

आयकर अपीलीय 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 GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA No. 192/JP/2020  
निर्धारण वर्ष / Assessment Year :2011-12

Smt. Ruksana, L/h of Late Sh. Mohammed Salim, Kunjda Street, Bada Bazar, Jhalawar City, Jhalawar-326001.	बनाम Vs.	I.T.O., Ward-Jhalawar.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: BJEPS 1293 M		
Appellant		Respondent

निर्धारिती की ओर से / Assessee by: Shri Shравan Kr. Gupta (Adv)  
राजस्व की ओर से / Revenue by: Smt. Runi Pal (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 08/04/2021  
उदघोषणा की तारीख / Date of Pronouncement : 30/06/2021

आदेश / ORDER

**PER: SANDEEP GOSAIN, J.M.**

This is the appeal filed by the assessee against the order of the Id. CIT(A), Kota dated 21/09/2017 for the A.Y. 2011-12. The grounds taken by the assessee in this appeal are as under:

"1. The impugned assessment order u/s 143(3) dated 15.03.2014 is bad in law and on facts of the case, for want of jurisdiction, being debatable issue and various other reasons and hence the same may kindly be quashed.

2.1 Rs.13,45,442/-: The Assessing Officer has grossly erred in law as well as on the facts of the case in invoking the provision of section 145(3). The provision so invoked by the Assessing Officer and confirmed by the Id. CIT(A) being totally contrary to the provisions of law and facts on the record and hence the same may kindly be quashed.

- 2.2 *Alternatively and without prejudice the Id. CIT(A) further erred in law as well as on the facts of the case in confirming G.P. rate 16% on the estimated turnover of Rs.1,11,19,528/- as against the turnover declared of Rs.26,26,670/- and resultant thereto made trading addition of Rs.13,45,442/- by the Assessing Officer. Hence the addition so made by the Assessing Officer and sustained by the Id. CIT(A) is being totally contrary to the provisions of law and facts on the record and hence the penalty may kindly be deleted in full.*
3. *Rs.21,803/-: The Assessing Officer has grossly erred in law as well as on the facts of the case in making the disallowance of various expenses of Rs.21,803/-. Hence the disallowance so made by the Assessing Officer is being totally contrary to the provisions of law and facts on the record and hence the same may kindly be deleted in full.*
4. *The Id. CIT(A) has grossly erred in passing the ex parte order without providing the adequate opportunity of being heard to the assessee, which is against the principal of natural justice and hence the same may kindly be quashed.*
5. *The Assessing Officer has grossly erred in law as well as on the facts of the case in charging interest u/s 234 A,B,C. The appellant totally denies its liability of charging of any such interest. The interest, so charged, being contrary to the provisions of law and facts, may kindly be deleted in full.*
6. *The appellant prays your honors indulgence to add, amend or alter all or any of the grounds of the appeal on or before the date of hearing."*

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

3. There is delay of 825 days in filing this appeal, for which the assessee filed an application for condonation of delay and the contents of application for condonation of delay reads as under:

*"1. In this connection it is submitted that the applicant is an individual. In this case the assessment u/s 143(3) was completed for A.Y. 2011-12 on dated 15.03.2014 raising the demand of Rs.4,75,310/-. Against*

*which the assessee had filed an appeal before the Id. CIT(A) Kota. The Id. CIT(A) has passed the ex parte order of appeal on 21.09.2017 which was served on the local counsel on dt. 22.09.2017. Hence the appeal was to be filed on or before 21.11.2017 but the same could be filed on 14.02.2020 i.e by delay of about 2 year 3 month late.*

- 2. The reason of late filing was that as the deceased assessee was expired on 12/07/2014 i.e. after filling the appeal and the applicant is being Legal Heir of him was not having any knowledge of any proceedings against the deceased assessee no having any knowledge about the his counsel. It is only after receiving some demand notice from the department and after consulting with the relatives and other advocates she come to know about the matter and despite her best efforts she could locate the counsel at Kota. And after meeting the counsel at Kota and consulting with other advocate she came to know all the proceedings and consequence thereof and after advise of the advocates she asked to prepare the appeal. Because she is not a literate lady and not having the knowledge of law, she has never been an Income Tax Assessee.*

*Hence, the appeal has been prepared on 12.02.2020 and signed by her.*

*Due to all this reason the appeal could not be filed within time. In support of these contentions, an affidavit of the Legal Heir is enclosed.*

- 3. It is submitted that the Hon'ble Supreme Court in the case of Collector, Land & Acquisition v. Mst. Katiji & Others (1987) 167 ITR 471 (SC) has advocated for a very liberal approach while considering a case for condonation of delay. The following observations of the Hon'ble Court are notable:*

*"The legislature has conferred the power to condone delay by enacting section 5 of the Limitation Act 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression sufficient cause' employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice-that being the life-purpose of the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But, the message does not appear to have percolated down to all the other Courts in the hierarchy."*

*The said judgment is a leading case on the subject and has a binding force on all the officers subordinate thereto.*

4. *The action or inaction by an assessee, on the advice of its counsel, whether correct or incorrect, if caused a delay, has been held to be reasonable and sufficient cause in these cases also. Kindly refer N. Balakrishnan v. M. Krishna Murthy(1998) 7 SCC 123 published in 30 BCAJ 922, Concord of India Insurance Co. Ltd. v. Smt. Nirmala Devi and Another 118 ITR 507.*

*That it is also settled that for the mistake of the Counsel, the party cannot be suffered. Reliance on Mahaveer Prasad Jain v/s CIT, 172 ITR 331(MP), Concord India Insurance Co. Ltd v/s Smt. Nirmala Devi, 118 ITR 507(SC), Kripa Shankar v/s CIT/CWT 181 ITR 183(A11), N. Balakrishnan v/s M. Krishanmurthy 7 SSC 123.*

5. *The Hon'ble Jaipur Bench of ITAT has also condoned the delay in the case of Ganesh Himalaya Pvt. Ltd. v. ACIT 22 Tax World 415 (Jp) where the filing was delayed because the son of the Managing Director had become victim of some misdeeds*

*committed by the Holigans, particularly when on the similar points in the earlier four years, the appeals were filed in time.*

*In the instant case also, the appeal could not be filed in time because of the above time taking a various process which were bonafide and was a sufficient cause and there was no malafide intention.*

6. *Recent Decision of Apex Court in a recent decision, the apex court have again reiterated that the expression "sufficient cause" should receive a liberal construction. The Hon'ble court has also held that advancing of substantial justice should be of prime importance. Kindly refer Vedbai vs. Shantaram Baburam Patil & Others 253 ITR 798 (SC).*

*Prayer: In view of above facts and circumstance and with the sympathy and settled legal position, the delay so caused may kindly be condoned."*

4. On the other hand, the Id DR could not rebut the facts submitted by the assessee before us for seeking condonation of delay.

5. We have considered the rival submissions as well as relevant material on record. From perusal of the record we noticed that the that assessee Late Sh. Mohammed Salim was residing and having his business at Jhalawar, he had filed the appeal before the Id. CIT(A) Kota on 03.04.2014 against the order of the Assessing officer dated 15.03.2014. Thereafter, he expired on 12.07.2014. In support thereof, the present assessee, i.e. legal heir of deceased assessee filed death certificate of him

as well as an affidavit mentioning the facts that on which reasons, the present appeal has been filed belatedly. For ready, reference, we reproduce the affidavit of the assessee as under:



शपथ पत्र

समक्ष माननीय आयकर अपीलीय अधीकरण जयपुर  
बेन्च जयपुर राज.

मैं रुकसाना पत्नी स्व. श्री मोहम्मद सलीम उम्र 45 वर्ष निवासी कुन्जडा गली बडा बाजार झालावाड़ जिला झालावाड़ राज. (326001) शपथ पुर्वक बयान करती हूँ

- (1) यह की मैं नियमित आयकर दाता नहीं हूँ।
- (2) यह की जैसे की मुझे मालूम हुआ की मेरे पति स्व. श्री मोहम्मद सलीम आयकर दाता थे।
- (3) यह की मेरे पति का स्वर्गवास 12.07.2014 को हो गया था।
- (4) यह की मेरे पति फलो की आडत व काम करते थे।
- (5) यह की मेरे पति का आयकर निर्धारण वर्ष 2011-12 का 15.03.2014 को हुआ था जो आयकर अधिकारी झालावाड़ ने पास किया था।
- (6) यह की उस आयकर निर्धारण की अपील मेरे पति ने कोटा में किसी सीए से 03.04.2014 आयकर आयुक्त कोटा के समक्ष की थी।
- (7) यह की मेरे पति का स्वर्गवास 12.07.2014 को हो गया था।
- (8) यह की उस अपील का आदेश दिनांक 21.09.2017 को आयकर आयुक्त ने एक तरफा पास कर दिया था।
- (9) यह की उस आदेश की कोपी मेरे पति के वकील ने 22.09.2017 को प्राप्त कर ली थी।

रुक्साना

- (10) यह की मुझे मेरे पति के आयकर से सम्बन्धित किसी भी कार्यवाही का मालूम नहीं था। नही में आयकर व उसके नोटीसों के बारे में समझती हूँ क्योंकि मैं ज्यादा शिक्षित नहीं हूँ।
- (11) यह की अभी कुछ दिन पूर्व ही हमारे पास कुछ आयकर के नोटीस आये तो मेने रिस्तेदारो को बताया तब उन्होने व मेने प्रयास करके कोटा में हमारे वकील साहब का पता लगाया। तब उन्होंने बताया की आपके पति का आयकर आयुक्त का आदेश 22.09.2017 को पारीत हो गया था। तथा उन्होंने मेरे पास सितम्बर अक्टुबर 2017 में समाचार मिजवा दिया था की आपके पति का कोई आयकर आदेश आया है उसके बारे में बात करनी है अतः आप कोटा ऑफिस आकर मिल लेना।
- (12) यह की मैं उस आदेश के बारे में समझ नहीं पाई तथा मैं कोटा उनके पास नहीं जा पाई अतः उस आदेश की गंभीरता को समझ नहीं सकी।
- (13) यह जब मैं फरवरी 2020 के प्रथम सप्ताह कोटा वकील साहब से मिली व आदेश की प्रति ली तथा उन्होंने मुझे इसके बारे में बताया व समझाया।
- (14) यह की हमारे रिस्तेदारों व दूसरे वकील साहब से चर्चा करने पर उन्होंने बताया की आप जल्दी से जल्दी इसकी अपील माननीय आयकर अपीलीय अधिकरण जयपुर के समक्ष दायर कर देवे तथा के कारणों को बताते हुवे व देरी माफी की प्रार्थना करते हुये।
- (15) अतः मैं आप माननीय महोदयों के समक्ष यह अपील देरी से दाखील कर रही हूँ उपरोक्त कारणों के कारण से अतः आपसे निवेदन है की उस अपील को स्वीकार कर मुझे अनुगृहीत करे।
- (16) यह कि मुझे अपने पति के आयकर कार्यालय के बारे में पूर्व में कुछ भी मालूम नहीं था। नही में जानती थी।

स्थान - झालावाड़  
दिनांक - 12.02.2020

शपथ गृहीता

#### सत्यापन

मैं रुकसाना पत्नी स्व. श्री मोहम्मद सलीम निवासी कुन्जडा गली बड़ा बाजार झालावाड़ यह सत्यापन करती हूँ की उपरोक्त पेरा 1 से 16 तक मेरी जानकारी में सत्य स्थान है कुछ भी नहीं छिपाया गया है खुदा मेरी सत्य बोलने में मदद करे।

शपथ गृहीता

6. From perusal of the record, we also noticed that the appeal has been decided by the Id. CIT(A)- Kota vide order dated 21.09.2017. The

order had been served upon the counsel of the assessee at Kota on 22.09.2017. As per condonation application and affidavit filed by the assessee before us, we are of the view that Smt. Rukshana wife and the legal heir of the deceased assessee was not having any knowledge and information about any order and income tax proceedings against his husband. As the order of the Id. CIT(A) has been served upon on the counsel at Kota not on the assessee or his family at Jhalawar and the Id. counsel could not communicate properly to the assessee or his family. As the wife of the assessee was also not having knowledge about his husband's counsel.

7. We also observe that when she received the recovery notice from TRO Kota in the first time in first week of February 2020, she has come to know about the any income tax proceedings against his husband. Thereafter she tried to locate the earlier counsel at Kota with the help of known and relatives and collected the order. Thereafter she consulted with the other counsel who advised to file the appeal with the above reasonable grounds of appeal. The Id. A/R also filed the recovery notice of February 2020 before us. The Id. D.R opposed the contention but not brought any contrary facts on record.

8. As regards the sufficiency of cause for filing the appeals belatedly, it is settled principles of law that the Courts have to take liberal approach

while interpreting the expression 'sufficient cause' for condonation of delay. In case **of Collector, Land Acquisition Vs. Mst. Katiji (1987) 167 ITR 471**, the Hon'ble Supreme Court has laid down the principle that the power to condone the delay provided under the statute is to enable the Courts to do substantial justice to the parties by disposing of the matter on merits, therefore, while considering the matters for condonation of delay, the law must be applied in a meaningful manner which subserves ends of justice and technical considerations should not come on the way of cause of substantial justice. There is no quarrel that the explanation and reasons explained for delay must be bonafide and not merely a device to cover an ulterior purpose such as laches on the part of the litigant or an attempt to save limitation in the underhand way. If the party who is seeking condonation of delay has not acted in malafide manner and reasons explained are factually correct then the Court should be liberal in construing the sufficient cause and lean in favour of such party. A justice-oriented approach has to be taken while deciding the matter for condonation of delay. However, this does not mean that a litigant gets free right to approach the court at its will.

9. Thus looking to the above facts, position and circumstances there was no default of the legal heir and there was no proper communication by the local counsel and no malafide intention of the legal heir and there

exists a sufficient and reasonable cause. If any person having knowledge that there has been passed an order, due to which a tax liability or penalty has been arose on him/her and in their view it is not correct, for that he is having option or platform to file the appeal to fight against that order with in time period allowed. Then after having knowledge he would not like to delay in filling the same until unless there is no compulsion or circumstances which prevent to him to do so. As also in the present case the legal heir was not having knowledge about the order passed by the CIT(A) being the above reasons and as she came to know she immediately all the exercised which she can do to file the appeal before us. In the case of **Vedbai vs. Shantaram Baburam Patil & Others 253 ITR 798 (SC)**, the Hon'ble Apex Court has again reiterated that the expression "sufficient cause" should receive a liberal construction. The Hon'ble court has also held that advancing of substantial justice should be of prime importance.

10. If we apply the settled principles as laid down by the Hon'ble Supreme Court as well as other courts on the facts of the present case we find that the assessee has explained cause of delay, therefore, in the facts and circumstances of the case, we condone the delay of 825 days in filing the present appeal and admit the appeal for hearing.

11. Now coming to the merits of the case. The brief facts of the case are that the deceased assessee was a fruit merchant and engaged in the business of retail trading of fruit in local market. During the year, first time he was also engaged or earned income from Arat/commission on fruits outside the city. The assessee has filed his return of income declaring the total income of Rs.1,96,850/- on 30.03.2012 for the year under consideration. The AO noted that the assessee has shown sale of Rs.27,10,510/- and as per information with the department, there was cash deposits of Rs.1,00,06,960/- in the bank account from out of station and local station. The AO has noted that on perusal of the P&L account it came to know that the assessee shown total sales of Rs.27,10,510/- out of which Rs.83,840/- from Arat and Rs.26,26,670/- from sale. Sale of Rs.67,92,481/- on Arat was done to M/s K.O.C Fruit Company B-767, New Sabji Mandi, Azadpur, Delhi. The AO has further noted that the assessee was not having bills of sales and purchase but having three diaries in place thereof. One diary for sale and purchase on Arat, another diary for the purchase of orange from farmers for sale and one diary for the sale of self. The assessee has also filed the list of the farmers from whom purchase of Rs.67,92,481/- for Arat was made. Out of which, confirmations of some farmers were also filed. The assessee also filed the list of the farmers from whom purchases of Rs.23,09,383/- were made for

self sale. The AO has asked the assessee to produce 4 persons (Sh. Ramratan, Bansilal Patidar, Ishwar Singh Rajput and Bhuralal) out of 16 from whom purchase for Arat was made for examinations. Out of which two persons (Ratan lal and Ishwar Singh Rajput) were produced and their statements were recorded by the AO. The AO has commented on the statements of the above persons and diaries and also on confirmations of M/s KOC Fruit Merchant. He found some contradiction therein but he ignored some admitted facts vide para 2.5 to 2.17 page 2 to 7 of the assessment order. On the basis of observations in above page or para the AO stated that books of accounts of the assessee is not believable and it is necessary to reject the books of accounts of the assessee and accordingly thereto the books of accounts of assessee is rejected u/s 145(3) of the Act. Thereafter the AO has noted that in the ledger account of the assessee in the books of M/s KOC Fruit Merchant there is deposits of Rs.72,09,018/- in this account in the bank account of the assessee through RTGS/NEFT by M/s KOC which is against the sale made by assessee to this firm M/s KOC. The AO has alleged that the assessee has not recorded this sale in his books of accounts as sale but has shown this sale on Arat and shown Arat of Rs.83,840/-on this sale.Thus the assessee shown total sales of Rs.27,10,510/-out of which Rs.83,840/- from Arat and Rs.26,26,670/- from own sales, which is not acceptable. The AO has

stated that the assessee has also made sale in Jaipur Agra, Noida because there were cash deposits in bank form these cities. Hence the AO has taken sales of Rs.27,10,510/- declared by the assessee, sale of Rs.72,09,018/- made to M/s KOC Fruit Merchant Delhi and also estimated the sales of Rs.12,00,000/- made in other states or cities as Jaipur, Agra, Noida. Thus he estimated or worked out total sales of Rs.1,11,19,528/- as against Rs.27,10,510/-. The AO while estimating the other cities sales of Rs.12,00,000/-has stated that there were cash deposits of Rs.50,000/-, 50,000/- and 3,000/- respectively from Jaipur Agra, Noida and the AO has alleged or assumed that the rest of sale has been taken in cash from these cities Jaipur, Agra and Noida. The AO has stated that the assessee has declared the 16% gross profit and he applied 16% gross profit on the alleged or highly estimated sales of Rs.1,11,19,528/- and determined the gross profit at Rs.17,79,124/- as against Gross profit of Rs.4,33,682/- declared by the assessee and made the trading addition of Rs.13,45,442/- as against the net profit of Rs.2,16,850/-.

12. Being aggrieved by the order of the A.O., the assessee carried the matter before the Id. CIT(A) and the Id. CIT(A) has confirmed the action of the A.O. by holding that the assessee has not able to provide the complete information during the proceedings. Despite the transaction

beyond the limit allowed the accounts were not duly audited. The Id. CIT(A) has also noticed that there was inherent contradiction in the version of the vender produces and in the books of accounts. The Id. CIT(A) has also alleged that assessee did not furnish proper and relevant evidences of cash deposits and huge turnover as compared to what was shown in his ROI. Now the assessee is in appeal before the ITAT by taking the aforementioned grounds of appeal.

13. The main grievance of the assessee relates to challenging the order of the Id. CIT(A) in confirming the trading addition of Rs. 13,45,442/-. In this regard, the Id. AR appearing on behalf of the assessee has reiterated the same arguments as were raised in the written submissions filed before the Bench and the contents of the same is as under:

*A. As in this case the main issue is that the Arat sales made to M/s KOC fruit New Delhi and other cities are own sales or Arat sales. And whether higher G.P rate should be applied or N.P rate on the basis of past history when as per the AO business was on wholesale basis. For this we have to submit as under:*

**1. Correct facts ignored by the lower authorities:** *At the very outset it is submitted the correct facts and position of the case and issue which were also available before the lower authorities with the evidence, despite they ignored the same. As the deceased assessee was a fruit merchant and engaged in the business of retail trading or sale of fruit in local. In this year or during the year first time he was also engaged or earned income from Arat/commission on sale of fruits outside the city.*

*In the year the assessee has declared the sale of Rs.26,26,670/- and he has also shown the income from the arat at Rs.83,840/- on the Arat sale of Rs.67,92,481/- on the goods of farmers. However the Id. AO has taken this Arat sale of 84,92,858/- by enhancing from Rs.67,92,481/- (enhanced by Rs.17,00,377/-) as his own sale in which he has included (Rs.72,29,018/- to M/s KOC,*

*Rs.12,00,000/- sale in other cities, Rs.83,840/- arat). The Id. AO has not accepted the Arat business of the assessee in this year. He has taken the same entire sales as own sales on assumption and presumption and applied the G.P rate for making the trading addition. As for understating we are reproducing herewith a chart for the past history.*

<b>A.Y.</b>	<b>Sales</b>	<b>Net Profit</b>	<b>N.P. rate</b>	<b>Increase in turnover</b>	<b>% of increase in turnover</b>
2006-07	1254744/-	96615/-	7.70		
2007-08	1813372/-	110676/-	6.10	558628	44.52
2008-09	1910660/-	112975/-	5.91	97288	5.36
2009-10	2565310/-	247173/-	9.63	654650	34.26
2010-11	2590370/-	178345/-	6.88	25060	0.97
Average			<b>7.24</b>		
2011-12	2626670/-	216850/-	8.00	36300	1.40
By AO for A.Y. 2011-12	1,11,19,528/-	1562292/-	14.04	8529158	330.00

*On perusal of the above chart it is clear that the Id. AO has increased the own sales turnover by 330% in comparison to last year and N.P. by 776% which is not possible as in past maximum increase in turnover was 44.52% and in N.P. 3.72%. And it is general practice that in Arat sale there is only some commission is received on the bulk sale. In commission sale the person only purchase and sale the goods on behalf of other persons in wholesale and for that he received only commission. Hence the Id. AO has wrongly taken the sales at Rs.1,11,19,528/- as against of Rs.26,26,670/-.*

*The Id. AO while making the trading addition has applied the G.P. rate and made the trading addition, when he was required to apply the N.P. rate on the basis of past history, because when the turnover has increased the expenses has also increased. Hence he must applied the N.P rate on the basis of past history.*

*And it is also very settled general principal or General Trade Practice that in the wholesale trade the marine of profit is very low in comparison to retail trading. But the lower authorities has ignored these vital facts.*

**2. No show cause notice for invoking the provisions of Sec. 145(3):** *From the perusal of the assessment order it is evident that the Id. AO has rejected the books of accounts of the assessee by invoking the provision of Sec. 145(3), without giving any show cause notice to the assessee that "why the books of accounts may not be rejected by invoking the provision of Sec. 145(3)". During the course of assessment proceeding the Id. AO only required the assessee to file the details. In response thereto the assessee filed details and reasons of the same. After receiving details he did not ask to the assessee that " As to why the books of accounts may not be rejected by invoking the provision of Sec. 145(3)*

*and the G.P rate of 16% may not be applied on the estimated turnover of Rs. 1,11,19,528/- in place of N.P.” The AO must have issued show cause notice in the interest of natural justice but he did not do so and made a huge trading addition and some disallowance. It is very settled legal position that a person(assessee) is entitled to opportunity to show cause as to why not the income of the assessee is determined in the manner as proposed by the Assessing Officer but in the instant case no such type of opportunity had been provided hence the addition so made may kindly be deleted in full. He relied on the decisions in cases of*

***Sanghi Brothers (Indore)Limited v/s Inspecting ACIT 122 CTR 19(MP)***

***Malik Packaging v/s CIT 284 ITR (All), T.C.N. Menon v/s ITO 96 ITR 148(Ker).***

***CIT vs. Vishishth Chay Vyapar ltd. (2015) 93 CCH 0070 Del HC***

***CIT vs. Oasis Hospitalities (P) LTD.\* (2011) 238 CTR 0402 : (2011) 51 DTR 0074 : (2011) 333 ITR 0119 :***

*3. Thus in the above matter there is only point that sales made to M/s KOC Fruit Company Delhi and to others out of cities are own sales or Arat Sales. For this we have already filed various details, accounts and confirmations of the farmers their statements have also been recorded. There may be some difference in statements but facts cannot be denied and no farmers has been stated that no Arat sales has been made. Sales has been made truck to truck not loose or petti. It is not possible to make retail sale of Fruit of Rs.1.11 Crore outside the Cities. And it is also admitted facts that the Fruits were sent to M/s KOC Delhi in bulk i.e in full truck and assessee had received Arat per Petti and in this business it is not possible to earn 16% Profit on such wholesale business on Arat. When in retail business the assessee had declared 7-8% N.P rate. The Id. AO has never asked any query or question to M/s KOC Delhi whether goods or fruit sent by assessee are on Arat basis or sale basis.*

*It is not the case of the Id. AO that the assessee firstly purchased the fruits from farmers, kept in his business place as stock, paid amount to them thereafter sold to M/s KOC Delhi. Rather the farmers has send the fruits directly to M/s KOC Delhi through assessee. And it is not the case of the Id. AO that the documents or diaries were made after the year or during the course of assessment proceedings.*

*In the case of **ACIT AND ANR. vs. CREAMY FOODS LTD AND ANR. (2019) 55 CCH 0377 DelTrib** held Income—Unaccounted sales—A search was conducted at assessee’s premises wherein, daily milk procurement sheets pertaining to period 01.07.2011 to 10.07.2011 and from 21.07.2011 to 31.07.2011 were seized—AO held that assessee was making unaccounted sales and same could be logically extended to entire block period—AO accepted that*

one of directors, Shri S had admitted that he was dealing in sale and purchase of milk in his individual capacity during post search enquiries—However, AO did not accept assessee's contention that it had not made **unaccounted sale** in other months of year—AO found that a logical and statistical remedy could be made from disclosed sales and undisclosed sales ratio and accordingly, made additions on account of undisclosed sales—CIT(A) observed that entire difference in purchase of milk could not be taken, as daily procurement sheets also included purchase of husk and coal used for processing of milk and not in trading of milk—CIT(A) further observed that maximum income assessable in respect of purchase and sale of milk based on documents seized was Rs. 1,00,86,337/- and since income of Rs. 93 lakhs was already offered and assessed in hands of Director, only short fall of Rs. 7,86,337/- was to be assessed as income of assessee—CIT(A) deleted addition made on account of undisclosed investment in purchases—Held, daily milk procurement sheets found and seized during search proceedings pertained to period 01.07.2011 to 31.07.2011 which means that sheets pertained to only 20 days—Total quantity of milk as per documents found during search was 4932805 litres—Quantity of milk shown in books of account was 3226341 litres which means unaccounted quantity of milk was 1706464 litres which came to 35% to recorded quantity—Applying said ratio, to quantity of milk sale recorded in books of account, at 5135335 litres came to 1797367 litres, which was wrongly taken by AO as 2716162 litres—If average selling rate per litre as per books of accounts was applied on unaccounted quantity of milk of 1797367 litres, value came to Rs. 4,71 crores whereas same was taken at Rs. 7.11 crores by AO for making addition—If profit margin of 10.56% was applied on such **unaccounted sale**, same came to Rs. 49 lakhs and director in his individual capacity had accepted **unaccounted sale** and offered Rs. 93 lakhs as his undisclosed income which was accepted by AO—This means that undisclosed income was fully covered by disclosure made by Director and, in fact, it was at a much higher figure than what was supposed to be considered by assessee—**Entire unaccounted sales could not be added because there had to be some purchases and expenses related therewith—Therefore, making addition on basis of profit margin was more logical and rationale—**Moreover, though daily milk procurement sheets were found but no document was found wherein Revenue could say that assessee was also making undisclosed purchases—AO in his whims and surmises, had considered extrapolation for only two AYs whereas, if he was so confident about seized documents and income therein, he should have extrapolated for entire block period of six years—AO did not give any reason for this—CIT(A) rightly deleted additions made by AO but erred in sustaining addition of Rs. 7,86,337/—Revenue's appeal dismissed.

**5. Recently the Honble Raj. High Court has also taken the view that the average G.P./N.P. rate of five years should be taken in the case of**

**business. Copy of Raj. High Court Order in the case of Sh. Kishan Kumar Saraiwala v/s CIT in DBIT No. 325 and 338/2011 dt. 28.08.2017 is enclosed.**

*And in the year under consideration the assessee has already declared High N.P. rate of **8%** as against average NP rate of **7.24%**. However the lower authorities has ignored the same. And applied 16% G.P rate ignoring the facts that the assessee had to expenses also in incurred so highly estimated turnover.*

*The same has been followed by this Hon'ble bench in the case of **ITO Bundi V/s Rameshwar Meena in ITA No. 420/Jp/2017 dated 30.04.2019** copy is enclosed.*

*Hence no addition is required to be made and the entire addition may kindly be deleted on this ground alone.*

*Further at the worst the N.P rate of 7.40% should be applied in place of 16.00% as applied by the Id. AO.*

**4.1 Better result and past history:** *It is pertinent to note that the appellant has declared much better NP rate vide above chart. In the year under consideration the N.P. Rate in comparison to last year and also in average has increased but both the lower authorities have ignored all these vital facts and proceed on mere assumption and guess work and Id. AO estimated higher turnover and profit on lump sum basis without bringing any material evidence on record and without any comparable case in his support. When Sec. 44AD itself allowed 8% Net Profit rate. There is no allegation of the Id. AO that the NP rate is low in comparison to last year.*

**5.** *The AO though made some allegation however, none of them are such so as to be based making addition as submitted below and more particularly when they are contrary to facts, details, legal position and submissions of the assessee were not considered judiciously. The Id. AO has also ignored the very vital facts that in the P&L account the assessee has not claimed any expenditure on account of Sales made through Arat as fright, labour, Godwan and so many other expenses. As per the P&L account the assessee has claimed the expenditure of Rs.2,16,832/- on the turnover of Rs.27,10,510/- and it is not possible that to obtain turnover of Rs.1,11,19,528/- there shall be only expenditure of Rs.2,16,832/- i.e 1.95% which is not at all possible in this line of business. When the fruits cannot be kept in stock for much time. The fruits become useless after some time and had to throw.*

*In **CIT v/s Mascot (India) Tools & Forgings (P) Ltd. 320 ITR 116 (All)** held that Books of account are supported by the purchases vouchers, vouchers for expenses, stock record, and therefore, **hypothetical and imaginary calculation of G.P. rate** cannot be made unless some specific mistake in the books of account are pointed. In the absence of any specific instances of mistake*

*in the books of accounts and other records, the book results cannot be rejected on the basis of any such hypothetical calculation based on erroneous presumption.*

**5.2 In Pankaj Diamond v/s ACIT 32 DTR 462(Ahd)(Trib.)** *It has been held that even after rejecting book results, addition can be made only on the basis of some material and not on the whims and caprice of the assessing authority. Trading results shown by the assessee compares favorably with the past accepted position in the case of assessee. Thus non maintenance of quality wise details of Diamonds did not empower the AO to make addition to the income of the assessee- Also no material was brought on record by the revenue to show that the value of closing stock shown by the assessee was incorrect or that the method of valuation consistently followed by it was incorrect.*

**6. No Fair additions done- Legal Position:** *Further it is submitted that even invoking of S.145 does not confer blind powers upon the AO and he is not at liberty to assess the income at whatever figure he wants. He is bound to make an honest estimation of income, keeping in view of the material available on record, past history of the case, local knowledge, comparable case of same area **after confronting with trading results** and repute of the assessee. He is also supposed to collect necessary material for the purpose, if so required. An arbitrary, capricious and wild estimation, as done in the present case, are not at all permitted in the eyes of the law. The Id. AO however did not confirm to its settled requirement. Refer **Brij Bhushan Lal Parduman Kumar v/s CIT 115 ITR 524 (SC)** Also kindly refer **Jotram Shershing vs. CIT 2 ITR 119 (All).** **Shree Shankar Khandsari Sugar Mills v. CIT 193 ITR 669 (Kar).***

*However, it will appear that in the present case, the Id. AO has not made a fair estimation in conformity of the above settled judicial guideline.*

**7.** *However the Id. AO and CIT(A) have blindly ignored these very vital facts of the case and proceeded on their own guess work, assumption, presumption and suspicion and it is the settled legal position that no addition can be the basis of suspicion, assumptions' and presumption. An allegation remains a mere allegation unless proved. Suspicion may be strong however cannot take the place of reality, are the settled principles kindly refer **Dhakeshwari Cotton Mills 26 ITR 775 (SC)** also refer **R.B.N.J. Naidu v/s CIT 29 ITR 194 (Nag), Kanpur Steel Co. Ltd. v/s CIT 32 ITR 56 (All).** Also refer **CIT v/s Kulwant Rai 291 ITR 36( Del).** In **CIT v/s Shalimar Buildwell Pvt Ltd 86 CCH 250(All)** it has been held that the AO made the addition merely on **suspicion** which was not desirable in the eye of law.*

**8. Blind Estimation of other cities turnover:** *The Id. AO estimated the other cities sales at Rs.12,00,000/- when admittedly there was evidence only of Rs.1,03,000/-(50,000/-+50,000/-+3,000) as Id. AO himself stated vide para 2.20*

*page 8 of assessment order. Then how on assumption, presumption and suspicion the turnover can be increased as stated in above para 10. Hence the turnover of Rs.10,97,000/-(12,00,000/- less 1,03,000) must be reduced if N.P. rate is held on the Arat Sales.*

***9. Alternatively and without prejudice to the above at the worst the N.P. rate of 7.24% average of last five years should be applied on the turnover of Rs.1,00,22,528/- (1,11,19,258/- less 10,97,000/-)***

***10. Hence in view of the above submissions the trading addition so made by the Id.AO and sustained by the Id. CIT(A) may kindly be deleted in full and oblige."***

14. On the other hand, the Id DR has vehemently supported the orders of the revenue authorities.

15. We have heard the Id. Counsels of both the parties and have perused the material placed on record. We have also deliberated upon the decisions cited in the orders passed by the authorities below as well as cited before us and we have also gone through the orders passed by the revenue authorities. From perusal of the record, we noticed that the deceased assessee was a fruit merchant, engaged in the business of retail trading of fruit in local market and also engaged or earned income from Arat/commission on fruits outside the city in this year first time as submitted by the assessee. During the scrutiny assessment the Assessing Officer has noted that the assessee has shown sale of Rs.27,10,510/- and as per information with the department there was cash deposits of Rs.1,00,06,960/- in his bank account from out of station and local station. The Assessing Officer has stated that on perusal of the P&L

account it has come to know that the appellant assessee shown total sales of Rs.27,10,510/- out of which the Rs.83,840/- from Arat and Rs.26,26,670/- from sale. Sale of Rs.67,92,481/- on Arat was done to M/s K.O.C Fruit Company, B-767 New Sabji Mandi Azadpur Delhi. In support, the assessee filed the confirmations of M/s K.O.C Fruit Company, which is placed at page No.15 of assessee's paper book.

16. We also noticed that the A.O. has stated that the assessee was not having bills of sales and purchase but having three diaries in place thereof. One diary for sale and purchase on Arat, one diary for the purchase of orange from farmers for sale of self and one diary for the sale of self as these diaries were filed before him by the assessee admittedly, which is placed at page Nos. 59-120 of the paper book. The list of the farmers from whom purchase of Rs.67,92,481/- for Arat was also filed by assessee, which is placed at page No. 36 of the paper book and confirmations of some of the farmers were also filed. Assessee also filled the list of the farmers from who, purchases of Rs.23,09,383/-, were made for self sale which is placed at page No. 37 of the paper book.

17. We also noticed that the A.O. has asked the assessee to produce 4 persons out of them namely Sh. Ramratan, Bansilal Patidar, Ishwar Singh Rajput and Bhuralal out of 16 from whom purchase for Arat was made for

examinations. The assessee produced two persons namely Ratan Lal and Ishwar Singh Rajput and the Assessing Officer has recorded their statements. On perusal of the assessment order, it has come to know that the Assessing officer has commented on the statements of the above persons, on diaries and also on confirmations of M/s KOC Fruit Merchant. The Assessing Officer found some contradiction therein vide para 2.5 to 2.17 page 2 to 7 of the assessment order. On the basis of those observations in above page or para the Assessing Officer was the view that the books of accounts of the assessee is not believable and it is necessary to reject the books of accounts of the assessee and accordingly thereto the books of accounts of the assessee was rejected u/s 145(3) of the Act and trading result of the assessee is determined u/s 144 of the Act. After that the Assessing Officer has noted that in the ledger account of the assessee in the books of M/s KOC Fruit Merchant there is deposits of Rs.72,09,018/- in this account in the bank account of the assessee through RTGS/NEFT by M/s KOC which is against the sale made by assessee to this firm M/s KOC. The Assessing Officer has stated that the assessee has not recorded this sale in his books of accounts as sale but has shown this sale on Arat and shown Arat of Rs.83,840/- on this sale. Thus the assessee shown total sales of Rs.27,10,510/- (Rs.83,840/- from Arat + Rs.26,26,670/- from own sales), which is not

acceptable. The Assessing Officer has stated that the assessee has also made sale in Jaipur, Agra, Noida because there were cash deposits in bank form these cities. From perusal of the assessment order it is revealed that the Assessing Officer has taken sales of Rs.27,10,510/- declared by the assessee, sale of Rs.72,09,018/- made to M/s KOC Fruit Merchant Delhi and also estimated the sales of Rs.12,00,000/- made in other states or cities as Jaipur, Agra, Noida by stating that there were cash deposits of Rs.50,000/-, 50,000/- and 3,000/- respectively from Jaipur Agra, Noida and assumed that the rest of sale has been taken in cash from these cities Jaipur Agra, Noida. Thus he estimated and worked out total sales of the assessee of Rs.1,11,19,528/- as against Rs.27,10,510/-. Thereafter he has stated that the assessee has declared 16% gross profit on its sale, hence he also applied the 16% gross profit on the estimated sales of Rs.1,11,19,528/- and determined the gross profit at Rs.17,79,124/- as against Gross profit of Rs.4,33,682/- declared by the assessee and made the trading addition of Rs.13,45,442/- .

18. After hearing both the parties, considering the Assessment order, CIT(A) order, paper book and rival submissions of the assessee and the Id. DR we are of the considered view that in the present matter the main issue or point is that whether the sales made or

fruits or goods supplied to M/s KOC fruit, New Delhi and other cities are assessee's own sales or Arat sales, which is to be decided first. For that we have perused the assessment order, CIT(A) order and Paper books and submission with material available before us from which we noted that the deceased assessee was a fruit merchant and engaged in the business of retail trading or sale of fruit in local market at Jhalawar. In this year first time he also engaged and earned income from Arat/commission on sale of fruits outside the city. On perusal of the record as P&P trading A/c of this year and earlier years, the assessee has declared the sale of Rs.26,26,670/- and he has also shown the income from the Arat at Rs.83,840/- on the Arat sale of Rs.67,92,481/- on the goods of farmers. However as discussed above the Assessing Officer has taken these Arat sale as assessee's own sale by enhancing from Rs.67,92,481/- to Rs. 84,92,858/- (as enhanced by Rs.17,00,377/-), which includes (Rs.72,29,018/- to M/s KOC, Rs.12,00,000/- sale in other cities, Rs.83,840/- arat). Thus Assessing Officer has not accepted the Arat business of the assessee in this year. He has taken the entire sales as his own sales and applied the G.P rate and made the trading addition. Before us the Id A/R has filed Trading and P&L A/c of earlier years and following sales and N.P arte chart of earlier years.

<b>A.Y.</b>	<b>Sales</b>	<b>Net Profit</b>	<b>N.P. rate</b>	<b>Increase in turnover</b>	<b>% of increase in turnover</b>
2006-07	1254744/-	96615/-	7.70		
2007-08	1813372/-	110676/-	6.10	558628	44.52
2008-09	1910660/-	112975/-	5.91	97288	5.36
2009-10	2565310/-	247173/-	9.63	654650	34.26
2010-11	2590370/-	178345/-	6.88	25060	0.97
Average			<b>7.24</b>		
2011-12	2626670/-	216850/-	8.00	36300	1.40
By AO for A.Y. 2011-12	1,11,19,528/-	1562292/-	14.04	8529158	330.00

We have gone through trading and P& L accounts of earlier years and also the above chart and noted that the Assessing Officer has increased the own sales turnover by 330% in comparison to last year and N.P. by 776% which seems to be abnormal if we compare with the past where maximum increase in turnover was 44.52% and in N.P. 3.72%. The lower authorities have also ignored these financial datas. The Assessing officer has also not denied with the past datas. When it was the admitted facts available on record that in the past the assessee has made sale in the local years not out of state or Cities and in the last year the turnover was only of Rs.26.26 Lacs and it is not possible to get the drastically increase in the turnover by 330%. There may be some contradiction in the statements of the farmers who were not much literate but the vital facts cannot be denied that they have admitted that they sold their goods through the assessee directly to the M/s KOC, New Delhi and get the payment from assessee. The Assessing Officer never asked any question

or query to the M/s KOC, New Delhi, whether goods or fruit sent by assessee are on Arat basis or direct sale basis, when he was having his confirmation to remove his doubt but he has failed to do rather disbelieved the contention of the assessee filed with details. Also ignored the past history of the assessee. When it is admitted facts in the market and general trend that in Arat sale there is only some commission is received by the agent on the bulk sale made through by him. In the commission sale the person only purchase and sale the goods on behalf of other persons in wholesale and for that he received only commission and it is also General Trade Practice that in the wholesale trade the margin of profit is very low in comparison to retail trading. Further when the A.O. admitted that the sales has been made out of state or cities despite the same he has not allowed the many expenses as many direct or indirect expenses, as salary, labour, truck freight, wastage, packing etc. and blindly applied higher G.P rate and the lower authorities has ignored these vital facts. On the other side the lower authorities have not rebutted these evidence by bringing any contrary material and evidences, except assumption, presumption and suspicion, on which no addition can be made is the settled legal preposition of law, as an allegation remains a mere allegation unless proved. Howsoever strong the suspicion may be but cannot take the place of reality, is the settled

principles. Thus in the totality of the above facts, documents and material placed before us in the form of Trading, P&L account of this and earlier years, diaries of transactions, confirmation of KOC Fruit Company, statements referred in assessment order etc. we are of the considered view that the sales made by the assessee's of farmers outside the cities or Arat sales not own sales and the assessee's has rightly shown commission thereon as no farmers has stated that no Arat sales has been made. Also sales have been made truck to truck not loose or petti as done in his own trading sales. It is also admitted facts that the fruits were sent to M/s KOC Delhi in bulk i.e in full truck and assessee had received Arat per Petti and in this business it is not possible to earn 16% Profit on such wholesale commission business on Arat. When in retail business the assessee had declared 7-8% N.P rate. The Assessing officer has not proved that the assessee has firstly purchased the fruits from farmers, kept in his business place as stock, paid amount to them thereafter sold to M/s KOC, Delhi. Rather the farmers have send the fruits directly to M/s KOC Delhi through assessee. It is not the case of the Assessing Officer that the documents or diaries were made after the year or during the course of assessment proceedings. Hence only addition on account of commission is to be added. There may be some defects in the books of accounts but no highly G.P rate can be applied on the Arat. Thus we hold

that the sale made by assessee out of cities are commission. We draw strength from the decision in the case of **CIT vs. Paramjit Singh (2014) 90 CCH 0499 PHHC (2015) 231 TAXMAN 0450 (P&H)** wherein the Hon'ble High Court has held as under:

*Assessing Officer did not comply with the statutory provisions of law, inasmuch, as that the assessee was not given sufficient opportunity to rebut the report of the Assessing Officer. Not only this, even the assessee was not **confronted** with letter obtained from the office of Ludhiana Stock Exchange in order to enable him to rebut or lead evidence in support of his stand, particularly when it has come on record that the forms were issued during the relevant period when the annual returns were filed on 3.3.2007, on a duly stamped form, submitted by the Registrar of Companies on 29.1.2007. The effect of the same was also duly recorded in the board meeting of the Company held on 10.3.2007. There was no occasion for the Assessing Officer to disbelieve the explanation submitted by the assessee before the Assessing Officer. The clarification sought from the office of the Ludhiana Stock Exchange during the appellate proceedings leaves no manner of doubt that the entire transaction by the Company was done in accordance with the provisions of the Companies Act and there was no deviation from the Act, which could have led the Income Tax authorities to form an opinion different from the decision of the Registrar of Companies. The judgments cited in the proposed questions of law does not support the case of the revenue as admittedly in the instant case the assessee was not given opportunity to confront with the material relied upon by the Assessing Officer during the assessment proceedings and rightly, the Commissioner of Income Tax (Appeals) and as well as the ITAT found that a sum of Rs.52,46,062/- could not be treated as loan given by the Company to the assessee being deemed income as per provisions of Section 2(22)(e) of the Act. The Commissioner of Income Tax (Appeals) in its order also extracted the statement Mrs.Pooja Kohli, Executive Director of the Ludhiana Stock Exchange. From the perusal of the statement of Mrs.Pooja Kohli, it leaves no manner of doubt that the share transfer forms were purchased and submitted on 29.1.2007 and the share holding pattern was effected on 3.3.2007, which was duly approved by the Company on 10.3.2007 in the meeting of the Board of the Directors.*

Similar view has been taken in the case of **CIT vs. Oasis Hospitalities (P) LTD. (2011) 333 ITR 0119** wherein it has been held as under:

The initial burden is upon the assessee to explain the nature and source of the share application money received by the assessee. In order to discharge this burden, the assessee is required to prove: (a) identity of shareholder; (b) genuineness of transaction; and (c) creditworthiness of shareholders. In case the investor/shareholder is an individual, some documents will have to be filed or the said shareholder will have to be produced before the AO to prove his identity. If the creditor/subscriber is a company, then the details in the form of registered address or PAN identity, etc. can be furnished. Genuineness of the transaction is to be demonstrated by showing that the assessee had, in fact, received money from the said shareholder and it came from the coffers from that very shareholder. Other documents showing the genuineness of transaction could be the copies of the shareholders register, share application forms, share transfer register, etc. As far as creditworthiness or financial strength of the creditor/subscriber is concerned, that can be proved by producing the bank statements of the creditors/subscribers showing that it had sufficient balance in its accounts to enable it to subscribe to the share capital. However, to discredit the documents produced by the assessee on the aforesaid aspects, there has to be some cogent reasons and materials for the AO and he cannot go into the realm of suspicion.—CIT vs. Divine Leasing & Finance Ltd. (2007) 207 CTR (Del) 38 : (2008) 299 ITR 268 (Del) and CIT vs. Lovely Exports (P) Ltd. (2008) 216 CTR (SC) 195 **followed**.

**(Paras 11 to 14)**

In IT Appeal No. 2093 of 2010 and IT Appeal No. 2095 of 2010, the assessees filed copies of PAN, acknowledgement of filing IT returns of the share applicant companies and their bank account statements for the relevant period, i.e., for the period when the cheques were cleared. However, the parties were not produced in spite of specific direction of the AO instead of taking opportunities in this behalf. Since the so-called directors of these companies were not produced on this ground coupled with the outcome of the detailed inquiry made by the Investigation Wing of the Department, the AO made the addition. This addition could not be sustained as the primary onus was discharged by the assessee by producing PAN, bank account, copies of IT returns of the share applicants, etc. The AO was influenced by the information received by the Investigation Wing and on that basis generally modus operandi by such entry operators is discussed in detail. However, whether such modus operandi existed in the present

case or not was not investigated by the AO. The assessee was not **confronted** with the investigation carried out by the Investigation Wing or was given an opportunity to cross-examine the persons whose statements were recorded by the Investigation Wing. As regards discrepancies found by the AO in the bank statement, suffice is to mention that the bank statements that were filed by the assessee were provided by the shareholders and were computer printed on the bank stationery. The same were filed by the assessee during the assessment proceedings without any suspicion of their being incorrect. During the assessment proceedings, the assessee was never **confronted** by the AO that there are discrepancies between the bank statements filed and the statements directly called by the AO. However, even after considering the alleged discrepancies, it does not follow that the amount of share capital was the undisclosed income of the assessee. Even the correct bank statements as claimed by the AO reveal that the assessee has received cheques from the shareholders. Therefore, there is no merit in these two appeals, which are accordingly dismissed at the admission stage itself.—*CIT vs. K.C. Fibres Ltd. (2010) 187 Taxman 53 (Del)* **followed**.

The Coordinate Bench of ITAT Jodhpur in the case of **ITO vs. Hitesh Kumar Panchori (2008) I DTR 17 (Jd. ITAT)**, it has been as under :

*“GP rate being better at 11.08% as against 10.20% in the immediately preceding year, no further addition can be made in the declared result even the books of account are rejected”*

*In the case of **ACIT AND ANR. vs. CREAMY FOODS LTD AND ANR. (2019) 55 CCH 0377 Del Trib**, wherein the Coordinate Bench of ITAT*

*Delhi as held as under:*

*“Income—Unaccounted sales—A search was conducted at assessee’s premises wherein, daily milk procurement sheets pertaining to period 01.07.2011 to 10.07.2011 and from 21.07.2011 to 31.07.2011 were seized—AO held that assessee was making unaccounted sales and same could be logically extended to entire block period—AO accepted that one of directors, Shri S had admitted that he was dealing in sale and purchase of milk in his individual capacity during post search enquiries—However, AO did not accept assessee’s contention that it had not made unaccounted sale in other months*

of year—AO found that a logical and statistical remedy could be made from disclosed sales and undisclosed sales ratio and accordingly, made additions on account of undisclosed sales—CIT(A) observed that entire difference in purchase of milk could not be taken, as daily procurement sheets also included purchase of husk and coal used for processing of milk and not in trading of milk—CIT(A) further observed that maximum income assessable in respect of purchase and sale of milk based on documents seized was Rs. 1,00,86,337/- and since income of Rs. 93 lakhs was already offered and assessed in hands of Director, only short fall of Rs. 7,86,337/- was to be assessed as income of assessee—CIT(A) deleted addition made on account of undisclosed investment in purchases—Held, daily milk procurement sheets found and seized during search proceedings pertained to period 01.07.2011 to 31.07.2011 which means that sheets pertained to only 20 days—Total quantity of milk as per documents found during search was 4932805 litres—Quantity of milk shown in books of account was 3226341 litres which means unaccounted quantity of milk was 1706464 litres which came to 35% to recorded quantity—Applying said ratio, to quantity of milk sale recorded in books of account, at 5135335 litres came to 1797367 litres, which was wrongly taken by AO as 2716162 litres—If average selling rate per litre as per books of accounts was applied on unaccounted quantity of milk of 1797367 litres, value came to Rs. 4.71 crores whereas same was taken at Rs. 7.11 crores by AO for making addition—If profit margin of 10.56% was applied on such **unaccounted sale**, same came to Rs. 49 lakhs and director in his individual capacity had accepted **unaccounted sale** and offered Rs. 93 lakhs as his undisclosed income which was accepted by AO—This means that undisclosed income was fully covered by disclosure made by Director and, in fact, it was at a much higher figure than what was supposed to be considered by assessee—**Entire unaccounted sales could not be added because there had to be some purchases and expenses related therewith—Therefore, making addition on basis of profit margin was more logical and rationale**—Moreover, though daily milk procurement sheets were found but no document was found wherein Revenue could say that assessee was also making undisclosed purchases—AO in his whims and surmises, had considered extrapolation for only two AYs whereas, if he was so confident about seized documents and income therein, he should have extrapolated for entire block period of six years—AO did not give any reason for this—CIT(A) rightly deleted additions made by AO but erred in sustaining addition of Rs. 7,86,337/—Revenue's appeal dismissed.

From the above facts and circumstances, we are of the view that the assessee has shown commission of Rs.83,840/- on the Arat sale of

Rs.67,92,481/- which comes to 1.23%, which appears in odd figure and there may be round figure. Hence looking to the defects pointed by the AO, we apply 1.5% on the Arat sale. Further the AO has taken sales (which is Arat Sales) of out station at Rs.84,92,858/-, which includes (Rs.72,29,018/- to M/s KOC, Rs.12,00,000/- sale in other cities, Rs.83,840/- Arat). However for Rs.12,00,000/- sales in other cities the Assessing Officer has brought on record only the evidence of Rs.1,03,000/- as deposits of Rs.50,000/-, 50,000/-, and Rs.3,000/- from these cities and there was no basis to taking the estimated figure of Rs.12,00,000/- without any evidence, further Rs.83,840/- has already been taken in to P&L account by the assessee. Thus after considering all these the Arat sales is calculated at Rs.73,32,018/- (Rs.72,29,018/- to M/s KOC+1,03,000/- to other cities) on which commission @ 1.5% comes to Rs.1,09,980/- against which the assessee has shown Rs.83,840/-. Hence the trading addition is sustained at Rs.26,140/- (109980-83840) and rest of addition of Rs.13,19,302/- is hereby deleted.

19. The next issue raised by the assessee relates to making of various expenses. From perusal of the record, we noticed that the A.O. has made disallowances out of various expenses at Rs. 21,803/- but this issue has not been raised before the Id. CIT(A) and order has been passed by the Id. CIT(A) on this issue. Therefore, considering the fact that the issue

under consideration has not been raised before the Id. CIT(A), therefore, we set aside this issue to the Id. CIT(A) for deciding the same in accordance with law.

20. As regards ground of appeal No. 5, which is charging of interest U/s 234 A,B,C, which is consequential in nature and does not require any adjudication.

21. In the result, this appeal of the assessee is allowed partly.

Order pronounced in the open court on 30<sup>th</sup> June, 2021.

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

Sd/-  
(संदीप गोसाईं)  
(SANDEEP GOSAIN)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur  
दिनांक / Dated:- 30/06/2021

\*Ranjan

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

1. अपीलार्थी / The Appellant- Smt. Ruksana, L/h of Late Sh. Mohammed Salim, Jhalawar.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward-Jhalawar.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 192/JP/2020)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar