

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER
AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER

ITA No. 270/Ind/2018
Assessment Year 2012-13

ACIT, Ratlam	Vs.	Shri Deepak Soni, Prop. M/s Jai Mata Di Billion & Jewellers, 13, Tal Walo Ki Gali, Ratlam (M.P)
(Revenue)		(Respondent)
PAN BCOPS5514E		

Revenue by	Shri Ashish Porwal, Sr.DR
Assessee by	S/Shri Kunal Agrawal & Amit Choudhary, CAs
Date of Hearing	17.02.2020
Date of Pronouncement	01.06.2020

ORDER

PER MANISH BORAD, AM

The above captioned appeal filed at the instance of Revenue pertaining to Assessment Year 2012-13 is directed against the orders of Ld. Commissioner of Income Tax (Appeals) (in short 'Ld.CIT(A)'], Ujjain dated 19.01.2018 which is arising out of the order u/s 143(3) of the Act dated 31.03.2015 framed by DCIT, Ratlam.

2. Revenue has raised following grounds of appeal:-

1. Whether on the facts and in the circumstances of the case, Ld. CIT(A) was justified in deleting the addition of Rs. 2,19,13,800/- made on account of unexplained expenditure in the purchase of gold bullion u/s 69C of the I.T. Act, 1961.

2. Whether on the facts and in the circumstances of the case, Ld. CIT(A) was justified in deleting the addition of Rs.65,42,060/- made on account of unexplained loan creditors u/s 68 of the I.T. Act, 1961.

The appellant reserves his right to add, amend or alter the grounds of appeal on or before the date, the appeal is finally heard for disposal.

3. Brief facts of the case as culled out from the records are that the assessee is an individual carrying on business of trading of gold & silver bar. E-return of income declaring income of Rs.25,67,180/- was filed on 30.09.2012 for the Assessment Year 2012-13. The case was selected for scrutiny through CASS. Statutory notices u/s 142(1)/143(2) of the Act along with questionnaire were duly served upon the assessee. Assessment u/s 143(3) of the Act was completed on 31.3.2015 at Rs.3,10,23,040/- making addition on account of unexplained expenditure u/s 69C at Rs. 2,19,13,800/- and unexplained loan creditors u/s 68 at Rs.65,42,060/-.

4. Aggrieved assessee preferred appeal before Ld. CIT(A) and succeeded.
5. Now the Revenue is in appeal against the finding of Ld. CIT(A) deleting the addition made by Ld. A.O.
6. Ld. Counsel for the assessee along with supporting the finding of Ld. CIT(A) also referred to the written submissions placed before first appellate authority, judgments referred and relied therein and also referred to the following written submissions placed before us:-

Nature of addition:

Addition of Rs. 2, 9, 13, 800/- u/s 69 C on account of Negative stock of Gold bullion made on the basis of incorrect "Item movement analysis report".

Loan creditors u/s 68 of Rs. 65,42,060/- made u/s 68 for the reason that assessee could not submit confirmation of the loan creditors to prove the genuineness of the same.

The appeal against the above additions were allowed by the Hon'ble CIT (Appeal) vide order dtd.19.01.2018 as under-

1. Basis of deleting addition made u/s 69C of Rs. 2,19,13,800/-

Above addition have been made u/s 69C on the basis of Stock Item Movement Analysis Statement which is drawn from the Audited Books of accounts but no defects have been found in such Books of account Bills (Sale & Purchases) & vouchers produced, not only during the assessment proceedings but also during the remand proceedings (See CIT(A) order page no. 49 to 51 of the paper book) .

No defects pointed by the Ld.A.O. in his remand report Dtd. 31.10.2017 while verifying the Correct Statement Movement Analysis Statement

with Books of Accounts, Bills (Sale & Purchases) & vouchers. (See page no. 229 to 232 of the paper book) .

The above addition made on the basis of incorrect data furnished by the accountant of the assessee.

The information relates to incorrect quantity movement.

There was no physical verification of stock done by the Ld.A.O The assessee has produced all books of accounts with all supporting vouchers and bills. The same has also been subject to Tax Audit u/s 44 AB of the Income Tax Act ,1961. All sales and purchases have been duly recorded & supported by bills

2. Basis of deleting addition made u/s 68 of Rs. 65,42,060/

During appellate proceedings, the appellant furnished duly signed loan confirmations for all 30 parties as additional evidences. Further, bank statement with respect to 13 creditors from Whom fresh acceptance has been made during the year were also furnished. (See page 33 to 134 of the paper book)

Ld.A.O. called such persons from whom fresh acceptance was made and took their statement on oath, however 03 persons could not appear but their confirmation, Address, P.A. No. and Bank statement were made available to the Ld.A.O for verification .

Ld. A.O in his remand report dtd. 13.10.2016 did not mode any negative observation about identity, creditworthiness and genuineness of transactions with any creditors, (See page No.135 to 140 of the paper book).

Appellant duly discharged his burden laid on him u/s 68 in line with judicial pronouncements in case of Supreme Court held in case of CIT Vs. Orissa Corporation P. Ltd. 159 ITR 78 Hon'ble IT AT Indore bench in case of Shri Girish Kumar Sharda Vs. ACIT -1(1), Indore (order dtd 28.10.2013) and many others. (See page no. 204 to 227 of the paper book)

In view of above order dtd. 02.11.2017 passed by the Hon'ble CIT(A) may be sustained.

7. Per contra Ld. Departmental Representative(DR) vehemently

argued and supported the order of Ld. A.O.

8. We have heard rival contentions and perused the records placed before us and carefully gone through the decision referred and relied by the Ld. Counsel for the assessee.

9. Apropos to Ground no.1; We observe that during the course of assessment proceedings while examining the purchase and sales of gold, quantitative details were referred at two places, except the quantity details of rate and vendor were missing in the Item Movement Analysis sheet dated 15.04.2011 & 12.10.2011 which were submitted before the Assessing Officer. On these two dates against the entry of transfers inward (production) for gold there stood stock journal entry of 1,000 gm & 7500 gm. When the assessee was asked to explain the source of gold purchase, it was submitted that there occurred unintentional mistake committed by the Accountant employee of assessee in the preparation of item movement analysis sheet. It was also submitted that overall quantitative details i.e. opening stock, purchase and sales and closing stock are duly supported by the documentary evidences and there was no negative stock at any point of time during the year. These submission were not sufficient to satisfy the assessing officer and he after applying the

rate of gold i.e. Rs.2113.80 per gram as on 15.04.2011 and Rs.2640.00 per gram as on 12.10.2011, completed that the alleged unexplained purchase at Rs.2,19,13,800/- and made addition u/s 69C of the Act for the unexplained expenditure.

10. When the matter came up before Ld. CIT(A), assessee again reiterated the submissions and Ld. CIT(A) after going through the audited financial statements, remand report by Assessing Officer and other relevant details deleted the addition made u/s 69C of the Act of Rs.2,19,13,800/- observing as follows:

*5.1 **'Ground No.1, 2, 3 & 4 :-** Through these grounds of appeal the appellant has challenged the addition of Rs. 2,19, 13,80/- u/s 69C of the LT. Act. The AO made the addition on the ground that the appellant has made excess sale in comparison to the purchases. The AO arrived this conclusion on the basis of gold movement analysis has been furnished by the accountant during the course of assessment proceedings. The total inward and outward of stock has been examined and no shortage has been found during the year under consideration. The appellant during the course of appellate proceedings furnished the corrected stock movement statement. On verification of this statement no negative stock has been detected. The stock movement statement has been forwarded to the AO for his comment. The AO furnished the comment vide report dated 29.10.2017. The AO has taken the statement of Shri Deepak Kumar Soni, appellant, Shri Parth Jhalani, CA and Shri Ravindra Chourasia, Accountant. Shri Ravindra Chourasia, Accountant during the course of recording the statement while replying the Q.No.-9 stated as under :-*

प्र.9. वित्त वर्ष 2011-12 (क.नि.व. 2012-13) के दौरान तैयार आईटम मुवमेंट एनालिसिस रिपोर्ट जो कि इस कार्यालय को कर निर्धारण के दौरान सौंपी गई थी, क्या वह रिपोर्ट आपके द्वारा तैयार की गई थी ।

उत्तर - मैं यह स्पष्ट करना चाहता हूँ कि मेरे द्वारा उपलब्ध कराया गया टैली का डाटा जो कि अपडेटेड नहीं था के आधार पर टैली सॉफ्टवेयर में उपलब्ध एमआईएस रिपोर्ट के

ऑप्शन द्वारा उपरोक्त रिपोर्ट जनरेट हुई थी हालांकि यह अपूर्ण टैली का डाटा मेरे द्वारा गलती उपलब्ध करा दिया गया था जिस वजह से उपरोक्त रिपोर्ट में कई तरह की विसंगतियां अधिकारी द्वारा जानकारी में लाई गई थी । उपरोक्त रिपोर्ट की विसंगतियां मेरे द्वारा गलत जानकारी उपलब्ध कराने की वजह से हुई है और मैं यह स्पष्ट करना चाहता हूँ कि साल भर का डाटा समय रूप से देखने पर प्रारंभिक स्टॉक, अंतिम स्टॉक, खरीदी एवं बिक्री में किसी प्रकार का परिवर्तन नहीं है ।

*Shri Ravindra Chourasia submitted that there was some mistake in the computer generated stock statement and the same has been taken by the AO. The AO is not justified in making the addition only on the basis that some wrong document has been filed during the course of assessment proceedings without supporting documentary evidences. The appellant was maintaining books of account. The books of account have been audited by the CA u/s.44AB of the LT. Act. The AO has not pointed out any defect in the books of account. Therefore, there is no reason in presuming that appellant has made the excess 'Sale than purchase. All the purchases have been accounted in the books of account. The AO failed to establish the unaccounted purchases made by the appellant. The Chartered Accountant who has audited the books of account submitted during the course of remand proceeding that no discrepancy with regard to the stock noticed. To deliver natural justice in the assessment proceedings, real Income is to be assessed. In view of the above facts and circumstances, there is no doubt appellant did not submitted correct stock movement analysis statement with the Assessing Officer in completion of assessment proceedings but the fact remains that in the delivery of justice the real income of appellant has to be assessed and that too after giving - the opportunity of being heard to the appellant. To sum up the account. The AO merely proceeded to make addition which is not permissible under law. The A.O. has not pointed any defects in the additional evidence in the form of , Corrected Stock Movement Analysis· Statement' submitted which was verified by the A.O. not only with the Books of accounts, Sales and Purchase Invoices but statement of assessee, his accountant and auditor were also taken. Even after verification and checking no defects have been pointed by the A.O. Therefore, the addition made by the AO amounting to Rs.2,19,13,800/- is **Deleted**. Therefore, the appeal on these grounds is **Allowed**.*

11. We have gone through the detailed finding of facts by the Id. CIT(A) and also gone through the available records. It is noteworthy that the books of accounts are regularly audited u/s 44AB of the Act.

Ld. Assessing Officer had not rejected these books of accounts. As per the audited financial statements and the return of income filed the following particulars showing the quantity and value wise details of opening stock, purchase and sales and closing stock of gold bullion for the financial year 2011-12 stands undisputed:-

Statement showing quantity and value of gold bullion for the Assessment year 2012-13			
<u>S.No.</u>	<u>Particulars</u>	<u>Quantity (Grams)</u>	<u>Value Rs.</u>
A	<u>Opening stock</u>	<u>1336.584</u>	<u>2757880.37</u>
B	Purchases	1773892.430	4473214102.27
C	Sale	1775066.483	4482855485.33
D	Closing Stock	162.531	407844.57

12. The above referred details have been accepted by the Ld. Assessing Officer and no defect has been pointed out in the books of account, bills and vouchers etc. The basis of the alleged addition of unexplained expenditure is item movement analysis sheet given during the course of assessment proceedings for two particulars dates. If the assessing officer was very much serious about the anomaly detected in the item movement analysis sheet, he was supposed to take further action by examining the total purchase during the year and should have vouched the details of purchase and

quantity of gold purchased during the year with the entries appearing in the item movement analysis sheet for complete year. Available records shows that he confined his investigation only to the extent of item movement analysis sheet of two particular dates and made the addition without resorting to any other investigation and rejecting books of accounts. Ld. Assessing Officer has accepted the authentication of audited financial statements. If there has been a short fall of stock-in-hand on particular dates when the goods were sold, then they should have been on effect on the annual quantitative details but in the instant case the annual quantitative details do not sure any such situation of negative stock. Complete quantitative details for the year have been examined by the auditor and purchase and sales bills were available for the examination of the assessing officer.

13. In these facts and circumstances the assessee certainly deserves the benefit of doubt as the assessing officer has not conducted complete enquiry and rather has accepted the financial results including that of quantity of gold purchase and sales. It is also brought to our notice that during the appellate proceedings before

the Ld. CIT(A) remand report was called for from the assessing officer and during the remand proceedings the corrected stock movement analysis statement was placed for verification before the assessing officer along with books of account, sales and purchase bills and quantitative records and after verification of all these details Ld. Assessing Officer had not pointed out any defect in the remand report related to any incorrectness in quantity of goods purchased during the year nor any observation of negative stock.

14. Thus, in our considered view, the addition made by the assessing officer seems to base on an incorrect Item Movement Analysis sheet prepared by the Accountant and looking to the overall records maintained by the assessee this mistake seems to be insignificant. Hon'ble Apex Court in the case of *CIT vs. Padamchand Ramgopal* [1970] 76 ITR 719 held that "*insignificant mistake cannot form basis for rejection of books of accounts.*" Similarly Hon'ble' Apex court in the case of *Umacharan Show and Bros vs. CIT* (1959) 37 ITR 271(SC) has observed that "*there was no material on which the Income Tax Officer or the Appellate Tribunal could come to the conclusion that the firm was not genuine. There were many surmises and conjectures, and the*

conclusion was the result of suspicion which could not take the place of proof”.

15. In the light of the above judgments and in the given facts and circumstances of the case, we are of the considered view that Ld. AO grossly erred in making addition for unexplained expenditure u/s 69C of the Act based on incorrect item movement analysis sheet which at the later stage during the remand proceedings were correctly filed by the assessee and duly accepted by the assessing officer. Thus, we find no infirmity in the finding of Ld. CIT(A) deleting the addition of Rs.2,19,13,800/- made by the Ld. AO u/s 69C of the Act on account of unexplained expenditure. Thus, ground No.1 of the revenue's appeal stands dismissed.

16. Apropos to Ground No.2; Wherein the Revenue has challenged the action of the Ld.AO deleting the addition of Rs.65,42,060/- made on account of unexplained loan creditors u/s 68 of the Act, we observe that while examining the unsecured loans totalling to Rs.3,19,74,781/-, Ld. Assessing Officer called for the details to explain the cash creditors. Some details were filed by the assessee, based on which accept for the cash creditors totalling to

Rs.65,42,060/- for the remaining cash creditors. Ld. Assessing Officer was satisfied with the explanation. He thus mad addition u/s 68 of the Act at Rs.65,42,060/-.

17. During the proceedings before the Ld. CIT(A), assessee requested to file additional evidences under Rule 46A of the I.T. Rules, and permission was granted. Assessee filed the confirmation letter, computation of income, bank statements, PAN No. These details were forwarded to the assessing officer. During the remand proceedings Ld. Assessing Officer called all the 13 cash creditors to appear before him and explain the loan/credit given to the assessee. Out of 13 cash creditors, 10 cash creditors appeared in persona. Out of these 10 cash creditors six of them categorically accepted the amount given by them to the assessee during the year and also explained about the mismatch of certain entries. The remaining (4 out of 10 cash creditors) submitted that the loans given to the assessee are old and no fresh loan was given during the year.

18. Now as far as the remaining three cash creditors who did not appear before assessing officer they were Ashya Pratap Soni, Komal Bai Dhammani & Sandeep Gupta who gave loan of Rs.1,12,450/-,

Rs.1,12,450/- & Rs. 3,20,295/- during the year. Confirmation of account, bank statement and bank details were duly filed. It was also placed on record that the loans taken from Sandeep Gupta, Komal Bai Dhammani & Ashya Pratap Soni were fully repaid during the A.Y.20120-13, 2013-14 and 2014-15 respectively. Based on these details and the remand report Ld. CIT(A) deleted the addition u/s 68 of the Act at Rs. 65,42,060/- observing as under:

*5.2 **Ground No.5, 6, 7 & 8:-** Through these grounds of appeal the appellant has challenged the addition of Rs.65,42,060/- u/s 68 of the LT. Act. The AO made the addition on the ground that the appellant failed to furnish the loan confirmation of 13 parties. The appellant during the course of appellate proceedings furnished the loan confirmation in respect of all parties. The loan confirmation has been forwarded to the AO for verification. The AO called all the persons and has taken the statement. The appellant produced the 10 creditors before the AO. The AO examined all the 10 creditors who in turn accepted that they had given loan to the appellant. In respect of the 03 creditors who have not attended, the appellant furnished the P AN, Address, particulars of payment and bank statement, TDS certificate etc. The appellant furnished the correct addresses of the loan parties and In response to the summons the roan parties filed the reply. By issuing the summon u/s 131 of the I.T. Act, the above parties becomes the witnesses of the department. It is obligatory on the part of the AO to force the attendance of the witnesses. The AO has all power to force the attendance of the loan parties. Once the AO has issued the summons and the same have been served, he cannot ask the appellant to produce the loan parties, because the loan parties are the witnesses of the department. The*

loan parties furnished the loan confirmation, copy of bank account and proof of filing of the return. By filing the above documents the appellant is able to establish the

- i. Identity of the creditors - all the creditors are income tax payers and filed the loan confirmations.*
- ii. Genuineness of the transaction- the appellant has taken the loan through banking channel. The appellant is in the receipt of loan by cheque.*
- iii. Creditworthiness of the creditors all the creditors is income tax payers and filing the income tax return. The persons not only given the loan to the appellant but to other parties also.*

From the above it is clear that the appellant has satisfied all the three conditions required for genuineness of the transaction. The same view has been upheld by Hon'ble IT AT in the following cases.-

- i. Umesh Electricals vis Asst. CIT(20 11) 18 ITJ635 (Trib.Agra): (2011)131 ITD 127 :(2011) 141TTJ Establishment of identity and credit-worthiness proved. Assessee produced the bank account of creditor in his bank account on the same day on which loan was given - Assessee furnished the cash flow statement of creditor - Based on inquiry, AO noted that creditor was engaged in providing accommodation entries-HELD- In group cases, it has been held that there was no evidence against the creditor to prove that he was providing accommodation entries-Further, mere deposit of money by the creditor on the same day, does not establish that the loan is not genuine-Assessee has proved the source of credit and also the source of source -Addition cannot be made.*
- ii. Aseem Singh vs. Asst. CIT (2012) 19 IT J 52 (Trib.Indore)*

Identity and credit-worthiness proved-Assessee took loan of Rs. 1,00,000/- confirmation of creditor was filed-Lower authorities made addition u/s 68 holding that amount was deposited in cash in the bank account of lender immediately prior to date of loan -HELD-Assessee has established the identity- The party has confirmed the transaction-If AO doubted the transaction, AO should have called creditor u/s 131-Addition cannot be made. Therefore, the addition made by the AO amounting to Rs.65,42,060/- is Deleted. Therefore, the appeal on these grounds is Allowed.

19. From perusal of the above details filed during the appellate proceeding which have been rightly appreciated by the ld. CIT(A) in the light of the judgment, we are of the considered view that the assessee to the best of his ability has furnished requisite documentary evidences to prove identity, genuineness and creditworthiness of the 13 cash creditors from whom loan of Rs.65,42,060/- stood taken at the close of the year. It is also noteworthy that out of 13 cash creditors 10 have appeared before the Ld. AO and explained the transactions and for the remaining three cash creditors even though necessary details were filed but they could not appear but the facts remains that transactions were carried out through banking channel confirmation account with PAN and address were filed and the loans have been repaid in subsequent

year/years . Further the assessing officer has not carried out any further investigation nor pointed out any instance from the bank statement or other documents of these 3 cash creditors to raise suspicion about the genuineness of the loan transactions.

20. We find that Indore Bench of I.T.A.T. in the case of *Shri Girish Kumar Sharda vs. ACIT*, Indore order dated 28.10.2013 considering similar issue has held that “as per requirement of [Section 68](#) the sum credited in the books of accounts can be considered to be the income of the assessee in a case where the assessee does not offer any explanation or the explanation offered by him, in the opinion of Assessing Officer is not satisfactory. The explanation of the assessee in the present case is that all these creditors are income tax assesseees and their PANs have given alongwith their copy of bank account as well as preceding years. By filing these evidences, it can be said that the assessee had discharged the initial burden laid upon him under [Section 68](#). When the particulars regarding income tax assessment and bank account, audited balance sheet duly indicating advancing of loan to the assessee, have been filed then initial burden has to be held to be discharged and then the burden shifts on the

Revenue to show that what is stated or explained by the assessee is not satisfactory. No material whatsoever, has been brought on record by the ld. Assessing Officer to show that what was explained by the assessee, was not a correct state of affairs. If any sum is found credited in the accounts of the creditors then the creditors may be examined so as to explain the credit so far as the source of deposit in the account of the assessee is concerned. The assessee can be considered to have explained by bringing the material on record in the shape of confirmations, bank account and income tax numbers of that person. Thus the assessee had filed ample evidence to discharge the burden cast upon him and the ld. Assessing Officer has not brought any material on record to show that the explanation filed by the assessee, was in any manner, unsatisfactory consequent thereto the evidence filed by the assessee remain unrebutted.”

21. In the light of above decision we observe that if the assessee filed ample evidences to discharge the burden carted upon him and the assessing officer fails to bring any material on record to show that explanation filed by the assessee are unsatisfactory, then addition u/s 68 of the Act for unexplained cash creditors is not justified.

22. Hon'ble Jurisdictional High Court in the case of *CIT vs. Metachem Industries (2001) 116 Taxman 572* held that “ when cash credit is found in assessee firms books and assessee has established that amount has been invested by a particular person, responsibility of firm is over and there is no requirement on part of assessee-firm to further show whether amount invested has been properly taxed in creditor’s hands.”

23. Further in the case where the assessee discharge his duty satisfactorily given all required details the burden shifts on the revenue to disprove the evidences filed by the assessee and if it is unable to do so then the assessee deserves relief. Hon'ble Supreme Court in the case *CIT vs. Orissa Corporation P. Ltd. 159 ITR 78* laid down ratio had held that “ when the particulars regarding income tax assessment and bank account, audited balance sheet duly indicating advancing of loan to the assessee have been filed then initial burden has to be held to be discharged and then the burden shifts on the revenue to show that what is stated or explained by the assessee is not satisfactory.”

24. In the light of the above judgment, detailed finding of facts by the Ld. CIT(A) and in the given facts and circumstance which *inter alia* includes the personal appearance of 10 cash creditors out of 13 cash creditors and in the remaining 3 cases also the loan taken has been repaid in subsequent years and all the necessary documentary evidences stands filed, we, are of the considered view that the ld. CIT(A) has rightly deleted the addition for unexplained cash credit u/s 68 of the Act for Rs.65,42,060/-. We thus, confirm the finding of Ld. CIT(A) and dismiss the revenue's ground no.2.

25. In the result, appeal of the revenue's stands dismissed.

The order pronounced in the open Court on 01.06.2020.

Sd/-	Sd/-
(KUL BHARAT)	(MANISH BORAD)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

दिनांक /Dated : 1st June, 2020

Patel/PS

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore