

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. 1058/JP/2019
निर्धारण वर्ष / Assessment Years : 2003-04

Smt. Anju Lashkery P/o Shri Ratnam, 22, Purandarji Ka Bagh, MD Road, Jaipur.	बनाम Vs.	The ITO, Ward-5(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAGPL8891 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Praveen Saraswat (C.A.)
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (Add.CIT)

सुनवाई की तारीख / Date of Hearing : 02/03/2021
उदघोषणा की तारीख / Date of Pronouncement : 10/05/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-II, Jaipur dated 25.06.2019 for the assessment year 2003-04 wherein the assessee has taken the following grounds of appeal:-

"1. That the Ld. AO has wrongly made the addition of Rs. 15,39,905/- being 25% of alleged bogus purchase besides making the trading addition of Rs. 30,79,250/- on account of low gross profit. Ld. CIT(A) has upheld the same to the extent of Rs. 808,400/- in place of Rs. 15,39,905/-. Entire addition of Rs. 15,39,905/- was deleted by the Hon'ble ITAT vide its order dated 24/04/2008. Thus Ld. AO and Ld. CIT(A) have erred by

upholding the addition, ignoring the order of Hon'ble ITAT on this issue.

2. The Id. CIT(A) has erred by estimating the GP @ 13% as against the 12.14% declared by assessee, for making the addition of Rs. 8,08,400/- on account of alleged bogus purchases. Ld. CIT(A) has ignored the fact that a separate trading addition of Rs. 30,79,250/-, taking the GP rate of 15.42% has already been upheld by Hon'ble ITAT and not disputed by assessee before Id. CIT(A).

3. That the Id. AO has ignored the requests of the assessee to summon and enforce the attendance of the parties u/s 131 for confirming the purchases worth Rs. 61,59,622/-. Non-exercise of the powers conferred on Id. AO u/s 131 has discharged the assessee from the initial onus cost on her, and therefore, the addition on the account of bogus purchases amounting Rs. 15,39,905/- is not sustainable."

2. During the course of hearing, the Id. AR submitted that this is the second round of appellate proceedings and in the first round, the matter has reached before the Hon'ble Rajasthan High Court on appeal by the Revenue and the Hon'ble Rajasthan High Court has remanded the matter to the file of the Assessing Officer for deciding the same afresh. It was submitted that the Assessing Officer while passing the impugned assessment order has made an addition of Rs. 15,39,905/- U/s 69C of the Act being 25% on purchases amounting to Rs. 61,59,622/- on account of alleged bogus purchases. On appeal by the assessee, the Id. CIT(A) had upheld the addition of Rs. 8,08,400/- by estimating the Gross Profit @ 13% as against 12.14% declared by the assessee. It was submitted that both the lower authorities have ignored the fact that in the first round, the Assessing officer had already made separate trading

addition of Rs. 30,79,250/- by raising GP rate from 12.14% to 15.42% and all the deficiency in the books of accounts as alleged in respect of the issue of bogus purchases have been duly take care of by such an addition as held by the Id. CIT(A) and affirmed by the Tribunal in the first round. It was submitted that in the instant case, the factual matrix of the case is different from Vijay Proteins/ Sanjay Oil case which has been followed by the AO, therefore, the ratio laid down in the said decisions cannot be applied in the instant case. It was submitted that in the present proceedings, the AO has applied only part of the directions given by the Tribunal in the first round which suited the Revenue and has completely ignored the concluding part of the Tribunal's decision wherein it was held that by applying higher GP rate of 15.42% as against 12.41% is sufficient to take care of the alleged bogus purchases and findings of the Id CIT(A) were upheld.

3. It was further submitted that during the present proceedings in response to notice U/s 142(1), the assessee has furnished the necessary documents in terms of purchase bills, sales tax register number, PAN Number, confirmations, complete address and bank statement of the sellers as well as the assessee. Thereafter, the Assessing Officer has not raised any further queries from the assessee. Regarding the findings of the AO that the assessee failed to produce the parties in order to examine them to ascertain the genuineness of the transactions, it was submitted that the AO had never asked the assessee to produce any of the creditors and the assessee therefore cannot be expected in such circumstances to present the persons before the Assessing Officer where the AO has neither fixed the date or

time for their personal appearance. It was submitted that the assessee has asked the AO to issue summons to this persons U/s 131 of the Act. It was accordingly submitted that the assessee has discharged the necessary obligation cast on her and she cannot be punished for the failure on part of the Assessing Officer to take further action. It was accordingly submitted that the addition so made and confirmed by the Id CIT(A) be directed to be deleted.

4. 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 2.3 to 3.3.2 of the appellate order which reads as under:-

"2.3 Ground No. 01 to 03 are being taken up together which are interrelated. I have perused the facts of the case, the assessment order and the submissions of the appellant. It is seen that assessee has obtained purchase bills of Rs. 61,59,622/- from two parties namely M/s Ambica Impex and M/s Abhinav Gems. In the original assessment proceedings u/s 143(3), dated 16.03.2006, Assessing Officer applied section 145(3) and made addition and also under section 69C of Rs. 61,59,622/- . Against the order of CIT(A), assessee as well as department filed an appeal before Hon'ble ITAT. Hon'ble ITAT vide its order 24.04.2008 in ITA No. 399/JP/2007 confirmed the order of CIT(A) in allowing estimation of profit. Against the ITAT order department filed appeal u/s 260A before Hon'ble Rajasthan High Court. Hon'ble Rajasthan High Court vide its order 03.11.2016 DBIT appeal No. 654/2008 remit back the case to the AO for deciding afresh on the factual matrix.

In set aside assessment, Assessing Officer made addition of Rs. 15,39,905/- being 25% on purchase of Rs. 61,59,622/- made from M/s Ambica Impex and M/s Abhinav Gems as bogus and unverifiable.

Since the purchases from two parties are not verifiable. Even in set aside proceedings and also in appellate proceedings, assessee has failed to verify the same. Therefore, rejection of books of accounts u/s 145(3) by Ld. Assessing Officer is correct and hereby upheld.

2.3.1 After rejection of Books of Accounts, the income has to be estimated by applying the GP rate which has to be applied based on the past history of the appellant. The Hon'ble ITAT Jaipur Bench in various decisions as cited by Id. AR of the assessee also held that the basis of estimation should be the past history of the assessee.

In decisions of M/s. Allied Gems Corporation ITA No. 794/JP/2011 and Rajkumar Agrawal ITA No. 504/JP/2013 the Hon'ble ITAT restricted the addition to the average GP rate based on past years.

Thus, in view of above judicial pronouncement after rejecting Books of Accounts, the past history of the assessee has to be seen for estimating the profit of the appellant.

3.3.2 During the appellate proceedings the Id. AR of the assessee submitted trading results of past year which are as under.

<i>A.Y.</i>	<i>Turnover</i>	<i>Gross Profit</i>	<i>G.P. %</i>
<i>2002-03</i>	<i>99334873</i>	<i>15317989</i>	<i>15.42</i>
<i>2003-04</i>	<i>93836783</i>	<i>11390381</i>	<i>12.14</i>

Therefore, in view of the totality of the facts and component of unverifiable purchases, in may considered opinion it would be appropriate to estimate the GP at 13% which comes to Rs. 1,21,98,781/-. Consequently, the trading addition comes to Rs. 8,08,400/- (1,21,98,781/- 1,13,90,381) which is sustained.

Accordingly, the balance addition of Rs. 7,31,505/- is deleted. These grounds of appeal are partly allowed."

5. We have heard the rival contentions and perused the material available on record. The Id CIT(A) has returned a finding that since the purchases from two parties remain unverified, the AO has rightly rejected the books of accounts by invoking provisions of section 145(3) of the Act. At the same time, the Id CIT(A) has not agreed with the AO as far as making addition of Rs 15,39,905/- being 25% of unverified purchases for the reason that once the books of accounts are rejected, the income has to be estimated by applying the GP rate which has to be estimated basis the past history of the appellant and has thus estimated G.P rate of 13%. 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 which is not under dispute before us. The limited grievance of the assessee is that as against declared gross profit of 12.14%, the G.P rate of 15.42% has already been applied by the Id CIT(A) which has been upheld by the Tribunal in the first round of litigation and has been accepted by both the parties and has thus attained finality and thus, there is no basis for fresh estimation of gross profit of 13% by the Id CIT(A) in the second

round of litigation which is anyway lower than what has estimated in the first round and making a further addition over and above what has already been done by estimating G.P rate of 15.42% in the first round of litigation. We find that in the present proceedings, the AO has made an addition of Rs 15,39,905/- towards unverified purchases to revised total income as computed after giving appeal effect u/s 143(3)/250 dated 16.02.2007 to order passed by the Id CIT(A) dated 8.01.2007 wherein he has estimated G.P rate of 15.42%. Therefore, the addition of Rs 15,39,905/- is made over and above the G.P addition made in the first round of litigation wherein G.P rate has been taken at 15.42% as against 12.14% declared by the assessee. In the second round, the Id CIT(A) has rightly deleted the addition of Rs 15,39,905/- as we have noted above as there cannot be separate addition other than estimation of profits where the books of accounts have been rejected. At the same time, the Id CIT(A) has estimated G.P @ 13% failing to take into the consideration the fact that G.P has already been estimated earlier @ 15.42% and which has been accepted by both the parties and has attained finality and necessary effect given to by the AO while passing the impugned assessment order. We therefore find force in the contention so advanced by the Id AR and the addition so sustained by the Id CIT(A) amounting to Rs 8,08,400/- is hereby directed to be deleted.

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

Order pronounced in the open Court on 10/05/2021.

Sd/-

(संदीप गोसाई)
(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 10/05/2021.

*Ganesh Kumar

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

1. अपीलार्थी / The Appellant- Smt. Anju Lashkery, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-5(2), 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. 1058/JP/2019 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar