

IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE SMC BENCH, INDORE

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.722/Ind/2018**  
**Assessment Year: 2013-14**

Shri Mahendra Kumar Mehta Prop. Balaji Traders Dewas (Appellant)	<u>बनाम/</u> Vs.	ITO-1 Dewas (Revenue )
P.A. No.AEPPM1266L		
Appellant by	Written Submission	
Respondent by	Shri K.G. Goyal, CIT-DR	
<b>Date of Hearing:</b>	<b>16.06.2020</b>	
<b>Date of Pronouncement:</b>	<b>17.06.2020</b>	

**आदेश / O R D E R**

This appeal by the assessee is directed against order of the CIT(A), Ujjain dated 02.05.2018 pertaining to the assessment year 2012-13. The assessee has raised following grounds of appeal:

*“1.The ld. CIT(A) was not justified in sustaining the assessment order, which is bad in law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.*

*2. That the Ld. CIT(A) erred in deleting only Rs.2,02,845/-*

*and sustaining the disallowance of Rs.22,13,11/- on account of undisclosed purchase and deleting only Rs.11,021/- and sustaining the addition of Rs.10,102/- on account of notional net profit thereon, on the basis of sheer estimation, assumption & surmises. The addition made to the returned income is arbitrary, uncalled for and bad in law.*

*3. That the ld. CIT(A) erred in confirming the ad hoc disallowance of Rs.30,000/- out of total expenses of Rs.44,843/- debited in the profit & loss account. The addition made to the returned income is arbitrary, uncalled for and bad in law.*

3. Briefly stated facts are that the case of the assessee was picked up for scrutiny under CASS and the assessment u/s 143(3) of the Income Tax Act 1961(hereinafter called as 'the Act') was framed vide order dated 04.02.2016 while framing assessment, the assessing officer assessed income of Rs.6,98,825/- against declared income of Rs.2,22,096/-. The Assessing Officer made addition in respect of trading account on the basis that the assessee debited a sum of Rs.52,633/- on account of entry tax on the purchase of sugar of Rs.48,39,144/- and the

Assessing Officer was of the view that entry tax is levied @ 1% on total purchase hence there was under reporting of the purchases by the assessee. The assessing Officer, therefore, made addition of Rs.4,45,279/- on this account and further made ad hoc disallowance of Rs.30,000/- and Rs.1,450/- in respect of disallowance of the expenditure and interest u/s 244 of the Act.

4. Aggrieved by this, the assessee preferred an appeal before Ld. CIT(A), who after considering the submissions partly allowed the appeal, thereby the Ld. CIT(A) reduced addition to Rs.2,32,332/- and also confirmed the ad hoc disallowance of Rs.30,000/-. Against this the assessee is in appeal before this Tribunal.

5. At the time of hearing no one appeared on behalf of the assessee. However, subsequently Ld. Counsel for the assessee appeared and filed a letter requesting that

submissions made before the Ld. CIT(A) and before this Tribunal may be considered.

6. On the contrary, Ld. DR opposed the submissions and supported the orders of authorities below. However he could not controvert the fact that Assessing Officer had filed remand report before the Ld. CIT(A).

7. I have heard the Ld. DR perused the written submissions filed by the assessee and the material available on record.

8. Apropos to Ground No.1 no submission is made, therefore, the ground no.1 is dismissed, moreover it is not stated that how the impugned order is bad-in-law, void ab initio and barred by limitation.

9. The ground no.2 is against confirmation of addition of Rs.2,21,311/- on account of undisclosed purchases and sustaining the addition of Rs.10,102/- on account of

notional net profit. I find that the assessing officer in his remand report has stated as under:

1. *“Appellant is engaged in the wholesale business of sugar. The sugar has been purchased from out of state. There is liability of payment of Entry tax @ 1% on the interstate purchase of sugar under MP Entry Tax Act. Appellant is a registered dealer under MP VAT act and prescribed quarterly returns have been submitted to the commercial tax department along with payment of tax.*

2. *During the course of assessment proceeding learned AO has asked to submit the copy of challan paid for Entry Tax. The appellant has submitted copy of challan on dated 02-02-2016. However assessing officer. did not asked for any other documents and explanation in this regard and finalize the assessment proceeding vide his order dated 04-02-2016.*

3. *Under Entry Tax Act, entry tax is payable on entry of goods into a local areal on the purchase price of such goods. The purchase price is defined under Act. Is "purchase amount+ transportation charges +any other charges or cost which is incurred in respect of goods purchased". Thus entry tax is payable @1% on the purchase of sugar and freight paid on sugar purchased. Perhaps Learned AO was not aware of the fact that Entry Tax is payable on Purchase price inclusive of freight.*

4. *In the trading Account, Purchases is appearing Rs. 4839144/- and freight paid on purchase is Rs. 20,28,45/-. The total of above comes to Rs.*

50411989/-. Therefore the liability of Entry Tax should have been Rs. 50420/-. The appellant has paid Rs. 50420/- as appearing in Annexure-L. However challan of RS. 5785/- which is paid on 08-01-2013 is wrongly entered in the Books as Rs. 7998/-

5. There is requirement of furnishing quarterly returns & payment of entry tax. Details of quarterly Entry Tax which is submitted to commercial tax purchases and ability department are enclosed herewith in Annexure-A. It is submitted that during the Quarter--Ill. Appellant was having liability to pay Entry tax Rs. 57s4- and he has paid Rs. 5785/ - but by mistake in the books of accounts it is entered by Rs. 7998/-, though purchases and challan amount were rightly shown under Entry tax returns.

6. It is submitted that due to clerical mistake only challan amount were wrongly entered Rs. 7998/- in place of Rs. 5784 which is apparent from the quarterly returns submitted to commercial tax department and copy of challan. It is further submitted that only due to mistake in entering incorrect amount of Entry Tax, the purchases can not be enhanced.

7. Learned A o. arbitrarily added the notional difference of purchases to the returned income. No explanation has been called upon by him before making such addition. No opportunity has been provided to the appellant to explain the reason difference. The addition as made by the AO is not only arbitrary but unwarranted on facts & in law.

8. Appellant's purchases are duly supported from bills and freight receipts. The entire payments of purchases have been made through account payee cheques only. All the purchases are recorded in the books of Accounts. The books of account are duly audited u/s 44AB of the Income Tax Act and quantitatively tallied also.

*From the submissions and documents furnished by the assessee it appears to be correct but the same should have been explained by the assessee the time of assessment proceeding. The reply of the assessee may kindly be considered on merits. In this context it is to mentioned that the assessee has paid entry tax at Rs.5784/- but claimed at Rs.7998/-.*

10. Ld. DR could not controvert the above observation of the assessing officer. I, therefore, direct the assessing officer to delete the addition and finding of the Ld. CIT(A) is set aside on this issue. Thus ground no.2 is allowed.

11. Ground No.3 is against the confirmation of ad hoc disallowance of Rs.30,000/-. Ld. DR submitted that before assessing officer the assessee had agreed to make this addition on the basis of the discrepancies found in the material placed before him.

12. On the other hand, it is stated on behalf of the assessee that there is no discrepancy, accounts are duly audited. Hence, there was no reason to make addition.

13. I have considered rival contentions and find that the addition was made on account of certain vouchers placed before assessing officer were not verifiable, therefore, the impugned addition was made. The assessee had no objection to such addition. It was stated before the Ld. CIT(A) that total expenditure is debited in the profit and loss account was Rs.44,843/- out of which only bills/vouchers, shop expenses of Rs.1426/- and travel expenses of Rs.200/- totalling to Rs.1626/- were not available. From perusal of profit and loss account, it is evident that more than 50% of the total expenditure is disallowed on ad hoc basis. It is also pertinent to note that the assessee has filed a copy of telephone bills, consultancy services and bills of travelling services. I, therefore, under these facts, cannot sustain the addition made by the assessing officer on ad hoc basis hence addition is hereby

deleted. Thus, ground no.3 of the assessee's appeal is allowed.

14. In the result, appeal of the assessee is partly allowed.

*Order was pronounced in the open court on 17.06.2020.*

**Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER**

Indore; दिनांक Dated : 17/06/2020

*Patel/PS*

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

**Assistant Registrar, Indore**