

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

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 1349, 1350 & 1351/JP/2019
निर्धारण वर्ष/Assessment Year :2003-04, 2004-05 & 2008-09

Smt. Mamta Haldia W/o Shri Ravi Haldia, Proprietor M/s Vidhi Gems 2 nd Floor, Haldia Multipoint House Corner of Thatheron Ki Gali, Chaura Rasta, Jaipur	बनाम Vs.	DCIT, Circle-01, New CR Building, Statute Circle, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAKPH9240H		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by : Sh. M.L Borad (Advocate)
राजस्व की ओर से / Revenue by : Ms Chanchal Meena (JCIT)

सुनवाई की तारीख / Date of Hearing : 27/08/2020
उदघोषणा की तारीख / Date of Pronouncement: 27/10/2020

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

These are three appeals filed by the assessee against the respective orders of Id. CIT(A)-1, Jaipur dated 24.09.2019 for A.Ys 2003-04, 2004-05 & 2008-09.

2. The hearing of the matter was scheduled through Video Conferencing in view of ongoing COVID-19 pandemic situation in the country. All these appeals were heard together involving common issues and are being disposed off by this consolidated order.

3. With the consent of the parties, the assessee's appeal in ITA No. 1349/JP/2019 for A.Y 2003-04 is taken as the lead case for the purposes of present discussions wherein the assessee has taken the following grounds of appeal:-

"1. Under the facts and circumstances of the case the learned CIT(A) erred in sustaining 100% disallowance of the alleged unverifiable purchases of Rs. 11,84,063/- and thereby sustaining addition of Rs. 11,84,063/- made by the AO in the total income of assessee, which sustenance of disallowance and consequential addition of Rs. 11,84,063/- is most arbitrary, unjust and untenable in fact and in law and in the alternative excessive w.r.t facts and circumstances of the case.

2. Under the facts and circumstances of the case the learned CIT(A) erred in sustaining trading addition of Rs. 2,22,289/- (as separate trading addition sustained by the learned CIT(A) at Rs. 11,84,063/- by disallowing 100% of total unverified purchases of Rs. 11,84,063/- is more than this trading addition of Rs. 2,22,289/- worked out by him by applying higher GP rate of 30% as against declared GP rate of 13.82% on sales of Rs. 13,73,963/- no separate trading addition of Rs. 2,22,289/- has been sustained by the learned CIT(A) on protective basis, which sustenance of trading addition of Rs. 2,22,289/- by the learned CIT(A) is most arbitrary, unjust, untenable and bad in fact and in law and in the alternative excessive with reference to facts and circumstances of the case."

4. During the course of hearing, the Id AR submitted that the appellant assessee carried on business of precious and semi precious

stones under the name and style of M/s. Vidhi Gems. Originally, the assessee filed her return of income u/s. 139 of the IT Act on 29.09.2003 declaring total income of Rs.1,34,190/-. In Haldia Group of cases of which assessee is a member, search and seizure action u/s.132 as well as survey u/s.133A was carried out at the residential and business premises of the appellant on 20.04.2007. In response to notice u/s 153A, the return of income was filed on 26.12.2007 declaring same total income of Rs.1,34,190/-as declared in the original return of income. Notices u/s 143(2) and 142(1) were issued along with questionnaire. Compliances to these notices were made. Books of accounts including books of assessee's sole proprietary concern M/s. Vidhi Gems consisting of cash book, ledger, Journal, purchase and sale bills, subsidiary books and expenses vouchers, stock register were examined by the AO. However while passing assessment order u/s. 153A r.w.s 153B/143(3) of the IT Act on 30.11.2009, the A.O. resorted to section 145, applied a GP rate of 30% and accordingly, the AO worked out trading addition of Rs.2,22,208/-. Simultaneously, the AO worked out addition for cash purchases/purchases from unregistered dealers at Rs.11,84,063/- being 100% of such cash purchase/purchases from unregistered dealers. As the addition for such purchases of Rs.11,84,063/- were more than the trading addition worked out by the AO by applying 30% GP rate at Rs.2,22,208/-, the AO made addition of Rs.11,84,063/- on substantive basis and simultaneously made trading addition of Rs.2,22,208/- on protective basis. In first round of appellate proceedings, the learned CIT(A) upheld the disallowance out of above mentioned purchases at Rs.2,96,016/- being 25% of such total purchases of Rs.11,84,063/- [cash purchases Rs.94,060/- + purchases from unregistered dealers at Rs.10,90,003/-] on substantive basis and

Rs. 2,22,208 on protective basis. Against this order of the learned CIT(A), the assessee filed appeal before the Tribunal which held that if a GP rate of 17% is applied it will meet the ends of justice. The Tribunal further directed the AO to re-calculate the trading addition by taking the G.P. rate at 17% against 13.82% declared by assessee and against 30% applied by the AO on the declared sales. Besides, the Tribunal observed that no separate addition for cash purchases/purchases from unregistered dealers of Rs.11,84,063/- is to be made. The Department filed appeal before the Hon'ble High Court against this order of Tribunal on the issues of excess stock and unverified purchases. The Hon'ble High Court answered the question of excess stock in favour of assessee and remitted back the matter relating to unverifiable purchases to the AO.

5. It was further submitted that in the set-aside proceedings, the AO vide the impugned assessment order dated 17.10.2018 applied the GP rate of 30% as against GP rate of 13.82% declared by the assessee and GP rate of 17% upheld by the Tribunal (in regard to appeal emanating from the assessment order dated 30.11.2009 passed u/s.153A r.w.s. 153B/143(3) of the I.T. Act, 1961) and consequentially made trading addition of Rs.2,22,208/- and also made addition of Rs.11,84,063/- being 100% of cash purchase/purchases from unregistered dealers of Rs.11,84,063/-. In the second round of appellate proceedings, the learned CIT(Appeal) sustained the addition of Rs.11,84,063/- being 100% of cash purchases/purchases from unregistered dealers but deleted the G.P addition of Rs.2,22,208 by observing that addition on account of bogus purchases and G.P. addition for same default cannot

be simultaneously made. Against the said findings, the assessee is in appeal before the Tribunal.

6. In the aforesaid factual background, the Id. AR submitted that the ground of appeal No.1 is against sustenance by the learned CIT(A) of 100% disallowance and consequential trading addition of alleged unverifiable purchases of Rs.11,84,063/- and in this regard, the assessee's submissions are as under:-

- 1) The assessee who is a dealer of cut stone has kept and maintained full record in terms of weight of the cut stone purchased and sold.
- 2) That detailed exhaustive stock register has been maintained for each and every item traded and the same was duly produced before the A.O.
- 3) Full record of purchase and sale has duly been maintained by the assessee and the same was produced before the A.O. from time to time.
- 4) The assessee has regularly kept and maintained books of accounts consisting of Cash Book, ledger, Journal, stock registers, purchase and sales bills, subsidiary books and expenses vouchers and other relevant records.
- 5) That the assessee started her business in the name of M/s Vidhi Gems on 22-03-2002 and first sale took place in the previous year relevant to year under appeal i.e. AY 2003-04. Accordingly the year under appeal is the very first assessment year of assessee's business under the name and style of M/s. Vidhi Gems

- 6) The A.O. has not pointed out any inherent defects in the system of accounting. Not a single item of suppression of sales nor inflation of purchases has been pin pointed by learned A.O.
- 7) Moreover it is a fact that neither during the course of survey/search nor otherwise there are any evidences of any unaccounted purchase/sale by the appellant.
- 8) The identity of the recipients of the payments was not doubted by the AO.
- 9) That complete quantitative details are available on the file of AO. No defect in the same was pointed out by AO. In any case, the rejection of books of accounts is also not justified especially when no significant defect has been pointed out by the AO. Reliance is placed on the judgment of Hon'ble Supreme Court in the case of CIT v/s. Padam Chand Ram Gopal (1970)76 ITR 719(S.C.).
- 10) In this line of business various qualities of precious and semi-precious stones are required and at the same time the assessee also requires different shapes and sizes of the stones and these are never available at one single place. Further the big dealers normally do not sell the goods in little volume. In these circumstances and to fulfill the commitments with the customers, the assessee had to purchase goods from petty dealers. This is not a peculiar feature of this business, but it is a regular practice in this trade. So the purchases from unregistered dealers and in cash should not be viewed otherwise.
- 11) That as regards payment made in cash the assessee's explanation is that the unregistered dealers as well as other persons related to this trade are almost illiterate or little educated . Most of

the same did not have even Bank A/c and in order to maintain regularity of business the appellant was compelled to make the payment in cash.

12) That this is not the case of the A.O. that the assessee had made excessive payment while making purchases in cash.

13) That above all, the appellant can be said to have been guided by business expediency for making the payment in cash to the illiterate / little educated unregistered dealers.

14) That as submitted above the assessee deals in Gems and stones and in this line of business multiple businesses are started every year which gives a tough competition in the market.

15) Moreover there is no allegation of the AO that such and such receipts are not entered in books of account nor is there any allegation that such and such amount have been received by the assessee out of books nor is there any allegation that such and such expenditure have been incurred out of books and such and such expenditure is inflated.

16) For every sale there has to be a purchase and without purchase there can't be sales. The A.O. has admitted the declared turnover. When sales are admitted there is no reason to suspect purchases which too are duly supported by sale invoice and duly recorded in stock register.

17) That the burden of proof of not accepting the apparent as real lies on the A.O. but he has failed to discharge this burden of proof.

18) That in innumerable decisions delivered by Jaipur Bench of the Tribunal as well as by the Hon'ble Jurisdictional High Court that in the matters like that of assessee (i.e. where books of accounts are

rejected on account of their being unverified purchases) past history of the assessee's case should be taken into consideration.

19) That in regard to unverifiable purchases the hon'ble jurisdictional High court has in a very large number of judgments like that of Sorabh Cement Ltd. Vs. ACIT in ITA No.135/2017 dated 05.12.2017 held that while considering issue of GP rate in such cases, average GP rate of preceding five years in assessee's own case should be taken into account.

20) In the case of appellant assessee, the year under appeal is the very first assessment year of assessee's business and as such there is no past history and under such circumstances GP rate of 17% as upheld by the co-ordinate Bench of the Jaipur Tribunal in assessee's own case i.e. in the case of Smt. Mamta Haldia v/s. the DCIT in IT appeal No. 726/JP/2011 for A.Y. 2003-04 itself vide their consolidated order dated 19/12/2011 in ITA No. 31,729,728,727 and 726/JP/2011 for AY 2008-09, 07-08, 05-06, 04-05 and 03-04 in the case of Smt. Mamta Haldia v/s. the DCIT and ITA No. 101/JP/2011 for AY 2008-09 in the case of the DCIT v/s. Smt. Mamta Haldia may be applied here also.

7. Regarding Ground No. 2, the Id. AR submitted that this ground of appeal is against sustenance by the learned CIT(A) of trading addition of Rs.2,22,289/- on protective basis made by the AO by way of application of higher GP rate of 30% as against declared GP rate of 13.82% on sales of Rs.13,73,963/-. The assessee's submissions in this regard are as under:-

1. To avoid repetition it is humbly prayed that the submissions made in para No. 1 to 12 in relation to Ground of appeal No.1 above may please be considered in respect of this ground of appeal No. 2 also.
2. That as submitted above the assessee deals in Gems and stones and in this line of business multiple businesses are started every year which gives a tough competition in the market.
3. That above all, the appellant can be said to have been guided by business expediency for making the payment in cash to the illiterate / little educated unregistered dealers.
4. Moreover there is no allegation of the AO that such and such receipts are not entered in books of account nor is there any allegation that such and such amount have been received by the assessee out of books nor is there any allegation that such and such expenditure have been incurred out of books and such and such expenditure is inflated.
5. Even the jurisdictional High court in the case of gotan lime factory has held that it is not necessary that after rejecting the books of accounts the AO has to make estimation of income.
6. That the application of 30% GP rate by the AO and sustenance of the same by the learned CIT(A) is highly un-justified and uncalled for in view of judgment of the ITAT Jaipur Bench in appellant's own case for this very year i.e. A.Y. 2003-04 in IT appeal No. 726/JP/2011 wherein the Bench vide its consolidated order dated 19/12/2011 in ITA No. 31,729,728,727 and 726/JP/2011 for AY 2008-09, 07-08, 05-06, 04-05 and 03-04 respectively in the case of Smt. Mamta Haldia v/s. the DCIT and ITA No. 101/JP/2011 for AY 2008-09 in the case of the DCIT v/s. Smt. Mamta Haldia held that if a GP rate of 17% is

applied it will meet the ends of justice. Besides the Tribunal observed that no separate addition for cash purchases/ purchases from unregistered dealers of Rs.11,84,063/- is to be made.

8. Per contra, the Id. DR is heard who has relied on the findings of the lower authorities and our reference was drawn to the findings of the Id CIT(A) which read as under:-

"3.1.2 Determination

(i) From the facts of the case, it is seen that the appellant is engaged in the business of trading in precious and semi-precious stones. The assessment u/s 153A r.w.s 153B of the Act was completed on 30.11.2009. The AO noted that the appellant has made unverified purchase amounting to Rs. 11,84,063/-. The AO also rejected the books of accounts and estimated the gross profit rate @ 30% in place of GP rate of 13.82% disclosed by the appellant. By adopting GP @ 30%, excess profit was worked out at Rs. 2,22,208/-. While concluding the assessment, the AO held that as the addition on the basis of bogus purchase is more than the trading addition on the basis of higher GP rate adopted, the addition on account of bogus purchase is made on substantive basis and addition on account of GP rate is made on protective basis. In a nutshell, the AO made the addition of Rs. 11,84,063/- and in the computation of income and addition of Rs. 2,22,208/- was kept on protective basis. The appellant filed the appeal before the Id CIT(A). The Ld. CIT(A) upheld the addition on account of gross profit rate @ 30% and held that the addition to the

extent of 25% of unverified purchase is justified. However, he further mentioned that as the addition on account of unverified purchase amounting to Rs. 2,96,016/- (25% of Rs. 11,84,063/-) is higher, no further addition on account of gross profit difference is required. In further appeal, the Hon'ble ITAT decided the above issue, thereby, the GP rate was adopted @ 17% and no separate addition on account of unverifiable purchase was sustained. The department preferred appeal before the Hon'ble High Court whereby following questions of law were raised:

"D.B. Income Tax Appeal No. 204/12 admitted on 03.01.2014

1 Whether the Tribunal was justified in deleting the addition of Rs. 2,96,016/- made on account of unverifiable purchases by the Assessing Officer and confirmed by CIT(A), despite upholding the rejection of books of accounts u/s 145(3) of the Act?

2. Whether the Tribunal was justified in reversing the finding recorded by CIT(A) as well as Assessing Officer and thereby, despite confirming the rejection of books of accounts u/s 145(3), reducing the trading addition of Rs. 2,22,208/- to merely Rs. 43,673/- by applying gross profit rate of 17% as against 30%?"

(ii) The Hon'ble High Court decided the above issue as under:

"in that view of the matter, the first issue regarding bogus purchase is required to be answered in favour of the department and the second issue is answered in favour of the assessee."

(iii) The Hon'ble High Court further held that on the question of bogus purchase, the matter is remitted back to the AO, it will be open for the parties to lead their evidence including the cross examination of the witness. It will also be open for the sides to produce documents which are relevant for deciding the issue.

(iv) In set aside proceedings, the AO completed the assessment on 17.10.2018 whereby he made additions on both the grounds i.e. unverified purchase to the extent of Rs. 11,84,063/- and difference in GP by adopting GP @ 30% amounting to Rs. 2,22,289/-.

(v) The appellant has challenged both the additions. The submission of the appellant has been reproduced in the earlier part of the order. It can be seen that right from first round of assessment proceedings to all the appellate stage, a consistent view was taken that higher of the additions on the basis of unverified purchase or on the basis of GP difference will finally be upheld. The Hon'ble High Court while setting aside the order has clearly mentioned that issue regarding bogus purchase is

answered in favour of the department and the second issue is answered in favour of the assessee. Considering the directions of the Hon'ble High Court and the facts on record in first round of appellate proceedings and in present proceedings, it is seen that the addition on account of bogus purchase and GP addition for same default cannot be simultaneously made. The AO can make addition either on account of unverified purchase or on account of gross profit difference. The addition worked out on the basis of bogus purchase is Rs. 11,84,063/- while on the basis of GP, it is Rs. 2,22,289/-. Therefore, higher of the two i.e. Rs. 11,84,063/- is upheld and the balance Rs. 2,22,289/- is deleted."

9. We have heard the rival contentions and perused the material available on record. The Id CIT(A) has returned a finding that considering the directions of the Hon'ble High Court and the facts on record in first round of appellate proceedings and in present proceedings, it is seen that the addition on account of bogus purchase and GP addition for same default cannot be simultaneously made and the AO can make addition either on account of unverified purchase or on account of gross profit difference. The said findings of the Id CIT(A) are not under challenge by the Revenue and have thus been accepted and even the assessee has not challenged the same before us. Thereafter, the Id CIT(A) has held that the addition worked out on the basis of bogus purchase is Rs. 11,84,063/- while on the basis of GP, it is Rs. 2,22,289/- and the higher of the two i.e. Rs.

11,84,063/- was upheld and the balance Rs. 2,22,289/- was deleted. The basis of sustaining the higher of the two additions as stated by the Id CIT(A) is that *"right from first round of assessment proceedings to all the appellate stage, a consistent view was taken that higher of the additions on the basis of unverified purchase or on the basis of GP difference will finally be upheld"*. In this regard, we refer to the findings of the Coordinate Bench in the first round of appellate proceedings and note that the Coordinate Bench vide its order dated 19.12.2011 has held that since the books of accounts have been rejected and trading addition has been sustained (by directing to apply G.P rate of 17% as against 30% applied by the AO), no separate addition is required to be made in respect of unverified purchases. Therefore, the basis of arriving at the conclusion by the Id CIT(A) based on first round of appellate proceedings that the higher of two additions, i.e, additions on the basis of unverified purchase or on the basis of GP difference is not borne out of records and cannot be accepted. Rather, we find that the emphasis in the findings of the Tribunal in the first round is that once the books of accounts are rejected u/s 145(3), gross profit rate has to be estimated and no separate addition is required to be made in respect of unverified purchases. Further, we donot find any such findings/directions given by the Hon'ble High Court which support the position adopted by the Id CIT(A). It is also the consistent position taken by this Bench wherein we have held that once the books of accounts have been rejected by invoking the provisions of section 145(3) of the Act, the Assessing officer is required to make the assessment on the basis of

his best judgment and a fair estimate of income has to be made instead of resorting to making the addition to the book results which already stand rejected or any alteration in the book results. In the instant case, the book results have been rejected by invoking the provisions of section 145(3) of the Act and the G.P estimation @ 30% has been done and the trading addition of Rs 2,22,289/- has been made by the Assessing officer. Regarding the challenge to the rate of G.P estimated by the AO @ 30% as against declared by the assessee @ 13.82%, we find that in the first round of appellate proceedings, the matter has been considered by the Hon'ble High Court wherein in respect of appeal filed by the Revenue, the matter has been decided in favour of the assessee and the G.P rate as sustained by the Tribunal @ 17% has been confirmed and the matter has attained finality. Similar is the finding recorded by the Id CIT(A). Therefore, the AO is directed to apply G.P rate of 17% and separate addition in respect of unverified purchases of Rs 11,84,063/- is hereby deleted. In the result, the grounds of appeal are disposed off.

ITA No. 1350/JP/2019

10. In ITA No. 1350/JP/2019 for A.Y 2004-05, both the parties submitted that facts and circumstances of the case are identical with facts and circumstances of the case in ITA No. 1349/JP/2019 for A.Y 2003-04 and similar contentions may be considered. Therefore, as submitted by both the parties, since facts and circumstances of these two cases are identical to facts and circumstances of the case in ITA No. 1349/JP/2018, our findings and directions contained therein shall apply *mutatis mutandis* to this appeal. Following the same, for A.Y

2004-05, the AO is directed to apply G.P rate of 15% and separate addition in respect of unverified purchases of Rs 17,23,930/- is hereby deleted.

ITA No. 1351/JP/2019

11. In ITA No. 1351/JP/2019 for A.Y 2008-09, we find that the matter is limited to estimation of gross profit rate after rejection of books of accounts u/s 145(3) of the Act and which has been subject matter of appeal before the Hon'ble High Court in the first round of appellate proceedings and the matter has been decided in favour of the department whereby the findings of the Tribunal have been reversed and the action of the AO in applying gross profit rate of 30% has been upheld and the matter has thus attained finality. Similar finding has been recorded by the Id CIT(A) which doesn't call for any interference and the same is upheld and the appeal of the assessee is dismissed.

In the result, all the three appeals of the assessee are disposed off in light of aforesaid directions.

Order pronounced in the open Court on 27/10/2020.

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य/Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य/Accountant Member

जयपुर/Jaipur
दिनांक/Dated:- 27/10/2020

*Ganesh Kr.

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

1. अपीलार्थी/The Appellant- Smt. Mamta Haldia, Jaipur

2. प्रत्यर्धी / The Respondent- DCIT, Circle-1, New CR Building, Statue Circle, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA Nos. 1349, 1350 & 1351/JP/2019}

आदेशानुसार / By order,
सहायक पंजीकार / Asst. Registrar