

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

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

आयकर अपील सं./ITA No. 239/JP/2018  
निर्धारण वर्ष/Assessment Year : 2012-13.

Shri Habeeb Khan Prop. M/s, H.K. Export corporation, 2259, Takiya Yaqeen Shah, Chokdi Topkhana Huzoori, Jaipur.	बनाम Vs.	The Income Tax Officer, Ward-2(5), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. ABPPK 5855 P		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri PC Parwal (CA)  
राजस्व की ओर से/ Revenue by: Shri J.C. Kulhari (JCIT)

सुनवाई की तारीख/ Date of Hearing : 15.10.2018.  
घोषणा की तारीख/ Date of Pronouncement : 17/10/2018.

आदेश / ORDER

PER VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 11<sup>th</sup> November, 2017 of Id. CIT (A)-1, Jaipur for the assessment year 2012-13. The assessee has raised the following grounds :-

1. The Id. CIT (A) has erred on facts and in law in deciding the appeal ex-parte without providing adequate opportunity of hearing to the assessee.
2. The Id. CIT (A) has erred on facts and in law in rejecting the books of accounts by applying the provisions of section 145(3) of IT Act, 1961.
3. The Id. CIT (A) has erred on facts and in law in confirming the trading addition of Rs. 9,95,984/- by applying average G.P. rate of three year i.e. 12.13% as against G.P. rate of 10.41% declared by the assessee.

4. The Id. CIT (A) has erred on facts and in law in confirming the disallowance out of following expenses :-

Particulars	Amount claimed (in Rs.)	Amount of expenses disallowed (in Rs.)
Salary expenses	6,46,500/-	64,650/-
Telephone expenses	68,033/-	6,800/-
General Expenses	97,493/-	9,750/-
Travelling expenses	14,68,820/-	1,00,000/-
Total	22,80,846/-	1,81,200/-

5. The Id. CIT (A) has erred on facts and in law in confirming the addition of Rs. 60,000/- u/s 68 of the IT Act by treating the amount payable to creditor M/s. Gems & Jewellery Information Centre as unexplained income of the assessee.

6. the assessee craves to amend, alter and modify any of the grounds of appeal.
7. Necessary cost be allowed to the assessee.

2. At the time of hearing, the Id. A/R of the assessee has stated at bar that the assessee does not want to press ground no.1 of the assessee's appeal and the same may be dismissed as not pressed. The Id. D/R has raised no objection if the ground no. 1 of the assessee's appeal is dismissed as not pressed. Accordingly, ground no. 1 of the assessee's appeal is dismissed being not pressed.

**Ground No. 2 is regarding the rejection of books of account under section 145(3) invoked by the Id. CIT (A).**

3. The Id. A/R of the assessee has submitted that though the AO has made a trading addition by applying GP rate of 12.13% as against the declared GP rate of 10.41% by the assessee, however, there was no rejection of books of account as the AO has duly examined and verified the books of account and all other supporting evidence. He has referred to the relevant finding of the AO at page 3 and submitted

that the AO has recorded that on verification he was satisfied about the value of stock, quantification and stock register. The sales and purchases made were also verified by the AO from purchase & sales register and bill/invoices produced by the assessee. Thus once the A.O. did not find any infirmity or deficiency in the books of account of the assessee, then without pointing out any defect by the Id. CIT (A) the rejection of books of account is not justified. Hence the Id. A/R has contended that invoking the provisions of section 145(3) by the Id. CIT (A) is illegal as there is nothing to conclude that the books of account of the assessee suffer from any defect or deficiency.

4. On the other hand, the Id. D/R has submitted that though the AO has not rejected the books of account, however it was a mistake on the part of the AO and inadvertently the books were not rejected. However, in substance the AO while making the trading addition has rejected the book result. The said mistake in the assessment order is now made up by the Id. CIT (A) having coterminous power with that of the AO. He has relied upon the order of the Id. CIT (A).

5. We have considered the rival submissions as well as the relevant material on record. The AO in the assessment proceedings has given the comparative details of sales, GP ratio and net profit of the assessee at page 2 as under :-

Particulars	Asstt. Year 2012-13	Asstt. Year 2011-12	Asstt. Year 2010-11
Sales	58135710	41188848	35627645
Gross Profit	6055878	5290323	4682088
GP Ratio	10.41%	12.84%	13.14%
Net profit	2075581	14311479	1230888
Net profit ratio	3.57%	3.47%	3.45%

Since there was a decline in the GP ratio for the year under consideration in comparison to the preceding two years, the AO undertook to verify the reasons for such decline. The AO has observed at page 3 of the assessment order as under :-

*"I have considered the submission made by the AR of assessee which revealed that the assessee has declared net profit in increasing manner as compared to preceding years but the GP rate found less by 2.43% in comparison to just preceding assessment year. The assessee produced the books of accounts consisting purchase and sales registers related sale/purchase invoice. On verification it has found that value of the stock has been quantified and duly been recorded in the stock register for which details of the same obtained. The Sales & purchases made are verifiable from sale and purchase registers and bills/invoices produced and the same are supported by VAT quarterly returns furnished by the assessee before the Sales Tax Deptt. The trading account is supported by the sale and purchase books which are duly audited under section 44AB of I.T. Act, 1961. On going through the details and invoices of sale and purchase produced during assessment proceedings, it is observed that rate of diamonds are varied in each invoice and no specification of diamond/stones and its quality is recorded on it. Therefore correct value of item sold cannot be ascertained in correct manner. In the year under review, the assessee has also declared GP rate on lower side in comparison to earlier 2 financial years which shows that assessee has suppressed his profit by claiming direct expenses. In view of above discussion and facts of the case trading results declared by the assessee are not acceptable. I*

*therefore applied an average GP rate @ 12.13% on total turnover of Rs. 5,81,35,710/- which works out a trading addition of Rs. 9,95,984/- (Rs. 70,51,862- Rs. 60,55,878) to cover up all possible leakage of revenue for the year and added back to the total income."*

It is evident from the finding recorded by the AO that the assessee produced books of account along with all other relevant record including stock register, sales & purchase register, bills/vouchers as well as sales-tax record for verification and examination of the AO. The AO did not find any defect or deficiency in the record produced by the assessee which were duly audited under section 44 AB of the IT Act, however, the AO made a trading addition only because there is a decline in the GP ratio for the year under consideration in comparison to the earlier years. It is settled proposition of law that decline in GP cannot be a basis for rejection of books of account until and unless the AO on verification of books of account as well as other relevant record was satisfied that the books of account of the assessee are not reflecting the true and correct state of affairs and are suffering from defect and deficiency. Since the AO has not given any adverse finding or observation recording the deficiency or defects in the books of account, therefore, the provisions of section 145(3) cannot be invoked in this case. The Id. CIT (A) has invoked the said provision under section 145(3) by citing the reason that the AO has inadvertently not rejected the books in the assessment order. It is pertinent to note that the Id. CIT (A) has not given a separate finding on the correctness of the books of account but has repeated the observation as recorded by the AO in the assessment order.

Therefore, without disputing the powers of Id. CIT (A) having coterminous with that of the AO but in the absence of any material or finding that the books of assessee are suffering from defect or deficiency, the provisions of section 145(3) cannot be invoked. Accordingly, we set aside the impugned order of the Id. CIT (A) qua this issue of rejection of books of account.

**Ground No. 3 is regarding trading addition.**

6. This ground is consequential to the ground no. 2 as the AO has made the trading addition without rejection of books of account and we have decided the issue of rejection of books in favour of the assessee. Accordingly no addition can be made on account of decline in the GP rate until and unless the books of accounts are rejected. Hence we delete the trading addition made by the AO and confirmed by the Id. CIT (A).

**Ground No. 4 is regarding disallowance of various expenses.**

7. The AO in the assessment order has made disallowance of 10% of various expenses, namely, salary, telephone, general expenses and a lump sum of Rs. 1 lac was disallowed on account of travelling expenses. The Id. A/R of the assessee has submitted that the adhoc disallowance made by the AO for want of supporting evidence as the assessee produced self made vouchers and further the telephone expenses were disallowed on account of personal use. However, it is not the case of the AO that the expenses are not incurred for the purpose of business. The Id. A/R has submitted that when all the expenses are incurred for the purpose of business and are duly supported by vouchers then an adhoc disallowance is not justified for want of vouchers from the parties. The nature of expenses are such that the invoices/bills from the other parties is not possible and, therefore, the assessee

produced self made vouchers in support of the expenses. The AO has not pointed out that the expenses are excessive or bogus and, therefore, only because the assessee has produced self made vouchers the AO has made adhoc disallowance. As regards the travelling expenses, the AO has made a lump sum disallowance without giving a finding that the claim of the assessee is excessive or bogus. In support of his contention, he has relied upon the decision of Mumbai Benches of the Tribunal in case of DCIT vs. ABC Bearing Ltd., 157 DTR 242 (Mum. Trib.) as well as Hon'ble Jurisdictional High Court in case of CIT vs. Premier Vegetable Products Ltd., 97 DTR 230 (Raj.). Hence the Id. A/R has submitted that the disallowances made by the AO may be deleted.

8. On the other hand, the Id. D/R has relied upon the orders of the authorities below and submitted that the AO has given the finding that the assessee has not produced the supporting evidences to substantiate the claim of expenses, only self made vouchers were produced by the assessee in support of the claim, therefore, the AO was very liberal and reasonable in making the 10% disallowance of claim of the assessee. Hence, the Id. D/R has submitted that the assessee has failed to discharge his onus that the expenditure claimed by the assessee are incurred wholly and exclusively for the purposes of business of the assessee.

9. We have considered the rival submissions as well as the relevant material on record. The assessee has claimed total expenditure of Rs. 41,45,992/- under the head selling & distribution which includes expenses of salary, travelling, telephone, conveyance and other administrative expenses . The AO dealt with the claim of the assessee in the assessment order in para 4 to 7 as under :-

"4. **Salary expenses:-** In the profit & loss account the assessee has debited the salary expenses of Rs 646500/- for which the AR of the assessee produced vouchers on verification of which it is found that most of the vouchers are self made and no payment evidence has been produced during assessment proceedings, therefore the expenses claimed and seems without basis and the same are fully not allowable therefore out of above a sum of Rs. 64650/- (being 10% of Rs. 646500/-) are disallowed and added to the total income.

5. **Telephone expenses:-** During the year under consideration the assessee has debited in the P&L account Rs. 68033/- for the telephone expenses. As the personal use of telephone is cannot be denied in the day to day life by the proprietor of the business therefore a lump sum addition of Rs. 6800/- is hereby made on this account being personal involvement and to cover up the leakage of revenue.

6. **General expenses:-** During the year under consideration the assessee has debited in the P&L account Rs.97493/- as general expenses. As the details and nature of expenses are found in general in nature which is required and essential in this type of business but payment made cash and vouchers are also found self made therefore an addition of 10% of above sum is hereby made resulting addition of Rs. 9,750/- added to the total income to cover up the leakage of revenue.

7. **Travelling expenses:-** In the profit & loss account the assessee has debited the salary expenses of Rs. 1468820/- for which the AO of the assessee produced vouchers on verification of which it is found that some of the vouchers are self made and no payment evidence

*has been produced during assessment proceedings, therefore the expenses claimed which seems without basis and possibility of leakage of revenue attracted and in view the same claim of expenses fully not allowable therefore out of above a lump sum disallowance of Rs. 1,00,000/- on this head and added to the total income.”*

Thus it is clear that the assessee has produced only self made vouchers in respect of salary expenses, general expenses and traveling expenses. Further these expenses were paid in cash and, therefore, in the absence of any supporting evidence the AO made disallowance of 10% of these expenses. There is no dispute that if some petty expenses are incurred by the assessee and the nature of expenses are such that it is not possible and practical to take the bills/vouchers for each and every item of expenditure, then if the expenditures are not found to be excessive or bogus, the same cannot be disallowed for want of verifiable supporting evidence. However, the expenses on account of salary, general expenditure and travelling expenses are not in the category of petty, general and misc. expenditure. Therefore, the assessee is duty bound and under obligation to establish that the expenditure is incurred wholly and exclusively for the purpose of business of the assessee. Therefore, it is a clear case of failure on the part of the assessee to produce the verifiable supporting evidence in respect of these expenditures. However, the AO has not given the finding of bogus or excessive claim of expenditure, therefore, having regard to the facts and circumstances of the case, we restrict the disallowance to 5% of these three expenses.

10. As regards the telephone expenses, the AO has made the disallowance of Rs. 6800/- which is about 10% of the expenditure on the ground of personal use of telephone. The AO has disallowed the expenditure only on the basis of suspicion and without giving a definite and concluding finding that the telephone was used for personal purposes and not for business purposes. Therefore, on verification of the record the telephones are not found to be used other than the business hours, then no disallowance can be made on this account. Accordingly, the disallowance made only on the suspicion is not sustainable and the same is deleted.

**Ground No. 5 is regarding an addition of Rs. 60,000/- made under section 68 of the IT Act.**

11. The AO noted that in the Balance Sheet, the assessee has shown sundry creditors of Rs. 9,49,96,902/-. On verification of the ledger account and confirmation of new cash creditors on test check basis, the AO observed that a sum of Rs. 60,000/- has been shown as amount payable to the creditor M/s. Gems & jewellery Information Centre. On verification from the said creditor, it was informed that no transaction was made with the assessee during the year. Accordingly, the AO made the addition of Rs. 60,000/- under section 68 of the Act. On appeal, the Id. CIT (A) has confirmed the addition by observing that the Id. A/R appearing on behalf of the assessee could not explain its case.

12. Before us, the Id. A/R of the assessee has submitted that the assessee booked an advertisement with M/s. Gems & Jewellery Information Centre for which the assessee submitted a copy of bill. However, due to the dispute between the parties, the payment was not made. The Id. A/R has referred to the copy of bill dated 31<sup>st</sup> January, 2001 for a sum of rs. 90,000/-. However, due to certain dispute

the bill was not accounted for the financial year 2000-01 and thereafter in the assessment year 2006-07 this bill was accounted for in the books of account at Rs. 60,000/- after some negotiations with the other party. The Id. A/R has also submitted that the payment was also made by the assessee during the subsequent assessment year i.e. 2014-15. Hence, the Id. A/R has submitted that this is not the amount introduced or created during the year under consideration but it is opening balance brought forward from the earlier years and, therefore, the same cannot be added as unexplained cash credit under section 68 of the Act.

13. On the other hand, the Id. D/R has submitted that the AO has conducted an enquiry from the alleged creditor who has clearly stated that there was no transaction with the assessee. Further the assessee has not explained anything before the Id. CIT (A) in support of the claim. Now the assessee has referred to a bill of 2001 that too for a sum of Rs. 90,000/- and not for Rs. 60,000/-. The Id. D/R has submitted that the claim of the assessee is not acceptable as the explanation of the assessee is not matching with the entry in the books of account.

14. We have considered the rival submissions as well as the relevant material on record. The assessee has shown the outstanding of sundry creditors including Rs. 60,000/- to M/s. Gems & Jewellery Information Centre. The AO has conducted an enquiry from the said creditor and found that there was no transaction with the said party during the year under consideration. The assessee has admitted the fact that there was no transaction with the said creditor M/s. Gems & Jewellery Information Centre during the year under consideration. However, the Id. A/R has referred to an invoice of 31<sup>st</sup> January, 2001 for a sum of Rs. 90,000/-. Further, the assessee has contended that there was a dispute about the amount and finally the parties have

settled for Rs. 60,000/- which was recorded in the books of account for the assessment year 2006-07. Thus it is the claim of the assessee that the amount which was accounted in the books for the assessment year 2006-07 is being carried forward and there is no new entry or introduction of cash credit during the year under consideration. Further the assessee has submitted that the said amount was paid in the subsequent year i.e. 2014-15. We find that all these expenses were not furnished before the authorities below. Therefore, this issue requires a proper verification of relevant record as well as the fact of repayment of the amount by the assessee. Accordingly, in the facts and circumstances of the case, we set aside this issue to the record of the AO for proper verification and examination and re-adjudicate the same after affording an opportunity of hearing to the assessee.

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

Order is pronounced in the open court on 17/10/2018.

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

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

Jaipur

Dated:- 17/10/2018.

Das/

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

1. The Appellant- Shri Habeeb Khan, Jaipur.
2. The Respondent – The ITO, Ward-2(5), Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 239/JP/2018)

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant. Registrar

