

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

श्री विजय पाल रॉव, 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. 1501/JP/2018
निर्धारण वर्ष/Assessment Year : 2011-12.

The DCIT, Circle-7, Jaipur.	बनाम Vs.	M/s. Onsaz Jewellery Creation G-1-38, Gems & Jewellery Zone, EPIP, Sitapura Industrial Area, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AABFO 2081 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से/ Revenue by: Shri A.S. Nehra (Addl. CIT)
निर्धारिती की ओर से/ Assessee by : Shri P.C. Parwal (CA)

सुनवाई की तारीख/ Date of Hearing : 21.05.2019.
घोषणा की तारीख/ Date of Pronouncement : 22/05/2019.

आदेश / ORDER

PER VIJAY PAL RAO, JM :

This appeal by the Revenue is directed against the order dated 09.10.2018 of Id. CIT (A)-3, Jaipur for the assessment year 2011-12. The revenue has raised the following grounds :-

1. On the facts and in the circumstances of the case, whether the Id. CIT (A) was justified in applying average GP rate of 8.70% thereby restricting the addition to Rs. 4,26,171/- as against the addition of Rs. 75,62,336/- made by the AO on account of unverifiable purchases from URD suppliers (25% of total Rs. 3,02,49,345/-) ignoring the facts that the assessee firm failed to provide details/complete address of the URD suppliers during the course of assessment as well as in remand proceedings ?
2. On the facts and in the circumstances of the case, whether the Id. CIT (A) was justified in applying average GP rate ignoring the decisions/findings given by the Hon'ble Apex Court in case of (i)

M/s. Kachwala Gems vs. Joint Commissioner of Income Tax (288 ITR 10: 2007) and (ii) N.K. Proteins Ltd. vs. DCIT order dated 16.01.2017 (SLP No. 769 of 2017) wherein it has been held that entire bogus purchases should be added as undisclosed income of the assessee ?

3. The appellant craves leave to add, alter, amend, withdraw or insert any ground or grounds of appeal before or at the time of hearing of the appeal."

2. The assessee firm is engaged in the business of trading, manufacture and export of Gem Stones and Jewellery. The assessee filed its return of income on 30th September, 2011 declaring total income of Rs. 18,42,770/-. During the course of scrutiny assessment, the AO issued notice under section 133(6) of the Act to 28 parties from whom the assessee has made purchases. Out of 28 parties to whom the notices were issued by the AO, the notices issued to 13 parties were returned back by the postal authorities. The AO accordingly treated the purchases of Rs. 3,02,49,345/- made from 13 parties as unverifiable and consequently he rejected the books of account of the assessee under section 145(3) of the IT Act. The AO then made an addition of Rs. 75,62,336/- by disallowing 25% of the alleged unverifiable purchases. The assessee challenged the action of the AO before the Id. CIT (A). The Id. CIT (A) vide impugned order has restricted the addition by estimating the income of the assessee on the basis of the average GP rate of past three years including the current year at 8.66%. Aggrieved by the impugned order, the revenue has filed the present appeal.

3. Before us, the Id. D/R has submitted that the AO has conducted the enquiry and once the parties were found not existed at the given address, then the purchases made from these 13 parties are bogus. Therefore, as per the decision of

Hon'ble Supreme Court in case of M/s. Kanchwala Gems vs. JCIT, 288 ITR 10 (SC) as well as the decision in case of M/s. N.K. Proteins Ltd. vs. DCIT dated 16.01.2017 whereby the decision of Hon'ble Gujarat High Court was upheld by the Hon'ble Supreme Court, the AO was justified in making a disallowance @ 25% of the unverifiable purchases. He has relied upon the order of the AO and submitted that when these suppliers were not available at the given address then in the absence of production of these suppliers before the AO, the assessee has failed to prove the claim of genuineness of the purchases.

4. On the other hand, the Id. A/R has submitted that the AO has made the addition by treating all these 13 parties as unregistered dealers whereas the assessee furnished all the details of these suppliers which include PAN, TIN, CST and RST numbers. He has referred to the remand report of the AO reproduced at pages 10 & 11 of the order of Id. CIT (A) and submitted that the AO has admitted that the assessee has furnished all the details in respect of these 13 parties and, therefore, the order of the AO is based on assumption and wrong facts and rather contrary to the facts. He has further contended that the assessee furnished all the details of these parties including PAN, TIN and complete address. Once PAN and TIN was provided by the assessee, then the existence of suppliers cannot be questioned. He has further submitted that once the books of account were rejected by the AO, then the only option available with the AO was to estimate the income of the assessee on some reasonable basis and not to make any disallowance and addition to the returned income of the assessee. He has referred to the order of the Id. CIT (A) and submitted that the Id. CIT (A) has followed the decision of this Tribunal wherein it was held that once the books of account were rejected, the income of the

assessee ought to have been estimated instead of making addition. He has relied upon the decision dated 26.12.2017 of Coordinate Bench of this Tribunal in case of DCIT vs. M/s. Gems Paradise in ITA No. 747/JP/2012 and C.O. No. 65/JP/2012. Thus the Id. A/R has submitted that the Id. CIT (A) has followed the binding precedent which cannot be faulted with.

5. We have considered the rival submissions as well as the relevant material on record. The AO in order to verify the purchases issued notices under section 133(6) of the Act to 28 parties. The notices issued to 13 parties were received back by postal authorities. The details of these parties are as under :-

S.No.	Parties	Amount (Rs.)
1.	Pari Exports	11,41,113/-
2.	Naman Gems	30,547/-
3.	Rosette India	9,80,020/-
4.	Pranav Gems	1,84,509/-
5.	Hardik Gems Exports	2,87,300/-
6.	K.K. Bullion	2,68,02,042/-
7.	Shree International	55,400/-
8.	UK Gems International	1,03,281/-
9.	R.S. Jewellers	1,19,818/-
10.	Radhika Impex	1,09,441/-
11.	The Willson Gems House	1,10,646/-
12.	MJ Enterprises	1,82,930/-
13.	Agarwal Brothers	1,42,999/-
	Total	3,02,49,345/-

We further note that the AO treated these parties as unregistered dealers but in the remand report the AO has accepted that the assessee has furnished PAN, TIN, CST and RST numbers. Therefore, the said finding of the AO is contrary to the facts and record that these 13 parties were duly registered under CST and RST and having their TIN number. This fact was accepted by the AO during the remand proceedings as recorded by the Id. CIT (A) at page 11 of the impugned order. Further, once the

AO has rejected the books of account by invoking the provisions of section 145(3), then the only course of action available under the provisions of section 145(3) read with section 144 of the Act is to estimate the income on some proper and reasonable basis. There is no quarrel that the past history of the GP declared by the assessee is a reasonable basis for estimation of income. The Id. CIT (A) has considered this issue in para 4.3 as under :-

"4.3. I have carefully considered the observation made by the Assessing Officer in the assessment order, submission and additional evidences filed by the A/R of the appellant, remand report of the Assessing Officer and rejoinder filed by the A/R of the appellant. I find that only issue involved in these grounds is that the Assessing Officer treated the purchases made from 13 parties as non verifiable and made disallowance of 25% of the purchases of Rs. 3,02,49,345/-. In the appellant proceeding the A/R submitted that appellant is maintaining day to day books of accounts along with stock register. Before the Assessing Officer complete tally was produced. The Assessing Officer examined the books in tally and identified the purchases from tally software itself. Therefore, the A/R argued that disallowance made by the Assessing Officer should be deleted.

On the other hand Assessing Officer in the assessment order and remand report mentioned that the appellant has not produce the books of accounts and also the parties for verification. However, two parties namely K.K. Bullion and Agarwal brothers directly filed the confirmation confirming the sales to the appellant.

On considering the over all facts of the case I find that out of total purchase of Rs. 3,02,49,345/- from 13 parties, 2 parties filed the detail confirming the purchases to the extent of Rs. 2,69,45,040/- (26802042-142998). However, the balance purchase of Rs. 3304305/-

remained unverifiable. Therefore the provisions of section 145(3) is clearly applicable and therefore the same is confirmed.

It is further find that the Hon'ble ITAT Jaipur Bench is consistently holding that wherever books of accounts is rejected by applying the provisions u/s 145(3), the Gross profit rate should be applied. Considering the past history of the appellant. The various case laws relied by the appellant also supported this case. In this case the average Gross profit rate of three years including current year is 8.66%. Further the turnover of the appellant has also increased from Rs. 15.22 crore to Rs. 22 crore this year. Therefore I find that it would be reasonable if the Gross profit rate of 8.70% is applied. On this basis the Gross profit work out of Rs. 1,91,68,395/- as against Gross profit of Rs. 1,87,42,224/- declared by the appellant resulting into final addition of Rs. 4,26,171/-. Thus the trading addition of this extent is confirmed. The appellant get relief of Rs. 71,36,165/-. These grounds are partly allowed."

Therefore, the Id. CIT (A) has referred the decision of this Tribunal taking a consistent view that once the books of account are rejected, the income shall be estimated by applying gross profit rate. The Coordinate Bench of this Tribunal in case of M/s. Gem Paradise (supra) while considering an identical issue in para 5 has observed as under :-

"5. We have considered the rival submissions as well as relevant material on record. The revenue is aggrieved by the impugned order by the Id. CIT(A) whereby the addition made by the AO equivalent to 25% of the unverifiable purchase was restricted by applying the GP addition @ 25.50%. We are of the considered view that once the books of account are rejected by the AO then, the only course of

action left with the AO is to assess the income of the assessee on the basis of estimate and best judgment. The Assessing Officer after rejection of books of account has further made addition of 25% of tainted sales to the books result which is not permissible when the AO resorted invoke the provisions of section 145(3) of the Act. Thus, this action of the AO is contrary to the decision of rejecting the books of accounts. Accordingly, we do concur with the view of the Id. CIT(A) in applying the GP rate for assessment of the income of the assessee after the rejection of books of account. This Tribunal comprising the same combination in case of CIT vs. Allied Gems Corporation in ITA No. 794/JP/2011 vide order dated 15.12.2017 considering then an identical issue has held in para 5 as under:-

“ 5. We have considered the rival submissions as well as relevant material on record. The Assessing Officer rejected the books of account by invoking the provisions of section 145(3). The issue of rejection of books of accounts is involved in the cross objection filed by the assessee, therefore, we deal with this issue while deciding the cross objection. 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 the basis of best judgment and GP rate is considered as proper and reasonable basis and guidance for the best judgment. Once, the books result are rejected the Assessing Officer cannot proceed to make an addition to the income offered by the assessee as per books result. However, the AO in the case of the assessee instead of applying the GP rate made an addition @ 25% of the purchases to the book results. This act of the Assessing officer itself contradicts the decision of rejecting the books of accounts and books result. The Tribunal in assessee’s own case for the assessment year 2006-07 has considered this issue and upheld the order of the Id. CIT(A) in para 2.20 and 2.30 as under:- “2.20 Hence, there are certain concerns for which Revenue got evidence in the form of statement recorded in respect of such parties, opening balance is Rs. 37,06,175/- while the closing balance is Rs. 42,81,496/-. It means that there is an accretion of amount of Rs. 5.75/- lacs. It means that to this extent, accretion in purchase is without supporting the correct bills. Of course, total opening balance of all parties is Rs. 1,15,43,782/- and the closing balance is Rs. 1,33,36,193/-. However, looking to the accretion in the closing balance of the concerns for which Revenue has material, the addition confirmed by the Id. CIT(A) is reasonable.....

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2.30 The Hon’ble P & H High Court in the case of Uplakesh Metal Industrial V CIT 177 taxman 298 held that issue decided by this is in the realm of appreciation evidence. The find of Tribunal as mentioned in this judgment is as under:-

“However, in our opinion the observation of the Assessing Officer that the assessee was prima facie required to prove the genuineness of the

transaction and identity of the creditors is not misplaced because there is no distinction laid between the trade creditor and the non-trade creditor and we are further of the opinion that in case the assessee claims liability of payment to the trade creditors shown in the balance-sheet, the assessee is definitely required to prima facie prove the identity of the trade creditors as well as the genuineness of the transaction. In this case, admittedly the assessee has neither been able to disclose the complete addresses of the trade creditors nor is able to give the complete addresses of the consignors nor the name has been mentioned on the challan forms, so the verification of the same by the Assessing Officer became totally impracticable on account of lack of this complete information supplied by the assessee. It means that the assessee failed in establishing the genuineness of the so called trade creditors appearing in its books of account. We are further of the opinion that since in the instant case of the assessee, the point under consideration before us is regarding the genuineness of the liability amounting to Rs. 1,75,26,586 shown by the assessee in its balance-sheet as trade creditors, so it was not relevant for us to consider as to whether the purchases made by the assessee were genuine or not or to whether the assessee has inflated those purchases or not. It is also not material to consider whether the GRs from sale-tax department were verified or not, so, the CIT(A) on considering these points was not justified in deleting the impugned addition without discussing as to whether the liability of trade creditors shown by the assessee in the absence of furnishing complete addresses of trade creditors/consignors and the payment vouchers was genuine or not."

While evaluating the material collected by the Revenue on the touch stone on human probability and considering the accretion in the closing balance in respect of parties for which Revenue has material in the form of statement. We fell that the Id. CIT(A) was reasonable in confirming the addition of Rs. 5.00 lacs. Hence both the grounds of assessee as well as Revenue are dismissed."

We further noted that when the corresponding sale is not in dispute then the question is only regarding the correct amount of purchases and verification of the same. The Id. DR has relied upon the various decisions of Hon'ble Gujarat High Court however, we find that in all those decisions there was a finding of facts that the assessee inflated the purchases upto 25% and therefore, it was not a case of non verification of the purchase and rejection of books of accounts but the fact was established in the investigation that the assessee inflated the purchase price and accordingly the addition of 25% being inflated purchases was made and upheld by the Tribunal which was again upheld by the Hon'ble High Court. On the contrary in the case of the assessee the AO not given any finding of inflated purchases by the assessee but doubted the very transaction of purchases due to non production of these parties before the AO. The AO has not given the finding that the prices of the goods was inflated by the assessee but the AO doubted the genuineness of the purchases on the ground that the suppliers were found to be accommodation entries providers. When the AO rejected the book results u/s 145(3) of the Act, then the AO after rejection of the books of account can proceed to make the assessment on the basis of best judgment instead of

resorting make the addition to the book results. Accordingly, in the facts and circumstances of the case and in view of the decision of this Tribunal in assessee's own case for A.Y. 2006-07 we do not find any error or illegality in the orders of the Id. CIT(A) in restricting the addition to the average GP rate based on the past history. Hence, the grounds raised in the Revenue appeals are rejected being without any substance or merits."

Accordingly, in view of the above facts and circumstances of the case and the decision of this Tribunal in case of ACIT vs. M/s Allied Gems Corporation (Supra) the grounds raised by the Revenue in this appeal are without any substance or merits.

As regards the decisions relied upon by the Id. D/R, we note that in case of M/s. Kanchwala Gems vs. JCIT (supra), the income was estimated by taking the GP on the entire sales and not an addition was made to the returned income by making the disallowance of unverifiable purchases. Further, in case of M/s. N.K. Proteins Ltd. vs. DCIT (supra), it was a case of addition based on inflated purchases and not the estimation of income by rejecting the books of account. Therefore, those decisions relied upon by the Revenue would not help in the present case when the AO has rejected the books of account of the assessee. Accordingly, following the earlier order of this Tribunal, we do not find any error or illegality in the impugned order of the Id. CIT (A).

6. In the result, appeal of the revenue is dismissed.

Order is pronounced in the open court on 22/05/2019.

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

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

Jaipur
Dated:- 22/05/2019.
Das/

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

1. The Appellant- The DCIT, Circle-7 Jaipur.
2. The Respondent – M/s. Onsz Jewellery Creation, Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 1501/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

