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

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 314/JP/2019
निर्धारण वर्ष/Assessment Year : 2010-11

Pappu Qureshi 250-251, Sanjay Nagar, Bhata Basti, Shastri Nagar, Jaipur.	बनाम Vs.	The ITO, Ward-4(5), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABPQ 8488 K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by: Shri S.C. Jain (C.A.)
राजस्व की ओर से/ Revenue by : Miss Chanchal Meena (JCIT)

सुनवाई की तारीख/ Date of Hearing : 18/02/2020
उदघोषणा की तारीख/Date of Pronouncement: 28/04/2020

आदेश/ ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of the ld. CIT(A), Ajmer dated 29.01.2019 for the assessment year 2010-11 wherein the assessee has taken the following grounds of appeal:-

"1. That the learned Assessing Officer had erred at law as well as on facts in reopening the assessment u/s 148 and thereby further erred in making the order U/s 144 on totally different aspects beyond the issues covered under reasons recorded U/s 147. The learned CIT(A) has erred in not adjudicating but confirming the action of the A.O.

2. That the learned Assessing Officer had erred at law as well as on facts in comparing the business results with the preceding assessment *year whereas the activities were different during this assessment year and thereby the trading results were not comparable.*

3. That the learned Assessing Officer had erred at law as well as on facts in applying the net profit rate of 5% as specified U/s 44AF on the declared turnover of Rs.7,94,47,417/- despite admitting that the assessee's case is covered U/s 44AB. The learned CIT(A) has further erred in not adjudicating and confirming the action of the A.O.

4. That the learned Assessing Officer had erred at law as well on facts in completing the assessment U/s 144 for non-production of books despite that the assessment was reopened beyond 4 years as such the books were not available except the computer accounts. The learned CIT(A) has further erred in not adjudicating but confirming the action of the Assessing Officer.

5. That the learned Assessing Officer had erred at law as well as on facts in making addition to the income of Rs.34,28,749/- and to complete the assessment on total income of 38,72,370/- as against the returned income of Rs.4,43,620/- ."

2. Briefly the facts of the case are that the assessee has filed original return of income declaring total income of Rs. 4,43,620/-. Subsequently notice U/s 148 of the IT Act dated 31.03.2017 was issued after seeking necessary permission from the ld. Pr. CIT, Jaipur. In response, the assessee filed his return of income declaring total income as per original return of income of Rs 4,43,620/-. Subsequently, notice U/s 143(2) of the Act was issued and the assessment was completed at assessed income of Rs. 38,72,370/- wherein the Assessing Officer had made an addition of Rs. 34,28,749/-. The finding of the Assessing Officer have since been confirmed by the ld. CIT(A) and against the said findings, the assessee is in appeal before us.

3. During the course of hearing, the ld. AR taken us through the reasons recorded by the Assessing Officer before issuance of notice U/s 148 of the Act and submitted that on perusal of the reasons so recorded by the Assessing Officer, it is clear that the reopening has been done on the basis of suspicion relating to deposit of cash in the assessee's bank account and therefore, for the purpose of verification of cash transaction in the assessee's bank account, the matter has been reopened. It was submitted that reopening of the assessment for the purpose of verification or making the enquiry is not permissible as per the settled legal proposition as laid down by the various Courts from time to time. It was further submitted that in the reasons so recorded, the Assessing Officer has stated about heavy cash transactions amounting to Rs. 3,24,81,500/- however, he has not indicated as to whether the said transactions relating to deposits or withdrawals. It was submitted that on perusal of the bank statement of the assessee maintained with ICICI Bank, there is total cash deposits of Rs. 6,27,44,261/- and corresponding withdrawal in cash of Rs. 6,01,09,971/-. It was accordingly submitted that while recording the reasons, no proper material or records were looked into and the vague reasons were recorded. It was further submitted that in the reasons so recorded, the Assessing Officer has alleged that the assessee has failed to disclose fully and truly all material fact however, he has not specified what material facts have not been disclosed by the assessee. It was further submitted that the approval by the ld Pr. CIT, Jaipur was also in a mechanical manner and does not reflect application of mind on the part of the ld. Pr. CIT, Jaipur.

4. On merits, it was submitted by the ld AR that the books of account, bills and vouchers were duly maintained by the assessee which were subject to audit U/s 44AB of the Act. During the course of assessment proceedings, various details were filed including extracts of books of accounts, bank account, purchases and sales however, the original books of account could

not be produced since the same were not available as the case was reopened after a period of 6 years. It was submitted that the reassessment proceedings were initiated with issuance of notice U/s 142(1) on 18.10.2017 and by that time, the period required for maintaining the books of accounts as specified in Rule 6F(5) got expired. It was accordingly submitted that the finding of the Assessing Officer regarding non-production of bills and vouchers is totally incorrect since the assessee was not required to have such records available with him when the proceedings have been taken up after a period of 6 years. It was further submitted that the entire details relating to the purchases, sales, bank statements and audit report issued U/s 44AB by the independent auditors were filed and relied upon by the Assessing Officer which indicated the assessee has complied with all the provisions of Section 44AA of the Act. It was further submitted that when the books of account were audited and turnover has been accepted as declared by the assessee there is no basis for invocation of provisions of Section 44AF of the Act and upholding the net profit rate of 5%. It was further submitted that the Assessing Officer had not invoked provisions of Section 145(3) of the Act and had completed the assessment as per provisions of Section 144 of the Act for simple reason of non production of books and had applied the rate of 5% on the turnover as declared.

5. It was further submitted that the assessee has filed the return of income u/s 139(1) which was accompanied with the audited statement of accounts and the audit report issued u/s 44AB of the IT Act declaring the turnover, purchases, various expenses as well as of other details as specified under the Act. The reasons recorded for reopening of the assessment were simply based upon the deposit of cash in the bank account and during the course of assessment proceedings, it was clearly specified that the animals are being purchased by the assessee from the producers of live stocks being agriculturists and thereafter the same are sold to the various meat factories

and the payments against the purchases are being made in cash to the agriculturists and the cash was deposited directly by the buyers in the account of the assessee who have purchased these animals. The Assessing Officer reopened the case for the reason of deposit of cash whereas while completing the assessment the A.O. had resorted to make the addition to the income by application of NP rate 5% on the declared sales. It clearly indicates that the sales declared by the assessee are not in dispute and collection of the sales proceeds is definitely being deposited in the bank accounts.

6. It was further submitted that it is an admitted fact that the books were subject to audit U/s 44AB and the turnover as being admitted and specified in the assessment order was much beyond the limit as prescribed U/s 44AF, then how for making addition, section 44AF be invoked.

7. It was further submitted that the A.O. had specified that the G.P. rate during the year under consideration has gone down when compared with the previous year whereas it was explained to the A.O. that the assessee till the preceding assessment year was getting the gross margin on purchase and sale for selling the boneless and with bone meat whereas during the current year there was no sale of meat but was direct sale of animals and according he was getting a fixed amount of Rs.80/- to Rs.100/- per animal as a difference between the purchases and sales prices. Therefore, the G.P has reduced. The fact relating to the change of business was also specified by the Auditors in the Audit Report issued U/s 44AB in the column 8 of business by stating that the assessee was working during this year as a Pakka Aarthia of unproductive animals with effect from 15th August, 2009. Therefore, the trading results as being compared by the A.O. with the preceding year are not applicable since the activity of business of the assessee was totally changed in this year.

8. It was further submitted that the Assessing Officer has made a remark "sales and purchases have been claimed to be made in cash. Huge cash deposits and withdrawals in bank accounts has been made". It was submitted that the statement of the A.O. relating to heavy withdrawals from the bank accounts in cash is not denied since the payment for the animals is being made to the agriculturists always in cash and the same are being exempt as per Rule 6DD and the A.O. purposely had ignored that the withdrawals of cash was used for making payments for purchases not chargeable per section 40A(3) of the Act being exempt under Rule 6DD.

9. It was further submitted that the Assessing Officer had failed to compare or to specify any of the comparable case in the assessment order where the rate of 5% is being declared by the trader as net profit engaged in the business of sales of animals to the meat factories and accordingly the judgment of the A.O. to apply the rate is arbitrary and based upon his own assumption.

10. It was further submitted that the proceedings for which the case so reopened were concluded by the Assessing Officer by having no adverse impact and therefore when the A.O. was satisfied about the deposits and withdrawals in cash in the bank account there was no reason to make any further addition by application of N.P. rate. In support, reliance was placed on the following decisions:-

- CIT v/s Shri Ram Singh (2008) 306 ITR 343.
- Ranbaxy Laboratories Ltd v/s Commissioner of Income Tax (2011) 336 ITR 136 (Del)
- CIT v/s Jet Airways India Ltd. (2011) 331 ITR 236 (Bom)
- CIT v/s Adhunik Niryat Ispat Limited (2011) 63 DTR 212 (Del)

11. It was accordingly submitted that under the circumstances, the entire proceedings taken by the Assessing Officer resorting to make addition by

applying the N.P. Rate of 5% is totally unjustified, unwarranted and against the provision of law as well as beyond the scope of section 148 for which the assessment was reopened by recording reasons since no matter was found to be taxable as per reasons recorded about the cash deposits and withdrawals in the bank accounts and therefore, the addition so made deserves to be deleted.

12. Per contra, the ld DR submitted that the matter was reopened by the Assessing officer in view of huge cash transactions made by the assessee in his bank account and thereafter, during the course of proceedings, the assessee was asked to produce books of accounts and vouchers which he failed to produce and in view of the same, the Assessing officer has estimated gross profit @ 5% as against 1.76% declared by the assessee. The ld DR supported the findings of the lower authorities and submitted that no interference is called for in the said findings and the order of the ld CIT(A) may accordingly be confirmed and the appeal of the assessee be dismissed.

13. We have considered the rival submissions and perused the material available on record. In this case, the assessee had originally filed his return of income on 29.09.2010 declaring total income of Rs 443,620/-, thereafter, notice u/s 148 was issued on 31.03.2017. The reasons for reopening so recorded by the Assessing officer read as under:

> " *As per the information available with this office, it is found that the assessee has made heavy cash transactions in his bank account amounting to Rs 3,24,81,500/- during the financial year 2009-10. As per material available on record, it is found that the assessee was not able to explain the heavy cash transactions in his bank accounts.*
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> *On verification of record, it is found that the return of income has been filed for A.Y 2010-11 declaring total income at Rs 4,43,620/-.*

Looking to the facts mentioned above, I have the reasons to believe that the income to the extent of Rs 3,24,81,500/- has escaped assessment within the meaning of section 147 of the IT Act, 1961 on account of failure on part of the assessee to disclose fully and truly all material facts necessary for his assessment for which notice u/s 148 of the Act is required to be issued."

14. In response to notice u/s 148, the assessee filed his return of income reiterating the income as declared in the original return of income. During the course of reassessment proceedings, the assessee was asked to justify the transactions of bank account with the respective sales/purchases and the profit declared and in this regard, the return of income, audit report u/s 44AB, copies of bank account and replies filed by the assessee were examined by the Assessing officer. Thereafter, the Assessing officer has concluded the reassessment proceedings and the relevant findings read as under:

"The trading and P & L account was analyzed and it was seen that assessee has declared total sales of Rs. 7,94,47,417/- and purchases of Rs. 7,80,47,438/-. Opening and closing stock has been claimed at Rs. Nil. No direct expenses has been claimed and gross profit has been declared at Rs.13,99,979/- giving GP rate 1.76%

No other income or receipt has been declared. In P & L Account after various expenses net profit of Rs.5,43,621/- has been declared giving NP rate 68%.

During proceeding the bank account of the assessee was analyzed and it was huge cash deposits in the bank account held with ICICI bank and huge withdrawals. The frequency and amount involved in the *transactions are unusually high in relation to what would be expected from a normal business activity.*

All the related facts have been examined. Sales and purchases have been claimed to be made in cash only. Huge cash deposits and withdrawals in bank accounts have been made. The G.P. rate declared by the assessee in earlier year was 4.46% as compared to this year declared 1.76% justification of low G.P. given has already been not considered as per discussed above. During entire assessment proceedings, the books of account have not been produced for verification. Various figures reflected in audit report U/s 44AB, return of income filed and submission made during the course of assessment proceedings could not been verified. The AR has shown his inability to produce these books of account and supporting bills and vouchers. In view of above facts and circumstances of this case, I estimate the net profit rate of the assessee at 5% which is quite justifiable to the case of non-maintenance of books of accounts and supported by provision of Section 44AF applicable the year.

Applying the above analogy, the net income of the assessee from his proprietor ship concern M/s AL Rahim & Co. works out to Rs. 39,72,370/ (5% of Rs. 7,94,47,417/-) as against Rs. 5,43,621/- declared by the assessee resulting in addition of Rs. 34,28,749/- to total income of the assessee."

15. We therefore find that the Assessing officer has noticed that there are huge cash transactions in the bank account of the assessee in terms of deposits and withdrawals and has also noticed that the sales and purchases as reflected in the audited financial statements have been made in cash, however, he has not highlighted any discrepancy or mis-match in such

transactions. Therefore, the transactions so reflected in the bank account reconciles with the transactions so reflected in the audited financial statements and no addition has been made towards any unrecorded sales transactions or any purchase transactions made out of books and no addition has been made in respect of the reasons for which the matter was reopened in terms of unverified bank deposits, thus, the subsequent estimation of profits on the declared turnover so accepted on account of lower declared profits cannot be sustained and the addition deserved to be set-aside on this account itself.

16. Further, we find that the Assessing officer has estimated the gross profit rate of 5% as against 1.76% without even rejecting the books of accounts so maintained by the assessee. Even where the complete books of accounts could not be produced for verification and the assessee has only produced copy of audited financial statements along with audit report, where the figures of sales and purchases have been accepted and in absence of opening and closing stock, we find that there cannot be a case of deemed rejection of books of accounts and estimation of gross profit rate. Further, for estimating gross profit rate, the AO has applied the provisions of section 44AF of the Act ignoring the fact that the assessee was engaged in the purchase and sale of animals which doesn't technically falls under the category of retail trade of goods and merchandise, and in any case, the turnover so declared by the assessee and accepted by the Assessing officer for the year was Rs 7,94,47,417/- well beyond the prescribed limits u/s 44AF of the Act. Further, we find that there is a change in the business model of the assessee as compared to the previous year which has apparently escaped the attention of the Assessing officer where he has compared the current year results with that of the previous year and in absence of any reasonable basis for estimation of gross profit rate in form of any comparable third party data, the

estimation of gross profit rate of 5% cannot be sustained. Therefore, in the entirety of facts and circumstances of the case, the addition of Rs 34,28,749/- so made by the Assessing officer is hereby directed to be deleted.

In the result, the appeal filed by the assessee is allowed.

Order pronounced on 28/04/2020.

Sd/-	Sd/-
(विजय पाल राव)	(विक्रम सिंह यादव)
(Vijay Pal Rao)	(Vikram Singh Yadav)
न्यायिक सदस्य / Judicial Member	लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 28/04/2020.
*Santosh.
आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Pappu Qureshi, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-4(5), 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. 314/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar