

आयकर अपीलिय 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 GOSIAN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 1311/JP/2019
निर्धारण वर्ष/Assessment Year : 2015-16

Smt. Saroj Sharma, F-233, Surya Path, Janpath, Shyam Nagar, Jaipur.	बनाम Vs.	A.C.I.T., Circle-3, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AFEPS 7256 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 1292/JP/2019
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D.C.I.T., Circle-3, Jaipur.	बनाम Vs.	Smt. Saroj Sharma, F-233, Surya Path, Janpath, Shyam Nagar, Jaipur.
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निर्धारिती की ओर से / Assessee by : Shri Shravan Kumar Gupta (Adv)
राजस्व की ओर से / Revenue by : Smt. Rooni Paul (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 08/02/2021
उदघोषणा की तारीख / Date of Pronouncement : 24/03/2021.

आदेश / ORDER

PER: SANDEEP GOSIAN, J.M.

These are the appeal and cross appeal filed by the assessee and the revenue arise against the order dated 18/09/2019 of Id. CIT (A)-I, Jaipur for the assessment year 2015-16. The grounds taken by the assessee and the revenue read as under:

Grounds of assessee's appeal in ITA No. 1311/JP/2019

"1. That on law and facts, the Id. CIT(A) has grossly erred in holding that sale of Rs. 2,40,02,905/- has been estimated correct by the Id. AO on

the basis of Circulation Certificate. The sale was wrongly estimated on the basis of circulation certificate since, assessee has maintained regular books of accounts and no discrepancy in maintaining of books of accounts was pointed out by the Id. AO. Further books of accounts was not rejected, hence, in the circumstances estimation of sale on the basis of circulation certificate is totally unjustified and the estimation of sale on the basis of Circulation Certificate deserves to be quashed.

2. *That on law and facts, the Id. CIT(A) has grossly erred in making addition of Rs. 34,22,814/- by applying Net Profit @ 14.26% on estimated sale of Rs. 2,40,02,905/-. The addition of Rs. 34,22,814/- is totally unjustified and against the facts on record and addition deserves to be quashed.*
3. *That the order of the Id. AO is bad in law and deserves to be quashed.*
4. *That the appellant reserves to the right to add, amend, withdraw or alter any ground of appeal before the finalization of said appeal."*

Grounds of assessee's appeal in ITA No. 1311/JP/2019

1. *Whether on the facts and in the circumstances of the case, the Id. CIT(A) was justified in holding the income received on leasing of land and building to be assessed under the head 'income from house property' and consequently allowing the deduction U/s 24 of the I.T. Act, 1961 ignoring the facts of the case that the land in question was allotted to the assessee on concessional rate for specific purpose of public interest and terms and conditions. There was a prohibition of further renting it public interest and terms and conditions. There was a prohibition on further renting it out.*
2. *Whether on the facts and in the circumstances of the case, the Id. CIT(A) was justified in holding the income received on leasing of land and building under the head 'income from house property' and consequently allowing the deduction u/s 24 of the I.T. Act, 1961 ignoring the facts of the case that the assessee flouted all the terms and conditions of numerous authorities just to reap benefits. As per the norms of allotment the total area to be sublet was not to exceed 40% of the total built up area, while the assessee had rented out area is 47.57% of total built up area.*
3. *Whether on the facts and in the circumstances of the case, the Id. CIT(A) was justified in holding that only net profit can be taxed in case of mismatch in figure of turnover and benefit of expenditure is to be granted to the assessee, whereas all the expenditure had already been claimed by the assessee in P&L account and no additional expenditure was shown to have incurred by the assessee."*

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

3. Firstly, we take revenue's appeal being ITA No. 1292/JP/2019. In this appeal, ground Nos. 1 and 2 raised by the revenue are interrelated and interconnected and relates to challenging the order of the Id. CIT(A) in holding the income received on leasing of land and building to be assessed under the head 'income from house property' and allowing deduction U/s 24F of the Income Tax Act, 1961 (in short, the Act).

4. The Id DR appearing on behalf of the revenue has relied upon the order passed by the A.O. and submitted that the Id. CIT(A) has fallen in error in holding the income received on leasing of land and building by the assessee to be assessed under the head 'income from house property' and allowing deduction U/s 24 of the Act by ignoring the fact of the case that the land in question was allotted to the assessee on concessional rate for specific purpose of public interest on terms and conditions. It was further submitted that as per terms and conditions of the letter of allotment, there was clear prohibition on further renting it out to anybody. Since, according to the Id. DR, the assessee had flouted terms and conditions of the allotment, therefore, no relief should have been given by the Id. CIT(A) to the assessee. It was further submitted that Id. CIT(A) ignored the fact that the assessee had flouted the terms and conditions of numerous authorities just to reap benefits. As per the

Id. DR, the norms of allotment of the total area to the assessee was subject to the condition that at the most, the assessee can sublet the area not exceeding 40% of the total built up area. Whereas on the contrary, the assessee while flouting those terms and conditions rented out 47.57% of the total built up area. The Id DR has also relied upon the findings recoded by the A.O., which are reproduced below:

- "6. *The submission of the assessee has been considered carefully but the same is not acceptable. Vide notification No. 3(63) 4D/3/2005 dated 05/08/2007 of the Urban Development & Housing Department subletting of the premises by news papers was allowed on fulfillment of certain conditions such as:*
- (i) registration of newspaper should be older than 30 years and is regularly published in Rajasthan which is not the case with this news paper.*
 - (ii) the total area sublet by an institution would not exceed 40% of the total built-up area vide submission dated 17/11/2017 the assessee has rented out 46.4% of the total built up area, thus clearly contravening provisions of above said notification. Further, there is an incorrect figure in calculation of 46.60% as rented area to FIITZee Ltd. is wrongly taken at 20000 sqr.feet in place of correct figure 20500 sqr feet as per the lease deed dated 12/03/2010, thus the actual rented out area is 47.57%.*
 - (iii) institution will be required to seek prior permission of JDA/UIT for any type of subletting, it has been observed no prior permission was sought.*

Therefore, from the above discussion, it is clear that the assessee flouted all the terms and conditions of numerous authorities just to reap benefits. The intent of legislature was totally defeated. Hence, income received from rent cannot be treated as house property income in the instant case.

Hence, the income received from rent should not be treated as house property and added as "income from other sources".

It was further submitted that as the conditions of concessional allotment was flouted by the assessee, therefore, the assessee was not entitled for deduction @ 30% U/s 24A and interest expenses U/s 24B of the Act.

5. On the contrary, the Id AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the Id. CIT(A) and also relied upon the findings recorded by the Id. CIT(A) while deciding these issues. The Id AR also relied upon the written submissions submitted before the Id. CIT(A) and the same are mentioned in para 3.1.1. of his order and the same are reproduced below:

3.1.1 Submissions made by the appellant:

It is submitted as under:

1. *That assessee is proprietor of M/s. Sandhya Jyoti Darpan and doing business of publishing daily newspaper under the name of Sandhya Jyoti Darpan and also doing jobwork of printing. Further during the year under assessment assessee was also having income from rent.*

2. That assessment was finalized u/s. 143(3) on dated 29.12.2017. Assessee has declared income Rs. 46,08,856/- while Ld. AO has assessed income of Rs. 3,19,46,8961-.

The Ld. AO has made the addition as under:

Income declared by assessee:	4608856.00
Add: Addition due to disallowing standard deduction u/s 24:	3335135.00
Add: Addition in trading results:	24002905.00

Total assessed income:	31946896.00

As such in assessment order the Ld. AO has made addition of Rs. 33,35,135/- by disallowing standard deduction u/s. 24 on rental income and Rs. 2,40,02,905/- in trading results.

3. During the course of filing of return of income assessee filed audited Trading account, Profit & Loss account and Balance Sheet alongwith all annexures and audit report. Further during the course of assessment proceedings books of accounts, purchase and sale vouchers and expenses vouchers and all relevant record were produced and duly examined by the Ld. AO and no discrepancy was point out by the Ld. AO in respect of maintenance of books of accounts . Further the Ld. AO has duly accepted the books of accounts and action u/s. 145 was not taken by the Ld. AO. As such books of accounts was not rejected as provided u/s. 145.

4. Further submitted due to instruction No. 8 of 2017 dated 29.09.2017 issued by CBDT for conducting assessment proceedings the Ld. AO vide letter No. ITBA/Com/F/17/2017-18/1006681108(1) dated 05.10.2017 has informed the assessee to intimate her intention to participate in assessment proceedings electronically. The assessee has filed his intention to pass the assessment order electronically. The Ld. AO in spite of request to finalized assessment proceedings electronically has completed assessment proceedings manually, as such the Ld. AO has not

followed the direction as per direction issued by CBDT. As such in the circumstances assessment order has been finalized against the direction of CBDT and assessment order deserved to be quashed.

In the case of Sunita Finlease Ltd. Vs. DCIT (2008) 8 DTR 183 (Bilaspur ITAT), it has been held as under:

"Scrutiny of the case having been done in violation of CBDT Instructions No. 9/2004 dated 20th Sep., 2004, AO erred in assuming jurisdiction and completing the assessment under s. 144".

5. *As per assessment order the Ld. AO has made the addition due to following reasons:*

(a) Disallowances of standard deduction u/s. 24 Rs. 33,35,135/-:

a) The land was allotted by JDA at concessional rate for specific purposes, hence use of land for other purposes is not allowable.

ii) Rental income was assessed by the Ld. AO under the head of "Income from other sources" while assessee has claimed rental income in the head of "Income from House Property". Hence for the reason standard deduction allowable u/s. 24 Rs. 33,35,335/- was not allowed.

(b) Estimation of sale as per circulation certificate Rs. 240 02 905/-:

i) The Ld. AO estimated the sale of newspaper as per circulation certificate filed with the RNI. The Ld. AO has not rejected the books of accounts and no discrepancy were notice. As such the addition is unjustified.

6. *Submission against addition of Rs. 3335135/- :*

i) In lease deed issued by JDA it is nowhere mentioned that assessee is not entitled to use the land for any other purposes except publishing of newspaper.

ii) Further submitted that Ld. AO in assessment order has rely on clause number 2, 6 and 10 of JDA lease deed which as per assessment order empowered the Ld. AO to treat the income from house property as income from other sources. It is submitted that the clause number 2, 6 and 10 of the lease deed are not applicable to assessee since assessee is proprietor and not the society as mentioned in lease deed.

iii) Further the Govt. of Rajasthan, Department of urban development and housing department vide notification No. 3(63) 4D/3/2005 dated 05.08.2007 has allowed that the 40% area can be given on rent by owner.

iv) Prior permission was granted by JDA to let out the property on rent.

v) In the case of *Hotel Arti Deluxe Vs. ACIT (2005) 97 TTJ 342 (Luck.)TM* it has been held as under:

"Assessee having let out a building simpliciter to a nursing home, through it was constructed to run a hotel, the rent receipt was attributable only to the ownership rights of the assessee and was liable to be assessed under the head 'Income from house property'.

In the case of *Neelam Cable Manufacturing Co. vs. ACIT (1997) 59 TTJ 476 (Delhi ITAT)*, it has been held as under:

"Rental income received by the assessee from the leasing out of factory godowns and industrial sheds is assessable as income from property and not as income from business".

In the case of *New Paris Complex vs. ACIT (2004) 89 TTJ 684 (Coch.)*, it has been held as under:

"Since the assessee-firm was carrying on the business of constructing and running shopping complex-cum-lodging house and not the business of banking, rent received by it by letting out a functionally independent portion of a building to a bank was assessable as income from house property".

vi) As such looking to above facts the Ld. AO is totally unjustified to treat the income from house property as income from other sources and also unjustified in not allowing standard deduction u/s. 24 of Rs.3335135/-.

