

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. 295/JP/2024
निर्धारण वर्ष / Assessment Years : 2017-18

Rakesh Vyas 10/113, Swarn Path, Mansarovar, Jaipur	बनाम Vs.	Income Tax Officer, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACAPV 6104 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

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

सुनवाई की तारीख / Date of Hearing : 01/05/2024
उदघोषणा की तारीख / Date of Pronouncement: 18/06/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

The captioned appeal challenges the order of the National Faceless Appeal Centre, Delhi dated 06/03/2024 [here in after (NFAC)/ Id. CIT(A)]. The dispute relates to the assessment year 2017-18. The challenged order of the Id. CIT(A) was on account of assessment order dated 20.12.2019 passed under section 144 of the Income Tax Act, by the ITO, Ward 2(4), Jaipur.

2. Aggrieved from the said order of the Id. CIT(A), the present appeal is filed raising the following grounds: -

“1. In the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs. 52,85,918/- by sustaining the GP rate @ 3% applied by the Learned Assessing Officer as against 1.18% declared by the assessee without any basis.

2. In the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs. 52,85,918/- on the ground of that in the absence of details/documents, books of accounts, stock register etc. verification of trading was not possible inspite of furnishing all evidences during appellate proceedings.

3. In the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals) has erred in not considering the submission of the assessee that the assessee is also maintaining quantitative records in form of stock register and all the purchases and sales are fully vouched and supported by respective purchase and sale bills (also mentioned in the appellate order on 3 in facts of the case)

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

3. Succinctly, the fact as culled out from the records is that the assessee is an individual and proprietor of M/s V.R. International, return of income declaring total income at 4,16,180/- was filed on 07.11.2017. The return of income so filed was selected for complete scrutiny through CASS. Accordingly, notice u/s 143(2) was issued on 08.08.2018 and duly served upon the assessee company. Thereafter notices u/s 142(1) of I.T. Act, 1961 along with detailed questionnaire were issued to the assessee on

06.08.2019 through ITBA fixing the date on 14.08.2019 for furnishing details / documents / information. However, the assessee neither made any compliance nor sought adjournment. Thereafter, notice u/s 142(1) of I.T. Act, 1961 again issued to the assessee on 22.10.2019 & 02.11.2019 fixing the date on 30.10.2019 & 08.11.2019 respectively for furnishing details / documents but the same were not complied.

3.1 In view of continuous noncompliance of the assessee a final show cause notice issued to the assessee fixing the compliance on 11.12.2019. Since the assessee remain non-co-operative the Id. AO has no option except to complete the assessment proceedings as ex-parte u/s. 144 of the Act based on the material available on records on 20.12.2019 determining total income at Rs. 13,41,43,350/- inter-alia making the following additions -

(i) Trading addition of Rs. 52,85,819/- [since the assessee has not complied the notices the G. P. Rate was considered at 3 % on sales and thereby an addition (Estimated Rs. 87,08,238/- less declared Rs. 34,22,320/-) of Rs. 52,85,918/-]

(ii) Addition of Rs. 12,03,500/- u/s 69A of the IT Act. [since the assessee has not furnished details cash deposit was considered as unexplained money]

4. Aggrieved from the order of the assessment, assessee preferred an appeal before the Id. CIT(A)/NFAC. Out of the two addition the Id. CIT(A) upheld the addition on account of the estimation of profit and has deleted the addition of unexplained money. Apropos to the grounds so sustained the relevant finding of the Id. CIT(A)/NFAC is reiterated here in below:

“5.4 I have carefully considered the facts of the case, assessment order and written submissions filed by the appellant. The appellant has filed additional evidence under rule 46A during appellate proceedings. The same is admitted and examined in the interest of justice. The Appellant has relied upon the various case laws which are not at all applicable to the present case.

5.5 During assessment proceedings, various notices were issued to the appellant to furnish any details/documents. However, the appellant failed to comply with the same. Therefore, assessment was completed u/s 144 of the IT act on the basis of material available on record with the AO. As regards the addition of Rs. 52,85,918/- in the trading account, I don't find any reason to interfere in the assessment order passed by the AO since no evidence in support of the same is filed during appellate proceedings. Hence, the addition of Rs. 52,85,918/- is sustained.

5. The assessee feeling dissatisfied preferred the present appeal on the grounds as reiterated here in above para two. To support the various grounds so raised the Id. AR appearing on behalf of the assessee has placed on record his written submission which is extracted here in below;

The assessee is an individual and is engaged in the wholesale trading of precious and semi-precious stones as well as rough stones. For the assessment year 2017-18, the assessee filed return of income declaring total income of Rs. 4,16,180/-. Copy of the return of income along with computation of income is available on Paper Book Page No.1-4. The assessee has maintained books of account, which are duly audited u/s 44 AB of the IT Act, 1961. The audit report along with audited accounts are available on Paper Book Page No.5-11.

This was the first year of the assessee. On total turnover of Rs.29,02,74,600/-, gross profit was declared at Rs. 34,22,320/-, giving a GP rate of 1.18%. The trading results are backed with quantitative details of purchases and sales, which are fully vouched. The assessee has maintained stock register on day-to-day basis, reflecting opening stock, purchases, sales and closing stock. However, it so happened that the Chartered Accountant, who was handling the income tax matters and was receiving notices on his mail, did not inform the assessee, which resulted in ex-parte assessment under section 144. The Learned Assessing Officer resorted to provisions of Sec. 145(3) and applied GP rate of 3% on estimate basis, which resulted in trading addition of Rs. 52,85,918/-.

Aggrieved with the order of the Learned Assessing Officer, the assessee preferred appeal before the Learned CIT(A), who has also sustained the addition of Rs.52,85,918/- as made by the Learned Assessing Officer without considering the reply of the assessee. The action of the Learned CIT(A) is unlawful and illegal and the same is assailed against individual grounds of appeal, which are taken together and discussed as under :-

(1) In the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs. 52,85,918/- by sustaining the GP rate @ 3% applied by the Learned Assessing Officer as against 1.18% declared by the assessee without any basis.

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(2) In the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs. 52,85,918/- on the ground of that in the absence of details/documents, books of accounts, stock register etc. verification of trading was not possible.

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(3) In the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals) has erred in not considering the submission of the assessee that the assessee is also maintaining quantitative records in form of stock register and all the purchases and sales are fully vouched and supported by respective purchase and sale bills (also mentioned in the appellate order on 3 in facts of the case)

The submission of the assessee for deleting the trading addition is as under :-

(a) Maintenance of books of accounts

This is the first year of business of the assessee. The assessee has carried on wholesale business of precious and semi-precious stones. The assessee has maintained books of accounts, such as, cash book, ledger, bank book, journal, vouchers of purchases and sales and stock register. During the course of appellate proceedings, the assessee furnished audit report u/s 44 AB, copy of

purchase account, copy of sales account, all purchase bills, stock register, cash book, and vouchers. These were submitted on paper book containing 247 pages. Copy of the paper book is available on Paper Book Page No. 1-247. It is submitted that the books of accounts have not been found defective in any manner. It is not the case of the Learned CIT(A) that there are any unaccounted purchases or unaccounted sales. Further, the entire purchases are of the nature of imports. The purchases are beyond doubt. The sales are mostly on wholesale basis. Complete ledger of taxable sales was furnished before the Learned CIT(A). The assessee is also registered with Commercial Taxes Department under G.S.T. the GST returns stands accepted. It has been held that once the sales are accepted by the GST Department, the IT Department has to follow. The following case laws are quoted in support :-

(1) COMMISSIONER OF INCOME TAX vs. ANANDHA METAL CORPORATION

HIGH COURT OF MADRAS

(2005) 273 ITR 0262, (2006) 152 TAXMAN 0300

Held that return accepted by the Commercial Tax Department is binding on the IT authorities and the AO has no jurisdiction to go beyond the value of the closing stock declared by the assessee and accepted by the Commercial Tax Department, and consequently no addition under s. 69 could be made in respect of unexplained difference between the value of closing stock as found noted in a seized document and the value admitted by assessee.

The submission of the assessee is that when the purchases and sales are beyond doubt, there was no question of doubting and disturbing the GP rate. The Courts have further held that where quantitative details have been maintained in respect of purchases and sales, there is no case for disturbing the GP rate. The following case-laws are quoted in support :-

(1) DCIT Vs. Alidhara Texprop Engineers P. Ltd
(2011) 43 SOT 1 (Ahmedabd)

Held that when sales declared are excisable goods and sales recorded in the books of accounts are supported by various excise registers, books results cannot be rejected on the basis of any hypothetical calculations based on erroneous presumptions.

(2) Amarjothi Granites (India) P Ltd Vs. ACIT
ITAT, Jodhpur.

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Held that Section 145 itself does not deal with addition or deletion in income and, thus, merely because there is some deficiency in books of account or merely because there is rejection of books of account, it does not mean that it must necessarily lead to additions in returned income of the assessee.

(3) ACIT Vs. ITD Cementation India Ltd (2013)
36 taxmann.com 74 (ITAT, Mumbai)

Held that where books of account of the assessee were audited and auditor had not given any adverse comments in maintenance of books of account or stock register, it was apparent that assessee had maintained proper books of account and Assessing officer was wrong in rejecting the same.

(4) DCIT Vs. Subhash Chand Agarwal
High Court of Allahabad

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Held that where the Assessing Officer failed to point out any defect in method of accounting or any inherent defect in books of account maintained by the assessee, section 145 could not be invoked for rejecting the books of account.

(b) Books of accounts are audited u/s 44 AB

During the course of appellate proceedings, the assessee furnished copy of audit report u/s 44 AB. The auditors have not found any discrepancy in the maintenance of books of accounts. The assessee also furnished books of accounts, stock register, purchase and sales account, GST return, cash book etc. before the Learned CIT(A). In his order, in para 5.4, the Learned CIT(A) has mentioned that he has examined the evidences furnished by the assessee during the course of appellate proceedings. It is not the case of the Learned CIT(A) that maintenance of the books of accounts was in any way defective. He has just sustained the order of the Learned CIT(A) without considering in detail the submissions made by the assessee. The Learned CIT(A) has failed to consider that being the first year of business, profit was bound to be lower. The Learned CIT(A) has also ignored the fact that when quantitative details are maintained, trading additions are not possible. In these circumstances, the addition sustained by the Learned CIT(A) deserves to be deleted.

(c) Quantitative details have been maintained

It is submitted that during the course of appellate proceedings, the assessee submitted audit report u/s 44 AB. The same is duly certified by the Chartered Accountant. The assessee also furnished the details of stock kept in the stock register both in respect of emerald rough and ruby rough. The position is as under and the relevant stock summary is scanned below :-

V R INTERNATIONAL
Stock Summary
1-Apr-2016 to 31-Mar-2017

Page 1

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Particulars	Opening Balance			Inwards			Outwards			Closing Balance		
	Quantity	Rate	Value	Quantity	Rate	Value	Quantity	Rate	Value	Quantity	Rate	Value
						16,79,25,343.00			16,48,82,475.31			35,72,824.74
Emerald Rough	15,000 carat	171.00	25,65,000.00	14,003 carat	171.00	23,94,513.00	997 carat	171.00	1,70,487.00	1,000 carat	225.46	2,25,457.80
Emerald Rough 01	15,000 carat	225.46	33,81,867.00	14,000 carat	225.46	31,56,440.00	3,911 carat	231.59	9,05,747.71	15 carat	3,040.60	45,609.07
Emerald Rough 02	36,500 carat	231.59	84,53,028.00	32,589 carat	231.59	75,47,286.51	15 carat	3,040.60	45,609.07	3,901 carat	308.42	12,03,133.35
Emerald Rough 03	4,250 carat	3,040.60	12,92,257.00	4,235 carat	3,069.07	12,97,506.24	653 carat	308.42	2,00,54,183.58	732 carat	338.02	2,20,724.62
Emerald Rough 04	36,500 carat	308.42	11,25,720.00	32,599 carat	308.42	10,05,183.58	356 carat	308.42	1,10,029.94	356 carat	396.88	2,90,516.52
Emerald Rough 05	36,500 carat	338.02	12,33,759.00	35,847 carat	338.02	12,11,77,002.94	1,000 carat	342.14	3,42,137.49			
Emerald Rough 06	51,000 carat	396.88	2,02,40,905.00	50,268 carat	396.88	1,99,50,363.84						
Emerald Rough 07	42,000 carat	474.75	1,99,39,521.00	41,644 carat	475.11	1,97,85,418.90						
Emerald Rough 08	41,930 carat	342.14	1,43,45,825.00	40,930 carat	342.14	1,40,03,790.20						
Emerald Rough 09			12,50,78,504.00			12,51,62,951.11						2,64,028.39
Ruby Rough	39,000 carat	237.45	92,60,387.00	38,652 carat	237.45	91,77,917.40	348 carat	237.45	82,631.15	315 carat	225.98	71,183.98
Ruby Rough 0001	42,000 carat	225.98	94,91,197.00	41,685 carat	225.98	94,19,976.30	3 carat	192.09	576.26			
Ruby Rough 0002	1,99,350 carat	192.09	3,82,92,369.00	1,99,347 carat	193.02	3,84,78,866.60	218 carat	198.88	43,355.55			
Ruby Rough 0190	33,000 carat	198.88	65,62,995.00	32,782 carat	198.88	65,19,684.16	311 carat	213.12	66,281.45			
Ruby Rough 0193	45,000 carat	213.12	95,90,564.00	44,680 carat	213.12	95,24,119.68						
Ruby Rough 0213	2,88,900 carat	201.27	5,80,85,017.00	2,87,116 carat	201.27	5,77,88,239.89	1,382 carat	201.27	2,78,148.53			
Blue Sapphire	220 kg	1,25,744.33	2,76,63,752.00	219 kg	1,25,744.33	2,75,38,008.27	1 kg	1,25,744.33	1,25,744.33			
SAPPHIRE RUBY	39,972 carat	516.24	2,06,34,995.00	39,962 carat	519.22	2,07,49,106.79	10 carat	516.24	5,162.36			
Tourmaline			39,93,67,611.00			39,61,20,782.34						42,45,908.35
Grand To												

The position of the aforesaid stock summary reveals that the total purchases of emerald rough are of Rs. 12,50,78,504/- and sales out of it are of Rs. 12,51,62,951/-. The closing stock is of Rs. 2,64,028/-. Similarly, the position in respect of ruby rough is that purchases are of Rs. 39,93,67,611/-, the sales are of Rs. 39,61,20,782/- and the closing stock is of Rs. 42,45,908/-.

In the facts and circumstances of the case and totality of facts that purchases and sales are fully vouched, stock register is maintained, quantitative details are available, there was no case with the Learned Assessing Officer to apply the provisions of Sec. 145(3) and rejecting the books of accounts. In fact, no books of account were produced before the Learned Assessing Officer, hence, the question of rejection of the same did not arise. It is also not the case of the Learned Assessing Officer that there is material with him on record establishing unaccounted purchase or sale. In the given circumstances, there was no case for applying higher GP rate. The trading addition made deserves to be deleted.

(d) No basis has been given for applying GP rate of 3%

It is further submitted that as against GP rate declared by the assessee of 1.18%, the Learned AO has applied GP rate of 3%, thereby making addition of Rs. 52,85,918/-. While applying GP rate of 3%, the Learned Assessing Officer has not quoted any basis for the same or any comparable case. It is submitted that before applying higher GP rate of 3%, it was incumbent upon the Learned Assessing Officer to have afforded an opportunity to the assessee for applying

higher GP rate so that the assessee could have furnished his defence. This has not been done. Hence, principles of natural justice stand violated and the addition is totally uncalled for. The same, therefore, deserves to be deleted.

(1) Joseph Thomas & Bros V.CIT
High Court of Kerala

68 ITR 796

Held that an assessment made by estimating the profits of the assessee on flat rate basis on the basis of comparable cases without furnishing details of such cases to the assessee is illegal.

(2) Seth Nathuram Munalal Vs.CIT
(1954) 25 ITR 216 (nag)

Held that if the assessee failed to satisfy the Assessing Officer as to the correctness of the profits returned by him, it is open to the ITO to take a higher percentage consistent with the state of trade in the locality or with any special circumstances of the assessee which warrant higher rate of profits. However, the ITO must disclose the basis and manner of computation and make his order a speaking order.

(3) Mysore Fertilizer Co. CIT
(1966) 59 ITR 268 (Mad)

Held that Estimation must not be arbitrary, vague and fanciful, but must be legal and regular. The law says that the ITO shall make the assessment to the best of his judgment; it means that he must make it according to the rules of reason and justice, not according to private opinion, but according to law and not humour and the assessment is to be not arbitrary, vague and fanciful, but legal and regular.

(4) Yaggina Veeraghavalue Vs.
Mavuleti Somraju & Co. V. CIT

(1996) 62 ITR 528 (AP)

Held that where, after rejecting the accounts of the assessee, an estimate of the turnover and gross profit is fixed to the detriment of the assessee, the assessee is entitled to know the basis and also to an opportunity to rebut the same.

In view of the facts of the case discussed above and the case-laws cited, the trading addition made by the Learned Assessing Officer and sustained by the Learned CIT(A) deserves to be deleted.

(4) 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. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions:

PAPER BOOK

S.No	Particular	Page no.
1.	Copy of acknowledgement of return with computation of income and audit report	1-11
2.	Copy of purchase account	12-13
3.	Copy of sales account	14-18
4.	Copy of forwarding charges expenses account	19-20
5.	Copy of purchase bills (import purchases)	21-165
6.	Copy of stock register	166
7.	Copy of bank statements	167-206
8.	Copy of cash book	207-214
9.	Copy of affidavit of the assessee	215
10.	Copy of VAT registration/GST registration	216-220
11.	Copy of VAT returns/GST returns	221-247

7. The Id. AR of the assessee in addition to what has been submitted vehemently argued that this is the first year of operation of the business of the assessee. The reasons attached to the non compliance in the assessment proceeding was on account of the fact that the mail id placed on record was of the consultant and that consultant could not file the required details which leads to non-compliance and thereby the ex-parte

assessment order. The assessee aggrieved from that order filed an appeal before the Id. CIT(A), wherein the assessee has also filed the additional evidence. He stated that once the Id. CIT(A) has admitted the additional evidence by holding as *“The appellant has filed additional evidence under rule 46A during the appellate proceedings. The same is admitted and examined in the interest of justice.”* Thus, the additional evidence though admitted but has not been considered in the interest of justice. The Id. AR of the assessee also submitted that once all the details called for was placed on record but has not commented upon is completely against the interest of justice and not a single line is written on the additional evidence and has not deemed it fit to have the additional evidence commented upon. The Id. AR of the assessee referring to the additional evidence submitted that books of accounts are audited, return of income has been filed in due date, no adverse comment in the audit report, the assessee submitted all the details of purchase and sales along with the quantitative details. Ignoring this aspect of the matter the Id. CIT(A) endorse the view of the Id. AO even though there is basis or reasoning for sustaining the addition ignoring the book results. Therefore, the order of the Id. CIT(A) is not sustainable and required to be quashed.

8. The Id. DR is heard who relied on the findings of the lower authorities and more particularly advanced the similar contentions as stated in the order of the Id. AO and Id. CIT(A). The Id. DR vehemently argued that the assessee remained non-compliant with the Id. AO has not filed any details before the Id. AO. Additional evidence has been admitted by the Id. CIT(A) and considering the while dealing with the appeal of the assesses. There has been a specific show cause notice for estimating the profit @ 3 % the assessee has not given any reply and has not justified as to why the is not correct.

9. We have heard the rival contentions and perused the material placed on record. The bench noted that the dispute in this appeal is the estimation of profit by the Id. AO @ 3 % as against 1.18 % Gross profit declared by the assessee. The reason behind doing so is that the assessee remained non-compliant before the Id. AO. While doing so the relevant finding of the assessing officer while estimating the profit as recorded in the assessment order reads as under :

“5. Trading Addition:- During the year under consideration the assessee derived income from Business & Profession and has declared gross profit of Rs. 34,22,320/- on the total turnover of Rs. 29,02,74,600/- giving a G.P rate of 1.18%. During the course of assessment proceedings, the assessee was asked to file details/documents in support of trading results declared. However, no compliance was made by the assessee to the

various notices issued to him during assessment proceedings and no details/documents, books of accounts, stock register were produced. Therefore, vide show cause notice dated 07.12.2019, The assessee was asked that as to why his books of accounts may not be rejected as per Provisions of Section 145(3) of the I.T. Act and G.P. Rate of 3% may not be applied on the total turnover of Rs. 29,02,74,600/- and thereby Gross profit may not be calculated at Rs. 87,08,238/- as against Rs. 34,22,320/- and an addition of Rs. 52,85,918/- (Rs. 87,08,238 - Rs. 34,22,320/-) may not be made to his total income.

6. The assessee has not made any compliances to the various notices issued to him u/s 142(1) of I.T. Act, 1961 during the course of assessment proceedings as well as show cause notice dated 07.12.2019. No details/documents were furnished during assessment proceedings and therefore, the trading results as declared by the assessee are subject to verification. In absence of details/documents, Books of accounts and stock register etc., verification of the trading result is not possible. In view of the facts that the gross profit as declared by the assessee is very low in comparison to the sales/turnover declared for the year and no books of accounts and other details have been produced by the assessee for verification of trading results declared, therefore, it clearly attracts the provisions of Section 145(3) of the I.T. Act, 1961. The books of accounts of the assessee are hereby rejected U/s. 145(3) of the I.T. Act, 1961. Looking to the facts of the case, it would be appropriate to adopt G.P. rate of 3% in the case of the assessee as against G.P. rate of 1.18% declared by the assessee for the year. If the G.P. rate of 3% is applied on total turnover of Rs. 29,02,74,600/- the gross profit would come to Rs. 87,08,238/- as against declared gross profit of Rs. 34,22,320/-, which resulted into a trading addition of Rs. 52,85,918/-. Accordingly a trading addition of Rs. 52,85,918/- is made to the total income of the assessee.

10. As the assessee could not submit any records before the assessing officer, while perusing the appeal before, the Id. CIT(A), the assessee has filed a prayer for allowing to place on record additional evidence under rule 46A. The Id. CIT(A) has admitted that plea of the assessee and admitted those additional evidence and examined the same in the interest of justice. Even though the Id. CIT(A) recorded finding in his order that *"I do not find any reason to interfere in the assessment order passed by the Id. AO since*

no evidence in support of the same is filed during appellate proceedings.”

This finding of the Id. CIT(A) is per se is contradictory as on the one hand he admitted that the assessee has filed the details and on the other hand he holds that no evidence in support of the contention raised is filed. Thus, Id. CIT(A) having admitted the evidence did not comment upon the veracity of the additional evidence. As the same were admitted in the interest of justice.

11. The bench also noted that the assessee has challenged the invocation of the provision of section 145(3) in form no. 35 filed by the assessee before the Id. CIT(A). While dealing with that ground the bench noted that in fact there is no finding of the Id. CIT(A) even though the assessee filed all the additional evidence in support of the addition so made by the Id. AO justifying the action of invocation of 145(3) as an incorrect. As the Id. CIT(A) has co-terminus power that of the assessing officer, once he has accepted the additional evidence, it is his duty and principles of natural justice demands from him to consider the same and to pass acceptance of that evidence or rejection of that evidence. Here in this case, he has in the interest of justice accepted the additional evidence but for the best reasons known to him the same has not been discussed giving sufficient and cogent

reasons as to why the same was not accepted by him. As it is clear from the records that the reasons for rejection of the book result given by the Id. AO was that the assessee did not appear and filed any documents in support of trading result declared by the assessee. Therefore, the Id. AO estimated the profit in the case of the assessee @ 3 % as against 1.18 % declared by the assessee. As in this case the provision of section 145(3) was invoked by the Id. AO on account of the non-compliance of the notices, for which he has explained the reasonable cause before the Id. CIT(A) and filed the additional evidence in support of the ground for rejection of the book results. We note from the order of the Id. CIT(A) though he has admitted the additional evidence but has remained silent so far as to the additional evidence qua the rejection of the books of accounts ground of the assessee.

12. Thus, the assessee has challenged the finding of the Id. CIT(A) on three different ground including for estimating the gross profit estimation. Thus, before we deal with these grounds of the assessee we would like to deal with the provision of section 145(3) of the Act, as the same was made basis for making the addition. The provision of section 145(3) reads as under :

Method of accounting.

145. (1) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.

(2) The Central Government may notify in the Official Gazette from time to time income computation and disclosure standards to be followed by any class of assesseees or in respect of any class of income.

(3) *Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) has not been regularly followed by the assessee, or income has not been computed in accordance with the standards notified under sub-section (2), the Assessing Officer may make an assessment in the manner provided in [section 144](#).*

13. Thus, as it is clear from the above provision of the act that the Id. AO or that of the Id. CIT(A) may proceed under Section 145(3) under any of the following circumstances :

- Where he is not satisfied about the correctness or completeness of the accounts; or
- Where method of accounting cash or mercantile has not been regularly followed by the assessee; or
- Accounting Standards as notified by the Central Government have not been regularly followed by the assessee.

As it is not case of the revenue for the second and third reason but is of on the first reason that the Id. AO is not satisfied about the correctness of completeness of the accounts. But the same is not the situation when the case was before the Id. CIT(A). Before the Id. CIT(A) the assessee has provided all the following evidence so as to justify the incorrect invocation of provision of section 145(3) of the Act. The bench noted that before the Id.

CIT(A) the assessee made a detailed submission to support as to why the provision of section 145(3) cannot be invoked in the case of the assessee. For the sake of clarity, the relevant submission made by the assessee as it is extracted in the order of the Id. CIT(A) is reproduced herein below for the sake of convenience:

“Ground No. 1

The Ld AO has erred on facts and in law in making addition of Rs. 52,85,819/- u/s 145(3) by non-considering the facts and nature of business and deeming provisions are applied.

1. Facts of the case-

This was the first year of the assessee's business. The assessee has started business from April 2016. The assessee is engaged in the business of wholesale trading of precious and semi-precious color stones and rough thereof. The books of accounts of the assessee are audited u/s 44AB of the IT Act, 1961. Copy of computation of income and audited accounts including trading, P&L A/c and Balance Sheets are placed on paper book page no. 1 to 11. The auditor has not made any adverse comments regarding maintenance of accounts. The assessee is also maintaining quantitative records in form of stock register. All the purchases and sales are fully vouched and supported by respective purchase and sale bills. During the year the assessee has achieved a turnover of Rs. 29,02,74,600/- on which the assessee has earned a gross profit of Rs. 34,22,320/- giving a G.P. rate of 1.18% which is most reasonable in this line of trade. Specially when this year was first year of the assessee's business. All the purchase of the assessee are import purchases. Copy of purchase ledger account is placed on paper book page no. 12 to 13. All the purchases were made through proper custom channel and payment of the same was also made through proper banking channel after the approval of the reserve bank of India. The sales are also completely vouched and 95% sales are through registered dealers and sales consideration was received by banking channel. Only less than 5% sales was made. The assessee has filed VAT/GST return. Copy of VAT and GST returns are placed on paper book page no. 216 to 247. The assessee has also maintain the stock details and stock register. Copy of stock details are placed on paper book page no. 166. The learned AO has made the assessment u/s 144 of the IT act. The assessee is not

well educated and his case was handled by Shri Adityendra Soni Chartered Accountant and he has not informed to the assessee regarding any notice or other proceedings. The assessee was totally in dark and never been informed regarding anything. The assessee was finally informed after completion of the assessment. Therefore, we could not submit any explanation in this regard. Affidavit of the assessee in this regard is placed on paper book page no. 215.

During the year under consideration the assessee has shown sales of Rs. 29,02,74,600/-, closing stock of Rs. 42,45,900/-, Purchases of Rs. 29,08,51,380/-, Forwarding charges of Rs. 2,46,800/- and declared gross profit of Rs. 34,22,320/- giving a G.P. rate of 1.18%. The reason for lower gross profit is that first of all this is the first year of the business. The assessee was new in this trade. The assessee was dealing in wholesale basis where the margin is on very lower side. The assessee's main target was to achieve the turnover and establish himself in the trade. Therefore, the GP rate shown by the assessee is most reasonable. The purchases are fully vouched. The sales is fully vouched. Both the purchases and sales are supported by respective purchase vouchers and sales vouchers. Copy of purchase vouchers and sales vouchers are placed on paper book page no. 21 to 165. The assessee is also maintaining complete stock details. The details of stock are placed on paper book page no. 166. All the payments of purchases and receipt of sales are through proper banking channel. Copy of bank statements are placed on paper book page no. 167 to 206. Hence there is no reason to invoke the provisions of section 145(3) of the Income Tax Act, 1961. So under these circumstances the invoking of provisions of section 145(3) deserves to be quashed and addition so made by applying the GP rate of 3% which is also without any basis or bringing any comparable case on record deserves to be deleted. Therefore, you are requested to delete the addition of Rs. 52,85,918/- on this account.”

14. Against the detailed submission and the evidence so filed the Id.

CIT(A) has preferred to remain silent and has simply held as under:

5.4 I have carefully considered the facts of the case, assessment order and written submissions filed by the appellant. The appellant has filed additional evidence under rule 46A during appellate proceedings. The same is admitted and examined in the interest of justice. The Appellant has relied upon the various case laws which are not at all applicable to the present case.

5.5 During assessment proceedings, various notices were issued to the appellant to furnish any details/documents. However, the appellant failed to comply with the same. Therefore, assessment was completed u/s 144 of the IT act on the basis of material available on record with the AO. As regards the addition of Rs. 52,85,918/- in the trading account, I don't find any reason to interfere in the assessment order passed by the AO since no evidence in support of the same is filed during appellate proceedings. Hence, the addition of Rs. 52,85,918/- is sustained.

15. As such we note that Id. CIT(A) has not justified the action of the Id. AO even though not disputed the additional evidence filed by the assessee. The Id. CIT(A) choose to remain silent so far as to the contention for rejection of the books of account based on the submission of the assessee. Thus, considering the provision of section 145(3) read with the additional evidence so admitted and upon doing so not finding any defects in the books of accounts by the Id. CIT(A) and even the Id. AO through Id. DR before us did not dispute the additional evidence and its veracity. The assessee vide this appeal raising three separate ground raised grievance that based on the set of evidences before the Id. CIT(A) the rejection of book result and thereby confirming addition is not the correct approach and is against the provision of law. Thus, we must decide as to whether based on the set of evidence and material placed on record the confirmation of invoking of the provision of section 145(3) of the Act by the Id. CIT(A) is correct or not and thereby confirming the addition thereof. As it is not under dispute that the assessee has explained the reasons as to why he

remained non-compliant before the Id. AO. The Id. CIT(A) accepted the reasonableness of the explanation furnished by the assessee and has admitted the additional information furnished by the assessee wherein the assessee has submitted all the details for which no adverse observation is recorded. Thus, the Id. AO or that of the Id. CIT(A) cannot reject books of accounts based on conjectures and surmises as such there is no comments on the additional evidence filed by the assessee. The assessee's books of account are regularly maintained, audited and no discrepancies whatsoever have been indicated by the Id. CIT(A) in any material terms and he has not deemed it fit to send back to the Id. AO for his comments also, when he admitted the additional evidence. This is an utter disregard of the fact that all the books of account were maintained and regularly audited. The assessee in support of trading result has produced before the Id. CIT(A), the records as mentioned at para no 6 above, who did not find any defects in the records so produced. Therefore, the conclusion of the Id. CIT(A) to confirm the rejection of the books of accounts without any pinpoint on the record and there has been no such defects noted by the lower authority and even the Id. AO through the Id. DR support the reasons for rejection of the books of accounts. Thus, the rejection of books is purely based on surmises and conjectures.

16. The bench noted that the Id. AO chose to pick up the G. P. Rate @ 3 % without giving any basis for doing so. He has not appreciated the fact that this is the first year of business of the assessee and has not placed on record any comparable cases while adopting the G. P. @ 3 % for estimation. Thus, the whole addition is nothing, but an interplay of surmises and conjectures arrived at by the Assessing Officer to willy nilly make the addition. Thus, in our considered view, when no palpable inconsistency in the books of account they cannot be rejected merely based on premises that the assessee failed file the required record before the Id. AO, though the reasons was explained and accepted by the Id. CIT(A), the same cannot be basis for estimation of profit at least before the Id. CIT(A). Having held so that there was no proper justification in rejection of the books of account now we would like to deal with the finding of the Id. AO while estimating the profit @ 3 %. We note that the Id. AO noted that the assessee failed to support the trading result along with the books of accounts. Therefore, Id. AO invoking the provision of section 145(3) and estimated G. P. @ 3 % as against 1.18 % declared by the assessee. As we have held in the preceding para that since the assessee has substantiated the reason for not attending the hearing before the Id. AO and produced all the details which were called for by the Id. AO. The said information having

admitted as additional evidence not commented upon justifies the correctness of the information and therefore, we see no reasons to estimate the profit @ 3 % in the case of the assessee. Because the assessee has maintained and produced all the records which are necessary to verify the trading results declared by the assessee before the Id. CIT(A). The Id. CIT(A) has co-terminus power that of the Id. AO. The assessee given all the quantitative information required and the same have also not found of having any defects. The business of the assessee in the first year of operation. The records produced are not found faulty nor suggests any defects by the lower authority. Thus, as alleged by the Id. AO the assessee has supported the trading results, with the audited books of accounts, related details of purchase and sales account along with the bills, details of forwarding expenses, stock register, copy of purchase bills [Import bills] VAT and GST records in support of purchase and sales. The sales are not disputed. The purchases are of the import purchase supported by bills and custom clearance. All these supporting bills and vouchers were submitted before the Id. CIT(A) and he could not found a single defect in the records. We see no justification to estimate the income of the assessee and that too merely based on surmises and conjectures. Based on these observation

ground no. 1 to 3 raised by the assessee is allowed. Ground no. 4 being general in nature does not require any adjudication.

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

Order pronounced in the open court on 18/06/2024.

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:- 18/06/2024

*Ganesh Kumar, Sr. PS

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

1. The Appellant- Rakesh Vyas, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Jaipur
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. 295/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar