

IN THE INCOME TAX APPELLATE TRIBUNAL, JODHPUR BENCH, JODHPUR

BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

ITA. No. 12/JODH/2021  
Assessment Year: 2016-17

M/s Pyarelal & Sons, Shop No. 14, New Subji Mandi, Sri Ganganagar-335001.	Vs.	The Pr. CIT-1, Jodhpur.
PAN/GIR No.: AABFP 1679 H		
Appellant		Respondent

Assessee by : Shri Rajendra Jain (C.A.),  
Smt Raksha Birla (C.A.) &  
Shri Mohit Soni (Adv.)  
Revenue by : Smt. Sanchita Kumar (CIT)

Date of Hearing : 10/08/2021  
Date of Pronouncement : 07/09/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is appeal filed by the assessee against the order of Ld. Pr.CIT, Jodhpur dated 19.03.2021 pertaining to assessment year 2016-17 wherein the assessee has taken the following grounds of appeal:-

*"1. That on the facts and in the circumstances of the case, the order passed u/s 263 by the Ld. Pr. CIT-1, Jodhpur is bad in law & bad in facts.*

*2. That on the facts and in the circumstances of the case, the Ld. Pr. CIT-1, Jodhpur erred in not recording own satisfaction in respect of assessment order passed by the Ld. AO is erroneous so*

*as it is prejudicial the interest of revenue as per provision of section 263 of the Act.*

*3. That on the facts and in the circumstances of the case, the Ld. Pr. CIT-1, Jodhpur erred in setting aside the assessment order passed by the Ld. AO without any finding as to how the assessment order passed by the Ld. AO is erroneous so as it prejudicial the interest of revenue.*

*4. That on the facts and in the circumstances of the case, the Ld. Pr. CIT-1, Jodhpur erred in recording various findings in the order are contrary to the material available on record.*

*5. That on the facts and in the circumstances of the case, the Ld. Pr. CIT-1, Jodhpur erred in setting aside the assessment order passed by the Ld. AO particularly when the Ld. AO passed the order after examination of documents produced by the assessee.”*

2. During the course of hearing, the Id AR submitted that the assessee is a partnership firm engaged in the arhat business of Fruit and Vegetables (Commission Agent ) at Sri Ganganagar. In the said business, generally farmers bring their agriculture crop by way of fruit and vegetable and through auction process, the said items are being purchased by the small shop keepers/ vendors/Hawkers/Peddlers of Fruit & Vegetables. The said arhat business is controlled by the Krishi Upaj Mandi Samiti (KUMS). The general rate of arhat (commission) in the said business is 6% and KUMS Fee is 1.5%, the same is collected by the assessee and further deposited with the KUMS. That during the assessment proceeding, the Ld. AO has made proper enquiry & verification. Further Ld, AO has properly applied his mind while framing the assessment.

3. It was submitted that in the notice issued u/s 263, it is stated that total bank deposit (Credit Side) during the relevant year was Rs.

10,21,80,533/- and it is further stated that commission @ 6% should be calculated on Rs. 10,21,80,533/-. In this regard, it was stated that total amount of credit side of bank could not be presumed as total turnover of the assessee, because there are many entries not relating to turnover which is passed through bank account, like amount received from unsecured loan & deposit, Capital introduced by the Partners, KUMS charges collected and further paid, dishonor of cheques, cancellation/reversal of RTGS etc. During the relevant year, the assessee has entered into many transactions through bank accounts which have no impact on turnover of the assessee. Detail of the these main transactions is as under:-

- (a) Capital Introduced by the partners
- (b) Amount received back from the old advances
- (c) Dishonor/Reversal/Cancellation of DD Related entries in the Bank Statement.
- (d) FD Closed
- (e) Recovery from old debtors.
- (f) Amount of Arhat (Commission) earned & Krishi Upaj Mandi Fee collected during the year. The said is around 7.5% of the actual turnover.
- (g) Amount withdrawn, used and remaining amount was redeposited in the bank on some occasion.
- (h) Some Times Perishable Fruit & Vegetable goods (as bring by the farmer) could not be sold in auction on the same day and in the compelling situation the assessee has to pass on these goods to the other arhtiyas of small city/town/mandies without any commission

(Arhat), if this is not done on the same day evening, then on the next date such fruit/vegetable could not be sold even on lesser rate.

4. It was submitted that during the assessment proceedings, the assessee has produced the Bank Statement and books of accounts. The Ld. AO has discussed the entries of bank statement and tallied the same from the books of accounts. Thus total of the credit side of Bank Statement can never be treated as turnover of the assessee, keeping in mind the above said bonafide and genuine reasons. Further as per law and as per generally accepted accounting principles, the total of the credit side of bank statement cannot be presumed as total turnover of assessee, particularly where books of accounts are properly maintained and all the entries of bank statement is duly incorporated in the books of accounts and said books of accounts are not rejected during the assessment proceedings. Thus on this ground, it cannot be said that the relevant assessment order is erroneous and prejudicial to the interest of revenue.

5. Regarding non-verification of remuneration and interest paid to partners, it was submitted that during the assessment proceedings, the original partnership deed was called upon vide AO's letter dated 16.01.2018 and the assessee has produced the original Partnership Deed for verification alongwith books of accounts and bank statements. As per Partnership deed, the Remuneration ratio is equal for both the working partners (Surender Sachdeva & Vijay Kumar Chhoda) whereas net profit sharing ratio is 60%, 25% & 15% ( Surender Sachdeva ,Vijay

Kumar Chhoda & Nisha Chhoda). Further during assessment proceedings, assessee has also filed/uploaded detailed partner's capital accounts along with copies of Partner's ITR for the relevant assessment year. The computation of total Income of the assessee firm was also filed/uploaded during the assessment proceedings, in the said computation of total income, the detailed chart about the remuneration, interest on Capital, share in Profit is clearly given. Here it is pertinent to note that during assessment proceedings the assessee has uploaded detailed partner's capital accounts, which can be verified from the e-portal of the Income Tax Department. From these documents, the remuneration & Interest paid to working partners is duly verified and the same is as per section 40(b) of the Income Tax Act. There is no loss to Revenue as far as interest on capital & remuneration to the partners is concerned. Further Partnership Deed is executed in the year 2011 and there had been no change in terms and conditions of this Partnership Deed till the year under consideration. Thus on this ground (Interest on capital & Remuneration), it cannot be said that the relevant assessment order is erroneous and prejudicial to the interest of revenue.

6. Regarding difference in bank balance as per books and as per bank statement, it was submitted that as per Balance sheet closing balance as on 31.03.2016 was Rs 4,26,268/-, whereas as per bank account statement filed during assessment proceeding balance as on 31-03-2016 in this bank Balance was Rs 4,66,812/- . The difference of Rs 40,544/- was because of a cheque issued in favour of KUMS on

31.03.2016 which was cleared in the April 2016 (on 12.04.2016). Here it is pertinent to note that the assessee has uploaded the Monthly KUMS Fee Detail during the assessment proceedings. If we go through the said Monthly detail for the month of March 2016, we find that last cheque dated 31.03.2016 is of the amount of Rs. 40,544 /- Thus this point is duly verified during the assessment proceedings. Thus on this ground also, it cannot be said that the relevant assessment order is erroneous and prejudicial to the interest of Revenue.

7. Regarding cash Payment of Rs 2,00,000/- to Sh Ranjeet Singh Lambra, it was submitted that Sh Ranjeet Singh Lambra is a farmer/Supplier and he used to sell his agriculture produce i.e potato to the assessee to be sold on commission agency basis. As per section 40A(3) read with rule 6DD, cash payment to farmer against agriculture crop is allowable as per income tax Act and rule. Thus there is no loss to revenue. Generally assessee try to make payment through banking channel, but in some exceptional circumstances when farmer highly insist for cash payment due to some urgent need or due to bank holiday or payment required after banking hours, we have to give payment to farmer to maintain cordial relations with them. Thus the same is valid, reasonable, justified and bonafide. Thus on this ground also, it cannot be said that the relevant assessment order is erroneous and prejudicial to the interest of revenue. Looking to the above said facts and circumstances of the case, it is clear that Ld. AO has made necessary enquiry and verification during the assessment proceedings. The assessee has already filed/uploaded requisite documents/explanation

during the assessment proceedings. There is no loss to revenue. Further the said assessment order is not erroneous and not prejudicial to the interest of the revenue. It was accordingly submitted that the order so passed by the Id PCIT may be set-aside.

8. Per contra, the Id. CIT/DR relied on the findings of the Id PCIT and our reference was drawn to his findings which are contained at para 5 of his order which read as under:-

*"5. The reply filed by the assessee and information/ details available on the records have been considered carefully and my observations in this regard are as under:*

*Issue/point 1:-As per details available on record, the assessee received commission @ 6% on sale of fruits and vegetable from traders and farmers. As per the bank details, total cash and credits deposits comes to Rs. 10,21,80,533/-. From the total credits available in the bank account, it is ascertained that the total commission income to the assessee should have been Rs. 61,30,832/- calculated at 6% of gross receipts/turnover. Against this, the assessee has declared gross commission of Rs.44,46,731/- only. This issue has not been verified by the AO while completing the assessment by making proper inquiries or verifications.*

*The AO is directed to examine and verify all the credit entries of the bank account and recalculate the gross commission receipt on the total turnover at the percentage declared by the assessee.*

*Issue/Point 2: During the year, the assessee has paid remuneration of Rs. 6,39,484/- each to partners, namely Sh. Surender Mohan and Sh. Vijay Kumar. The share of these partners was 60% and 25% respectively. The partnership deed is not available on record and in absence of the same, remuneration paid to the above partners*

*cannot be said to be verified. Similarly, interest amounting to Rs.8,18,723/- has been paid to the three partners, but their respective capital accounts have not been obtained by the AO during assessment proceedings. On account of this, the withdrawals, if any made by the partners also remained to be verified. While completing the assessment, the AO failed to verify and examine the claim of remuneration and interest paid to the partners.*

*The AO is directed to examine and verify the issues discussed above before allowing the remuneration and interest paid to the partners.*

*Issue/Point 3: As per balance sheet, the closing balance as on 31.03.2016 in SBBJ bank account No. 51023571106 of the assessee was Rs. 4,26,268.13. However, as per bank account statement filed during assessment proceedings, the balance as on 31.03.2016 in the said bank account was Rs. 4,66,812.13. Thus, there is a difference of Rs. 40,544/- in the closing balance as per balance sheet and as per the bank statement. This difference in the closing balance has not been verified by the AO in as much as no reconciliation statement is available on record.*

*The AO is directed to examine and verify the closing balance of the variation in the closing balance discussed above.*

*Issue/Point 4: From the details available on record, it has been noticed that cash payment of Rs. 2,00,000/- has been made to one Sh. Ranjeet Singh Lambra on 07.09.2015, whereas all the other payments to the above person have been made through banking channels. The AO failed to examine and verify the nature of this cash payment to Shri Ranjeet Singh Lambra. The AO is directed to examine and verify as to whether the cash payment of Rs.2,00,000/- to Shri Ranjeet Singh Lambra is in the nature of trade transaction or loan to the said person."*

9. We have heard the rival contentions and perused the material available on record. In the show-cause notice, the Id PCIT has highlighted four issues and has held that in respect of these issues, proper enquiries and verifications have not been carried out by the AO and the order so passed has been held as erroneous in so far as prejudicial to the interest of Revenue. We refer to each of these issues and respective contentions advanced by both the parties.

10. Regarding the first issue of understatement of commission receipts, the Id PCIT has held that assessee received commission @ 6% on sale of fruits and vegetable from traders and farmers. As per the bank details, total cash and credits deposits comes to Rs. 10,21,80,533/- and total commission income to the assessee should have been Rs. 61,30,832/- calculated at 6% of gross receipts/turnover as against Rs.44,46,731/- declared by the assessee. As per Id PCIT, this issue has not been verified by the AO while completing the assessment by making proper inquiries or verifications and accordingly, the AO was directed to examine and verify all the credit entries in the assessee's bank account and recalculate the gross commission receipt on the total turnover at the percentage declared by the assessee.

11. The contention of the assessee however is that the Id PCIT has merely presumed total credits in the bank account as total turnover of the assessee which is factually not correct for the reason that during the year under consideration, the assessee has entered into many transactions through its bank account which have no impact on turnover of the assessee such as amount received from unsecured loan &

deposit, capital introduced by the Partners, KUMS charges collected and further paid, dishonor of cheques, cancellation/reversal of RTGS etc. It was further submitted that during the assessment proceedings, the assessee has submitted the details of comparative commission receipts for year under consideration and last two years as well as monthly sales of fruits and vegetables and commission receipts, produced the Bank Statement and books of accounts and the Id. AO has examined the entries of bank statement and tallied the same from the books of accounts and no adverse finding has been recorded regarding total commission receipts. It was submitted that where books of accounts are properly maintained and all the entries of bank statement are duly incorporated in the books of accounts and said books of accounts are not rejected during the assessment proceedings, the assessment order cannot be held as erroneous and prejudicial to the interest of Revenue.

12. We find that it is a matter of record that the Assessing officer has examined the nature of assessee's business and activities carried out during the year which is buying and selling of fruits and vegetables on commission basis. It is also a matter of record that the assessee earns commission @ 6% and collects Krishi Upaj Mandi fee ranging from 0.01% to 1.5% during the year under consideration. The daily and monthly details of sale of fruits and vegetables are sent to Krishi Upaj Mandi Samittee and details thereof were submitted during the course of assessment proceedings as appearing at pages 35 to 48 of paperbook besides copy of bank statement and books of accounts. The Assessing officer has examined the same and no adverse finding has been recorded as regards the total receipts of Rs 7,41,12,467/-, commission

@ 6% on such receipts amounting to Rs 44,46,731/- and Krishi Upaj Mandi fee of Rs 905,035/- and the said figures have thus been accepted as so claimed by the assessee after due verification. It is also noted that the Assessing officer has called for and examined the comparative commission receipts reported by the assessee during the year and the last two years wherein the assessee has reported commission receipts of Rs 57,06,740 in AY 2015-16 and Rs 55,71,084 in AY 2014-15 and the reasons for such variation.

13. As against the aforesaid methodology adopted by the Assessing officer for verification of reported commission receipts by the assessee, the Id PCIT has looked at the credits standing in the bank account of the assessee and has held that the whole of such credits should be considered as revenue receipts from business activities and commission income should be computed accordingly without taking into consideration the explanation submitted by the assessee that not all credits in the bank account could be construed as revenue receipts as there are credits in form of amount received from unsecured loan & deposit, capital introduced by the Partners, KUMS charges collected, dishonor of cheques and cancellation/reversal of RTGS payments etc. We therefore find that it is not a case where the matter relating to commission receipts reported by the assessee has not been examined by the Assessing officer rather the Assessing officer has taken all reasonable steps as are expected to be taken and after calling for necessary information/documentation ranging from monthly sales figures to comparative yearly figures for last two years has accepted the commission receipts as so reported by the assessee. The Id PCIT has

not doubted the said exercise being undertaken by the Assessing officer, however, has directed to adopt a different methodology in terms of minutely examining each and every entry in the bank statement rather has directed sum total of all such entries to be construed as receipts on revenue account and computation of commission accordingly. To our mind, methodology to be adopted for examining a particular transaction or set of transactions is something which is best left to the discretion of the Assessing officer who is the best judge to device an appropriate methodology given the facts and circumstances of a particular case. At the same time, we are conscious of the fact that there are standard operating procedures devised by the CBDT and the Assessing officers are expected to follow the same while discharging their functions. However, in the instant case, we find that there are no standard operating procedures devised by the CBDT and the Id PCIT has basically suggested a different methodology than the one followed by the Assessing officer and merely by virtue of the same, the order so passed by the Assessing officer cannot be held as erroneous in nature. In any case, the explanation so offered by the assessee regarding the nature of various credit entries have not been disputed by the Id PCIT, therefore, in light of the same, we are of the considered view that there is no justifiable basis to hold that there is a failure on part of the Assessing officer by virtue of inadequate enquiries and verifications and the directions so issued to verify bank credits and recalculate commission receipts is hereby set-aside.

14. Regarding non-verification of remuneration and interest paid to two partners, the Id PCIT has held that copy of partnership deed is not

available on record as well as capital account of the partners are not available on record and has not been obtained by the AO and in absence of the same, remuneration and interest paid to two partners is not verifiable as to whether the same is in accordance with the provisions of the Act. The contention of the assessee however is that both the partnership deed as well as capital account of partners were called for and submitted during the course of assessment proceedings and uploaded on the e-proceeding portal of the department and duly verified by the AO. In this regard, we find that the AO vide notice u/s 142(1) dated 16.01.2018 has called for copy of the partnership deed as well as capital account of the partners and the same were submitted as part of the assessee's submissions placed at page 22 of the paperbook. Therefore, we find that the requisite documents have been called for by the AO and duly examined in terms of payment of remuneration and interest to the partners and no adverse finding has been recorded by the AO. It is thus not a case where the AO has failed to examine and verify the subject matter. Further, we find that during the course of revision proceedings, the assessee has again submitted copy of the partnership deed and partner's capital account and there is no finding recorded by the Id PCIT as to whether the allowance of remuneration and interest is not in accordance with the facts and relevant provisions of the Act. In light of the same, where the matter has been duly examined by the AO, the findings of the Id PCIT for fresh examination cannot be upheld and is hereby set-aside.

15. Regarding difference in bank balance as per books and as per bank statement amounting to Rs 40,554/-, it was submitted that the said difference is on account of a cheque issued in favour of KUMS on

31.03.2016 which was cleared on 12.04.2016 and necessary details regarding Monthly KUMS Fee payments were submitted and examined by the AO during the assessment proceedings. Therefore, we find that where the difference is on account of cheque issued and not presented before the close of the financial year and the details of cheque payment and its subsequent clearance after the close of the financial year is duly available on record and examined by the AO, the order so passed by the AO cannot be held as erroneous on account of non-verification and in any case, the accrual/payment to KUMS has not been disputed, therefore, the allowance thereof cannot be held as prejudicial to the interest of Revenue.

16. Regarding cash payment of Rs 2,00,000/- to Sh Ranjeet Singh Lambra, it was submitted that Sh Ranjeet Singh Lambra is a farmer and he used to sell his agriculture produce to the assessee. As per section 40A(3) read with rule 6DD, cash payment to farmer against agriculture crop is allowable as per Income tax Act and Rules and the assessee has filed requisite documents/explanation during the assessment proceedings explaining the business exigency which has been verified and accepted by the AO. In this regard, we find that the assessee has made payments to Shri Ranjeet Singh Lambra, a farmer towards supply of potato totaling Rs 23,42,829/- on as many as eight occasions and all payments have been made through cheque except a payment of Rs 2 lacs made in cash and all these details of supply and payments are available on record at page 23 of paperbook and submitted during the course of assessment proceedings. Therefore, the factum of payment being made to Shri Ranjeet Singh Lambra, a farmer towards supply of

potato is not under dispute and the assessee has reasonably explained the business exigency of making such payment in cash which is also covered in the exception so provided in Rule 6DD. Therefore, where the matter has been verified and examined during the course of assessment proceedings and the claim has been allowed as per provisions of law, the order so passed by the AO cannot be held as erroneous due to non-application of relevant law and related provisions.

17. In light of aforesaid discussions and in the entirety of facts and circumstances of the case, we are of the considered view that the necessary enquiries and examination as reasonably expected have been carried out by the Assessing officer and he has taken a prudent, judicious and reasonable view after considering the entire material available on record and the order so passed u/s 143(3) cannot be held as erroneous in so far as prejudicial to the interest of Revenue. The impugned order passed by the Id PCIT u/s 263 is accordingly set aside and the order of the Assessing officer is sustained.

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

Order pronounced in the open Court on 07/09/2021.

Sd/-  
(Sandeep Gosain)  
Judicial Member

Sd/-  
(Vikram Singh Yadav)  
Accountant Member

Jodhpur

Dated:- 07/09/2021.

\*Santosh

Copy of the order forwarded to:

1. A. The Appellant- M/s Pyarelal & Sons, Sri Ganganagar.
2. The Respondent- Pr. CIT-1, Jodhpur.

3. CIT
4. CIT(A)
5. DR, ITAT, Jodhpur.
6. Guard File { ITA No. 12/Jodh/2021 }

By order,

Asst. Registrar