. However, once the assessee has established this fact with the entries recorded in the books of account particularly in the ledger account of the parties to show that each payment of freight is linked to the freight income booked by the assessed in respect of a particular trip then the claim of the assessee of payment of freight cannot be rejected or disallowed merely on the ground that the assessee has made some payment in cash for which the self made vouchers were produced by the assessee. The relevant finding of the Id. CIT(A) on this issue in para 4.3 as under:

*“4.3 I have gone through the assessment order, statement of facts, grounds of appeal and written submissions carefully. It is seen that the assessee supplies trailers to main contractors (transporters) who issue bulthy/consignment notes at the time of loading goods in trailer. The business of assessee has been discussed at page 2 of assessment order as under.*

*“During the course of the assessment proceedings, it has been stated that the assessee was carrying transportation work of different parties and different types. It is also stated that the assessee is not obtaining any work order, also not filing any specific tender or quotation and also no making any agreement in writing with the parties. The terms and conditions on which work is carried on are always mutually decided by both the parties, no specific agreement is required to be made for the same. The rate of transportation is depend upon the type of goods, risk, weight, distance and market conditions. It is further submitted that nature of goods transported are steel coil, stone, wood, machinery, coal etc. It is further submitted that transportation is done by giving sub contract to market owned trailers on sum margin or say commission basis. Bills have been raised on parties and the parties have paid freight to the assessee. Whatever freight earned from parties have been credited to trailer*

*owners, after deducting the margin which is received as income of the assessee."*

*The AO conducted enquiries u/s 133(6). After considering the outcome of the enquiries made u/s 133(6), the AO found out discrepancies / deficiencies in the books of accounts which has been discussed by the AO in the assessment order at page 2 to 5. In view of the discrepancies / deficiencies noted by the AO, book results of the appellant were rejected u/s 145(3) and net profit of the appellant was estimated by the AO @2.5% of the freight receipts of Rs. 16,16,74,377/- declared in the profit and loss account, relying on the decision of ITAT Jaipur Bench in the case of Om Prakash Bansal vs ITO, Ward- Behror (ITA No. 734/JP/2012, order dated 05.06.2015, A.Y. 2008-09). During the course of appellate proceedings, the appellant has furnished explanation with supporting evidences with respect to the discrepancies / deficiencies discussed by the AO in the assessment order. The explanation furnished by the appellant is found to be reasonably correct. It can be seen that the appellant has maintained his books of accounts mainly on the basis of vehicle number and RC number. The ledger of each person whom freight charges have been paid by the appellant have been maintained by the appellant on the basis of vehicle number and name appearing in RC of the vehicle. In the voucher prepared for payment of freight in cash, the appellant writes vehicle number, amount paid and obtains signature of the recipient (driver / owner of the vehicle). In the bills issued by the appellant for the freight charges received by him, name of the party (main transporter), vehicle number, destination of the vehicle (from & to) and amount of freight in respect of each trip and date of each trip are mentioned. The appellant has furnished statement linking each freight payment with the corresponding freight income (trip register) booked by the appellant to show that there is no freight payment without any freight income against that payment. The appellant obtains copy of PAN Card and RC from each person whom the payment of freight is paid by the appellant.*

*I have gone through each document furnished by the appellant carefully. The contention of the appellant that its each payment of freight can be linked to freight income booked by him in respect of that particular trip is found to be correct. Still, the possibility of freight payment shown to have been made in cash having been inflated by the appellant cannot be ruled out. In view of the discrepancies / deficiencies discussed by the AO in the assessment order, I am of the considered view that the AO has rightly rejected the book results u/s 145(3). Hence, the rejection of book results u/s 145(3) is held to be valid and in accordance with the provisions of law.”*

Thus, the Id CIT(A) has accepted the fact that the assessee has produced the PAN card and registration certificate of each vehicle owner as well as maintained the books of account. It was found that the ledger account of each person regarding freight charges payment have been maintained on the basis of vehicle number and name of the owner as per registration certificate of the vehicle. The Assessing Officer has not doubted the business activity of the assessee being working only an intermediary in the activity of providing transportation to various clients by hiring the vehicles from the vehicle owners. The bills were raised by the vehicle owners to the clients and the assessee is only charging some margin/commission in the transaction for providing the services of transportation. Once this business activity of the assessee is not doubted and the freight income and freight payment which are matching to each other with the transaction by transaction of each trip then the freight charges payment cannot be disallowed or held as bogus ignoring the fact

that the corresponding freight receipt is accepted on the basis of the same bills. Even if the Assessing Officer was not satisfied with the claim of freight payment for want of supporting evidence and confirmation from the recipient of the freight then the claim of the freight payment can be examined and disallowed to the extent of not found to be proved by the assessee. The non-acceptance of a particular claim of expenditure cannot be a reason to hold that the books of account of the assessee are defective and suffering from deficiency or discrepancies warranting rejection U/s 145(3) of the Act. In case, the Assessing Officer was not satisfied with the claim of freight charges then that particular claim could have been examined and disallowed to the extent of not proved by the assessee instead of resorting to the provisions of Section 145(3) of the Act. Even otherwise some other expenditure which is not substantiated by the assessee by filing a supporting evidence, the same can be disallowed but these disallowances cannot be a reason for rejection of books of account. Accordingly, when the assessee has been maintaining regular books of account duly audited by the qualified auditor then in absence of specific discrepancy or deficiency in the books of account, the provisions of Section 145(3) of the Act cannot be invoked. Hence we hold that the Assessing Officer was not justified in rejecting the books of account merely because the assessee could not file the confirmation from the

parties to whom the freight charges were paid. Hence, this ground of assessee's appeal is allowed.

10. Ground No. 3 of the appeal is regarding the estimation of income by applying the NP rate. This issue is consequential in nature and therefore, in view of our finding on the issue of rejection of books of account, this ground becomes infructuous. Since the Assessing Officer has doubted the claim of freight payment as the assessee has not filed any confirmation and the parties have not responded to the notice issued by the Assessing Officer U/s 133(6) of the Act, therefore, the issue of allowability of the said claim can be reexamined by the Assessing Officer only to the extent of scope of any inflation in the quantum of the freight charges paid by the assessee. So far as the outright rejection of freight charges is concerned we note that when the freight income and freight charges are linked one to one for each trip and also found recorded in the books then the entire claim of the assessee cannot be held as bogus. The only issue which can be examined by the Assessing Officer is the quantum of the freight charges inflated by the assessee or not. Accordingly, for limited purpose, we set aside the issue of allowability of the freight charges in the above terms. We may clarify that the addition/disallowance, if any, cannot be exceeded the addition sustained

by the Id. CIT(A) in the first round of appeal as the department has not challenged the impugned orders of Id. CIT(A).

11. Now we take ITA Nos. 676/JP/2018 and 677/JP/2018. In both these appeals, the assessee has raised common grounds as under:

Grounds of ITA No. 676/JP/2018

- “1. The impugned order passed by the learned Commissioner (Appeals), Ajmer to the extent prejudicial to the appellant is bad in law and liable to be quashed.
2. That on facts and in the circumstances of the case and law applicable provisions of section 145(3) of the I.T. Act are inapplicable and consequently upholding by the learned Commissioner (Appeals) of rejection of book results u/s. 145(3) of the I.T. Act made by the AO is not valid and not in accordance with the provisions of law.
3. The learned Commissioner (Appeals) has erred in upholding the application of net profit rate of 1.75% as against declared N.P. rate of 0.34% and consequentially confirming the trading addition of Rs.22,41,255/- (addition made by the AO Rs.32,28,994/- minus addition deleted by Commissioner (Appeals) Rs. 9,87,739/-) to the total income of the assessee company. On facts and circumstances of the case and law applicable, the sustenance of net profit rate of 1.75% as against declared NP rate of 0.34% and consequentially sustaining trading addition of Rs.22,41,255/- (trading addition made by the AO Rs.32,28,994/- minus addition deleted by Commissioner (Appeals) is erroneous and unjustified and in the alternative it is highly excessive.
4. That the appellant craves leave to add, alter, amend or substitute one or more grounds of appeal as and when needed.”

12. Ground No. 1 of both these appeals is general in nature and has not been pressed by the assessee. The Id AR of the assessee made

statement at bar that the assessee does not press ground No.1 of both these appeals. Accordingly, ground No. 1 of both these appeals is dismissed being general and not pressed by the assessee.

13. In both these cases, the Assessing Officer rejected the books of account on the identical grounds as in ITA No. 694/JP/2018 and estimated the income by applying the N.P. rate @ 2.5%, which was restricted by the Id. CIT(A) to 1.75%. The issue of rejection of books of account have been considered by us in ITA No. 694/JP/2018 and in view of our finding in ITA No. 694/JP/2018, the said issue has been decided in favour of the assessee.

14. As regards the claim of freight charges paid by the assessee, the said issue is set aside to the record for limited purpose of examination and verification of the claim. The assessee is directed to file the relevant supporting evidences.

15. In the result, all these three appeals are partly allowed.

Order pronounced in the open court on 17/09/2018.

Sd/-  
(विक्रम सिंह यादव)  
(VIKRAM SINGH YADAV)  
लेखा सदस्य / Accountant Member  
जयपुर / Jaipur

Sd/-  
(विजय पाल राव)  
(VIJAY PAL RAO)  
न्यायिक सदस्य / Judicial Member

दिनांक / Dated:- 17<sup>th</sup> September, 2018

\*Ranjan

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

1. अपीलार्थी/The Appellant- (i) Jai Nakoda Roadways Pvt. Ltd., Ajmer.  
(ii) Shri Agarsen Transways Pvt. Ltd.,  
Nasirabad.  
(iii) Amit Road Carrier India Pvt. Ltd.,  
Nasirabad.
2. प्रत्यर्थी/ The Respondent- (i) The ITO, Ward-2(2), Ajmer.  
(ii) The ITO, Ward-2(3), Ajmer.
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. 694, 676 & 677/JP/2018)  
आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar