

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

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

आयकर अपील सं./ITA. No. 122/JP/2022
निर्धारण वर्ष / Assessment Year : 2012-13

Kandoi Metal Powders Manufacturing Company Pvt. Ltd., F-381, 382, Road No. 9F, VKI Area, Jaipur.	बनाम Vs.	DCIT, Central Circle-3, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCK 0316 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. S. L. Poddar (Adv.)
राजस्व की ओर से / Revenue by : Sh. A. S. Nehra (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 08/08/2024
उदघोषणा की तारीख / Date of Pronouncement : 01/10/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

Captioned assessee aggrieved with the order of the Commissioner of Income Tax (Appeals)-4, Jaipur dated 29/03/2022 [here in after Id. CIT(A)] for assessment year 2012-13 filed the present appeal. The said order of the Id. CIT(A) arises because the assessee challenged the finding recorded in the order dated 29.12.2019 passed under section 147 r.w.s 143(3) of the Income Tax Act [for short Act] by ACIT, Central Circle-03, Jaipur.

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

"1. The Learned CIT(A) has erred in sustaining the addition of Rs. 11476762/- on account of gross profit by applying GP Rate of 6% against 4.91% declared by the assessee. Because of unverifiable purchases.

2. Under the facts and circumstances the Learned CIT(A) has erred in sustaining the amount of Rs. 6,88,603/- against an addition of Rs. 31,58,913/- made on account of alleged commission payment.

3. Under the facts and circumstances the Learned (CIT(A) has erred in confirming the action of the Learned AO on account of reopening of assessment by appreciating wrong facts and without making proper enquirers only on the basis of information received.

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. In this case, the appeal of the revenue as well as that of the assessee was decided by the Bench on 15.09.2022 taking into consideration the judgment of clarity gold rendered by our High Court decided issue of bogus purchase in the case of CIT(Central), Jaipur vs. M/s Clarity Gold (P.) Ltd. (100 CCH 0396 Rajasthan High Court). In that case Hon'ble High Court estimated profit of the assessee's case @ 12% of such bogus purchase. Thereafter, the assessee filed Misc. Application contending that our High Court in that case while estimating the profit also held that in para 6 that "*in our consider opinion, taking into account, the industry which is running the business, the addition which have been made on the*

basis of GP which has been shown identical industries". As is evident that assessee is engaged in the business of metal whereas the case relied upon was decided by the Hon'ble High Court in the case of M/s Clarify Gold (P.) Ltd. (Supra) industries was gold. Therefore, considering that specific mistake apparent on record, the Misc. Application filed by the assessee was decided on 09.05.2024 and thereby this appeal is decided.

4. The facts as culled out from the record are that the assessee is a private limited company and engaged in the business of manufacturing of copper wire and other copper related products. The return in this case was filed on 17.03.2013 declaring a total income of Rs. Nil. The original assessment was completed u/s 143(3)/153C of the Income Tax Act, 1961 on 26.03.2015. On the basis of information received and after analyzing the fact related to escapement of income, the case of the assessee was re-reopened under section 147 of the Act. The necessary approval of the Principal Commissioner of Income Tax, (Central), Jaipur was obtained. Thereafter, the case was reopened u/s. 148 after recording the reasons for satisfaction and obtaining due approval.

Notice u/s. 148 was issued on 30.03.2019 which was duly served on the assessee. In response to the statutory notice issued during the proceedings the assessee efiled the reply.

5. In response to notice u/s 148 the assessee filed e-return declaring the income at Rs. Nil as filed originally u/s 139 of the Income Tax Act, 1961 on 17.03.2013. Thereafter, the assessee requested for providing copy of reasons recorded for reopening of the case u/s. 148. The copy of the reasons recorded for issuing notice u/s. 148 were provided and assessee was required to file information in response to the notice issued.

6. An inquiry was conducted by the investigation wing authorities. During investigation, it was found that various entities were indulged in giving and taking non-genuine accommodation entries in which assessee is one of those beneficiaries which has taken such entry.

Thus, as per the information received in possession of the revenue, it was found that the assessee indulged in bogus purchases for the year under consideration from some bogus

entities. As per the information, an inquiry was conducted by the ADIT (Investigation)(Hq-2), New Delhi wherein, it was observed that the assessee has shown purchases found from M/s. Unnati Alloys Private Limited and obtained bogus entry in the form of bogus purchases amounting to Rs. 21,05,94,215/- during the year under consideration.

Based on these facts, information u/s. 133(6) of the Act was called from M/s. Unnati Alloys Private Limited to check the veracity of claim of purchase of the assessee. The AO has called for following information;

- (i) Copy of confirmations of account with M/s. Kandoi Metal Powders Manufacturing Company Private Limited duly certified in their books for FY 2011-12.
- (ii) Copy of detailed descriptions of the source from where the funds have been received including the Name, PAN and postal address of the source and proof of creditworthiness of the source for AY 2012-13.
- (iii) Copy of Bank account statement showing receipts of payment against sale of goods to the above party for F. Y. 2011-12.
- (iv) Copy of sales vouchers.

7. The above entity has not provided any information except the ledger account of the assessee in its books of account. The remaining details was not provided and thus AO considered that the assessee has taken an entry of bogus purchase to reduce its own tax liability. During the assessment proceedings a show cause

notice dated 13.12.2019 was issued requiring the assessee to explain as to why the amounts as mentioned in reasons recorded u/s. 148 should not be added back to the total income of the assessee on account of unverifiable purchases.

The assessee submitted its reply on 13.12.2019 stating that the allegation is only based on third-party information gathered by the investigation wing of the department without any further verification on the part of the assessing officer. Therefore, no addition can be made by based on such information. Assessee also submitted that Hon'ble apex court in a judgment of Odeon Builder Private Limited held that the third-party information without further verification cannot be used for making any addition on account of bogus purchase allegation.

8. The Id. AO based on the finding and information received alleged that the assessee indulged in bill shopping from bogus concern M/s. Unnati Alloys Private Limited. During enquiries it was found that Moral Alloys Private Limited in an effective period 4 years (FY 2011-12 to 2014-15) has made turnover of Rs. 856 crores in its bank account. As per the information said account was

opened on 23.08.2011 in Axis Bank. The aforesaid company was incorporated in September 2010 and declared its activity as trading in metals. The outflows in the said account were exact equivalent to inflows and on same day. Account exhibited unusual transaction pattern of high value rounded amount transfer/RTGS credits from different entities such as listed in the order of the Id. AO. The Id. AO further observed that in all these entities the out flow in the account were to the similar entities. A large number of debits to companies was noticed in the account. After every withdrawal, the account was left with minimal balance. Though account had witnessed transactions with entities into the same line of activity, trend of transactions raised suspicion.

9. The Id. AO further observed that the account had been seen exceptionally high turnover in a short span of time and that too, by recording to and from transactions with the same group of entities in similar trend. Movement of funds among the group accounts pointed to the suspicion that the proceeds might not actually pertain to the business activities. All these entities have offered very low income as compared to very high turnover and even the

director of these companies have offered very low income. It is also observed that the summons were issued and the letter were sent but no satisfactory replies were received. The Id. AO further observed that two biggest intermediary entities which transferred funds to Moral Alloys Private Limited during the FY 2011-12 were Unnati Alloys Private Limited and Misawa Impex Private Limited, their bank account statements were analyzed and it was seen that almost all fund credited in the bank account was transferred further to other entities on the same day and accounts are left with minimal balance which strengthens the fact that this is layering of funds through various accounts.

10. Based on the above back ground Id. AO held that Major entities which transferred to Unnati Alloys Private Limited (i.e. Purchases claimed by them from Unnati Alloys Private Limited or credits extended by them to Unnati Alloys Private Limited) were identified and assessee was found to be one of the beneficiaries of such accommodation entries in the grab of purchase to the extent of Rs. 21,05,94,215/-. The director of these companies from where these purchases made has elaborately described the modus

operandi of their business accepting the fact that they are indulged in issuing bogus bills only against certain commission. This admission is considered by the AO and concluded that the purchases recorded by the assessee company is bogus purchases arranged by the assessee. The Id. AO further concluded that the assessee not been able to provide the satisfactory explanation for the show cause notice issued to them. The Id. AO has also relied upon the various judicial decisions on the issue and based on the discussion and judicial decision he hold that

- a) The primary onus is on the assessee to establish the genuineness of the alleged accommodations entries claimed by it.
- b) If the investigation done by the department leads to doubt regarding the genuineness of alleged accommodation entries in lieu of bogus purchases, it is incumbent on the assessee to produce the parties along with necessary documents to establish the genuineness of the transaction.
- c) The purchases have been made from alleged bogus concerns and therefore, it was the duty of the assessee to establish the existence of the concerns which allegedly entered into the said transactions. Therefore, it is the duty of the assessee to satisfy the Assessing Officer regarding the existence of the payee and to establish the genuineness of the payment for business needs.

11. Based on these observations made by the AO the assessment was completed by making addition of Rs.

5,26,48,554/- by disallowing 25% out of alleged bogus purchases and Rs. 31,58,913/- on account of commission paid determining total income at Rs. 5,58,07,470/-.

12. Aggrieved from the order of the Id. AO, assessee has preferred an appeal before the Id. CIT(A) who has after considering the arguments and submission held that the appellant has declared a GP rate of 2.51% in the F Yr. 2010-11, 4.91% in the year under consideration, GP rate of 6.10% in the FY 2012-13 and has declared a GP rate of 6.84% in the FY 2013-14. Thus, he find that though there is an increase in GP rate in the year under consideration as compared to previous year but there is substantial decline in the turnover in the year under consideration than the previous years. It is observed that in the subsequent years the appellant has declared consistently higher GP. Thus, in such a case, once the provisions of section 145 were invoked, the best course of action would be to apply GP ratio and confirm certain percentage of sales to cover any leakage of revenue. Therefore, the AO is directed to apply a GP rate of 6% on the total turnover of Rs. 1,05,29,10,586/ to cover any possible leakage of revenue on

account of bogus purchases which works out to Rs. 6,31,74,635/-. Since the appellant has already declared Rs. 5,16,97,909/- as the GP for the year under consideration, therefore addition to the extent of Rs. 1,14,76,726/- is sustained and the appellant gets a relief of Rs. 4,11,71,827/-. As regards the second addition he has based on the reduction in GP rate relief also granted relief on account of alleged commission from Rs. 31,58,913/- to 6,88,603/-.

13. The departmental representative supported the findings of the assessing officer and vehemently argued that the assessee is engaged in the bogus purchases and thereby inflating their purchase and thereby reducing the profit. The Id. DR further draw our attention to the findings of the AO recorded at para 7 of his order, wherein he has discussed various aspect and investigation done what is the bogus circulating transaction done by the parties from where the assessee has also done the purchase transactions. The Id. DR drawn our attention that during the assessment proceeding the Id. AO pointed certain questions to the party from whom the purchases were made, same were not replied and only confirmation was filed. Thus, the assessee failed to substantiate

the figures of their purchases alleged to have been paid from the bogus suppliers and submitted that the assessee is engaged in the bill shopping only. In support of estimation of profit @ 25 % Id. DR relied upon the decision of M/s. Vijay Protein wherein also the issue of bogus purchase was involved and in that case profit estimated @ 25 %. Thus, he supported the addition made by the AO @ 25 % of purchase. The Id. DR also draw our attention to the findings recorded by the AO that how the exact credit and debit transactions recorded in the parties from where these purchases are accounted. He has also drawn our attention to the findings that all these companies have high volume of turnover and very low income for taxation. The Id. DR also supported various legal decision cited by the Id. AO while making the assessment and he has submitted that the AO has instead of adding 100 % purchases as non-genuine only added a justified percentage of 25 %. In last the Id. DR has relied on the recent judgment of the M/s. Clarity Gold in ITA No. 125/2014 delivered by the jurisdictional high court to support his arguments. The Id. DR also relied upon the findings of the following cases laws

- [2015] 58 taxmann.com 44 (Gujarat) (09-12-2014) Vijay Proteins Ltd. Vs. Commissioner of Income-tax

- [2002] 125 TAXMAN 763 (RAJ.) Indian Woollen Carpet Factory Vs. Income-tax Appellate Tribunal.
- [2018] 99 taxmann.com 47 (SC) (09-12-2014) Commissioner of Income-tax Vs. Clarity Gold (P.) Ltd.
- [1997] 92 TAXMAN 356 (RAJ.) Commissioner of Income-tax Vs. Golcha Properties (P.) LTD.

14. The assessee has challenged the order of the Id CIT(A) in confirming an addition of Rs.1,14,76,726/- and sustaining commission @ 6 % on this sustained addition of Rs. 1,14,76,726/- for an amount of Rs. 6,88,603/-. The Id. AR of the assessee has submitted following written submission against the grounds raised by the assessee:

“The above matter was recalled because the profit rate applied by Hon'ble Bench in ITAT Order dated 15.09.2022 was of jewelry trade as per Hon'ble Rajasthan High Court Order in the case of M/s Clarity Gold Pvt. Ltd. in DB Income Tax Appeal No. 125/2014 order dated 19.09.2017. In this High Court order it was observed by the Hon'ble High Court that the GP Rate shown by identical industry should be applied.

The assessee company is engaged in the manufacturing and trading of Copper Wires and Other Copper Items. Therefore, the rate of identical industry should be applied. In the Hon'ble Rajasthan High Court Order the GP Rate applied was of the assessee himself average GP Rate. In our case the GP Rate chart is as under :-

Fin. Year	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
Turnover	1966466609	1052910586	709061300	829795056	1205046686	1180457391	1224619368	1350149424
Gross profit	49358311.9	51697909.8	43252739	56757982	54640923	52311550	59050842	67179120
Net Profit	2753053.25	2316403.29	1559934.9	3651098.2	4209201	2154203	4772765	4638197
GP Rate	2.51%	4.91%	6.10%	6.84%	4.53%	4.43%	4.82%	4.98%
NP Rate	0.14%	0.22%	0.22%	0.44%	0.24%	0.18%	0.39%	0.34%

In the year under consideration the assessee has declared 4.91% GP on increased turnover. Therefore, there is no question of other addition. If we go by the industry then we have collected data's for the following assessee which are in the same trade :-

1. Bright Metals India Pvt. Ltd. - Average GP Rate is 3.86%
2. Prime Gold International Ltd. - Average GP Rate is 4.37%
3. LLoyds Metal & Energy Ltd. - Average GP Rate is 0.045%
4. Shree Metalloys Ltd. - Average GP Rate is less than 1%

Therefore, you are requested to decide accordingly and oblige.”

15. In addition to the returned submission the Learned authorised representative supported the order of the learned CIT – A for deletion of addition and further submitted that even the additions confirmed by the learned CIT – A cannot be sustained in view of the fact that the purchase are genuine and the Id. AO treated genuine purchases as non-genuine simply on suspicion doubts and conjectures. The assessee has furnished PAN, address, bills were filed before the assessing officer. The assessee is subjected to excise duty and all are records mentioning all the inwards and outwards with the quantitate records. Thus, the allegation made by the department are far from the truth. The Id. AR of the assessee submitted that even the addition sustained by the Id. CIT(A) is required to be deleted as copy of the relied upon documents were not supplied to the assessee. He has relied upon

various judgments to drive home to the various aspects of arguments raised by him. The learned authorised representative took us to the finding paragraph of the order of the Id. CIT(A). Relying on that finding he submitted that the assessee has declared a GP rate of 2.51 % in the F. Y. 2010-11, 4.91 % in the year under consideration the GP rate is 6.10 % in the FY 2012-13 a GP rate of 6.84 %. Thus, the Id. CIT(A) find that there is an improvement of GP in the results declared by assessee supported by audited accounts. Based on the GP being in the range of 6 % the Id. CIT(A) has arbitrarily adopted GP @ 6 % which also not correct, and the AO should be directed to accept the book results. He further referred to the finding of Id. CIT(A) wherein he stated that when the books are rejected and provision of section 145 is invoked, the best course of action is to apply the GP ratio and confirm certain percentage of sales to cover up any leakage of revenue. The profit declared in the year under consideration is higher than the previous year and the same should be accepted as the assessee has shown better results. He therefore submitted that to that extent i.e. in deleting addition of CIT(A) is proper but while estimating the GP the Id. CIT(A) has made mere guess work

and confirmed the addition at another estimate only ignoring the book results.

16. We have considered the rival contentions, perused the material available on record and also gone through the findings of the lower authorities recorded in their respective orders. We have also gone through the various judicial ruling placed before us by both the parties to drive home to their contentions. The bench noted that against the allegation made by the revenue the assessee has not demonstrated that the contentions of the department can be put a side. He has even in the reassessment proceeding remained silent and has not made any effort to revert the contentions raised by the revenue. The fact of the case shows that during reopened assessment for reasons that assessee has purchases of Rs 21,05,94,215/- as part of bogus purchases the parties are in appeal before us. Therefore, now the question arises that what is the amount of income earned by the assessee out of the bogus purchases arising out of the circular trading. We do not have any hesitation in confirming the action of the learned CIT – A in stating that the 25 % of the purchases cannot be added in the

hands of the assessee. But now, the question arises is that how much income is to be imputed and in what manner.

17. For this both the parties have relied upon the decision of the honourable jurisdictional High Court in the case of Clarity Gold (P) Ltd in ITA No. 125/2014 where in the court has held that:

6. Taking into account the evidence on record, the tribunal while considering the matter has totally deleted the amount of addition. **In our considered opinion taking into account the industry which is running the business, the addition which has been made on the basis of GP which has been shown of the identical industry whose is also heard together.**

18. As is evident from the above jurisdictional High Court Judgment wherein the High court stated that while estimating the gross profit the industry gross profit which is running the business and that gross profit shown by the comparable cases should be considered. Considering that aspect of the matter, Id. AR of the assessee filed comparable cases with evidence of following cases.

1. Bright Metals India Pvt. Ltd. - Average GP Rate is 3.86%
2. Prime Gold International Ltd. - Average GP Rate is 4.37%
3. LLoyds Metal & Energy Ltd. - Average GP Rate is 0.045%
4. Shree Metalloys Ltd. - Average GP Rate is less than 1%

19. As is evident from the above comparable cases cited, the highest gross profit is 4.37 % as against the assessee has

declared profit @ 4.91 % which is higher than the comparable cases. As against this information filed by the assessee revenue did not brought any cases having higher profit we direct the Id. AO to adopt 5 % as gross profit to end justice in the matter. While holding so we have respectfully followed the finding of our high court taking the industry comparable profit in the case of Clarity Gold (Supra) and direct the Id. AO to adopt the Gross Profit @ 5%. As the assessee has already disclosed Gross Profit @ 4.91% balance gross profit to be add @ 0.09% and determine the Income accordingly.

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

Order pronounced in the open Court on 01/10/2024.

Sd/-
(संदीप गोसाई)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

Sd/-
(राठौड कमलेश जयंतभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 01/10/2024

*Ganesh Kumar, Sr. PS

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

1. अपीलार्थी / The Appellant- Kandoi Metal Powders Manufacturing Company, Jaipur.
2. प्रत्यर्थी / The Respondent- DCIT, Central Circle-3, 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. 122/JP/2022 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar