

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
&
SHRI K.N. CHARY, JUDICIAL MEMBER**

**ITA No.-485/Del/2020
(Assessment Year: 2015-16)**

ITO
Ward 2(1)
Moradabad.

Appellant

**Vs. Abhishek Agarwal
Prop. M/s R.K. Gifts,
Amroha Gate,
Moradabad.
PAN No. AFZPA0629R
Respondent**

Revenue by Shri Kanv Bali, Sr. DR
Assessee by Shri Piyush Kaushik, Adv.

Date of hearing: 02.12.2020
Date of Pronouncement : 10.12.2020

ORDER

PER K. NARASIMHA CHARY, JM

Challenging the order dated 30/4/2015 passed by the learned Commissioner of Income Tax (OSD) (Appeals), Moradabad ("Ld. CIT(A)"), in the case of Sh. Abhishek Aggarwal ("the assessee"), for the assessment year 2012-13, while deleting the addition of Rs. 1,38,17,203/- made by the assessing officer on account of bogus purchases and the other addition of Rs. 40,20,000/- towards cash deposit, Revenue preferred this appeal.

2. Brief facts of the case are that the assessee has been in the business of gift items and furniture. For the assessment year 2012-13 he filed the return of income on 7/9/2012 declaring an income of Rs. 6,70,500/-.

Assessment order under section 143(3) of the Income Tax Act, 1961 (for short "the Act") was passed on 80 5/3/2015 at Rs. 1,87,29,250/-while making certain additions, which includes the additions disputed in this matter. When the assessee preferred appeal, Ld. CIT(A), by way of impugned order deleted the additions relevant for this appeal while granting partial relief to the assessee.

3. Aggrieved by such additions, assessee preferred appeal before the Ld. CIT(A).Insofar as the addition of ₹ 1,38,17,203/- is concerned, assessee contended before the Ld. CIT(A) that when the learned Assessing Officer accepted the corresponding sales of the bogus purchases, it is not practicable not to believe the purchases in the event of which the situation gives rise to abnormal GP and NP.

4. In respect of the other addition of Rs. 40,20,000/-, it was made on account of unexplained deposits in the savings bank account. According to the assessee the said amount was duly accounted for in the books of accounts regularly and properly maintained by the assessee and the transactions were recorded the which were examined by the learned Assessing Officer and found to be correct.

5. During the course of first appellate proceedings, assessee filed many documents and the Ld. CIT(A) forwarded the same to the learned Assessing Officer and obtained remand report. Ld. CIT(A) considered the remand report and the evidence produced by the assessee and analysed the same in the facts and circumstances of the case to reach a conclusion that the additions cannot be sustained. He recorded so many reasons, which we would advert at relevant place, to support this conclusion. After taking into

consideration the remand report and the submissions made on behalf of the assessee, Ld. CIT(A) thought it fit to delete this addition also.

6. Aggrieved by the deletion of these two additions, Revenue is before us in this appeal contending that the Ld. CIT(A) failed to appreciate the facts brought on record by the learned Assessing Officer and also failed to see that there is sufficient evidence supporting these two additions. Ld. DR placed reliance on the assessment order and contended that the deletion of these additions by the Ld. CIT(A) is not justified.

7. Per contra, Ld. AR submitted that during the first appellate proceedings, the assessee produced the voluminous evidence before the Ld. CIT(A) in support of the contentions basing on which the Ld. CIT(A) sought for the remand report from the learned Assessing Officer, and the learned Assessing Officer did not give any adverse remarks in respect of these additions or the evidence filed in support of the contentions of the assessee in respect thereof. It is contended by the Ld. AR that without rejecting the books of accounts and without it commenting on the genuineness of the sales, it is not open for the assessing officer not to accept the purchases. He further contended that the alleged unexplained deposits in the savings bank account are accounted for in the books of accounts of the assessee which are maintained regularly and properly and such books of account are examined by the learned Assessing Officer, but not at all doubted by him.

8. We have gone through the record in the light of the submissions made on either side. Insofar as the addition of Rs. 1,38,17,203/-, as stated above, it was made on account of the alleged bogus purchases. Record speaks that it was made basing on the report of the Income Tax Inspector who reported that when he contacted one Sh. Rakesh Kumar Aggarwal one of the sellers to

the assessee in the showroom, it was reported that the assessee was not carrying on any business activities of Pooja articles of brass and so on and so forth. There is no dispute that when the assessee filed voluminous record in support of his contentions, the same were forwarded to the learned Assessing Officer seeking remand report offering his remarks on the documents filed on behalf of the assessee, it goes undisputed that the learned Assessing Officer did not offer any adverse comments on the detailed submissions on facts by the assessee.

9. It is further undisputed that the learned Assessing Officer though in enclosed the letter dated 9/4/2015 of the Assistant Commissioner of Trade Tax with reference to the address of the assessee, nothing material could be turned out on that aspect. It's also not in dispute that the learned Assessing Officer had examined the books of accounts and documents, as is evident from the assessment order, but it did not detail out any discrepancy therein. At the same time the learned Assessing Officer neither rejected the books of accounts nor invoked the provisions of section 145 of the Act before disturbing the trading results. The submission of the assessee that the learned Assessing Officer did not bring any documentary evidence on record to show that the assessee did not purchase any goods as alleged in the assessment order goes undisputed.

10. Learned Assessing Officer made the addition basing on the report of the Inspector, which reveals the fact that the enquiries made in respect of one RK Gotawale whereas according to the assessee the business was M/s RK gifts. It is also not in dispute that the assessee contended before the learned Assessing Officer that the Puja articles like Trishul and Manjeera which are of brass items are exempt from VAT as per schedule-1 of the

UPVAT Act and dealers are also not required for registration under such an enactment, but the assessment order does not seem to have dealt with this aspect. CIT(A) further found that the order dated 3/3/2015 passed by the Deputy Commissioner under section 28 (2) (i) of the UP value-added Income Tax Act, 1961 ("the Act") for the relevant shows that all the exempt purchases, sales out of exempt purchases and closing stock of the exempt purchases were accepted and there is no reason for not acting upon this document.

11. Ld. CIT(A) noticed that the learned Assessing Officer did not disturb the corresponding sales out of bogus purchases and on the other hand had that the entire purchases, after reducing by the bogus purchases, were sold for the same amount as a sales have been disclosed by the assessee in his books of accounts and since the learned Assessing Officer did not bring any material on record to show that the actual sales of Rs. 2,84,21,433/- were made only out of genuine purchases of Rs. 1,06,92,040/-, the difference of amount to the tune of Rs. 1,38,17,203/-, is liable to be deleted.

12. The assessment order does not reveal that the learned Assessing Officer rejected the books of accounts or suspected the sales, and such sales include the sales in respect of the alleged bogus purchases. If we go by the suspicion of the learned Assessing Officer, it creates a situation in which the admitted sales would give rise to the GP rate at 56.60% on the sales of Rs. 2,84,21,433/-, because the alleged bogus purchases amount of Rs. 1,38,17,203/- is added back to the declared GP of ₹ 22,68,156/-. It is not the case of the learned Assessing Officer that in the given business of the assessee the prevailing GP rate is at any rate, nearer to such inflated GP rate of 56.6%. Acceptance of the contention of the learned Assessing Officer

would lead to such an anomaly which the revenue is unable to explain. Further, without doubting the sales and without rejecting the books of accounts is not permissible for the assessing officer to disturb the GP declared in the books of account or to invoke the provisions of section 145 of the Act.

13. Further, the impugned order clearly establishes that after considering the documents filed on behalf of the assessee, learned assessing officer did not offer any remarks which are adverse to the contentions of the assessee. Ld. CIT(A) pointed out that the enquiries of the income tax Inspector were in respect of the business of M/s RK Gotewale and also in respect of the assessment years which were 3 subsequent to the assessment year under consideration, and therefore much relevance cannot be placed on the report of the income tax Inspector. The prime factor which convinced the Ld. CIT(A) is that the learned Assessing Officer examined the books of accounts and documents furnished by the assessee, both at the time of the assessment as well as during the first appellate stage, but notice it was pointed out in them. Sales were accepted, but the purchases were suspected, leading to the rumours situation of producing the abnormal GP rate at 56.6%, which is not common in the business conducted by the assessee. Learned Assessing Officer failed to notice this factor also. For these reasons, taking a comprehensive review, we are of the considered opinion that the view taken by the learned Assessing Officer does not appear to be sound and the Ld. CIT(A) deleted the addition by taking a pragmatic view. We, therefore, do not think it necessary to interfere with the same.

14. Now coming to the addition of ₹ 40,20,000/- on account of the unexplained deposits in the savings bank account of the assessee, there is no

dispute that the assessee has been maintaining the books of accounts regularly and properly recording the transactions, and even an examination of the same. Learned Assessing Officer did not point out any defect in such books of accounts. Ld. CIT(A) recorded that the learned Assessing Officer did not offer any adverse comments on the details submitted by the assessee with reference to the documents. Ld. CIT(A), on an examination of the record found that all the transactions were routed through the books of accounts, examined by the learned Assessing Officer and it is not the case of the learned Assessing Officer that the deposits to the tune of ₹ 40,20,000/- appearing in the Punjab National Bank were not routed to the books of accounts. Ld. CIT(A) satisfied that the sources of each deposit out of ₹ 40,20,000/- added by the learned Assessing Officer were properly explained and supported by the documents, which the learned Assessing Officer failed to notice and appreciate.

15. It is not the case of the revenue before us also that the documents produced by the assessee or their books of accounts are untrustworthy or suffer any legal infirmity. It is only on examination of these documents in the books of accounts, Ld. CIT(A) found that all the deposits are properly explained and are supported by relevant documents, which were available before the learned Assessing Officer, but the learned Assessing Officer failed to verify the same properly to reach a just conclusion. In the circumstances, we find it difficult to reject the factual findings of the Ld. CIT(A), which are formally based on the books of accounts and the other documents submitted by the assessee. For these reasons, we are of the considered opinion that both the additions made by the learned Assessing Officer

cannot be sustained and the Ld. CIT(A) rightly deleted the same. Grounds of appeal of the revenue or divide of merits and dismissed.

16. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 10/12/2020.

Sd/-

(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Dated: 10.12.2020

*Kavita Arora, Sr. PS

Sd/-

(K. NARSIMHA CHARY)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR

ITAT NEW DELHI