6. We have considered the rival submissions and carefully perused the material placed on record. After appreciating the facts of the present case, we noticed that the assessee had given building at 3A, D.L. Tower, Vidhya Ashram Institutional Area, JLN Marg, Jaipur on lease to FIITJEE on a monthly rent of Rs. 6,29,207/-. The assessee had disclosed the above income under the head income from house property and also claimed interest expenses of Rs. 21,42,598/- U/s 24 of the Act. From the facts of the case, we further noticed that the A.O. treated the rental income received by the assessee as 'income from other sources' by holding that the assessee had flouted the terms and conditions of allotment and had sublet more than area which was prescribed by the RIICO authority without seeking prior permission from the JDA/UIT. We further noticed that the assessee is proprietor of M/s Sandhya Jyoti Darpan and doing business of publishing of newspaper under the name and style of "Sandha Jyoti Darpan" and also doing the job work of printing. Since the assessee was owner of the entire premises but out of the entire premises, some part was rented out by the assessee to the tenant and on account of the said tenancy, the assessee was receiving monthly rent of Rs. 6,29,207/- from FITJEE. It is an admitted fact that the rent has been received from an independent portion of the building and the function of the tenant are

not related with the assessee's business and the terms and conditions of JDA, nowhere mentions that the assessee is not entitled to use the land for any other purpose except publishing of news paper. Even the department of Urban Development and Housing, Government of Rajasthan's notification No. 3(63)/4D/3/2005 dated 05/08/2007 has allowed that 40% of the area can be given on rent by the owner. However, in the present case, the assessee had given on rent the area approximately 47.57% which according to us is in close proximity of the specific range. The basis reason for treating such income as 'income from other sources' by the A.O., was that the assessee had not fulfilled certain conditions as desired by the JDA on the basis of which the land was allotted at concessional rate.

6.1 However, now the question which arises before us is to see as to whether on non-fulfillment of certain conditions under other Act can lead to 'change the head of income'. We are of the view that it is an established law under the Income Tax Act that income can be charged under particular head of income on fulfillment of certain conditions depending upon the nature of income. However, non-fulfillment of condition under some other Act cannot impact the decision regarding charging of income under particular head of income and if some violations have been done by the assessee related to some other Act, then in that eventuality, the action for such violation can be taken under that Act only.

6.2 Since in the present case, the A.O. has failed to pin point any violation of any condition regarding chargeability of income under the head "income from house property". Therefore, in our view, the A.O. was not competent to treat the income earned by the assessee from rentals to be considered under the head "income from other sources". More particularly when the assessee had fulfilled all basic conditions for treating the income under the head "income from house property" as enumerated in Section 22 of the Act. We have also meticulously gone through the orders passed by the revenue authorities and we found that the Id. CIT(A) while dealing with these amounts have elaborately discussed the provisions of Section 22 of the Act and the ingredients contained therein for treating the income earned by the assessee by giving portion of the property on rent and had rightly concluded that the assessee had correctly shown the said income under the head "income from house property" as the assessee had fulfilled all the basis conditions of Section 22 of the Act for treating the income under the head "income from house property", therefore, it was rightly held that the assessee was also entitled for deduction U/s 24(a) and 24(b) of the Act.

6.3 No new facts or circumstances have been brought before us in order to rebut or controvert the findings so recoded by the Id. CIT(A). Therefore, we find no reasons to interfere into or deviate from the findings recorded by the Id. CIT(A). Hence, these grounds raised by the revenue stand dismissed and the order passed by the Id. CIT(A) qua these issues stand affirmed.

7. Ground No. 3 raised by the revenue and grounds No. 1 and 2 raised by the assessee in ITA No. 1311/JP/2019 are interrelated and interconnected, therefore, we thought it fit to dispose off these grounds by this consolidated order.

7.1 The Ld. DR appearing on behalf of the Revenue has relied upon the order passed by the A.O. and submitted that the A.O. on the basis of circulation certificate submitted by the assessee before the Registrar of newspaper had correctly held that the sale have not been properly disclosed by the assessee, therefore, considering the difference in such figures and after allowing discount of 25%, the A.O. had rightly made addition of Rs. 2,40,02,90/- by observing as under:

"7. The assessee was asked to submit the circulation certificate as submitted in registrar of newspaper so as to all certain the sale. On perusal it was seen that:

<i>Particulars</i>	<i>AY 2015-16</i>
<i>Sale as per sale certificate</i>	<i>6,65,10,000</i>
<i>Discount as claimed by assessee</i>	<i>3,32,55,000</i>
<i>Sales as per books</i>	<i>2,58,79,595</i>
<i>Concealed sales as per assessee</i>	<i>73,75,405</i>
<i>Concealed sales as per books</i>	<i>4,06,30,405</i>

[The AO pasted the scanned image]

The discount as claimed by the assessee could not be verified by the assessee, neither has she claimed it as an expense nor as TDS been deducted on the same. Out rightly it has been mentioned that sale as per circulation certificate the total actual sales, there are required to be filed for determining government advertisements rates. Such an argument of the assessee is self contradictory and not acceptable. By no stretch of imagination can one think of giving a discount of 50% in any business.

On further perusal of market practices, it was gathered that a discount of around 25-30% is given to hawkers and distributors. Even if we consider maximum discount of 25% it comes out to be Rs.1,66,27,500/- still sales are concealed to an amount of Rs.2,40,02,905/- (4,98,82,500 - 2,40,02,905). Thus, amount of Rs.2,40,02,905/- needs to be added back to the total income."

8. On the other hand, the Id AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the Id. CIT(A) which are contained at para No. 3.2.1 of the order of Id. CIT(A) and the same are reproduced below:

"3.2.1 Submission made by the appellant

7. *Submission against addition of Rs. 2,40,02,905/-:*

i) *That the trading results as per books of accounts are as under:*

<i>Particulars</i>	<i>Asstt. Year 2013-14</i>	<i>Asstt. Year 2014-15</i>	<i>Asstt. Year 2015-16</i>
<i>Sales</i>			<i>54,159,849.00</i>
	<i>38,616,717.00</i>	<i>69,664,917.00</i>	
<i>Gross Profit</i>	<i>7,083,939.00</i>	<i>14,733,205.00</i>	<i>11,768,745.00</i>
<i>Gross Profit rate</i>	<i>18.34%</i>	<i>21.15%</i>	<i>21.73%</i>
<i>Net Profit</i>	<i>52,40,717.00</i>	<i>1,00,10,234.00</i>	<i>77,23,674.00</i>
<i>Net Profit Rate</i>	<i>13.57%</i>	<i>14.37%</i>	<i>14.2%</i>

As such looking to above chart GP rate in assessment year 2015-2016 was better in comparison to last years, hence trading addition is totally unjustified.

In the case of ITO vs. Hitesh Kumar Panchori (2008) I DTR 17 (Jd. ITAT), it has been held as under:

"GP Rate being better at 11.08 per cent as against 10.20 per cent in the immediately preceding year, no further addition can be made in the declared results even when the books of account are rejected".

In the case of Haridas Parikh vs. ITO (2008) 1 DTR 390 (Jd. ITAT), it has been held as under:

"In the absence of any defect having been found in the books, there was no valid reason for rejecting the books and applying a higher GP rate which was earned by assessee on law sales of Rs. 1.43 crore in preceding year compared to higher sale of Rs. 1.54 crores in the year under consideration".

8. *During the assessment proceedings books of accounts alongwith sale and purchase vouchers, expenses vouchers and other relevant record were produced and examined. Further copy of audited Balance sheet, Trading account, Profit & Loss Account and audit report were also filed alongwith return of income. Further submitted that no discrepancy were found by the Ld. AO in regarding maintenance of books of accounts. The books of accounts were not rejected as provided u/s. 145. As such books of accounts was duly accepted by the Ld. AO.*

In the case of Sargam Cinema Vs. CIT (2011) 241 CTR 179 (SC), it has been held as under:

"Assessing authority could not have been referred the matter to the DVO without the books of accounts being rejected, and therefore, reliance placed on the report of the DVO was misconceived and the impugned Judgment of the High Court is set aside".

In the case of ACIT vs. Govind Ram Kakwani 90 TTJ 981 (Jabalpur ITAT), it has been held as under:-

"No trading addition was warranted as the assessee's books of accounts were not rejected and proviso to s. 145 was not applied and the AO has accepted the purchase and sales".

In the case of ITO vs. Dr. Kailash Sharma & Sons (2004) 84 TTJ 955 (Jd.), it has been held as under:

"When the AO did not point out any specific mistake in the books of account and did not reject the same but made addition and the Department is not challenging the finding of the CIT(A) that the provision of s. 145 could not be invoked, additions cannot be made on estimate basis".

In the case of Sri Venkatraju Modern Boiled & Raw Rice Mill vs. ACIT (1997) 57 TTJ (Hyd.) 493, it has been held as under:

"Without first rejecting books maintained by assessee showing cost of construction, the AO was not justified in making reference to valuation cell and then addition on that basis under s. 69".

In the case of CIT Vs. Pratap Singh, Amrosh Singh, Rajendra Singh (1993) 200 ITR 788 (Raj. SC), it has been held as under:

"In respect of the investment which is made in the property there can be only two methods to find out the correct position (one, when proper books of accounts are maintained and two valuation report). If the assessee has maintained proper books of accounts and all details are mentioned in such books of account which are duly supported by vouchers and no defect are pointed out and the books are not rejected, the figures shown therein have to be followed. The valuation report can be taken into consideration only when the books of account are not reliable or are not supported by proper vouchers or the ITO is of the opinion, that no reliance can be placed on such books of account. It is to that the /TO has no option, but to rely on

the valuation report which is a documents prepared by an expert and is admissible, but there must be a finding by the /TO that the books maintained by assessee are defective or not reliable".

9. *The assessee has filed circulation certificate with RNI on estimate basis and on higher side since the rate of advertisement is determined as per sale shown in circulation certificate. As such to obtained higher rate of advertisement from government usually in circulation certificate higher figure of sale are given, the circulation certificate did not show the real and correct position of sale. Hence no reliance should be made on circulation certificate. Further during assessment proceedings books of accounts were produced and duly accepted. The Ld. AO has not point out any discrepancy in regarding maintenance of books of accounts. As such the addition made on the basis of circulation certificate is totally unjustified and deserves to be quashed.*

In the case of ACIT vs. Jyoti Woolen Mills (2009) 125 TTJ 810 (Delhi), it has been held as under:

"Assessee having shown higher stock for obtaining credit facility from the bank against hypothecation of stock, and there being no evidence on record to shown that the assessee was in fact possession of higher quantity of stock as declared to the bank, addition could not be made on mere comparison of the stock declared to the bank and the one shown in the books of accounts.

In the case of 1TR Vs. Devidayal Rice Mills (2002) 75 TTJ 24 (Asr.), it has been held as under:

"Where the stock statement submitted to the bank were prepared on estimate basis which were admitted inflated in order to obtain larger credit AO was not justified in making addition on the basis of higher value shown n those statements that the stock discussed in the books

of account particularly when no apparent mistake was noticed in the books of account maintained by the assessee'.

In the case of Technical Glass Industries Vs. ACIT (2004) 91 TTJ (Agra) 561, it has been held as under:

"Stock hypothecated to bank having been shown on mere estimate basis in order to obtain overdraft facilities without any physical verification, difference in value of stock as hypothecated to the bank and as shown in books of assessee could not be made subject-matter of addition".

The assessee has maintained regular books of accounts and books were duly audited. GP rate was better in comparison to last years. Books of accounts duly examined by Ld. AO and no discrepancy were notice by Ld. AO further books of accounts has not rejected, hence addition on the basis of circulation certificate is totally unjustified. In the case of ACIT Vs. Shankar Exports (2011) 64 DTR 409 (Jpr.) (ITAT), it has been held as under:

"When each and every details have been kept by the assessee, regular books of accounts are maintained and no defect was found by the AO, mere fall in GP rate could not been made basis for rejection of books and addition".

10. Even otherwise the Ld. AO has treated the entire sale of Rs. 2,40,02,905/- as income of the assessee from undisclosed sources. The action of the Ld. AO is totally unjustified and against the Act, since in the circumstances the Ld. AO is bound to make the addition on the basis of Net Profit rate (NP rate) declared by the assessee which is 14.20% during the year under appeal.

11. Original demand notice is enclosed.

12. Power of attorney is enclosed.

As such looking to above facts your honour is requested to please accept the appeal as requested above & oblige."

9. Apart from this, the Id AR also relied upon the written submissions filed before us and submitted that while filing the written submissions, the N.P. rate chart was given at page No. 19. However, during the course of arguments, another separate and independent N.P. rate chart of last five years was also filed and it was submitted that in earlier chart, net profit which was shown 'included' the rent receipts, however, in the present chart, the rent receipts have been 'excluded'. In this respect, it was submitted by the Id. AR that rental income has separately been shown under the separate head in computation of total income which is at page No. 2-3 of the paper book and tax has already been paid. Hence, the total income of business should exclude "Rental Receipts"

10. We have considered the rival contentions and carefully perused the material available on record. From perusal of the records, we noticed that the A.O. on the basis of circulation certificate submitted by the assessee before the Registrar of newspaper had held that the sales have not been properly disclosed by the assessee, therefore, while considering the difference in such figures and after allowing discount of 25%, made additions of Rs. 2,40,02,905/- by holding that the discount as claimed by the assessee could not be verified by the assessee as the assessee had neither claimed it as expenses nor TDS has been deducted on the same. Therefore, while

considering the maximum discount of 25% had concluded that the assessee had concealed the sales amounting to Rs. 2,40,02,905/- and added the same to the total income of the assessee. Although, it was submitted by the Id. AR that the A.O. had estimated the sale figures without rejection of books of account and the circulation certificate filed before RNI was only on estimation basis and is on a higher side so as to obtain a better rate of advertisement, therefore, the same should not have been made the basis by the A.O. for making additions. It was also submitted by Id AR that the circulation certificate did not show right and correct position of sale and in alternative, the assessee also contended that the entire sale of Rs. 2,40,02,905/- was wrongly treated as income by the A.O. and in that eventuality, the addition at the most could have been made on the basis of net profit rate.

10.1 The Id. CIT(A) after considering the contentions of both the parties had correctly held that the circulation certificate was part and parcel of the documents of the assessee record, therefore, the same was rightly made as basis for calculating the income of the assessee. However, the alternative plea raised by the assessee was considered to be genuine and therefore, only net profit declared by the assessee @ 14.26% was considered for the purpose of additions. The Id. CIT(A) after considering the decisions of Hon'ble Madhya Pradesh High Court as well as Hon'ble Gujarat High Court had rightly concluded that only net profit can be taxed in case of mismatch in figure of turnover and benefit of expenditure is to be granted to the assessee.

11. We have also considered the G.P./N.P. chart submitted by the assessee for the last three years which is reproduced below:

<i>Particulars</i>	<i>Asstt. Year</i> <i>2013-14</i>	<i>Asstt. Year</i> <i>2014-15</i>	<i>Asstt. Year</i> <i>2015-16</i>
<i>Sales</i>	<i>38,616,717.00</i>	<i>69,664,917.00</i>	<i>54,159,849.00</i>
<i>Gross Profit</i>	<i>7,083,939.00</i>	<i>14,733,205.00</i>	<i>11,768,745.00</i>
<i>Gross Profit rate</i>	<i>18.34%</i>	<i>21.15%</i>	<i>21.73%</i>
<i>Net Profit</i>	<i>52,40,717.00</i>	<i>1,00,10,234.00</i>	<i>77,23,674.00</i>
<i>Net Profit Rate</i>	<i>13.57%</i>	<i>14.37%</i>	<i>14.2%</i>

We found that the N.P. on declared sales was 14.26% during the year under consideration. The sales as per the circulation certificate was Rs. 6,65,10,000/- while the sales as per books was Rs. 4,58,79,595/-. Since the assessee had claimed discount on such @ 50% whereas the A.O. had estimated the discount @ 25% amounting to Rs. 1,66,27,500/-, therefore after giving effect of this discount, the A.O. had correctly computed unrecorded sales of Rs. 2,40,02,905/-. Since the A.O. had made additions on the entire amount whereas as per the decision of Hon'ble Madhya Pradesh High Court as well as Gujarat High court in the case of **CIT Vs M/s Balchand Ajit Kumar (2003) 263 ITR 610 MP) and DCIT Vs Panna Corporation (2012) 074 DTR 0089 (Guj)**, it was held that addition to the extent of net profit rate can be made in case of difference in sale figures. Therefore, to this extent, we agree with the findings recorded by the Id. CIT(A) and uphold the same. However, as per the facts of the present case, the Id. CIT(A) had directed to adopt N.P. rate @ 14.26% declared by the assessee herself and the profit on such difference in sales comes to Rs.

34,22,814/-. But during the course of arguments, the assessee had furnished another chart for the last five years wherein the rent receipts had been 'excluded' from the total income of the assessee and the same is reproduced below:

Particulars	Asstt. Year 2010-11	Asstt. Year 2011-12	Asstt. Year 2012-13	Asstt. Year 2013-14	Asstt. Year 2014-15	Asstt. Year 2015-16
Sales	43,083,639.00	50,451,600.00	27,157,826.00	38,616,717.00	69,664,917.00	54,159,849.00
Gross Profit	11,591,818.00	10,477,244.00	5,449,367.00	7,083,939.00	14,733,205.00	11,768,745.00
Net Profit (As per books)	573,741.00	2,443,190.00	3,960,187.00	5,240,717.00	10,010,234.00	7,723,674.00
Less : Rent	-	7,374,316.00	9,662,820.00	9,775,812.00	10,687,578.00	11,117,118.00
Add: Interest on Loan against rent	-	1,624,506.00	1,738,320.00	1,154,096.00	683,252.00	130,728.00
	573,741.00	(3,306,620.00)	(3,964,313.00)	(3,380,999.00)	5,908.00	(3,262,716.00)
Net Profit rate:	1.33%	-6.55%	-14.60%	-8.76%	0.01%	-6.02%

On perusal of the above chart and the profit of loss account and computation of income which is part and parcel of the paper book, we found that the NP rate chart which is mentioned at page No. 19, the NP has been shown at Rs. 77,23,674/- which 'includes' rent receipts. However, in the above chart which has now been filed by the assessee which 'excludes' the rent receipt from the net profit claimed by the assessee. Thus, in our view, the assessee had rightly excluded the rent receipts from the net profit as from the financial statements i.e. from the computation of total income, we noticed that the rental income had been considered separately under the head 'income from house property'

and on which tax has already been paid. Therefore, in order to avoid double taxation, the assessee had excluded the rent receipts from the net profit which has now been reflected in the above chart which is termed as Annexure-A. Under these facts and circumstances, we direct the A.O. to apply N.P. rate after excluding the rent receipts from the total income of the assessee. With these directions, we restore this issue back to the file of the A.O. for deciding the issue afresh on the basis of above direction.

12. In the result, appeal of the revenue is partly allowed for statistical purposes and the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 24/03/2021.

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

Sd/-
(संदीप गोसाई)
(SANDEEP GOSIAN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 24/03/2021.

*Ranjan

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

1. अपीलार्थी / The Appellant- Smt. Saroj Sharma, Jaipur.
2. प्रत्यर्थी / The Respondent-The A.C.I.T./D.C.I.T, Circle-3, 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 No. 1311 & 1292/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar