

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

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

आयकर अपील सं./ITA No. 180/JP/2024  
निर्धारण वर्ष / Assessment Years : 2018-19

Dilip Kumar Jain Bazar No. 1, Ramganjmandi Kota	बनाम Vs.	Assistant Commissioner, Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABNPJ 0091 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. S. L. Poddar (Adv.)  
राजस्व की ओर से / Revenue by : Sh. Arvind Kumar (CIT)

सुनवाई की तारीख / Date of Hearing : 01/04/2024  
उदघोषणा की तारीख / Date of Pronouncement: 22/04/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by assessee is arising out of the order of the Commissioner of Income Tax, Appeal, Udaipur-2 dated 22/12/2023 [here in after (NFAC)/ Id. CIT(A)] for assessment year 2018-19 which in turn arise from the order dated 09.12.2019 passed under section 143(3) r.w.s 153B(1)(b) of the Income Tax Act, by ACIT, Central Circle-Kota.

2. In this appeal, the assessee has raised following grounds: -

*“1. Ground under the facts and circumstances of the case the learned Commissioner of Income Tax Appeal, Udaipur has wrongly disallowed our contention for deletion of the addition of Rs. 459300 as unaccounted sales. The appellant craves the leave to add, alter, amend or modify any of the above appeal grounds on or before hearing.”*

3. Succinctly, the fact as culled out from the records is that assessee is an Individual and derives income from business, agriculture and other sources etc. A search & seizure operation under section 132(1) of the Income-tax Act, 1961 (hereinafter "the Act") was Carried out on 15.11.2017 at the various premises of "Golden Group, Suket, Ramganjmandi, Kota," to which the assessee belongs. The case of the assessee was also covered under search proceeding. Consequent to search action, the case of the appellant was centralized to Central Circle-Kota. Assessee had filed his return of income u/s 139 of the Act on 27.10.2018 at the total income of Rs.7,50,180/- and agriculture income of Rs. 1,03,020/-. Notice u/s 143(2) of Act was issued by the AO on 15.02.2019 which was duly served. Further, notice under sub section (1) of Section 142 of the Act was issued by the AO on 27.05.2019 along with questionnaire/Annexure-A requiring certain details/information, which was served upon the assessee.

3.1 During the Survey proceedings at the site of mines of M/s Dilip Kumar Moti Lal, Chechat dated 15.11.2017, the stock of Kota Stone was

inventoried and as per the physical verification of Stock, total 10,70,682 Sq. Feet of Kota Stone was found of various sizes. However, as per the Production Register (Stock Register) maintained by the assessee, total stocks of Kota Stone comes to 11,78,109 Sq. Feet. Thus, the stock of kota Stone measuring 1,07,427 Sq. Feet (1178109-1070682) was found short in comparison to the production register maintained by the assessee as on 16.11.2017. Meanwhile, the assessee was asked to explain the reason of short stock found in comparison of stock as per books, vide Q. No. 14 of the statement recorded by the assessee on 07.03.2018. In reply, thereto, the assessee had stated that after correcting some clerical/mathematical error in both of stocks, the difference of stocks, which found short in comparison to production register maintained by the assessee comes to 45,930 Sq. Feet instead of 1,07,427 Sq. Feet.

3.2 Further, the assessee was asked vide Q. No. 15, as to why his Firm has been found to have less stock of 45,930 Sq. Feet and why the shortage might not be considered as unrecorded sale by him and should be considered as an unaccounted & undisclosed income of his firm M/s Dilip Kumar Moti lal for the current financial year i. e. F.Y. 2017-18 in addition to regular sale. He was also asked to state about the average sale price of

Kota Stone. In reply, thereto, the assessee had stated that the average per Sq. Feet Sale price of Kota Stone comes to Rs. 10 per Sq. Feet. Further, he had also stated in his statement that the reason of short stock found in comparison of Production Register is due to damages in Kota stone. The reply of assessee was not believable since entire stock was inventorised correctly by the team members of survey party in the presence of main site supervisor who is also key member of the group. No stocks were left out & uncounted. One reliable key member of the assessee group was also available with the team members of Survey party for inventorying physical stock at the time of stock taking. Thus, the contention of the assessee that short stock found was due to damages in Kota Stone was not justifiable.

3.3 In this regard, a show cause notice was issued to the assessee on 23.11.2019 that why the unaccounted/unrecorded cash sale of Kota Stone of Rs. 4,59,300/- should not be added in total income of the assessee. In response to this show cause notice, the A/R of the assessee has filed his reply on dated 26.11.2019.

3.4 The reply of the assessee is considered and placed on record but not found convincing, as the explanation submitted by the assessee is not

acceptable. Therefore, the value of short stock of Kota Stone found amounting to Rs. 4,59,300/- is added in the total income of the assessee as unrecorded/unaccounted cash sale.

4. Aggrieved, from the said order of assessment the assessee has filed an appeal before the Id. CIT(A) who after hearing the contention of the assessee dismissed the appeal of the assessee by giving following findings on the issue:-

“4.6 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

The AO noted in this case that during the survey proceedings the inventory of stock was prepared by survey team in the presence of assessee's supervisor and key person of the group. The inventory of stock found was also verified and signed by them. The assessee or has representative not objected the method of stock taking during survey action and signed the inventory documents after his satisfaction only. Therefore, the value of short stock of Kota Stone found amounting to Rs. 4,59,300/- is added in the total income of the assessee as unrecorded/unaccounted cash sale.

*The appellant argued that the nature of Kota stone, being a natural material, inherently presents challenges in accurate quantification. The process of counting approximately 3-4 lakh pieces of Kota stone, particularly when situated in an open field, introduces a degree of uncertainty. Human error is inevitable in such manual counts, a fact underscored by discrepancies identified in the calculation sheets during the inventorying process.*

The reply of the appellant is considered. During the survey proceedings the inventory of stock was prepared by survey team in the presence of assessee's supervisor and key person of the group. The inventory of stock found was also verified and signed by them. The assessee or has representative not objected the method of

stock taking during survey action and signed the inventory documents after his satisfaction only.

It was stated that during the post-search proceedings, the mistakes made has been identified and brought in notice of department as well wherein miscalculations were evident in the inventory calculation sheets, which were executed with the assistance of calculators. This discovery emphasizes the potential for inadvertent errors, further raising concerns about the precision of counting 3-4 lakh individual pieces of Kota stone without any margin for mistake.

The issue of mistakes identified by the appellant has been considered by the AO in the assessment order. It is noted by the AO that as per the physical verification of Stock, total 10,70,682 Sq. Feet of Kota Stone was found of various sizes. However, as per the Production Register (Stock Register) maintained by the assessee, total stocks of Kota Stone comes to 11,78,109 Sq. Feet. Thus, the stock of kota Stone measuring 1,07,427 Sq. Feet (1178109-1070682) was found short in comparison to the production register maintained by the assessee as on 16.11.2017. Meanwhile, the assessee was asked to explain the reason of short stock found in comparison of stock as per books, vide Q. No. 14 of the statement recorded by the assessee on 07.03.2018. In reply, thereto, the assessee had stated that after correcting some clerical/mathematical error in both of stocks, the difference of stocks, which found short in comparison to production register maintained by the assessee comes to 45,930 Sq. Feet instead of 1,07,427 Sq. Feet. The revised positions of stocks are as under:

Stocks as per physical verification as on 16.11.2017	10,75,815 Sq. Feet
Stocks as per Production Register (Stock Register maintained by the assessee as on 16.11.2017	11,21,475 Sq. Feet
Difference of Stock (Short)	(-) 45,930 Sq. Feet

Further, the assessee was asked vide Q. No. 15, as to why his Firm has been found to have less stock of 45,930 Sq. Feet and why the shortage might not be considered as unrecorded sale by him and should be considered as an unaccounted & undisclosed income of his firm M / s Dilip Kumar Moti lal for the current financial year i. e. F.Y. 2017-18 in addition to regular sale. He was also asked to state about the average sale price of Kota Stone. In reply, thereto, the assessee had stated that the average per Sq. Feet Sale price of Kota Stone comes to Rs. 10 per Sq. Feet. Further, he had also stated in his statement that the reason of short stock found in comparison

of Production Register is due to damages in Kota stone. The AO further noted that the claim of damage was not substantiated by the appellant.

Considering the above notings of the AO, it is seen that the AO has considered the issue of calculation mistake in the assessment order. With regard to damages, the appellant could not substantiate the claim of damages therefore, the claim is not found to be acceptable in the absence of any supporting evidence.

It is further argued that the stock variance of 45,930 square feet represents a mere fraction of the total stock of 11,21,475 square feet. This nominal difference aligns with established judicial precedents that have recognized and accepted minimal discrepancies in stock levels as inconsequential.

The appellant is not able to explain the difference in stock of Rs. 4,59,300/-. The difference is not small as claimed by the appellant. During the survey proceedings the inventory of stock was prepared by survey team in the presence of assessee's supervisor and key person of the group. The inventory of stock found was also verified and signed by them. The assessee or his representative has not objected the method of stock taking during survey action and signed the inventory documents after his satisfaction only. The calculation mistakes were also considered by the AO in the assessment proceedings. The appellant has not furnished any supporting evidence in support of the claim of damages. The judicial decisions are applicable on particular facts of the case and cannot be generalized in each case. Therefore, the addition made by the AO is found to be justified as unaccounted sales. The addition is confirmed.

This ground of appeal is treated as dismissed.

6. The last Ground of appeal is that the appellant craves the leave to add, alter, amend or modify any of the above appeal grounds on or before hearing.

6.1 The appellant has not added, altered, amended or modified any of the above mentioned grounds of appeal. Accordingly such mention by the appellant in its ground is treated as general in nature, no needing any specific adjudication and is accordingly treated as disposed of.

7. In the result, the appeal of the appellant is treated as partly allowed.”

5. As the appeal of the assessee was partly allowed, the assessee filed the present appeal against the finding of the Id. CIT(A) on the ground as reproduced hereinabove. To support the ground so raised by the Id. AR of the assessee, has filed the written submissions and the same is reproduced herein below.

STATEMENT OF FACTS -

The assessee is an individual and derives income under the head "business", "other sources" and agricultural income. Search and seizure action u/s 132 of the IT Act, 1961 was carried out on 15/11/2017 in the case of "Golden Group" of Suket, Ramganjmandi, to which the assessee belongs. The case of the assessee was also covered under search and seizure action. The assessee filed return of income declaring total income of Rs. 7,50,180/- and agricultural income of Rs.103020/-. Notice u/s 143(2) was issued on 15/02/2019 and subsequently notice u/s 142(1) on 27/5/2019. The assessment stands completed on 09/12/2019, inter-alia, by making the following additions :-

(i) Unaccounted sales of Kota stone

on the basis of slips found during

search

Rs.69,575/-

(ii) Deemed sale of Kota Stone

on account of stock found short to

this extent

Rs.459300/-

2. Aggrieved with the order passed by the Learned Assessing Officer, the assessee preferred appeal before the Learned CIT(A). The Learned CIT(A), vide order dated 22/12/2023, partly sustained the addition of Rs.69,575/- made on account of unaccounted sales on the basis of loose papers found during survey by restricting the same to Rs. 30876/- and confirmed the addition of Rs.4,59,300/- made by the Learned Assessing Officer on account of shortage of stock. The Learned CIT(A) has grossly erred in confirming the addition of Rs. 4,59,300/- without appreciating the facts of the case and the submissions made by the assessee.

3. Aggrieved with the order of the Learned CIT(A), the assessee is in appeal before the Hon'ble Tribunal. The individual grounds are discussed hereunder :-

GROUND NO.1

Under the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) Udaipur has wrongly disallowed out contention for deletion of the addition of Rs. 4,59,300/- as unaccounted sales.

4. In this case, during the course of survey, stock of kota stone was found short by 45930 Sq.ft of the value of Rs.4,59,300/-. The Learned Assessing Officer has treated the same as unaccounted sale and has made addition of the entire amount of Rs. 4,59,300/-. Aggrieved the assessee filed appeal before the Learned CIT(A). Before the Learned CIT(A), during the course of appellate proceedings, it was vehemently argued that the stock found short was hardly 4% of the total stock and was, therefore, negligible. It was further argued that the shortage of stock could be ascribed to damages, pilferage and weight loss. However, the Learned CIT(A) did not find favour with the submissions of the assessee and sustained the addition made by the Learned Assessing Officer. The action of the Learned CIT(A) is unlawful and unjust. The same is assailed as under :-

(a) Entire unaccounted sales did not require to be added

4.1 It is submitted that there are plethora of decisions by several courts holding that unaccounted sales cannot be treated as income in toto. Only the profit element on such unaccounted sales requires to be taxed. In view of this, it is submitted that both the Learned Assessing Officer and the Learned CIT(A) committed an error in making and sustaining the addition on account of shortage of stock of Rs. 4,59,300/- treating the same as unaccounted sale. It is submitted that it is not in dispute that the stock was found short against stock as per book position. In other words, the stock was short out of accounted stock. This means that the accounted purchases were effected as unaccounted sales. In such circumstances, it is the element of profit on such sales which required to be taxed and not the entire sales. In the line of business of kota stone, the net profit never exceeds 10%. In such circumstances, the net profit in the case of the assessee comes to Rs. 45,930/-, which alone could have been brought to tax and not the entire sales of Rs. 4,59,300/-. The following case laws are quoted in support :-

(1) Commissioner of Income Tax Vs. Williamson Financial Services & Ors (SLP(C) 2275/2007 (Hon'ble Supreme Court)

*The Hon'ble Supreme Court has held as under :-*

*“It is important to bear in mind that under section 4 the levy is on “total income” of the assessee computed in accordance with and subject to the provisions of the Income Tax Act. What is chargeable to tax under the Income Tax Act is the profit and gains of a year. What is chargeable to tax under the Income Tax Act is not the gross receipts, but income. Under the Income Tax Act, the tax is on income and not on gross receipts.”*

(2) Commissioner of Income Tax Vs. Balchand Ajitkumar 263 ITR 610 (2003)  
Hon’ble MP High Court

*The Hon’ble High Court held that total sale cannot be regarded as the profit of the assessee. The net profit rate has to be adopted and once a net profit rate is adopted, it cannot be said that there is perversity of approach. Whether the rate is low or high, it would depend upon the facts of each case. In the present case net profit rate of five per cent has been applied. It is not appropriate that the same requires to be enhanced. It is high. In any case, it cannot be said that there has been perversity of approach.*

(3) Commissioner of Income Tax Vs. President Industries (2002) 258 ITR 0654 –  
Hon’ble Gujrat High Court

*The Hon’ble High Court held that it cannot be a matter of an argument that the amount of sales by itself cannot represent the income of the assessee who has not disclosed the sales. The sales only represented the price received by the seller of the goods for the acquisition of which it has already incurred the cost. It is the realisation of excess over the cost incurred that only forms part of the profit included in the consideration of sales.*

(4) Manmohan Sadhani Vs. Commissioner of Income Tax, (2008) 304 ITR 0052 –  
Hon’ble M.P. High Court

*In this case, the Hon’ble Madhya Pradesh High Court held that the entire sale proceeds of the assessee cannot be treated as its income and net profit has to be applied.*

(5) M/s Abhishek Corporation Vs. DCIT  
ITA No. 153/Ahd/1997 – ITAT, Ahmedabad

*The Hon’ble ITAT held that even though it is established from the seized documents that the assessee was receiving premium/on money on booking of flats belonging to third parties, entire receipts cannot be treated as income of the assessee, only net profit rate can be applied on such unaccounted receipts/sales for making addition.*

(6) Commissioner of Income Tax Vs. Samir Synthetic Mills (2010) 325 ITR 0410  
(Hon’ble Gujarat High Court)

*The Hon’ble High Court upheld the order of the Id. ITAT and held that any addition that is to be made is not in respect of the sale consideration, but only in respect of the profit.*

(7) Brij Bhushan Lal Parduman Kumar Vs. CIT

(1978) 115 ITR 524 (SC)

*“The authority making a best judgment assessment must make an honest and fair estimate of the income of the assessee, same must not be capricious but should have a reasonable nexus to the available material and the circumstances of the case.”*

(b) Addition of unaccounted sale of Rs. 30876/- should have been given credit/set-off

It is further submitted in this case, the Learned Assessing Officer had also made addition of Rs. 69,575/- with reference to sales found noted on certain loose papers. This addition has been reduced to Rs. 30876/- by the Learned CIT(A) as per para 4.6 of the appellate order. The addition is also on account of and with reference to sales found noted on sllps which were not accounted for. In fact, while passing the assessment order, it was incumbent up on the Learned Assessing Officer to have given set-off of this unaccounted sales against stock found short. Both these are co-related. The stock was found short as the same was sold unaccounted. In other words, unaccounted sales as upheld by the Learned CIT(A) to the extent of Rs. 30876/- are relatable to shortage of stock on account of which addition of Rs. 45,930/- worked out as discussed above. Considering the addition already sustained on account of unaccounted sales of Rs. 30876/-, the net addition now requires to be upheld works out to Rs.15054/-(45930 –30876). The Hon'ble Tribunal is humbly requested to consider the submissions of the assessee sympathetically and grant relief accordingly. The addition sustained by the Learned CIT(A) of Rs. 4,59,300/- requires to be reduced to Rs. 15054/- only.

GROUND NO.2

The assessee craves your indulgence to add, amend or alter all or any grounds of appeal before or at the time of hearing.

The Hon'ble Tribunal is requested to consider the submissions made and case-laws cited above and decide the appeal in favour of the assessee and oblige.”

6. The Id DR is heard who has relied on the findings of the lower authorities and submitted that the assessee could not explain the difference in stock of Rs. 4,59,300/-. During the survey proceedings the inventory of

stock was prepared by survey team in the presence of assessee's supervisor and key person of the group. The inventory of stock found was also verified and signed by the assessee or his representative and they have not objected the method of stock taking during survey action and signed the inventory documents after his satisfaction only. The calculation mistakes were also considered by the AO in the assessment proceedings. Therefore, the addition made by the AO is found to be justified and prayed to be confirmed.

7. We have heard the rival contentions and perused the material placed on record. In this appeal the assessee has challenged the finding of the lower authority adding the full value of shortage of stock as unaccounted sales. The brief fact on the issue is that the business premises of the assessee was Surveyed on 15.11.2017. On verification it was noticed that the stock of Kota Stone as per the physical verification of Stock, total 10,70,682 Sq. Feet of Kota Stone was found of various sizes. However, as per the Production Register (Stock Register) maintained by the assessee, total stocks of Kota Stone comes to 11,78,109 Sq. Feet. Thus, the stock of kota Stone measuring 1,07,427 Sq. Feet (1178109-1070682) was found short in comparison to the production register maintained by the assessee

as on 16.11.2017. Meanwhile, the assessee was asked to explain the reason of short stock found in comparison of stock as per books, vide Q. No. 14 of the statement recorded by the assessee on 07.03.2018. In reply, thereto, the assessee had stated that after correcting some clerical/mathematical error in both of stocks, the difference of stocks, which found short in comparison to production register maintained by the assessee comes to 45,930 Sq. Feet instead of 1,07,427 Sq. Feet. Considering the average sale price of the material Id. AO made the addition of Rs. 4,59,300 [  $45,930 * 10$  ] as unaccounted sales of the assessee. The assessee challenged the finding of the Id. AO before the Id. CIT(A). The Id. CIT(A) has dismissed this ground on ground that the assessee could not explain the difference of stock, when the stock has been carried out with the presence of the assessee and also there is no mistake pointed out in the method of measuring the stock. Before us the Id. AR of the assessee submitted that the stock found in this case is short and not excess. Had it been excess the amount can be added as unaccounted stock but herein this case the same is found in short and therefore, only the profit portion can be added based on the various decisions cited by the Id. AR of the assessee wherein several courts taken a view that unaccounted sales cannot be treated as income in total but only the the profit element on such

unaccounted sales requires to be taxed. It is not under dispute that the stock was found short against stock as per book position. In other words, the stock was short out of accounted stock. This means that the accounted purchases were affected as unaccounted sales. In such circumstances, it is the element of profit on such sales which requires to be taxed and not the entire sales. As it is evident that the sale price of the kota stone adopted for valuation @ Rs. 10 and the profit in this type of business ranges between 8 – 10%. In such circumstances, the net profit in the case of the assessee at the best be added at Rs. 45,930/-, which alone could have been brought to tax and not the entire sales of Rs. 4,59,300/-. We get support of this view from the decision of Commissioner of Income Tax Vs. Williamson Financial Services & Ors (SLP(C) 2275/2007 (Hon'ble Supreme Court), Commissioner of Income Tax Vs. Balchand Ajitkumar 263 ITR 610 (2003) Hon'ble MP High Court, Commissioner of Income Tax Vs. President Industries (2002) 258 ITR 0654 – Hon'ble Gujrat High Court and others. The Id. AR of the assesses submitted in the written submission that the learned Assessing Officer had also made addition of Rs. 69,575/- with reference to sales found noted in certain loose papers. This addition has been reduced to Rs. 30,876/- by the Learned CIT(A) as per para 4.6 of the appellate order. The addition is also on account of and with reference to

sales found noted on slips which were not accounted for. In fact, while passing the assessment order, it was incumbent up on the Learned Assessing Officer to have given set-off of this unaccounted sales against stock found short. Both these are co-related. The stock was found short as the same was sold unaccounted. In other words, unaccounted sales as upheld by the Learned CIT(A) to the extent of Rs. 30,876/- are relatable to shortage of stock on account of which addition of Rs. 45,930/- worked out as discussed above. Considering the addition already sustained on account of unaccounted sales of Rs. 30,876/- by the Id. CIT(A) the net addition now requires to be upheld works out to Rs.15054/- (45930 – 30876). In the light of this discussion addition sustained by the Learned CIT(A) for an addition of Rs. 4,59,300/- requires to be reduced to Rs. 15054/-. In the light of the discussion so recorded the ground no. 1 raised by the assessee is allowed.

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

Order pronounced in the open court on 22/04/2024.

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:- 22/04/2024

\*Ganesh Kumar, PS

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

1. The Appellant- Dilip Kumar Jain, Ramganjmandi
2. प्रत्यर्थी / The Respondent- Assistant Commissioner, Kota
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 180/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar