

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'F', New Delhi**

**Before : Shri Amit Shukla, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No. 3031/Del/2016
Assessment Year: 2011-12**

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| Income-tax Officer, Ward-5, Rohtak. (Appellant) | vs. | Rajeev Aggarwal, W-7, Greater Kailash-1, New Delhi. PAN- AHBPK5683K. (Respondent) |
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| Appellant by | Sh. Surender Pal, Sr. DR |
| Respondent by | S/Sh. U.S. Aggarwal, B.B. Jain, Advocate |

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| Date of Hearing | 28.02.2019 |
| Date of Pronouncement | 22.05.2019 |

ORDER

Per L.P. Sahu, A.M.:

This is an appeal filed by the Revenue against the order of Id. CIT(A), Rohtak dated 21.03.2016 for the assessment year 2011-12 on the following grounds :

1. *CIT(A) has erred in deleting the addition of Rs. 4,47,22,319/-- made on account of low G.P: as compared to earlier years without any substantiating details and maximum sales are in cash and many of them were made without proper invoices. Moreover, stock register was never produced & negative stock was shown in the stock tally for month of May & December 2010.*
2. *During remand proceedings the assessee has submitted different purchase details in the additional evidences submitted before CIT(A) vis-a-vis the details submitted before the AO during the assessment proceedings which*

is clearly manipulation of accounts and justify the decision of AO taken in assessment order of rejecting books of accounts of the assessee.

3. CIT(A) has erred in deleting addition of Rs. 1,23,307/- made on disallowance of car depreciation & interest on car loan for personal usage of vehicle. As CIT(A) has nowhere denied the fact of personal use of car. No log book was furnished by the assessee so as to find the nexus to business use in respect of car expenses as is accepted by the assessee himself vide order sheet entry dated 11.03.2014, so entire expenses cannot therefore be said to have been incurred for the purpose of business.

2. The brief facts of the case are that the assessee filed return on 28.09.2011 declaring an income of Rs.17,83,080/-. The case was selected for scrutiny and statutory notices were issued to the assessee. The trading results for earlier two assessment years and the impugned order are as under :

| Assessment year | Sales (Rs.) | Gross Profit(Rs) | Gross Profit rate |
|-----------------|-------------|------------------|-------------------|
| 2011-12 | 9258549587 | 5241544 | 0.057 |
| 2010-11 | 9298649213 | 3815071 | 0.041 |
| 2009-10 | 37449929254 | 19795763 | 0.537 |

The Assessing Officer observed that the net profit rate has been drastically down from A.Y. 2009-10. The case for assessment year 2009-10 was scrutinized but the return for assessment year 2010-11 was processed u/s. 143(1)(a). The Assessing Officer chose the assessment year 2009-10 as base year for comparison of gross profit earned during the year. The details asked for were submitted by the assessee. The Assessing Officer further noted that the assessee has traded the goods of 99.9% of gold bullion and the total turnover for the impugned year was of Rs.925,85,49,587/- which was derived out of complete sales through cash. Copy of invoices issued by the assessee did not contain the names and addresses

of the buyers. Therefore, he concluded that the genuineness of the rates charged by the assessee from the buyers cannot be verified at this stage. Therefore, the correct profit from the sales was unverified. The Assessing Officer further noted that the distinctive particulars of gold bars sold are also not mentioned in any of the invoices of cash sales, the distinctive particulars of each of the gold bars having been mentioned in the documents issued by the supplier MMTC. On further scrutiny of accounts, the Assessing Officer noticed that there was a negative stock in the month of May, 2010 and December 2010. In this regard, the assessee submitted reply on 20.02.2014 which has been reproduced in the assessment order and the assessee has explained the negative stock noted by the Assessing Officer. The Assessing Officer was not satisfied from the submissions of the assessee and therefore, he invoked the provisions of section 145(3) for rejection of books of account and applying GP rate of 0.54%, he calculated the total addition in the gross profit of Rs. 4,99,63,863/- and after reducing the gross profit shown in the books of account of Rs.52,41,544/-, made addition of Rs.4,47,22,319/-.

3. On further scrutiny of accounts, the Assessing Officer noticed that the assessee has claimed expenses on cars as under :

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| (i). Interest on car finance | Rs.86,466/- |
| (ii). Car Insurance | Rs.39,707/- |
| (iii). Car running expenses | Rs.1,08,000/- |
| (iv). Car maintenance | Rs.32,881/- |
| (v). Car depreciation | <u>Rs.3,49,480/-</u> |
| Total car expenses claimed | Rs.6,16,180/- |

The assessee was unable to produce the log book. Therefore, the Assessing Officer disallowed 1/5th of the above expenses on account of non-business purpose and added Rs.1,23,307/- into the total income of the assessee.

4. Aggrieved from the above order, the assessee filed appeal before the Id. CIT(A) and also filed additional evidence u/r 46A which were sent to the Assessing Officer for remand report. The Assessing Officer submitted his report on 03.09.2015. A detailed written submission was also filed before the Id. CIT(A), explaining all the objections made by the Assessing Officer and relying on some case laws also. In the remand proceedings, the Assessing Officer has supported the assessment order. The assessee had replied the remand report point to point as incorporated in the order of Id. CIT(A). The Id. CIT(A) considering the submissions of the assessee, remand report and case laws, cited by the assessee, allowed the appeal of the assessee. Aggrieved from the order of Id. CIT(A), the Revenue is in appeal before the ITAT.

5. The Id. DR submitted that the Id. CIT(A) has wrongly deleted the additions without removing the objections raised by the Assessing Officer. The Assessing Officer noticed that there was a negative stock in the month of May, 2010 and December, 2010 which is not possible and the entire sales have been made in cash. In the invoices issued by the assessee, there is no mention of names and addresses of the purchasers which raised doubt for charging correct rate. Therefore, the Assessing Officer has rightly rejected the books of account of the assessee and applied the net profit rate at 0.54% as was earned in assessment year 2009-10. He also submitted that the Id. CIT(A) has wrongly accepted the

additional evidence filed by the assessee. He relied on the judgment in the case of CIT v. Manish Build Well (P) Ltd., (2011) 16 taxmann.com 27 (Delhi). He further submitted that the ld. CIT(A) has wrongly mentioned in his order that the assessment order as well as remand report suffers from drawback which is totally incorrect.

6. On the other hand, the ld. AR reiterated the submissions made before the ld. CIT(A) and submitted that the ld. CIT(A) has rightly allowed the appeal of the assessee after considering the facts which were produced before the Assessing Officer. The additional evidence submitted were the part of records. The books of account are audited and cash book, bank book, journal, bank stock and journal ledger were maintained by the assessee and no any discrepancies have been pointed out therein. The stock registers were also produced before the Assessing Officer which were not considered by him. Therefore, the rejection of account books is not justified. It was submitted that there is no material to show as to how the Assessing Officer has calculated the negative stock in the months of May and December, 2010. The assessee again produced the trading account for the months of May and December, 2010 before the ld. CIT(A). The gold bars were purchased from MMTC, which is a government enterprises and authorized for sale of gold bullion. The prices of gold bars are fixed by three methods, i.e., the cash value, value tom and spot value basis. It was next submitted that in cash sales, there was no need to mention the names and addresses of the buyers and simply because the names of the buyers were not mentioned on the invoices, it can hardly be presumed that the rates charged in the invoices are not acceptable. Gold bullion is a precious metal and has always been purchased from MMTC and

its rates are fixed by MMTC. The selling rate of bullion was also easily ascertainable from the national market, Sarrafa Associations or from other comparable business houses. However, the Assessing Officer without making any exercise on it, has wrongly doubted the selling rate simply for the sake of rejection of books of account. No defects are pointed out in the books of account maintained by the assessee.

7. After hearing both the sides and perusing the entire materials available on record, we find that the assessee has explained before the Id. CIT(A) the negative stock pointed out by the Assessing Officer in the assessment order. We also observe from the paper book filed contained 249 pages, that the assessee has produced stock statement which are placed at page 41 to 52 where no negative stock is shown. It was also produced before the Assessing Officer, but how the Assessing Officer has noted the negative stock is not clear. Regarding the additional evidence, it is clear from the paper book that the evidences filed before the Id. CIT(A) were nothing but part of the account books furnished in support of assessee's contention. Therefore, the case laws relied by the Id. DR is not applicable in the present case on this count. As regards other reason for rejection of accounts of account, we are of the opinion that simply because the names of the buyers were not mentioned in the bills of cash sales, it would not go to disbelieve the books of account as held by Hon'ble Bombay High Court in the case of RB Jessaram Fatehchand (Sugar Dept.) vs. CIT, 75 ITR 33. We find substance in the contention of the assessee that gold bullion is a precious metal and its day-to-day rates are easily ascertainable from the rates declared by National Market, Sarrafa Bazars etc. It is not the case of the Revenue that the rate of bullion

charged in the invoices was not in consonance with the market rates of gold bullion prevailing at that point of time. No any comparable instance has been given to support the doubt by the Assessing Officer on the rates of bullion sold by the assessee. The assessee has maintained quantitative tally of the stock, on perusal of which we find no incongruity in the purchases, sales and stock shown by the assessee. Besides, the Revenue authorities have not made out a case that the assessee has not adopted consistent method of accounting and in view of aforesaid facts, the profits and gains earned by the assessee can be easily deduced from the books of accounts so maintained by the assessee. Therefore, in our considered opinion, the Assessing Officer was not justified in rejecting the book version of the assessee and to apply the profit rate of 0.54% without any good reason.

8. As far as the disallowance of car expenses is concerned, we find no justification to discard the finding of the Id. CIT(A) that the adhoc addition has been made by Assessing Officer without pin pointing any head of car expenses or any particular expense on car which was of disallowable nature. Even otherwise, it is settled law that depreciation is allowable to the assessee on vehicle even if it is put to personal use partially, though no such instance has been given by the Assessing Officer. Therefore, the deletion of adhoc addition made by the Id. CIT(A) does not call for any interference.

9. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 22.05.2019.

Sd/-
(Amit Shukla)
Judicial member

Sd/-
(L.P. Sahu)
Accountant Member

Dated: 22.05.2019