

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 27/JP/2023
निर्धारण वर्ष/Assessment Years : 2013-14

Shri Vikas Dugar, D-275, Todarmal Marg, Bani Park, Jaipur	बनाम Vs.	ACIT Central Circle-02, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABXPD 6164 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Surendra Sha (C.A.)
राजस्व की ओर से / Revenue by : Smt Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 01/03/2023
उदघोषणा की तारीख / Date of Pronouncement : 06/03/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by the assessee aggrieved from the order of the Commissioner of Income Tax (Appeals)-4, Jaipur [Here in after referred as Ld. CIT(A)] for the assessment year 2013-14 dated 29.11.2022, which in turn arises from the order passed by the ACIT, Central Circle-02, Jaipur passed under Section 143(3) r.w.s 254 of the Income tax Act, 1961 (in short 'the Act') dated 22.11.2019.

2. The assessee has marched this appeal on the following grounds:-

“1. That the Ld CIT(Appeals), has erred on facts and in law in confirming the addition of Rs. 19,30,214.00 by treating the amount payable to sundry creditors M/s Blue Bird Overseas (Rs. 9,45,200.00) and M/s Madhav Krishna Jewellers (Rs. 9,85,014.00) as non genuine by not appreciating the various evidences filed by the assessee in support of the genuineness of creditors and also by not appreciating the fact that purchases from these creditors were held to be genuine.

2. That the appellant craves the right to add, delete, amend or abandon the ground of this appeal at the time or before the actual hearing of the case.”

3. The fact as culled out from the records is that the return of income declaring total income at Rs. 4,05,930/- was filed by the assessee on 28.09.2003. The case of the assessee was reopened u/s 148 of the I.T. Act, 1961 and the then AO completed the assessment u/s 148 on 29.02.2016 by making an addition of Rs. 21,73,358/- on account of unconfirmed sundry creditors & bogus credit entry in the books of accounts and total income was assessed at Rs. 25,79,290/-.

4. This appeal is in its second round of litigation and in the first round the ITAT while dealing with the appeal of the assessee passed an order in ITA No. 530/JP/2018. The direction of the bench is reiterated here in below:

“various documents in support of the purchase transaction were duly submitted during the course of assessment proceedings were not considered by the AO and even during the appellate proceedings, the Id. CIT(A) has not taken during the appellate proceedings, the assessee has furnished the evidence that these purchases were subsequently exported during the year.”
“Further, we noted that there seems to be some confusion on the correct address of these two concern and their proprietors and as a result, the noticed issued by the AO u/s 133(6) were not complied with and even the Inspector could not locate their business premises. In the entirety of facts and circumstances of the case, we deem it appropriate that the matter is remanded back to the file of the AO to examine the same afresh, after providing reasonable opportunity to the assessee.”

5. In the proceeding pursuant to the order of the bench the assessee submitted that as the transaction of the party were for the one time and the assessee have no idea of their current status. So based on the finding recorded by the predecessor officer in the first round of assessment confirmed the addition. The relevant finding this second round litigation is reproduced here in below:

“The assessee failed discharge the onus lies with him by furnished latest whereabouts of the creditors. He also failed to furnished any fact or evidence contrary to observation of the predecessor. Therefore, keeping in view of the facts and circumstances of the case as mentioned above, it is held that sundry creditors shown by the assessee as outstanding in his books accounts amounting to Rs. 19,30,214/- (as in (i) above) and Rs. 243144/- (as in (ii) above), totaling to Rs. 2173358/- are treated as bogus sundry creditors and same are treated as income of the assessee resulting in total addition of Rs. 2173358/-.”

6. As the Id. Assessing Officer added the same creditors pursuant to the remand made by the ITAT, the assessee preferred an appeal before the Id. CIT(A) vide Appeal no. 584/2015-16 & 1/12028/2015-16 e-filing Appeal No. 01/10406/2017-18, Assessee's appeal was dismissed. The relevant finding of the Id. CIT(A) is reproduced here in below:

“(D) Now coming to the assessment order passed by the AO u/s 143(3) r.w.s 254 dated 22.11.2019. It has been categorically recorded that the appellant has admitted that they do not have business dealings with the said two parties and that it was only one time deal, during the accounting year 2012-13 and that the latest addresses are not known to them. Even during the appellate proceedings no new contentions have been raised. If the purchases are accepted by the AO, it does not mean that the sundry creditors stand proved automatically. As regards the contention that the goods purchased from these parties were immediately exported, the AO has given a clear finding that-

“.....the claim of the assessee that he exported the material does not substantiate that the purchase was made from the creditor itself...”

Even during the appellate proceedings,- the appellant has failed to substantiate his claims with any evidences. Merely submitting that the purchases made from these creditors were exported will not help the appellant. The Income Tax Proceedings are based on evidences and the appellant has failed to substantiate his statements with any evidence whatsoever to prove that those very purchases were exported. The case laws relied upon by the appellant are not relevant to the facts of the case and are distinguishable.

(ii) Therefore, in view of the above discussion and looking to the facts and circumstances of the case, it is held that the AO was justified in making addition of Rs. 19,30,214/- on account of sundry creditors, no being genuine and thus, the addition made by the AO is hereby sustained. Accordingly, appellant's Ground of Appeal No. 1 is treated as dismissed. ”

7. As the assessee did not find any favor from the finding of the Id. CIT(A) preferred an appeal before the tribunal on the grounds as taken in appeal memo and reproduced at para 2 above.

8. In support of the grounds so raised by the Id. AR of the assessee, he has relied upon the following written submission.

1.1 The appellant is engaged in export of precious and semi-precious Gemstones. The details of Turnover, Gross Profit and Gross Profit ratios of preceding years and subsequent years is as under:

Assessment Year	Turnover	Gross Profit	G P rate
2010-11	4667310.00	152559.73	3.27%
2011-12	7272809.00	705324.00	9.70%
2012-13	9896360.00	752326.00	7.60%
2013-14	9116517.00	1646187.00	18.06%

1.2 The return of income for A Y 2013-14 declaring total income at Rs. 4,05,930/- was filed by the assessee on 28-09-2013. The AO completed the assessment u/s 143(3) on 29-02-2016 by making an addition of Rs. 19,30,214/- on account of following unconfirmed sundry creditors & Rs 2,43,144.00 on account of bogus credit entry in the books of accounts and total income was assessed at Rs. 25,79,290/ -. Copy of Assessment order paced at page no 1-8 of paper book).

Name of Creditor	Amount(Rs)
Madhav Krishna Jewellers	9,85,014.00
Blue Bird Overseas	9,45,200.00
TOTAL	19,30,214.00

1.3 The assessee preferred appeal against the said order before the Ld. CIT(A)-I, Jaipur vide Appeal no. 584/2015-16 & 1/12028/2015-16 e-filing Appeal No. 01/10406/2017-18. Assessee's appeal was dismissed by the Ld.

CIT(A)-I, Jaipur wherein CIT(A) hold that sundry creditors are not genuine. Copy of CIT(A) order attached.

1.4 Thereafter, the assessee filed further appeal before the Hon'ble ITAT against the order of Ld. CIT(A)-I, Jaipur sustaining the addition of Rs 19,30,414.00 made by Ld AO for unconfirmed sundry creditors. The addition of Rs 2,43,144.00 made on account of bogus credit entry was not challenged. The Hon'ble ITAT vide ITAT no. 530/JP/2018 dated 07-08-2018 restored the matter to the file of AO to decide the same afresh. Copy of ITAT order placed at page no 19-26 of paper book.) The Hon'ble ITAT held that:

"various documents in support of the purchase transaction were duly submitted during the course of assessment proceedings were not considered by the AO and even during the appellate proceedings, the Id CIT(A) has not taken cognizance of said documents. It was further contended that during the appellate proceedings, the assessee has furnished the evidence that these purchases were subsequently exported during the year. However, we find that there is no finding which has been recorded by the lower authorities examining these documents so submitted by the assessee in support of his purchase documents. Further, we noted that there seems to be some confusion on the correct address of these two concern and their proprietors and as a result, the notices issued by the AO u/s 133(6) were not complied with and even the Inspector could not locate their business premises. In the entirety of facts and circumstances of the case, we deem it appropriate that the matter is remanded back to the file of the AO to examine the same afresh, after providing reasonable opportunity to the assessee".

1.5 In compliance of direction of the Hon'ble ITAT, Jaipur to examine the evidences and documents filed in support of purchases made from alleged bogus creditors and their subsequent exports and to again verify the genuineness of the creditors, the set aside proceedings were initiated by ACIT, Central Circle-2, Jaipur. However, the Ld AO neither examined the documents & evidences filed in support of purchases and their subsequent exports nor made any efforts to locate the creditors and made the same addition of Rs 21,73,358.00. He also did not take into the fact that the payment to said creditors was made in the subsequent financial year thru banking channels.

1.6 The assessee challenged the order passed by AO ACIT, Central Circle-2, Jaipur before Commissioner of Income Tax (Appeals)-4, Jaipur. Ld

CIT (A) sustained the additions by holding that the appellant has failed to substantiate his claim with any evidences.

SUBMISSIONS

2.1 The appellant submits that it had discharged the initial burden casted upon it to prove the genuineness of purchases from Madhav Krishna Jewellers and M/s Blue Bird Overseas by furnishing following documents during assessment proceedings u/s 143(3) which are:-

- (i) Purchase bill.
- (ii) TIN under Rajasthan VAT Act.
- (iii) Permanent Account Number under Income-Tax Act.
- (iv) Confirmation duly signed by them.
- (v) Copy of Bank statement of October 2013 showing payment Payments made by RTGS in subsequent year and which stood debited in the Bank Account.

The Ld AO has not disputed the veracity of above documents.

The above documents are also placed at page no 27-35 of paper book.

2.2 During Assessment proceedings u/s 143(3) all the requisite details were submitted and books of accounts and other records were produced before AO for his examination. The Ld AO after examining the books of accounts and other relevant records, found no discrepancy therein and accepted the trading results. The total local purchases during the year were Rs 49,11,794/- and same was accepted by him. He did not rejected the books of accounts and invoked the provisions of section 145(3) of the Act. He however added the credit balance lying in the account of M/s Blue Bird Overseas Rs 9,45,200/- and in the account of M/s Madhav Krishna Jewellers Rs 9,85,014.00 holding them to be not genuine. He failed to appreciate that the payments to these creditors were made in subsequent financial year. The credit balance in the account were on account of purchases made from these parties. The Ld AO had found the purchases genuine . If the purchases were genuine, how can credit balances lying in their account be not genuine when the credit in the account has flown from the same purchase bill which he has found genuine. He also failed to appreciate that the payments to both the creditors has already been made in the month of October 2014 through RTGS. This was also mentioned in copy of account of the parties duly confirmed by them.

2.3 The payment to the above creditors was made through RTGS on 31.10.2013. Against total outstanding amount of Rs 985014.00 of Madhav Krishna Jewellers, RTGS of Rs 9,75,014.00 was made after deducting Rs 10000.00 on account of rate and quality difference. Evidence in form of Bank

statement showing the remittance of amount through RTGS to the said creditors is placed at page no 33 of paper book. There are no amount outstanding against the said creditors now. It is also submitted that the payment to said creditors was made prior to issue of notice under section 143(2) of the Act.

2.4 The Ld Assessing Officer has not rejected the books which means that the appellant has maintained the books of accounts in accordance with the provisions of section 145 of the Act. G P rate for the relevant year is higher than preceding years. is higher He has only doubted the genuineness of the suppliers but not the genuineness of purchases. The goods purchased from these parties were immediately exported. Hon'ble ITAT while remanding back the matter to AO has given unequivocal direction to examine this aspect but the Ld AO did not complied with the said direction. Copy of custom attested export bill /Airway bill is placed at page no 34-35 of the paper book. It is also a fact on record that the Ld AO has not doubted the export sales effected by the assessee. Thus, it is logical to conclude that without corresponding purchase being effected, the assessee could not have made the exports. Thus the purchases are genuine and consequently the parties from whom purchases are made is also genuine.

2.5 The evidences of export of goods purchased from the above parties were submitted before CIT(A) and the allegation that no such evidences were submitted before her is absolutely incorrect. The shipping bill of 571.96 carats of Cut and polished semi precious stones were filed before CIT(A). Tanzanite Cut stones weighing 278 cts was purchased from Blue Bird Overseas on 02.02.2013 and Tanzanite Cut stones weighing 289.71 cts was purchased from Madhav Krishna Jewellers on 04.02.2013. The total qty purchased from both the creditors was 567.71 cts and the export on 11.02.2013 was of 571.76 carats. The exports were made with in 10 days of purchase and the qty of purchases and exports made is also closely matching. Thus it is proved beyond doubt that the goods purchased from the above creditors were exported.

The Ld CIT(A) also did not examine other evidences filed before proving the genuineness of the transaction with the said creditors and payments made to them.

2.6 The Ld AO while making the addition of Rs 1930214.00 has not specified the sections under which the addition is made i.e whether the addition is made u/s 68 or under 41(1) of the Act. Addition u/s 68 of the Act can be made where any sum is found credited in the books of assessee maintained for any previous year, and the assessee offers no explanation about the nature and

source thereof or the explanation offered by him is not in the opinion of the Assessing Officer satisfactory. In the instant case, the credit is on account of purchases made from these creditors which has been found genuine by the Ld AO. The evidences and documents establishing the identity and genuineness of transactions were furnished during assessment proceedings and which were not disputed by the Ld AO. The creditors were Income tax assesses having valid PAN and were also registered under Rajasthan VAT Act. The payments were made through banking channels which proves that they were compliant of KYC norms as mandated by RBI. Thus their identity is proved beyond any doubt. As the assessee has discharged its obligations casted upon it under section 68, no addition could have been made u/s 68 in respect of trade creditors amounting to Rs 1930214.00

It is well settled that the provisions of section 41(1) can be invoked only when trading liability incurred by the assessee has subsequently found to have ceased to exist in the relevant year and the onus in this regard is on the AO to establish on evidence that there was indeed remission or cessation of such liability. In the instant case, there is no such material on record which proves that the liability has ceased to exist. The creditors have confirmed the amount due to them and same was paid to them in subsequent years through banking channels. Thus, no addition can be made u/s 41(1) as well.

2.7 The basis on which AO added the credit balances of 2 trade creditors was solely on account of non-service/reply of notices sent to them u/s 133(6) of the Act which was in utter disregard to evidences submitted during assessment proceedings like confirmation, Invoice containing all the particulars like TIN, PAN, address etc, bank statements showing payments to the said trade creditors and material so purchased from these creditors has been exported . Also the payments were made to the suppliers and no amount was outstanding, the assessee had no control or persuasive powers over them to make them reply to the notices of AO. There is no material on record which suggest that cash has travelled back to the assessee.

In this regard, many benches of ITAT and Hon'ble High Courts has held that when purchases are supported by sufficient documentary evidences then merely because of non-appearance before the AO or non-response to the notice u/s 133(6), one cannot conclude that purchases were not made by the assessee and credit balance lying in the account of said supplier on account of such purchase is not genuine. Reliance is placed on judgement Of Hon'ble Jaipur Bench of ITAT in the case of Beauty Tax V/s DCIT (Jaipur ITAT in ITA

no 508/JP/2016) dated 10.04.2017 where on identical facts, the addition was deleted. Copy of judgement is attached herewith.

PRAYER

It is submitted that the LD AO ,during set aside proceedings, did not consider the above documents and evidence furnished by the appellant during assessment proceedings and has confirmed the addition by blindly following the findings of the assessing officer who passed the order u/s 143(3). The Ld AO made no efforts to find out the whereabouts of the said creditors. The PAN of the creditors were provided to the AO and he could have find out their latest address from the Department's data base.

From the documents and evidence furnished, the genuineness of purchases is fully established. In respect to above purchases, the Ld. A.O. did not bring on record any cogent material or evidence for holding the purchases as non-genuine or purchase bills submitted by assessee as bogus. If the purchases are established, then creditors emanating from the same purchases cannot be held as bogus. He also did not considered and examined the evidences and documents furnished to substantiate that the goods purchased from the alleged bogus trade creditors have been subsequently exported.

Thus, the addition made by the AO is only on surmises and conjectures and without appreciating the material available on record in a correct perspective. It is prayed that the addition of Rs 19,30,214.00 made by treating the amount outstanding in the account of Madhav Krishna Jewelers and Blue Bird Overseas as bogus may kindly be deleted.

9. The Id. AR of the assessee in addition to the written submission also argued that the assessee has purchased the goods, the goods were exported their credit have been paid subsequently by an account payee cheque before issue of notice. Merely the amount is outstanding at the year end the amount cannot be considered as income without doubting the purchases

for which already sales are accounted by the assessee in their books of account the revenue did not found any mistaken in the books.

10. Per contra the Id. Sr. Dr representing the revenue heavily relied upon the findings of the lower authorities and submitted that the assessee made single purchase and the assessee could not substantiate the credit supported. The finding out of the Id. CIT(A) is not coming from his order. Based on these arguments she supported the order of the lower authorities.

11. We have heard the rival contentions and perused the material placed on record. The bench noted that in para 4 at page the assessee in the proceeding before Id. CIT(A) submitted as under:

“2.1 The appellant submits that it had discharged the initial burden casted upon it to prove the genuineness of purchases from Madhav Krishna Jewellers and M/s Blue Bird Overseas by furnishing following documents during assessment proceedings u/s 143(3) which are:-

- (vi) Purchase bill.
- (vii) TIN under Rajasthan VAT Act.
- (viii) Permanent Account Number under Income-Tax Act.
- (ix) Confirmation duly signed by them.
- (x) Copy of Bank statement of October 2013 showing payment Payments made by RTGS in subsequent year and which stood debited in the Bank Account.

The Ld AO has not disputed the veracity of above documents.

The above documents are also placed at page no 27-35 of paper book.”

11.1 Thus, we find from the order of the Id. CIT(A) that when the assessee has paid the amount outstanding in the books before issue of notice and the purchase and sales were not doubted merely the assessee were not found on the address and the assessee could not locate the current address of the purchases made and the same is supported by the bill, confirmation, VAT registration and subsequent account payee cheque payment by the assessee. We feel that these are the sufficient evidence to support the claim of the assessee. Merely the creditors have not replied to the notices u/s. 133(6) the purchase which is supported by various evidence cannot be denied. To support his contention the Id. AR of the assessee has relied upon the decision of the co ordinate bench of Jaipur in the case of Beauty Tax Vs. DCIT in ITA no. 508/JP/2016, the relied upon para is reproduced here in below:

“8. We have heard the rival submissions and pursued the material available on record. It is noted that the Assessing Officer has blindly followed the findings given in assessment proceedings for A.Y for 2008-09 while bringing the subject transaction with M/s Mahaveer Textiles to tax in the year under consideration. There are other transactions (other than the transaction with Mahaveer textiles) which were held to be bogus in nature by the AO in AY 2008-09 and subsequently, even the said transactions have not been held as bogus and additions were ultimately deleted by the Coordinate Bench. Further, the AO has referred to certain conclusive evidences brought on record to treat the subject transaction as bogus but we are unable to see any such evidence which has been brought on record by the Assessing Officer either during the course of assessment proceedings for AY 2008-09 or the reassessment proceedings for the impugned AY 2007-08. The only grievance of the

Assessing Officer is that the assessee has failed to produce the party so as to establish genuineness of the transaction and secondly, no payment has been made to the party till the year end. The Id.CIT(A) while confirming the disallowance has stated that though confirmation has been obtained from the party, however, a simple confirmation is not sufficient to establish the fact of purchase without elaborating what more is required from the assessee to justify its claim. Regarding non appearance of the supplier, the assessee has submitted that the supplier was based in Delhi and he has denied coming to Jaipur but at the same time, he has sent its requisite confirmation directly to the department by the registered post. Further the amount outstanding against the said purchases has been paid by account payee cheque in April and May, 2015 and now there is no outstanding amount against the said supplier. Regarding the other details submitted by the assessee, namely copy of Ledger amount and purchase bill of M/s Mahaveer Textiles, copy of the confirmation of the amount sent by M/s Mahaveer Textile Mills to the department and the fact that the materials so purchased form part of the turnover and which has been exported, there is no finding by the Assessing Officer as to reasons for nonacceptance of the said documents and in absence of that, the stand taken by the Revenue cannot be accepted. Merely non-appearance of the supplier in absence of any other corroborate evidence cannot be a basis to justify the stand of the Revenue that the transaction of purchase is bogus. In the result the purchases made from M/s Mahaveer Textiles have not been proved to be bogus by the Revenue and the said additions cannot be sustained in the eye of law in absence of any conclusive evidence brought on record. The ground of appeal taken by the assessee is thus allowed. In the result the appeal filed by the assessee is allowed.

11.2 On being consistent to the finding of the co-ordinate bench decision and considering the evidences and fact that the assessee's purchases are supported by bills, VAT number of the parties, PANno and confirmation duly signed, copy of bank statement specifying the payment subsequent the close of the financial and before issue of notices by the revenue is sufficient to claim the credit recorded in the books of the assessee and there is no justification to sustained the addition by the lower authorities. In

terms of these observations, we vacate the addition of Rs. 19,30,214/-.

In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 06/03/2023

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 06/03/2023

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Vikas Dugar, Jaipur
2. प्रत्यर्थी / The Respondent- ACIT, Circle-02, 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. 27/JP/2023 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar