

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

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 63/JP/2023
निर्धारण वर्ष/Assessment Year : 2013-14.

Shri Basant Gupta 4828, Sotians Street, KGB Ka Rasta, Johari Bazar, Jaipur.	बनाम Vs.	The DCIT, Circle-1, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AAPPG 1895 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rajeev Sogani (CA) &
Shri Rohan Sogani (CA)

राजस्व की ओर से / Revenue by : Smt. Runi Pal (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 25/04/2023
उदघोषणा की तारीख / Date of Pronouncement: 5/06/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the assessee is directed against the order dated 14.12.2022 of Id. CIT (A), National Faceless Appeal Centre (NFAC), Delhi passed under section 250 of the IT Act for the assessment year 2013-14. The assessee has raised the following grounds :-

1. In facts and circumstances of the case and in law Id. CIT (A) has erred in confirming the action of Id. AO of rejecting the books of accounts by applying the provisions of section 145(3). The action of Id. CIT (A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by accepting the books of the assessee.

2. In facts and circumstances of the case and in law Id. CIT (A) has erred in confirming disallowance to the tune of 12.5% of the alleged unverifiable purchases of Rs. 2,68,19,481/- from certain parties as mentioned in the assessment order. the action of Id. CIT (A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the disallowance.
3. In facts and circumstances of the case and in law Id. CIT (A) has erred in estimating the profit embedded in alleged unverifiable purchases of 12.5% without any basis. The action of Id. CIT (A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the disallowance.
4. The assessee craves his right to add, amend or alter any of the grounds on or before the date of hearing.

2. The brief facts of the case are that the assessee is an Individual engaged in the business of manufacturing and trading of Gem stones under the name and style of M/s. Earth Stone Inc. The assessee is an exporter having 100% export turnover during the relevant year. Assessee, for the year under consideration filed his return of income on 30.09.2013 declaring total income of Rs. 24,84,320/-. Consequently assessment was completed under section 143(3) of the I.T. Act, 1961 resulting into addition of Rs. 67,04,870/- vide order dated 20.03.2016. Against such addition, assessee preferred an appeal before NFAC, and vide order dated 14.12.2022 NFAC gave relief of Rs. 33,52,435/- to the assessee and confirmed the addition to the extent of Rs. 33,52,435/-. Against the said addition, the assessee has preferred an appeal before us.

3. After having gone through the submissions and arguments addressed by Id. A/R and also of Id. D/R and after perusal of the record, we find that assessee was liable to get his accounts audited under section 44AB of the IT Act, 1961. In the

said audit report, no qualification has been mentioned by the Auditor i.e. purchases were justified in the opinion of the Auditor, as per copy of audit report which has been placed at paper book pages 2-20. As per the specific assertion of the assessee, the assessee was maintaining stock records as evident from Form 3CD which is placed at paper book pages 9-20 and the said fact is also accepted by the AO. No defect in the quantitative details were either pointed out by the Auditor or by the AO, but the books of accounts maintained by the assessee were rejected by the AO and consequently made the addition of 25% of unverifiable purchases. The details of unverifiable purchases are contained in the written submissions furnished by the assessee which are reproduced hereunder :-

S.No.	Name of Party	Alleged Unverified Purchases	25% Disallowance
1.	H.R. Brothers	15,15,040	3,78,760
2.	Pacific Exports	15,98,182	3,99,546
3.	Unique Jewellers	15,15,170	3,78,793
4.	China Exports	15,54,939	3,88,735
5.	Ruchi Impex	16,00,497	4,00,124
6.	Amrit Exports	15,55,609	3,88,902
7.	Lucky Jewellers HUF	29,00,121	7,25,030
8.	N.K. Enterprises	20,64,910	5,16,228
9.	Bansal Jewels	20,22,573	5,05,643
10.	Rishabh Jeweller HUF	19,17,213	4,79,303
11.	Om & Company	18,81,998	4,70,500
12.	D.P. Jewellers	18,07,151	4,51,788
13.	Radiant	16,97,608	4,24,402
14.	Vishal Art	16,22,042	4,05,511
15.	Rose Jewellers	15,66,428	3,91,607
	Total	2,68,19,481	67,04,870

It was submitted by the Id. A/R that during the year under consideration assessee made total purchases of Rs. 8,24,66,170/- and the said purchases were made from 82 local parties and 4 foreign parties and during the course of assessment proceedings, as per Id. A/R, the assessee had submitted all the details with

reference to the purchases and it was categorically submitted that payments for purchases were made through banking channel. The Id. A/R also pointed out that all the receipts and movement of goods thereafter were duly reflected in the Stock Records maintained by the assessee which have been examined and accepted by the AO. From the record, we noticed that the AO issued notice under section 133(6) to 17 parties, out of which, 7 parties were sent through postal authorities and notices to remaining 10 parties were sent through Circle Inspector. It is strange on the part of the AO that he chose two different modes for serving notices. It was also pointed out that all the 7 notices which were sent through postal authorities, were duly served and 2 parties also responded confirming their supplies. However, out of 10 notices which were served through Circle Inspector, only 1 party responded to the said notice and 9 parties did not reply to the notices allegedly served through Circle Inspector as the address of those parties were incorrect. The details of service of notices to the respective parties are reproduced herein below :-

S.No	Name of Party	Fate of notice	Mode
1.	Unique Jewellers	Served	Postal Authorities
2.	China Exports	Served	Postal Authorities
3.	Ruchi Impex	Served	Postal Authorities
4.	Amrit Exports	Served	Postal Authorities
5.	D.P. Jewellers	Served	Postal Authorities
6.	H.R. Brothers	Served	Inspector
7.	Pacific Exports	Not served	Inspector
8.	Radiant	Not served	Inspector
9.	Vishal Art	Not served	Inspector
10.	Om & Company	Not served	Inspector
11.	Rishabh Jeweller HUF	Not served	Inspector
12.	Lucky Jewellers HUF	Not served	Inspector
13.	N.K. Enterprises	Not served	Inspector
14.	Bansal Jewels	Not served	Inspector

15.	Rose Jewellers	Not served	Inspector
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Perusal of the above table revealed that the notices which were sent through Circle Inspector remained unserved. Thus in these circumstances it was specifically pointed out by the Id. A/R that the report of the Circle Inspector cannot be relied upon because of the following reasons :-

- (i) There was no reason for Id. AO for serving notices on 10 parties through Inspector. All the notices could have been sent through postal authorities also.
- (ii) Inspector took 10 notices out of which only one (H.R. Brother) was served by him and for the remaining 9 notices he reported that the addresses were incorrect. Whereas, all the notices which were sent through postal authorities were duly served. This leads to a reasonable belief that Inspector did not make any effort for serving any of the notices.
- (iii) Inspector reported the addresses to be incorrect or incomplete. It is to be noted that all the addresses were complete in all respect because Plot No., Street, Area, etc. have been duly mentioned. Thus, the allegation of Inspector is patently wrong.
- (iv) Inspector at one hand mentioned that the address is incorrect and on the other hand has reported that no such firms/ persons were found. Thus, Inspector himself gave contradictory findings.
- (v) Inspector merely mentioned that on enquiries it was told that no firm/ person was there at the given address. It is submitted that in ideal scenario he should have provided name, address, statements, etc. of the persons from whom enquiries were made. However, Inspector merely just mentioned that enquiries were made. He could not even mention the names of the persons from whom so called enquiries were made.

- (vi) H.R. Brothers on whom Inspector reported that he served notice gave a letter through its Partner that no person from Income Tax department contacted the firm for serving any notice **[PB: 173]**.
- (vii) Inspector categorically mentioned that he went to serve letters dated 20.01.2016. In spite of this fact he issued the report dated 22.01.2015. This shows that the report was issued in a care free, careless manner and without application of mind.

After having gone through the submissions of both the parties on the conduct of the service carried out by the Circle Inspector, the Inspector's report on the face of it does not inspire confidence and the only reasonable inference which can be drawn, in view of the above fact is that the Circle Inspector did not conduct any enquiry and he only prepared the report. Although it was pointed out before us that on receipt of notice of AO wherein the assessee was for the first time informed that notices remained unserved on few parties, then the assessee on his own contacted the parties and he was informed that no person from Income Tax Department contacted those respective parties ever. Therefore, in such circumstances, it was pointed out by A/R that the report of the Circle Inspector cannot be used as an evidence against the assessee as the assessee was never provided an opportunity to cross examine the Inspector which is against the principles of natural justice. From the records, we noticed that the assessee had submitted required details along with supporting documentary evidences as regards the purchases made by him from the parties and the details in the tabular form are reproduced herein below :-

S.No	Name of Party	Address	PAN	Amount	Invoices	Confirmation	Registration Certificate	Bank Statement
1	H.R. Brothers	3936, Near Mosque Paharganj, Surajpole Gate, Jaipur- 302003	AAMFM2235R	15,15,040	✓ [PB: 177-179]	✓ [PB: 174]	✓ [PB: 175-176]	
2	Pacific Exports	3933, Dhandia House, K.G.B Ka Rasta, Johari Bazar, Jaipur-302002	ABPPV9964J	15,98,182	✓ [PB: 187-190]	✓ [PB: 180]	✓ [PB: 181]	✓ [PB: 182-186]
3	Unique Jewellers	G-33, Khetan Tower, Central Spine, Vidhyadhar Nagar, Jaipur- 302039	ABTPV4181H	15,15,170	✓ [PB: 198-202]	✓ [PB: 191]	✓ [PB: 192]	✓ [PB: 193-197]
4	China Exports	A-403, Shivanand Marg, Malviya Nagar- 302017	AMWPV5401C	15,54,939	✓ [PB: 209-213]	✓ [PB: 203-204]	✓ [PB: 205]	✓ [PB: 206-208]
5	Ruchi Impex	99, Gopal Puri, Pratap Nagar, Sanganer, Jaipur- 302033	ACRPV8041R	16,00,497	✓ [PB: 220-224]	✓ [PB: 214-215]	✓ [PB: 216]	✓ [PB: 217-219]
6	Amrit Exports	43, Sita Ram Colony-1, Tonk Road, Sanganer, Jaipur- 302033	BNBPS0896R	15,55,609	✓ [PB: 229-234]	✓ [PB: 225-226]	✓ [PB: 227]	✓ [PB: 228]
7	Radiant	92, Goverdhan Nath Ki Gali, Chaura Rasta, Jaipur-302006	BMPPS9300H	16,97,608	✓ [PB: 236-239]		✓ [PB: 235]	
8	Vishal Art	2911, Kumharon Ki Gali, Jaipur -302002	AEIPH2879A	16,22,042	✓ [PB: 241-247]		✓ [PB: 240]	
9	Om & Company	1648, Chaura Rasta, Jaipur-302006	ARCPP005H	18,81,998	✓ [PB: 249-254]		✓ [PB: 248]	
10	D.P. Jewellers	6/334, Vidhayadhar Nagar, Jaipur- 302039	AFNPP0037J	18,07,151	✓ [PB: 257-264]	✓ [PB: 255-256]		
11	Rishabh Jeweller HUF	891, Sanjay Nagar, Near Vidhyut Nagar, Ajmer Road, Jaipur-302021	AAPHR7305Q	19,17,213	✓ [PB: 268-273]	✓ [PB: 265-267]		
12	Lucky Jewellers HUF	627, Vidhyut nagar, Ajmer Road, Jaipur- 302021	AABHL7707C	29,00,121	✓ [PB: 277-284]	✓ [PB: 274-276]		
13	N.K. Enterprises	63, R F C Colony, Vaishali Nagar, Jaipur- 302021	ABXPS4300F	20,64,910	✓ [PB: 288-295]	✓ [PB: 285-287]		
14	Bansal Jewels	4828, KGB ka Rasta, Johari Bazar, Jaipur-302003	APPPB5649L	20,22,573	✓ [PB: 299-304]	✓ [PB: 296-298]		
15	Rose Jewellers	627-A, Vidhyut Nagar, Ajmer Road, Jaipur-302021	ABTPJ9189P	15,66,428	✓ [PB: 308-311]	✓ [PB: 305-307]		
	Total			2,68,19,481				

From the above table and the documents placed on record in paper book, we find that assessee discharged his complete onus by furnishing name, address, PAN, invoices, registration certificate, affirmation, bank statement of the parties from whom purchases were made and further we also noticed that out of 15 parties, notices were served on 6 parties and for remaining 9 parties no reasonable efforts for service of the notice were made by the Inspector. We have also come across one of the important facts which relates to the controversy or question is that in the previous assessment proceedings undertaken in the case of assessee, the books of

the assessee were accepted and in this regard order of assessment has already been placed on record which is at paper book page 168. It is pertinent to note that it is not the case of the AO that the parties from whom purchases were made were paper companies or firms operated by entry providers like Rajendra Jain Group etc. There is no allegation that the parties from whom purchases were made were engaged in providing accommodation entries. Rather, it was submitted that merely because the so called notices were not served by the Inspector could not lead to the inference that the parties were bogus. Since in the present case the books of accounts were rejected by the AO and now it is settled proposition of law that once the books of accounts of the assessee are rejected under section 145(3) of the IT Act, 1961, the only recourse available to the AO is to make assessment under section 144 and, therefore, for making assessment under section 144, the past history of the assessee or history of similarly situated other businessmen/traders is the best guide. We concur with the said settled legal position and in this regard we draw strength from the decisions of Hon'ble Jurisdictional High Court in the case of Inani Marbles (P) Ltd. (2009) 316 ITR 125 (Raj.) and also Hon'ble Delhi High Court in the case of Action Electricals (2002) 258 ITR 188 (Delhi) wherein in both the above cases it has been categorically held that the past history of the assessee would be one of the reliable guidelines to make or not to make any estimation/addition and on this aspect our stand also fortified with the decision of Coordinate Bench of the ITAT Jaipur in the case of Swarna Ganga Jewellers vs. ACIT in ITA No. 833/JP/2011 wherein it has been held as under :-

"However, the Jaipur Benches are also taking a consistent view that where addition is made on the basis of unverifiable purchases is not justified as the addition can be made taking into consideration the past history of the case and current events of the case as held by Hon'ble Rajasthan High Court in case of CIT vs. Inani Marbles Pvt. Ltd., 316 ITR 125 (Raj.) and in case of Gotan Lime, 256 ITR 243. In recent judgment in case of Amrapali Jewels Pvt. Ltd., 65 DTR 196 (Raj.), the Hon'ble Rajasthan High Court has also upheld the view that in case of unverifiable purchases only section 145(3) can be invoked but no addition can be made on the basis of unverifiable purchases as the addition can be made after taking into consideration the past history and current events of the case. It is further seen that in immediately preceding year i.e. 2006-07 against disclosed GP rate of 24.78% the AO applied GP rate of 26.23%. The addition made by AO was deleted by Id. CIT (A) and the Tribunal has confirmed the order of Id. CIT (A) vide its order in ITA No. 457/JP/2009 dated 30.09.2009. The Tribunal has held that GP rate declared by assessee is quite reasonable. In the year under consideration, the GP rate has gone very high i.e. 35.36% against 24.78%, therefore, no addition can be made on the basis of past history. However, the fact remains that certain purchases remained unverifiable, therefore, we are of the view that if an addition of ` 1 lac is sustained which will take care of leakage of revenue, if any, that will meet the ends of justice. We order accordingly."

Thus in our view also, the only recourse available as per the facts and circumstances of the present case is estimation of income. Though NFAC in this case allowed part relief to the assessee , but sustained the addition made with regard to specific transaction. Be that as it may, even otherwise the assessee has also alternatively raised argument that in case additions are to be sustained then in that eventuality the said additions are to be restricted on the sales corresponding to unverified purchases. In this regard we have gone through the decision of Hon'ble Jurisdictional High Court in the case of Amrapali Jewels Pvt. Ltd., 65 DTR 196 (Raj.)

wherein the Hon'ble High Court has approvingly upheld the following propositions by elaborately quoting the relevant portion of the order of Hon'ble ITAT Jaipur Bench :-

- (i) After rejecting the books of accounts, profit estimation should be based on appropriate application of G.P. rate taking into consideration the past history of the case.
- (ii) **The trading addition should be restricted on sales corresponding to unverified purchases and should not be applied on the entire sales.**

Thus, in view of the above Rajasthan High Court judgment, the GP variation can be done, at worst, on the profit emanating from the transactions from such alleged unverified parties. The assessee has reiterated that out of 15 parties notice on 6 parties was duly served. Therefore, no addition can be made on account of purchases made from such 6 parties amounting to Rs. 95,48,406/-. Therefore, we are of the view that at most a GP percentage can be applied on the remaining purchases of Rs. 1,72,71,075 (2,68,19,481-95,48,406) being made from 9 parties on whom it has been observed that the so called notices were not served.

The Trading a/c of the purchases from 9 parties on whom so called notices were not served is as under:

Particulars	Amount	Particulars	Amount
To Purchase	1,72,71,075	By Sales	1,95,70,623
To Gross Profit	22,99,548		
Total	1,95,70,623		1,95,70,623

Thus, the most the above trading account can be disturbed.

The Id. A/R further submitted that even if additions are to be made, subsequent to the rejection of books of accounts, the most, the previous year's GP of 12.99% should be applied on sales of Rs 1,95,70,623/- pertaining to the purchases from 9 parties on whom the so called notices were not served. This would result into GP of Rs. 25,42,223/- [Rs. 1,95,70,623 * 12.99%]. Accordingly, as the assessee has already declared GP of Rs 22,99,548/- on such sales, the most, addition of Rs 2,42,676/- [being Rs. Rs. 25,42,223 Minus Rs 22,99,548] may be made to the income of the assessee. The Id. A/R also submitted that Id. AO misdirected himself in placing reliance on the judgment of **Hon'ble High Court** in the case of **Sanjay Oilcake Industries vs. Commissioner of Income Tax 160[10 DTR (Guj.) 153]**. In the Sanjay Oil Cake case, there was a factual finding of inflation of purchases to the extent of 25%. In view of this, Sanjay Oilcake case is distinguished. The cases relied upon by the AO are not applicable to the facts of present case of the assessee and are totally distinguishable.

3.1. Thus while following the decision of Hon'ble Jurisdictional High Court in the case of Amrapali Jewels Pvt. Ltd., supra, we restrict the trading addition by applying the previous year's GP @ 12.99% on the sales of Rs. 1,95,70,623/- pertaining to the purchases from 9 parties on whom the so called notices were not served. This would result into GP of Rs. 25,42,223/- (Rs. 1,95,70,623 x 12.99%). The assessee has already declared GP of Rs. 22,99,548/- on such sales. Thus, an addition of Rs. 2,42,676/- (Rs. 25,42,223 – Rs. 22,99,548/-) is sustained.

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

Order pronounced in the open court on 5/06/2023.

Sd/-

(राठौड़ कमलेश जयंतभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 5/06/2023.

Das/

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

1. अपीलार्थी / The Appellant- Shri Basant Gupta, Jaipur.
2. प्रत्यर्थी / The Respondent- The DCIT, Circle-1, 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. 63/JP/2023}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar