

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" 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. 598/JP/2018
निर्धारण वर्ष / Assessment Year : 2008-09

Shri Habib Khan Prop. M/s H.K. Export Corporation, 2261, Topkhana Hazuri, Ghatgame, Jaipur.	बनाम Vs.	The Pr.CIT, Jaipur-1, Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: ABPPK 5855 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)
राजस्व की ओर से / Revenue by : Shri B. K. Gupta (CIT)

सुनवाई की तारीख / Date of Hearing : 12/11/2018
उदघोषणा की तारीख / Date of Pronouncement : 11/12/2018

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. Pr.CIT, Jaipur dated 21.03.2018 for Assessment Year 2008-09 wherein the assessee has taken following grounds of appeal:-

"1. Under the facts & circumstances of the case, the order passed by Ld. CIT u/s 263 is illegal & in law and be quashed.

2. The Ld. CIT has erred on facts and in law in holding that the AO in course of reassessment proceeding has accepted the

genuineness of purchases of Rs. 60,30,610/- made from various parties mechanically without verification and thus, order passed by AO is erroneous and prejudicial to the interest of revenue.

2.1 The Ld. CIT has erred on facts and in law in making various incorrect observations in holding that AO has not made proper enquiry in accepting the purchases as genuine.

2.2 The Ld. CIT has erred on facts and in law in holding that income of assessee is under assessed to the extent of Rs. 15,07,653/- being 25% of alleged unverifiable purchases of Rs. 60,30,610/-."

2. The Id. AR submitted that the assessee is the proprietor of H.K. Export Corporation and is engaged in the business of manufacturing and export of gem stones and filed his return of income on 30.09.2008 declaring total income of Rs. 9,57,900/-. In the assessment framed u/s 143(3) dated 29.11.2010, the AO held that the purchase of Rs. 9,18,148/- made from M/s Lotus Impex is unverifiable. He therefore disallowed 25% of such purchases and made addition of Rs. 2,29,537/-. This addition was challenged by the assessee in appeal in ITA No. 415/JP/2013 before the Tribunal and it was decided by Tribunal on 29.08.2018 where AO was directed to apply GP rate of past years which has attained finality.

3. The Id. AR further submitted that the AO subsequently initiated proceedings u/s 148 on 31.03.2015 for the reason that assessee has made purchases of Rs. 60,30,610/- from five parties who are the bogus concerns operated by Shri Rajendra Jain, Mumbai. In reassessment

proceedings, assessee furnished affidavit, income tax returns, PAN, ledger account of the assessee in the books of these concerns, and the bank statement of these parties in evidence of the genuineness of the purchases. The assessee also furnished the stock records in evidence of receipt of goods from these parties. The AO after considering these evidences, verification of books / details / documents and after making necessary enquiries / verification held that assessee has disclosed all the purchases at the time of the original assessment completed u/s 143(3) and therefore, it is not a case where assessee failed to disclose fully and truly all material facts necessary for assessment. He accordingly, vide order dt. 30.03.2016 assessed the income as originally assessed by him vide order dated 29.11.2010.

4. The Id. AR submitted that the Ld. CIT thereafter, issued notice u/s 263 on 20.02.2018 and held at Para 7 of the order that a routine acceptance of material without further analysis indicates a failure on part of the AO to make correct assessment and therefore, order passed by the AO was both erroneous and prejudicial to the interest of the revenue. In Para 8, the AO was directed to finalise the assessment by disallowing 25% of the unverifiable purchases of Rs.60,30,610/- i.e., to disallow Rs.15,07,653/- but an opportunity was given to the assessee to state its case in the interest of the natural justice.

5. It was submitted by the Id AR that the very issue for which notice u/s 263 has been taken has been examined by the AO in detail in course of reassessment proceedings and after making necessary enquiries following finding is given at Pages 7-8 of the order:

"I have gone through the entire material available on record and replies / evidences made by the AR of the assessee during the assessment proceedings. In the own case of assessee, original assessment was completed under scrutiny vide order dated 29.11.2010 on total income of Rs.13,54,351/- as against the declared income of Rs.9,57,900/- and trading addition was made on account of fake / bogus purchases made during the financial year 2007-08 from parties identified as entry providers. During assessment proceedings completed under scrutiny, the assessee had made available required details / supporting evidences consisting of P&L account, balance sheet, capital account, list of trade creditors, audit report in 3CD, stock of quantity details of finished stones (including diamond faceted beads) etc. for the financial year 2007-08 relating to reassessment proceedings. The assessee has also furnished affidavits of all concerning parties from whom he has made purchase in actual delivery of goods and facts mentioned therein that the goods, so purchased are tallied in quantity wise and value wise as required vide show cause letters issued from time to time. Due verification also made from the books and details / documents produced during assessment proceedings. After verification facts found verified. The assessee has also mentioned that assessee has made purchases in actual delivery of goods and the same has been taken in his stock register. As per stock register, the goods purchases / sold by the assessee during financial year 2007-08 shown under the head diamond faceted beads which is reproduced as under:-

Annexure - C***M/s H.K. Exports Corporation****(Quantitative details of finished goods)**Financial ending as on 31.03.2008**(All**quantitative in grams)*

<i>S.No.</i>	<i>Particulars</i>	<i>Opening Stock</i>	<i>Receipts</i>	<i>Issue</i>	<i>Closing Stock</i>
<i>33</i>	<i>Diamond faceted beads</i>	<i>3178.866</i>	<i>2185.318</i>	<i>2934.882</i>	<i>2429.302</i>

Due verification has been made on each and every items relates to purchases shown by the assessee in financial year 2007-08 which has covered in the reasons of pending re-assessment proceedings. In this connection show cause notice u/s 133(6) of IT Act, 1961 vide letter dated 11.06.2015 were issued in all the concerned parties who has furnished their confirmations by submitting copy of ITR, PAN, bank statement and copy of assessee's ledger account which are on record. Information received u/s 133(6) from related parties have been test checked and facts found duly verified".

6. The Id. AR further submitted that from the above, it can be noted that AO has conducted necessary enquiries / verification which should have been made by him. The Ld. CIT has not specified that which enquiry / verification is not conducted by the AO. In fact, the Ld. CIT by

passing order u/s 263 has directed the AO to disallow 25% of the alleged unverifiable purchases even when the same is duly confirmed by the parties and these purchases are duly recorded in the books of accounts / stock records. In assessee's own case for this very assessment year, the Tribunal in ITA No.415/JP/13 order dt. 29.08.2018 has held that once books are rejected, the only recourse to AO is to assess income on estimation & best judgment by applying G.P. rate of past years which has attained finality. Therefore, the order passed by AO by no stretch of imagination can be considered as erroneous.

7. In support reliance was placed on the decision in case of Honda Motorcycle & Scooters India Pvt. Ltd. vs. PCIT (2018) 53 CCH 0241 (Trib) (Del) and GE Capital Services India vs. ACIT (2018) 52 CCH 0372 (Trib) (Del).

8. The Id. AR further submitted that the Hon'ble Supreme Court has dismissed the SLP filed by the Department against order of the Hon'ble High Court of Gujarat in case of PCIT vs. Tejua Rohit kumar Kapadia where it was held that no question of law arises since the appellate authority as well as the tribunal had come to the conclusion that "the purchases made were duly supported by bills and payments were made by account payee cheque. Moreover, the seller also confirmed the transactions. There was no evidence to show that the amount was recycled back to the assessee. Particularly, when it was found that the assessee had also shown the sales out of the purchases made which were accepted by the Revenue".

In the present case also, (a) the purchases 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. Therefore, the order passed by CIT to thrust upon his own opinion on the AO by way of order u/s 263 is illegal and bad in law.

9. The Id. AR accordingly submitted that even the ITAT, Jaipur Bench has consistently held that in case of alleged unverifiable purchases where the books of accounts are rejected, the only course of action is to estimate the income of the assessee by applying gross profit rate as held in case of DCIT vs. Gems Paradise AY 2009-10 ITA No. 747/JP/2012 order dated 26.12.2017. In this case, the AO after invoking the provisions of Section 145(3) disallowed 25% of the unverifiable purchases made from four parties. The Ld. CIT(A) upheld the rejection of books but restricted the trading addition by applying GP rate of 25.50% on total turnover instead of GP rate of 25% declared by the assessee. The ITAT held that after rejection of books of accounts, making further addition of 25% of the tainted purchases to the books results is not permissible. Accordingly, it upheld the view of the Ld. CIT(A) in applying the GP rate for assessment of income after rejection of books of accounts.

10. In view of above, the order passed u/s 263 by the Ld. CIT is only to thrust upon his own opinion against the finding of the AO. Therefore,

the order passed by the AO is not erroneous as the same is one of the possible views. Accordingly, the order passed u/s 263 be quashed.

11. Per contra, Id CIT DR vehemently argued the matter and supported the order of Id CIT in exercising her jurisdiction under section 263 of the Act and our attention was drawn to the following findings of the Id CIT which reads as under:

" Keeping the above discussion in view by the virtue of the powers conferred on the undersigned under the provisions of section 263 of the IT Act 1961 I hold that the order under Section 147/143(3) dated 30/03/2016 for assessment year 2008-09 passed by the Assessing Officer is erroneous insofar as it is prejudicial to the interest of revenue as the order has been passed by the Assessing Officer in a routine and perfunctory manner without making enquiries/verification which ought to have been made before accepting the submission made by the assessee regarding the genuineness of purchases made by it from a group of concerns which admittedly provided bogus bills to facilitate accommodation entries. It is therefore liable to revision under explanation (2) clause (a), clause (b) of section 263 of the Income Tax Act. Hence the assessment order is set aside on this issue with a direction to the Assessing Officer to assess the case of the assessee de novo in accordance with law after making the necessary enquiries, examination and verification in respect of the claim made by the assessee regarding the issue under discussion. The stand taken while assessing the case of the assessee for A. Y 2009-10 on identical issue should be kept in view. The AO is directed to finalise the assessment keeping in view the information received from the office of Addl. CIT Surat dated 13/03/2015 regarding

availing of accommodation entry by the assessee to the tune of Rs. 60,30,610/- as bogus purchase bills. It is clear that the income for A. Y. 2008-09 has been under assessed to the extent of Rs. 15,07,653/- being 25% of unverifiable purchases of Rs. 60,30,610 as per the decision pronounced by the Apex Court in Special leave to Appeal (c) No. 8956/2015 decided on 6.4.2015 Vijay Proteins Ltd. Vs. CIT. This erroneous assessment has in turn resulted in loss of revenue. However an opportunity to the assessee to state its case is to be allowed in the interest of natural justice."

12. We have heard the rival contentions and perused the material available on record. In the context of original assessment proceedings, we have already held in ITA no. 415/JP/2013 dated 29.08.2018 that in case of unverifiable purchases, once books of accounts are rejected, only course of action available to the AO is to assess the income of the assessee on estimation basis and average GP declared by the assessee which has attained finality shall be proper basis for estimation of income and our relevant findings are as under:

"3. We have heard the Id. A/R as well as the Id. D/R and considered the relevant material on record. In the assessment proceedings, the AO rejected the books of accounts of the assessee under section 145(3) of the IT Act and thereafter estimated the income of the assessee by applying 25% of the purchases which was considered as unverifiable. On appeal, the Id. CIT (A) confirmed the addition made by the AO. In the proceedings before us, the only issue is regarding estimation of income of the assessee after rejection of books of accounts. Therefore,

once the AO rejected the books of accounts under section 145(3) of the Act and the said decision of the AO has now attained the finality, then the consequential action of the AO would be estimation of income in terms of section 144 of the Act. The AO has made the addition @ 25% of the purchases instead of estimating the income by applying some reasonable and proper basis of GP rate. 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 estimation basis and on best judgment. The GP rate is considered as a proper and reasonable basis and a guidance for the best judgment of estimation of income. It is settled position of law as held by the Hon'ble Jurisdictional High Court in the case of CIT vs. Inani Marbles Pvt. Ltd., 316 ITR 125 (Raj.) as well as in the case of Kansara Bearings Pvt. Ltd. vs. ACIT, 270 ITR 235 (Raj.) that the GP rate declared and accepted in the earlier years can be a reasonable and proper basis for estimation of income of the assessee. Accordingly, the average GP declared by the assessee which has attained the finality shall be the proper and reasonable basis for estimation of income of the assessee. Accordingly, in the facts and circumstances of the case, we set aside this issue of estimation of income of the assessee to the record of the AO for deciding afresh by applying the average GP of past years which has attained the finality. Ground Nos. 2 & 3 are set aside to the record of the AO."

13. Even the reassessment proceedings and the impugned revision proceedings u/s 263 have been initiated in context of unverifiable purchases, the only course available with the AO is to assess the income on estimate basis as we have already held in context of original

assessment proceedings. In light of same, the present revision proceedings u/s 263 have become infructuous and are set-aside.

In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 11/12/2018.

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 11/12/2018.

*Santosh

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

1. अपीलार्थी / The Appellant- Shri Habib Khan, Jaipur.
2. प्रत्यर्थी / The Respondent- Pr.CIT, Jaipur-1, 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. 598/JP/2018 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar