

**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH 'DB', JABALPUR**

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Yogesh Kumar US, Judicial Member

ITA No. 71/JAB/2023 : Asstt. Year: 2017-18

Rakesh Kumar Soni, C/o Amarnath Enterprises Sarafa Bazar, Katni, MP 483501	Vs	The ACIT, Central Circle, Jabalpur, MP 482001
(APPELLANT)		(RESPONDENT)
PAN No. AWJPS 1734 L		

**Assessee by : Sh. Sapan Usrethre, Adv.
Revenue by : Sh. Ravi Mehrotra, JCIT-DR**

Date of Hearing: 28.11.2023	Date of Pronouncement: 29.11.2023
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by assessee against the order of Id. CIT(A)-3, Bhopal dated 22.03.2023.

2. The assessee has raised the following grounds of appeal as under:-

1. The learned Commissioner of Income tax (Appeal) was not justified in not quashing the assessment proceeding as the AO fails to decide the Objection raised regarding the reopening of assessment which is mandatory condition before proceeding to assessment in view of Honble Apex court Judgment in the case of GKN Drive Shaft Vs ITO.

2. The learned Commissioner of Income tax (Appeal) was not justified in not quashing the assessment proceeding as the AO was not justified in completing the proceedings under section 147 of the Act merely on the basis of preliminary statement recorded. No independent mind was applied by the AO to reach to the conclusion and hence assessment is bad in law.

3. The learned Commissioner of Income tax (Appeal) was not justified in deleting the addition of Rs.24,00,000/- by

misinterpreting the words of loose paper, which does not belong to the appellant.

4. The learned Commissioner of Income tax (Appeal) was not justified in deleting the addition of Rs.24,00,000 on the basis of loose paper which does not contain any thing regarding appellant and hence it is dumb document.

5. Without Prejudice to above the appellant is raising alternate ground that the learned CIT(A) fails to follow the settled issue as decided by Honble Jurisdictional High court that if at all addition has to be made it is the net profit which is to be taxed.

3. In this case, an addition of Rs. 24,00,000/- has been made based on the document marked as LP-1, Page no. 3. The same has been reproduced at page no. 8 of the Assessing Officer. The person who had written this page has recorded the amount payable and paid by the appellant in connection with the purchase of Silver Bar or "Dora". Financial transactions written on this page is being deciphered as under:-

" Payble	=	1183350
29447 x 40830	=	1202321
Total Payable	=	2385671
Cash Received	=	<u>2400000</u>
Balance Returnable	=	14329"

"Balance to be delivered
1Kg x 29825
1Kg x 29850"

4. Before the Id. CIT(A), the assessee submitted that the details form part of the unaccounted trading done by the assessee, hence the gross profit may be considered as the income and pertaining to the material found i.e. page of LP-1. The Id. CIT(A) held that the amount represent unexplained investment and affirmed order of the Assessing Officer.

5. Before us, the Id. AR reiterated the arguments taken up before the Id. CIT(A) and the Id. DR relied on the orders of the authorities below.

6. Heard the arguments of both the parties and perused the material available on record.

7. We have gone through the details mentioned on the paper which clearly demonstrates that the detail on the paper pertains to the unaccounted cash business transaction entered by the assessee. Hence, GP has to be treated as the income earned. The assessee has earned GP of 3% in the regular business. The Id. AR has also fairly agreed to the proposal that double the normal GP i.e. 6% be considered as GP on the amount of Rs. 24,00,000/- mentioned on the page 3 LP-1, as VAT and other expenses are also saved on this transaction. Hence, we direct the AO to determine GP @6% on the unaccounted turnover of Rs. 24,00,000/-

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

Order Pronounced in the Open Court on 29/11/2023.

Sd/-
(Yogesh Kumar U.S)
Judicial Member

Sd/-
(Dr. B. R. R. Kumar)
Accountant Member

Jabalpur Dated: 29/11/2023

NV, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT JABALPUR