

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH 'B', JAIPUR

श्री रमेश सी. शर्मा, लेखा सदस्य एवं श्री विजय पाल रॉव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH C. SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA No. 29/JP/2019
निर्धारण वर्ष/Assessment Year : 2010-11.

M/s. J.K. Jewellers International, A-36, Govindi, Takhteshahi Road, Jawahar Lal Nehru Marg, Jaipur.	बनाम Vs.	The Income Tax Officer, Ward 6(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AAEFJ 9839 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.L. Poddar (Advocate)
राजस्व की ओर से / Revenue by : Shri J.C. Kulhari (JCIT)

सुनवाई की तारीख / Date of Hearing : 01.07.2019.
घोषणा की तारीख / Date of Pronouncement : 02/07/2019.

आदेश / ORDER

PER VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 26th December, 2018 of Id. CIT (A) for the assessment year 2010-11. The assessee has raised the following grounds :-

1. Under the facts and circumstances of the case the learned CIT (A) has erred in confirming the action of the learned AO in passing the order u/s 148/143(3) of the Income Tax Act, 1961.
2. Under the facts and circumstances of the case the learned CIT (A) has erred in sustaining the lump sum addition of Rs. 10,00,000/- out of Rs. 60,79,802/- made by the learned AO by disallowing 25 percent of total alleged bogus purchases of Rs. 2,43,19,210/- without considering the submission of the assessee.
3. The assessee craves your indulgence to add amend or alter all or any grounds of appeal before or at the time of hearing."

2. The assessee is a partnership firm and dealing in precious and semi-precious stones. During the year under consideration, the AO noted that the assessee has shown the purchases from 5 (five) parties which were subjected to search and seizure action by the Investigation Wing, Mumbai and found to be involved in providing bogus entry. Accordingly, the AO considered the purchases made by the assessee from those entities as bogus/unverifiable purchases and consequently made addition of 25% of such purchases after rejection of books of account. The Id. CIT (A) restricted the addition made by the AO to lump sum of Rs. 10,00,000/- as against the disallowance/addition made by the AO of Rs. 60,79,802/- along with unaccounted commission of Rs. 48,638/-.

3. Before us, the Id. A/R of the assessee has submitted that an identical issue has been considered by this Tribunal for the assessment years 2008-09 and 2009-10 & 2014-15 vide orders dated 28th March, 2018 and 06.06.2019 respectively. Thus the Id. A/R has submitted that the Tribunal has held that once the books of account are rejected by the AO, then the only option with the AO to make the best judgment assessment by estimating the income of the assessee on the basis of the average GP of past years. Thus the Id. A/R has submitted that the Tribunal has deleted the identical addition made by the AO and partly sustained by the Id. CIT (A) in those years.

4. On the other hand, the Id. D/R has submitted that the earlier decisions of this Tribunal are not applicable for the year under consideration when the GP as well as the NP declared by the assessee are declined during the year under consideration. He has further submitted that there was no issue of declining of GP and NP in the

earlier years where the Tribunal has deleted the addition made by the AO. He has relied upon the orders of the authorities below.

5. In rejoinder, the Id. A/R has submitted that the Tribunal has held that average GP of past years is a proper and reasonable basis for estimation of income. Therefore, by considering the GP declared by the assessee in the year under consideration, no addition is required even after rejection of books of account.

6. We have considered the rival submissions as well as the relevant material on record. So far as the issue of estimation of the income of the assessee after rejection of books of account is concerned, we find that the same has been considered by this Tribunal in assessee's own case for the assessment year 2008-09 in para 4 as under :-

"4. We have heard the Id. DR as well as the Id. AR and considered the relevant material on record. The Revenue is aggrieved by the order of the Id. CIT(A) in the first round of assessment whereby the assessee is aggrieved the order of the Id. CIT(A) in the reopening of the assessment. The assessee firm is deriving income from export of precious and semi precious stones including export of gold and silver jewellery. In the original assessment passed u/s 143(3) the AO doubted the purchases made from 12 parties and when the assessee could not produce the suppliers for examination, the AO treated the purchases to the extent of Rs. 1,33,94,163/- as not genuine and disallowance the same. On appeal, the Id. CIT(A) after considering the relevant facts as well as evidences produced by the assessee before the AO in support of the purchases made from these 12 parties has adjudicated the issues in para 2.3 as under:-

"2.3. I have carefully considered the facts of the issue under consideration, observations of the AO and also the submissions made by Ld. AR in this regard. Before going into the merits of the rival stands, the primary claim of the appeal that the present issue has already been dealt and decided by the Hon'ble ITAT, Jaipur bench, in their favour, in the past, was examined. On

perusal of the relevant orders of A.Y. 2006-07 & 2007-08, it is transpired that the Hon'ble ITAT has deleted the addition made by the AO of entire or part of such purchases, made almost from same suppliers, which are involved in current year. While giving the relief to the appellant, the Hon'ble bench has held that once the sales are accepted then the addition cannot be made while terming the corresponding purchases as bogus in nature. Under such circumstances, the Hon'ble bench has laid down the principle that any addition can be made, only on the basis of the adequacy of the trading results shown of current year viz. shown in the past period. While disposing the appeal for A.Y. 2006-07, the Hon'ble ITAT deleted the addition of entire purchases made u/s 69C of the Act and restricted the same, up to the gap of the higher GP ratio shown in the past then shown in the relevant year. Similarly while deciding the appeal of A.Y. 2007-08, the Hon'ble bench has deleted the addition made of 25% of such purchases. Similarly in view of the fact that the GP in the relevant year was offered at higher side than the previous year, the Hon'ble ITAT made adhoc addition of Rs. 1,00,000/- to cover-up the discrepancies found i.r.o. relevant purchases.

With the above background, if the facts and circumstance of the current year are match with the A.Y. 2006-07 & 2007-08, they would be found identical in all manners. So much, so that most of the suppliers of goods are common in both the assessment years and also that the GP the current year is better than the last year. Accordingly, while respectfully following the guidelines and verdict of the Hon'ble tribunal, it is held that the AO was not reasonable and justified, while disallowing the entire purchases of the appellant, which were indisputably utilized for making export sales of the relevant period. Accordingly the addition of Rs. 1,19,58,445/- is found untenable on the facts and merits also and thus found deserves to be deleted. Similarly in view of the fact that the GP rate of the current year (i.e.18.55%) is better than the previous year (17.36%), therefore, while following the foot prints of the decision of the Hon'ble ITAT Bench, in the appellant case for A.Y. 2007-08 and also the fact of the increased turnover of the current year, an adhoc action of Rs. 3,00,000/- is sustained to take care of all the incrementing aspects, related to the issue under consideration, if any consequently, this ground of appeal is partly upheld."

Thus, it is clear that the Id. CIT(A) while deleting the addition made by the AO has followed the decision of this Tribunal in assessee's own case for the assessment year 2007-08. It is also not disputed that the assessee is an exporter of precious and semi precious stones as well Jewellery therefore, when the export of goods is not in dispute then the purchases of the corresponding quantity cannot be doubted except the cost of purchase which might have been inflated by the assessee. However, it is not the case of the A.O. that the assessee has inflated the purchases in comparison to the prevailing market price of the goods. Therefore, when the GP rate of the current year declared by the assessee at 18.55% is better than the earlier assessment year at 17.36% which has been accepted as finally decided by this

Tribunal in deleting the addition made by the AO then no addition is called for on this account. Hence, as far as the Revenue's appeal is concerned in the absence of any contrary material or fact we do not find any error or illegality in the impugned order of the Id. CIT(A)."

Thus the Tribunal has deleted the addition made by the AO and sustained by the Id. CIT (A) by considering the fact that the GP declared by the assessee for the said year was more than the previous assessment years. Similarly for the assessment years 2009-10 and 14-15, the Tribunal deleted the addition by noting the fact that after rejection of books of account best judgment assessment ought to have been framed by the AO by estimating the income on some reasonable and proper basis. The average GP declared by the assessee in the past years was considered as a proper criteria for estimation of income. Accordingly, when the GP declared by the assessee for those years were found to be in line or more than the average of the GP declared in the preceding years, the Tribunal deleted the addition made by the AO and confirmed by the Id. CIT (A). Thus it is clear from the earlier orders of this Tribunal that there was no issue of declining of GP and NP declared by the assessee in those years. The authorities below have considered the fact that there was decline in GP as well as NP declared by the assessee for the year under consideration. The details of the GP and NP for the year under consideration as well as in the preceding years as reproduced at page 12 of the order of the Id. CIT (A) are as under :-

A.Y.	Turnover	Gross Profit	GP Rate	Net Profit	NP Rate
2010-11	46751902.00	8598887.00	18.39%	607263.05	1.30%
2009-10	87369875.00	16499885.00	18.89%	9352554.00	10.70%
2008-09	69102064.00	12818695.00	18.55%	7661894.11	11.09%

The assessee has not disputed these factual details. Further, the Id. CIT (A) has decided this issue in para 3.3 to 3.3.2 as under :-

- “ 3.3. I have perused the facts of the case, the assessment order and the submissions of the appellant. Assessee has not challenged the invocation of section 145(3) and merely contended that its trading results are better therefore no additions should be made. He placed reliance on ITAT order for assessment year 2008-09 in appellant's own case.
- 3.3.1. On going through results, it is seen that GP fell down from 18.89% to 18.39% and NP fell down sharply from 10.70% to 1.30%. No plausible explanation was given for sharp decrease in NP by appellant.
- 3.3.2. Once books are rejected, estimation is to be made based on past history. Records of assessee show decline in profits therefore a lump sum addition of Rs. 10,00,000/- is upheld in place of addition made by Assessing Officer of Rs. 60,79,802/-. This ground of appeal is partly allowed.”

It is clear that the Id. CIT (A) has considered the fact that GP declared by the assessee fell down from the earlier years and NP declared by the assessee fell down sharply from 10.70% to 1.30%. It was also noted by the Id. CIT (A) that no plausible explanation was given for sharp decline in NP by the assessee. So far as the addition made by the AO and sustained by the Id. CIT (A), we find that in view of the earlier decisions of this Tribunal, the same is not sustainable as it is not based on some reasonable or proper criteria being the average GP or NP declared by the assessee in preceding years. Accordingly, we set aside the orders of the authorities

below and remit the issue to the record of the AO to estimate the income of the assessee by applying the average of past GP declared in the preceding years by the assessee and thereafter the AO may examine the allowability of expenditure independently to find out the cause of sharp decline in NP. The assessee be given a proper opportunity of hearing before passing the fresh order.

7. In the result, appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 02/07/2019.

Sd/-
(रमेश सी. शर्मा)
(RAMESH C. SHARMA)
लेखा सदस्य/Accountant Member

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

Jaipur

Dated:- 02/07/2019.

Das/

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

1. The Appellant- M/s. J.K. Jewellers International, Jaipur.
2. The Respondent – The ITO Ward 6(2), Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 29/JP/2019)

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant. Registrar