

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" 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. 235/JP/2020
निर्धारण वर्ष / Assessment Years : 2007-08

M/s G.B. Impex, B-172, Rajendra Marg, Bapu Nagar, Jaipur.	बनाम Vs.	The ITO, Ward-6(3), Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AAGFG 3052 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (C.A.)
राजस्व की ओर से / Revenue by : Shri A.S. Nehra (ACIT)

सुनवाई की तारीख / Date of Hearing : 05/01/2021
उदघोषणा की तारीख / Date of Pronouncement : 01/04/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

The assessee has filed the present appeal against the order of Id. CIT(A)-I, Jodhpur dated 11.12.2019 for the assessment year 2007-08 wherein the assessee has taken the following grounds of appeal:-

- "1. The Ld. CIT(A) has erred on fact and in law in upholding the rejection of books of accounts U/s 145(3) of the Act, 1961.*
- 2. The ld. CIT(A) has erred on facts and in law in confirming the trading addition of Rs. 58,57,118/- by disallowing 15% of the*

alleged unverifiable purchases of Rs. 3,90,47,452/- made from 12 parties."

2. Briefly the facts of the case are that the assessee firm is engaged in the business of trading and export of gem stones, diamond, rough, etc. During the year it declared gross profit of Rs.76,16,983/- on sales of Rs.17,40,37,587/- giving G.P. rate of 4.38% as against gross profit of Rs.5,51,602/- on sales of Rs.64,57,290/-giving G.P. rate of 8.54% in last year. The AO observed that the parties mentioned at page 2 of the assessment order have admitted before the authorities of Investigation Wing of Income Tax Department that they had no business activities of purchase and sales of precious or semi-precious stones or any related items and actually indulged in issuing bogus bills. The onus to prove the genuineness of purchase lies on the assessee. The assessee was asked to produce the parties but it failed to do so. The assessee cannot absolve from his onus of proving genuineness of purchases by simply suggesting the department to call these parties or make direct enquiry through inspector. The summons issued were either returned back with the postal remark "The addresses were not available on account of incomplete address or stated to have shifted from that place" or where summons have been served instead of attending before the undersigned, written submission alongwith copy of ITR, copy of bank account, copy of sale bills etc. have been filed by them. Accordingly, the AO after relying on the decision of Gujarat High Court in case of Sanjay Oil Cake Industries Vs. CIT 10 DTR 153 rejected the books of accounts and made trading addition of Rs.97,61,863/- by disallowing 25% of purchases of Rs.3,90,47,452/-. On appeal, the Ld. CIT(A) confirmed the action of AO in rejecting the books of account u/s 145(3) of the Act. As regard to the disallowance of 25% out of alleged

unverifiable purchases received from 12 parties, the Ld. CIT(A) after relying on the decision of ITAT in assessee's own case for AY 2008-09 restricted the disallowance to the extent of 15%. Against the said findings, the assessee is in appeal before us.

3. During the course of hearing, the Id. AR submitted that the assessee is maintaining complete books of account on day-to-day basis which are subject to tax audit. These books are duly supported by bills and vouchers. All the transaction of purchases & sales is fully verifiable from the supporting bills, vouchers & documents maintained by the assessee. The assessee also maintains the stock records on day to day basis. All the purchase and sales are duly recorded in the stock register. The quantitative tally is provided in tax audit report. The AO has accepted the sales. There cannot be sale without purchase. The AO has also accepted the stock register/ quantitative details. Hence, purchases claimed by the assessee cannot be held to be bogus.

4. It was submitted that in respect of alleged bogus purchases, complete details of 12 parties along with their address, TIN No., telephone no., copy of purchase bills, mode of payment was submitted during the course of assessment proceedings. Payment of the purchases was made by account payee cheque. On these parties summons were issued. Some of the parties have confirmed the sale made by them to the assessee by providing the copy of ITR, bank account, sale bill, etc. as has been accepted by the AO at Pg 4 of the assessment order. However, AO has not provided the details as to which parties have accepted the sale made by them but treated them

as bogus only because they have not appeared before him but filed the written submission. This cannot be a reason to treat the purchases made from these parties as bogus/ unverifiable.

5. It was further submitted that the assessee has provided copy of purchase bills of these parties and linked it with the sales made by it. Out of total purchases of Rs.3,90,47,452, there is one to one linking with sales to the extent of purchase of Rs.2,72,69,607/-. Thus, purchases to the extent of 69.84% is linked to sales. Some of the purchases could not be linked to sales as they were mixed with other stock and thereafter sold. In any case where purchases are linked to sales, G.P. margin earned by the assessee is tabulated as under:-

Name of party	Amount of purchases	Amount of sales	Gross Profit	G.P. Rate
Royal Gems & Arts	26,03,913	27,52,191	1,48,278	5.39%
Anupam Exports & Imports	67,10,763	70,41,725	3,30,962	4.70%
Swapan Shree Jewels	28,85,953	30,49,980	1,64,027	5.38%
Rishabh International	58,27,522	61,00,165	2,72,643	4.47%
Shyam International	13,23,601	13,89,216	65,615	4.72%
RidhiSidhi Jewellers	15,94,080	16,67,978	73,898	4.43%

Resu Exports	63,23,775	66,41,990	3,18,215	4.79%
Total	2,72,69,607	2,86,43,245	13,73,638	4.80%

From the above, it can be noted that the G.P. rate from the alleged non verifiable purchases is 4.80% which is better than the overall G.P. rate of 4.38%. Hence, the purchases cannot be presumed to be inflated.

6. It was further submitted that the Ld. CIT(A) has confirmed the addition by disallowing 15% of alleged unverifiable purchases by referring to the decision of Hon'ble ITAT in assessee's own case for A.Y 2008-09. This order is dated 22.10.2014. Thereafter, the Hon'ble ITAT has taken a consistent view that where purchases are unverifiable, instead of disallowing 15% of the purchases, appropriate G.P. rate should be applied considering the past history of the case & other surrounding circumstances. Even in AY 2006-07, on similar facts, Hon'ble ITAT has applied G.P. rate for estimating the income. In AY 2006-07 G.P. rate was 8.54%. However, it can be noted that the turnover of assessee has increased manifolds as compared to the turnover of last year. In fact AY 2006-07 was the first year of business which started on 18.09.2005. Therefore, G.P. rate of last year cannot be compared with the G.P. rate for the year under consideration. Otherwise also, a businessman is interested in the volume of profit and not in the percentage of profit. In terms of volume, gross profit has increased from Rs. 5,51,602/- to Rs.76,16,983/-. The decline in G.P. rate is on account of reduced margin on increase in turnover. The

position of turnover and G.P. rate in previous and subsequent years is as under:-

AY	Sales	Gross profit	G.P. Rate declared	Remark
2006-07	Rs.64,57,290/-	Rs.5,51,602/-	8.54%	Assessment was framed u/s 143(3) by making addition of Rs.17,92,158/- by disallowing 25% of unverifiable purchases. The Ld. CIT(A) confirmed the trading addition of Rs.61,839/- by applying g.p. rate of 9.5%. The order was CIT(A) was confirmed by Hon'ble ITAT vide order dt. 11.02.2011 in ITA No.1263/JP/2010(PB 28-32).
2007-08	Rs.17,40,37,587/-	Rs.76,16,983/-	4.38%	Year under appeal
2008-09	Rs.19,71,89,378/-	Rs.1,06,85,782/-	5.42%	Assessment was framed u/s 143(3) by making addition of Rs.82,10,166/- by disallowing 25% of unverifiable purchases. The Hon'ble ITAT vide order dt. 22.10.2014 in ITA No.241/JP/12restricted the addition by disallowing 15% of unverifiable purchases.
2009-10	Rs.18,78,86,268/-	Rs.1,06,65,406/-	5.68%	Assessment was framed u/s 143(3) by making trading addition of Rs.2.50 lacs. Thereafter, assessment was reopened u/s 148 which was quashed by the Hon'ble ITAT vide order dt. 18.09.2018 in ITA No.624/JP/18.
2010-11	Rs.19,36,99,119/-	Rs.1,03,87,456/-	5.36%	Assessment was framed u/s 143(3) by making trading addition of Rs.57,83,670/- which was restricted by Ld. CIT(A) to Rs.7,85,442/- by disallowing 15% of unverifiable purchases. The appeal filed by the department was dismissed by Hon'ble ITAT vide order dt. 13.05.2016. Thereafter, assessment was reopened u/s 148 which was quashed by the Hon'ble ITAT vide

				order dt. 18.09.2018 in ITA No.800/JP/18.
2011-12	Rs.18,72,73,797/-	Rs.46,46,077/-	2.48%	Accepted u/s 143(1). Thereafter in reassessment proceedings u/s 147 addition of Rs.22,79,279/- was made by treating the purchases made from M/s Kothari Impex as non-genuine vide ex-parte order dt.03.12.2018.
2012-13	Rs.7,51,43,437/-	Rs.17,05,291/-	2.27%	Assessment was framed u/s 143(3) by making trading addition of Rs.20,51,880/- by applying g.p. rate of 5%. The Hon'ble ITAT vide order dt. 17.11.2016 in ITA No.430/JP/16 restricted the trading addition by applying g.p. rate of 3.64% resulting into trading addition of Rs.10,29,930/-.

From the above table it can be noted that G.P. rate is fluctuating on year to year basis. It can't be constant. Even in AY 2012-13, Hon'ble ITAT considered the g.p. rate of 3.64% as reasonable. In these circumstances even if books of accounts are rejected, it should not necessarily lead to trading addition.

7. It was submitted that it is a settled proposition of law that trading addition need not necessarily made only because books of accounts are rejected. One is to consider the other facts and circumstances of the case. For this reliance was placed on the following cases:-

- Shankar Export Vs. ACIT 42 DTR 441 dt. 01.06.2010(Jpr.)
- CIT Vs. Smt. Poonam Rani 41 DTR 194 (Del)
- Malani Ramjivan Jagannath Vs. ACIT 207 CTR 19 (Raj.)

- CIT Vs Gotan Lime Khaniz Udhyog 256 ITR 243 (Raj.)

8. Per contra, the Id. DR relied on the finding of the lower authorities and our reference was drawn to the findings of the Id. CIT(A) which are contained at para 4.3 of his order which reads as under:-

"4.2 I have considered the facts of the case, assessment order, documents on record and appellant's submissions. The AO noted that the assessee had recorded bogus purchases in his books of accounts. In such circumstances, it was not possible for him to ascertain true picture of profit rate. Thus, he rejected the assessee's books of accounts u/s. 145(3) of the Act and disallowed 25% of alleged unverifiable purchases amounting to Rs. 3,90,47,452/- received from as many as 12 parties resulting into addition of Rs. 97,61,863/-. There are two issues to be considered here; first, regarding rejection of books of accounts u/s 145(3) of the Act and second regarding disallowance of 25% out of alleged unverifiable purchases. As regards to rejection of books of accounts, The Hon'ble High Court of Rajasthan in the case of Vimal Singhvi vs. ACTT [2015] 55 taxmann.com 309 (Rajasthan) has held that on non-genuine purchases, books of accounts can be rejected and provisions of Sec. 145(3) are applicable. The same Court in the case of Venus Arts & Gems vs. ITO, DB Income Tax Appeal No.582/2011 has observed that once there is finding that the parties are non-existent, this by itself is a serious discrepancy and adverse inference can be drawn. The AO had pointed out various deficiencies, thus, he rejected the book result U/s 145(3) of the Act. The appellant has cited certain case-laws in his favour but they were rendered as per facts and circumstances of those cases and are not directly applicable in the instant case. Considering the factual and legal position as

discussed above, the AO's action of rejecting the books of accounts u/s 145(3) of the Act is upheld.

As regards to the disallowance of 25% out of alleged unverifiable purchases received from as many as 12 parties, Here it is relevant to discuss assessee's case pertaining to AY 2008-09, wherein the AO after invoking provision of section 145(3), disallowed 25% of unverifiable purchases. Further, the CIT(A) upheld the AO's action of rejection of books of account and disallowance of 25% out of unverifiable purchases. The Hon'ble ITAT, Jaipur in appellant's own case in ITA No. 241/JP/2012 for A.Y. 2008-09 restricted the disallowance to the extent of 15% of unverifiable purchases. The relevant extract of the judicial pronouncements is reproduced as under:-

"11.5 We have heard the rival contentions of both the parties and perused the material available on the record. The assessee has not challenged the rejection of book result as defects pointed out by the Assessing Officer are sufficient to reject the book result U/s 145(3) of the Act. The department had conducted survey and search in various cases as mentioned by the Assessing Officer as well as the learned CIT(A). On investigation, it is found that four parties were also indulged in providing accommodation bills. The sufficient opportunities have been given by the Assessing Officer to prove the genuineness of the purchases. The Assessing Officer himself issued the notices to these parties but notices were returned back by the Postal Department with remark " no such party exists at given address". The assessee could not produce these parties for verification during the course of assessment proceedings. Even the Assessing Officer provided sufficient time to the assessee. The unverifiable purchases were Rs. 3,28,40,664/- whereas the assessee exported the goods during the year at Rs.93,42,720/- during the year under consideration. Therefore, the assessee's claim that all the goods were exported during the year is not correct. Further the learned Assessing

Officer had not precluded by the law if the assessee even exported the goods 100% to investigate the unverifiable purchases. The learned Assessing Officer sent notices to these parties which were returned back unserved with remark "party is not existent". The assessee was also produced these parties for verification whatever evidence were produced by the assessee are not sufficient to prove the purchase genuine even payments through account payee cheques is not sacrosanct and had not discharged onus on it. During the course of investigation conducted by the department, these parties were figured in the list of entry provides and they had admitted that they only provided bills no any real business with delivery of goods. The learned Assessing Officer applied Hon'ble Gujarat High court decision in the case of Sanjay Oil Cake Industries (supra) and ITAT Ahmadabad Bench decision in the case of Vijay Proteins wherein 25% disallowance held reasonable on unverifiable purchases. The A.R. of the assessee tried to distinguish this case with facts and circumstances and argued to apply past history of the case. The onus is on the assessee to prove these purchases as genuine and sufficient purchases from these parties have been claimed to be made by him. The assessee also could not be able to lead any evidence in furtherance of filing of confirmatory letter or merely showing that the payments were made by account payee cheques. The assessee was aware of the whereabouts of the parties and he should have produced these parties before the Assessing Officer for verification of purchases, which could not be done at the stage of assessment proceedings. The addition on account of unverifiable purchases were made in A.Y. 2006-07. Thus, past history of the assessee is not reliable and doctored. This finding is also got support from the recent decision of Hon'ble Rajasthan High Court in the case of Venus Arts & Gems order dated 20/8/2014 wherein it has been held that order passed by the ITAT for confirming G.P. after rejection of books of accounts on the basis of various discrepancies found by the Assessing Officer, there is no question of law involved in such

profit estimates. Even the assessee may be 100% exporter which does not preclude the Assessing Officer from enquiring into the N.P. on unverifiable purchases is reasonable in this case. Accordingly, the assessee's appeal is partly allowed."

Therefore, following the decision of Hon'ble ITAT, Jaipur in appellant's own case, the disallowance of 25% of total unverifiable purchases appears to be on higher side. Disallowance of 15% out of unverifiable purchases is reasonable in the present case. Held accordingly. The appellant gets partial relief on this ground. Thus, ground No. 1 and its parts are treated as partly allowed."

9. We have heard the rival contentions and perused the material available on record. The Id CIT(A) has affirmed the rejection of books of accounts on account of non-genuine purchases which could not be verified during the course of assessment proceedings relying on the decision of the Hon'ble Rajasthan High Court in case of Vimal Singhvi (supra). We donot any infirmity in the said findings of the Id CIT(A) and the same is hereby confirmed. Regarding disallowance of 25% of the alleged purchases, the Id CIT(A) has followed the Coordinate Bench decision in assessee's own case for A.Y 2008-09 and has restricted the disallowance to 15% of alleged purchases. It is also noted from the assessee's assessment history, for instance, A.Y 2010-11, where under similar facts and circumstances of the case, disallowance of 15% of unverifiable purchases were made by the Id CIT(A) which has been affirmed by the Coordinate Bench and similar disallowances have been made in other years. In light of same, we donot see any infirmity in the

findings of the Id CIT(A) in restricting the addition to 15% of unverified purchases.

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

Order pronounced in the open Court on 01/04/2021.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)

(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 01/04/2021.

*Santosh

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

1. अपीलार्थी / The Appellant- M/s G.B. Impex, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-6(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. 235/JP/2020 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar