

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", JAIPUR
श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 557/JP/2019
निर्धारण वर्ष / Assessment Year :2013-14

Rajiv Bothra, B-252, Janta Colony, Jaipur.	बनाम Vs.	I.T.O., Ward 5(2), NCRB, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAZPR 2080 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Written Submissions
राजस्व की ओर से / Revenue by : Ms. Chanchal Meena (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 28/09/2020
उदघोषणा की तारीख / Date of Pronouncement : 21/10/2020

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-2, Jaipur dated 19/03/2019 for the A.Y. 2013-14, wherein the assessee has raised following grounds of appeal:

- "1. That the Id. CIT(A) has erred at law as well as on facts in invoking provisions of Section 145 for confirming the addition made when the Assessing Officer had made the trading additions without invoking provisions of Section 145.*
- 2. That the Id. A.O. had erred at law as well as on facts in arbitrarily treating purchases made from Maximus Gems, Surya Diam and Navkar India of Rs. 71,32,000/-, Rs. 10,09,250/- and Rs. 9,01,600/- respectively in total of Rs. 90,42,850/- are non-verifiable purchases and the Id. CIT(A) also erred in confirming that the purchases made from these parties are non-verifiable.*

3. *That the Id. A.O. had erred at law as well as on facts in taking 25% of the value of total purchases of Rs. 90,42,850/- being Rs. 22,60,712/- as trading addition and the Id. CIT(A) has erred in confirming the trading addition of Rs. 10,00,000/- and by deleting the addition of Rs. 12,60,712/-."*

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. Briefly stated facts of the case are that the assessee is engaged in business of gold and precious stones. Return of income for the year under consideration was filed by the assessee. Later on, case of the assessee was selected for scrutiny and the A.O. after enquiry passed assessment order U/s 143(3) of the Income Tax Act, 1961 (in short, the Act) and assessed the total income of Rs. 33,22,772/- by making addition on account of bogus purchases.

4. Being aggrieved by the order of the A.O., the assessee carried the matter before the Id. CIT(A), who after considering the case of both the parties, restricted the addition to the lump sum addition of Rs. 10.00 lacs.

5. Being aggrieved by the order of the Id. CIT(A), the assessee is in further appeal before the ITAT on the grounds mentioned hereinabove.

6. Today the case was fixed for argument, however, the Id AR has filed written submissions and also a letter dated 6/09/2020 on the ground that the appeal of the assessee be disposed off by considering the written

submissions as the assessee do not want to address oral arguments, therefore, considering the specific submissions made by the assessee vide letter dated 26/09/2020, we have heard the appeal by providing opportunity of hearing to both the parties.

7. On the other hand, the Id DR had addressed the submissions on behalf of the revenue and relied upon the impugned order passed by the Id. CIT(A) and also relied upon the decision of the Hon'ble Supreme Court in the case of C. Vasantlal & Co. Vs CIT 45 ITR 0206.

8. We have heard the Id. DR and have also gone through the written submissions filed by the assessee. We have also deliberated upon the decisions cited in the orders passed by the authorities below as well as cited before us and we have also gone through the orders passed by the revenue authorities. Before we decide merits of the appeal, it is necessary and imperative to evaluate the order passed by the Id. CIT(A) while disposing of the appeal. The Id. CIT(A) has discussed the grounds raised by the assessee in para Nos. 2.3 and 2.3.1 of her order and the same is reproduced below:

"2.3 Ground No. 01 to 04 are being taken up together. I have perused the facts of the case, the assessment order and the submissions of the appellant. It is seen that the trading addition was made by the Assessing Officer on the basis of bogus purchases. Before me also, Id. Authorized Representative has failed to justify purchases alleged as bogus. In the view of the above facts, books of accounts were

not reliable. Hence, I invoke provisions of Section 145(3) of the I.T. Act, 1961.

2.3.1 The Assessing Officer made the addition at the rate of 25% of purchases as unverifiable which is not a proper course as trading addition has to be made by considering the past history. During the year, assessee declared better trading results and there was increase in turnover. However, the assessee failed to substantiate purchase of Rs. 90,42,850/- which is major part of purchases made. Looking to these facts and keeping in mind the better trading results declared, a lumpsum addition of Rs. 10,00,000/- is reasonable. Assessee gets relief of Rs. 12,60,712/-. These grounds of appeal are partly allowed.”

From perusal of the facts of the present case, we notice that the assessee had made purchases from three concerns, however, it was found by the Investigation Wing, Mumbai, who had carried the search proceedings on M/s Shri Bhanwar Lal Jain group and on the basis of paper impounded, it was noted by the Investigation Wing, Mumbai that the purchases made by the assessee from the firms namely M/s Maximus Gems, Navkar India and M/s Surya Diam are not genuine purchases as the person on whose premises, search was conducted had affirmed in their statements recorded U/s 132(4) of the Act that they have not sold the goods to the assessee but had provided bills and after receipts of the payments of bills, the same were refunded back in cash to the parties. Therefore, on the basis of investigations carried out by the Investigation Wing, Mumbai as well as on

the basis of statements recorded U/s 132(4) of the act whereas it was categorically admitted by Shri Bhanwal lal Jain that no goods were sold to the assessee but they had only provided accommodation entries. Whereas on the contrary, the said facts has been refuted by the assessed by filing detailed written submissions wherein it has been specifically asserted by the assessee that the transactions carried out by the assessee from the above mentioned persons/ firms were genuine and the payments for the purchases of materials were made through account payee cheques and thus, in this way, it was the case of the assessee that the transactions in respect of which they had maintained accounts were genuine transactions. It was also submitted in the written submissions filed by the assessee that the A.O. had not provided any opportunity for cross examination of the assessee in respect of the statement recorded that of Shri Bhanwar Lal Jain etc. After having gone through the facts of the case and after going through the written submissions filed by the assessee and hearing of the Id DR at length, we found that there is nothing on record to show that the ITO had not disclosed to the assessee, the material he had collected from the Investigation Wing of the Income Tax Department. The ITO/AO is not bound by any technical rules of law of evidence. It is open to him to collect materials to facilitate the assessment even by private enquiry but if he desires to use the said material so collected, then in that eventuality, the

assessee must be informed of the material and must be given an adequate opportunity of explaining it. In this case, the A.O. had informed the assessee in respect of material collected by him and had also provided adequate opportunity to the assessee of explaining the same. Even otherwise, from the records, we also noticed that in the statement of Shri Bhanwal Lal Jain recorded U/s 132(4) of the Act, it was specifically admitted that they were involved in providing bogus entries by issuing accommodation bills. The relevant portion is reproduced below:

“Q-16 In his statement recorded u/s 131 of IT ACT, 1961 on 05.10.2013, Lunkaran Parasmal Kothari has stated that Import of Diamond in the concerns managed and controlled by you, is made on behalf of certain local parties who do not wish to show such imports in their books of accounts. On receiving the consignment the material is handed over to real importer out of books. However, in the books of the concerns managed and controlled by you, the said Consignment still appear as stock since the material has sold to the real importer out of books. To shown sale against the bogus stock outstanding in your books, bogus sale bill are issued to parties against their purchase made in cash. These parties who take accommodation entries from your concerns make payment through RTGS. This RTGS is in turn used to make payment to the foreign parties from whom import has been made. The parties who have been given accommodation entries by you in form of bogus bill and who had made payment for such bogus purchase through RTGS want their cash back. In the meantime, the real importer on whose behalf import has been made, makes the payment for the said import through Aangaria (cash transaction). The cash thus receive3d from the real importer is used to pay back the

party from who RTGS has been received against bogus accommodation entry. Please comment on the same.

Ans. Shri Lunkaran parasmal Kothari has correctly stated that import of diamond in the concerns managed and contro011ed by me of various concerns running from our offices mentioned in Annexure A of this statement does import diamond as per the modus explained by him. I do agree that import of diamonds is made on behalf of certain local parties who do not wish to show such imports in their books of accounts. On receiving the consignment, the material is handed over to real importer out of books. However, in the books of the concerns managed and controlled by me and my son sh. Rajesh Jain, the said consignment still appear as stock since the material has been sold to the real importer out of books. To show sale against the bogus stock outstanding in your books, bogus sale bill are issued to parties against their purchase made in cash. These parties who take accommodation entries from your concerns make payment through RTGS. This RTGS is in turn used to make payment to the foreign parties from whom import has been made. The parties who have been given payment for such bogus purchase through RTGS want their cash back. In the meantime, the real importer on whose behalf import has been made, makes the payment for the said import through angaria (cash transaction)."

On the contrary, the Id AR could not point out any material on record to show that the above concerns from whom the purchases made, were in fact carrying out any commercial activity and were maintaining stocks. The Hon'ble Supreme Court in the case of C.Vasantlal & Co Vs CIT (supra) had clearly held that the A.O. is not bound by any technical rules of the law of

evidence. It is open to him to collect materials to facilitate assessment even by private enquiry. But if he desires to use the material so collected, the assessee must be informed of the material and must be given an adequate opportunity of explaining it.

9. Since from the facts of the case, we noticed that the A.O. in the above peculiar circumstances, had informed the assessee with regard to material collected by him and had also given adequate opportunity to the assessee for explaining the same but no plausible justification has been placed on record by the assessee, we are of the view that the presumption of correctness is attached with the statement recorded U/s 132(4) of the Act as the said statement was recorded by the officials of the IT department during discharge of their official duties and since the said statement is recorded on oath, therefore, the presumption of correctness is attached with the said statement until it is rebutted or uprooted by the assessee. We also noticed that the Id. CIT(A) while reaching to the conclusion on the basis of material placed on record had held that since the assessee has failed to justify the purchases made by him, therefore, had rightly invoked the provisions of Section 145(3) of the Act. At the same time, it was also held by the Id. CIT(A) that during the year, the assessee had declared better trading results and there was increase in turnover but since the assessee failed to substantiate the purchases of Rs. 90,42,850/-, therefore,

keeping in mind, the better trading results declared by the assessee, a lumpsum addition of Rs. 10.00 lacs were sustained. No new facts or circumstances have been brought on record by the assessee before us in order to controvert or rebut the findings so recorded by the Id. CIT(A), therefore, we find no reason to interfere in the finding so recorded by the Id. CIT(A). Accordingly, we uphold the order of the Id. CIT(A) qua this issue.

10. In the result, appeal of the assessee is dismissed

Order pronounced in the open court on 21st October, 2020.

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

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 21/10/2020

*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Rajiv Bothra, Jaipur.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward 5(2), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 557/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar