

**IN THE INCOME TAX APPELLATE TRIBUNAL  
ALLAHABAD 'SMC' BENCH, ALLAHABAD**

**BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER**

**Through Virtual Court**

**ITA Nos.30 & 31/ALLD/2020  
Assessment Year: 2012-13**

<b>Smt. Uma Kesarwani, Padila Mahadev, Ismileganj, Allahabad 211013</b>	Vs.	<b>The Income Tax Officer, Ward 1(5) Aaykar Bhawan, 38, M.G. Marg, Civil Lines Allahabad 211001</b>
<b>PAN:AVFPK8177Q</b>		
(Appellant)		(Respondent)

Appellant by:	Mr. Sanjay Kumar, Adv.
Respondent by:	Mr. A.K.Singh Sr. DR.
Date of hearing:	07.07.2021
Date of pronouncement:	08.07.2021

**ORDER**

**PER VIJAY PAL RAO (JUDICIAL MEMBER):**

These two appeals by the assessee are directed against two separate orders of CIT (appeals) both dated 26.11.2019 arising assessment order passed u/s 143(3) and u/s 147 r.w.s. 143(3) respectively for the assessment year 2012-13. The appeal of the assessee in ITA No. 30/Alld/2020 is taken up first in which the assessee has raised following grounds:

- "1. Because the Id. Commissioner of Income Tax (Appeals) has failed to appreciate the facts and circumstances, summarily rejected the explanation offered and confirmed the addition of Rs.1,51,386/- as Unexplained Investment in Purchases.

2. Because the order is bad in the eyes of law and against the facts.”

2. The solitary issue raised in this appeal by the assessee is regarding addition of Rs.1,51,386/- on account of unexplained investment for purchases. The assessee is an individual and running liquor shop. She has filed her return of income on 25<sup>th</sup> September, 2012 declaring total income of Rs.3,50,336/-. The case of the assessee was selected for scrutiny assessment through CASS. During the assessment proceedings the A.O found certain discrepancies and defects in the books of account and consequently rejected the books of account of the assessee under Sec. 145(3) of the Income tax Act. The Assessing Officer then estimating the income of the assessee by applying G.P Rate 18.33% which was declared by the assessee in the immediately preceding assessment year. Apart from trading addition of Rs.69,710/- the A.O has also made an addition of Rs.1,51,386/- on account of unexplained investment in purchases. The A.O noticed that purchases to the tune of Rs.1,51,386/- made on 22<sup>nd</sup> February, 2012 have not been disclosed in the audit report. Accordingly, the A.O treated the said purchases as unexplained investment and added to the total income of the assessee. The assessee challenged the action of the Assessing Officer before the CIT(A) but could not succeed.

3. Before the Tribunal the ld. A.R with the assessee has submitted that once the Assessing Officer has rejected the books of accounts and estimated the income by applying G.P Rate no further addition could be made on account of unexplained purchases. He has further contended and that the A.O has made the addition on account of unexplained investment for purchase of Rs.1,51,386/-. However, this fact is not in dispute that the payment for the said purchases has been made through bank account of one Ms. Sikha Jaisawal. He has further explained the reasons about the payment made through the bank account of Sikha Jaisawal due to serious illness of the daughter of the assessee who was admitted in AIIMS Delhi. Therefore, the assessee was out of station to attend her ailing daughter in AIIMS and during that

period the shop of the assessee was being run by Sikha Jaisawal. He has further pointed out that in the ledger account of the supplier the payment is reflected through the HDFC bank account of Sikha Jaisawal which is not in dispute. This is not the only payment for purchases from the bank account of Sikha Jaisawal but all the payments from January 2012 onwards till the end of the February, 2012 were made through the bank account of Sikha Jaisawal as she was running the liquor shop in the absence of the assessee. Thus, the ld. A.R has submitted that once the source of payments is not in dispute these purchases cannot be treated as unexplained investment. The ld. A.R has treated that the addition made by the A.O after rejection of books of account and estimation of income of the assessee is not justified and the same may be deleted.

4. On the other hand the ld. D.R has contended that though the payment of the purchases were made through bank account of Sikha Jaisawal however, once the assessee has not recorded this purchase in the books of accounts then the A.O had rightly treated the same as unexplained investment. The ld. D.R has further contended that the assessee has failed to produce any supporting evidence to show that the said amount of Rs.1,51,386/- was repaid by the assessee to Sikha Jaisawal as well as source of the said repayment. He has relied upon the orders of the authorities below.

5. I have considered the rival submission and as well as the relevant material on record. The Assessing Officer rejected the books of accounts of the assessee by invoking provision to Sec. 145(3) of the Income Tax Act, and consequently estimated the income by applying the G.P rate 18.33% which was declared by the assessee in the immediate preceding assessment year. So far as the rejection of the books of accounts and estimation of the income by applying G.P rate at 18.33% is concerned the assessee has not challenged the said action of the A.O. Therefore, to that extant the issue of rejection of books of accounts and trading addition has attained finality. The assessee is aggrieved by the addition made by the A.O on account of unexplained investment for purchases made to the tune of Rs.1,51,386/- on 22<sup>nd</sup> February, 2012.

It is pertinent to note that the A.O has not disputed the fact that the sales shown by the assessee are of inclusive of the alleged unexplained/unaccounted purchases. Therefore, once the books of accounts of the assessee is rejected and the income of the assessee is estimated by applying the G.P rate then no further addition can be made on account of unexplained purchases. Even otherwise the purchases being an item of trading account is covered under the estimation of the income by applying G.P rate. Therefore, once the income of the assessee is estimated by G.P rate no further addition can be made on account of expenditure which is part of the trading account. As far as the unexplained investment is concerned the source of payment is not in dispute as it is clearly made through bank account of one Sikha Jaisawal and the assessee has explained the reasons for such payment through bank account of Sikha Jaisawal. It is pertinent to note that it is not the isolated transaction of payment for purchases through bank account of Sikha Jaisawal but all the transactions from January, 2012 to February, 2012 were made from the bank account of Sikha Jaisawal. The A.O has accepted all other transactions of purchases and payment made through bank account of Sikha Jaisawal but pick up this transaction of Rs.1,51,386/- due to the reasons that the same is not recorded in the books of accounts of the assessee. Once, the source of the payment of the purchases is not in dispute then the same cannot be treated as unexplained investment. Accordingly, in view of the fact that the income of the assessee was estimated by the A.O by applying G.P rate after rejection of books of accounts u/s 145(3) of the Act the addition made by the A.O on account unexplained/unaccounted purchases is not sustainable and the same is liable to be deleted. Accordingly, the addition of Rs.1,51,386/-made by the A.O on account of unexplained investment is deleted.

6. This appeal is allowed.

**ITA No. 31/ALLD/2020**  
**Assessment Year: 2012-13**

7. In the appeal i.e ITA No. 31/Alld/2020 the assessee has raised the following grounds:

- i. Because the LD. Commissioner Appeals of Income Tax (Appeals) has wrongly, illegally confirmed the addition of Rs.11,05,000/- as unexplained investment. The LD. Commissioner Appeals of Income Tax (Appeals) has failed to appreciate the facts that Amount of Cash of Rs. 8,68,000/- credited in bank were duly entered in the Books of Accounts and the remaining were Bank Transfers or Cheque Deposits. Though the Books of Accounts were produced and rejected during the Original Assessment proceedings and Assessment was completed by Invoking the provisions u/s 145(3).
- ii. Because the Ld. has failed to appreciate the relevant documents, Extract of Books of Accounts Bank A/c's were placed before him vide submissions dated 22/11/2019 which he chose to ignore ,and summarily & arbitrarily confirmed the Addition of Rs.11,05,000/-.
- iii. Because the order is bad in the eyes of law and against the facts."

8. After the scrutiny assessment framed u/s 143(3) the A.O reopened the assessment by issuing a notice u/s 148 on 25<sup>th</sup> March, 2017 whereby the A.O proposed to assess the income on account of deposits made in the bank account of the assessee with Bank of Baroda of Rs.11,05,000/-. The A.O has recorded that despite the sufficient time elapsed the assessee has not explained the source of deposits of Rs.11,05,000/- in the bank account maintained with Bank of Baroda and also failed to produce books of account with supporting bills and vouchers. Accordingly, in the absence of any evidence in support of source deposits the A.O made an addition of Rs.11,05,000/- while framing reassessment u/s 147 r.w.s 143(3). The assessee has challenged the action of the A.O before the CIT(A) but could not succeed.

9. Before the Tribunal the ld. A.R of the assessee has submitted that the assessee has explained the source of the deposits made in the bank account of the assessee being sale proceeds and the deposits were also used by the assessee for payments to the excise department. He has further, submitted that the deposits as well as the payments made by the assessee are part of the books of accounts and particularly shown in the balance sheet of the assessee. Therefore, the license fee paid by the assessee from this bank account to

the excise department are duly reflected in the books of accounts. The assessee has furnished all these details before the CIT(A) which are reproduced in the impugned order at Page No. 4 & 5. However, this explanation and details furnished by the assessee were rejected by the CIT(A) while confirming the addition. Hence, the Id. A.R has submitted that the issue may be set aside to the record of A.O for verification of this fact of source of deposits from the sale proceeds and the payment made by the assessee towards the license fee to the excise department of the State Government and then decide the issue. On the other hand the Id. D.R has submitted that despite sufficient opportunity given by the A.O the assessee has failed to produce any explanation or supporting evidence to explain the source of deposits made in the bank account. Thus, the Id. D.R submitted that the assessee does not deserve any further opportunity to explain source of deposits.

10. I have considered the rival submission and as well as the relevant material on record. The A.O in the reassessment proceedings made the addition of Rs.11,05,000/- on account of unexplained deposits made in the bank account of the assessee on various dates maintained with the Bank of Baroda. It is pertinent to note that before the CIT(A) the assessee has submitted a detailed reply and explanation which has been reproduced by the CIT(A) at Page No. 4 & 5 as under:

“It was explained that the amounts were withdrawn from Business as Imprest A/C duly entered in the Books of Accounts, they were used for paying Excise Duty /License Fees etc. through the Bank Account by making Demand Drafts and the same has been claimed in the Profit & Loss A/C which was on record. The explanation has been rejected by the Ld. Assessing Officer. Though the Bank Account did not reflect in the Balance later made a part of the same as mentioned in the Reasons, recorded the copy of Bank statement of A/C No 3949100000021 of Bank of Baroda, where Cash, has been deposited is enclosed as Annexure-3.

It is pertinent to mention that a part of License fees of Rs. 3,45,000/- and Rs. 45,000/- was made by Demand Drafts to the District Excise Office, UP State Government from this Bank Account and duly claimed & entered in the Books of Accounts and claimed in the Financial Statements. This can be verified from the Bank Statements of A/C no. 3949100000021 BOB, on 10-11-2011 the amount of Rs. 4, 10,920/- which for issuing the Demand Drafts and Draft Commission of Rs. 920/- . The Copy of Bank Drafts made of Rs. 3, 65,000/- and Rs. 45,000/- is enclosed as Annexure 4. It is humbly submitted that the cash Deposits in the Bank A/c enclosed for your reference as Annexure 5 the amount were entered in the Ledger A/c of the Assesse which were rejected in the Original Assessment Proceedings. The Ld. Assessing Officer has proceeded to add the amount u/s as

Unexplained Investment which is against the facts &, the amounts are explained and deserves to be deleted.

That further it is submitted that the Total Cash Deposits are not of Rs. 11, 05,000/- but of Rs. 8, 68,000/ only. The remaining is Bank Transfers from A/c No. 06980100007271 of Bank of Baroda, of Mr. Rajendra Kesarwani on 31/03/2012 and other of the Appellant A/c 39490100000022 on made on 03/12/2011 or amounts credited on cancellation of drafts on 26/12/2011, the segregation is as under :-

Source	Amount Credit	Cash	Transfer	Cancelled DD	Cheque	Other	Total Credits
Rajendra- 022	5000		1000				
Cash	10000	10000				5500	
Pawan Pandey	5500					11000	
Pawan Pandey	11000						
Cash	550000	550000					
DD Cancelled	5000			5000			
DD Cancelled	5000			5000			
DD Cancelled	5000			5000			
DD Cancelled	5000			5000			
DD Cancelled	5000			5000			
Cash	25000	25000					
Cash	40000	40000					
Cash	10000	10000					
Cash	138000	138000					
Ch 127384	41000				41000		
Uma - 7271	49500		49500				
Cash	45000	45000					
Rajendra- 022	100000		100000				
Cash	50000	50000					
Total Credits	1105000	868000	154500	25000	41000	16500	1105000

That the copy of Bank Statement of A/C No. 39490100000022 of Rajendra Kumar Kesarwani form where Transfer has been made is enclosed as Annexure 6 and the copy of Bank Statements of A/c No 06980100007271 of the Appellant which is reflected in the Balance sheet from where Transfer has been is enclosed as Annexure 7. The Ld. Assessing Officer has wrongly arrived at Rs.11, 05,000/- as Cash Deposits and has made the addition as unexplained Investment. That in view of above facts, submissions and law the additions made u/s 69 by the Ld. Assessing officer deserves to be deleted because the amounts deposited are Business Receipts which have been used for running the business and not Unexplained Investments u/s 69, it is prayed that the Appeal be allowed, additions be deleted and such other Orders as deemed fit be passed.”

It is manifest from the details and explanation furnished by the assessee that the assessee has shown the deposits made in the bank account on various dates and also the corresponding payment through cheques and demand draft which were subsequently cancelled in some instance. It is pertinent to note that if the sale proceeds of the assessee are not deposits in any other bank account then the explanation of the assessee that the deposits made by the assessee in the bank account maintained with Bank of Baroda cannot be rejected without verifying these details. Accordingly, in the facts and circumstances of

the case and in the interest of justice this issue is set aside to the record of A.O for proper verification of the details as well as facts regarding the source of the deposits and then adjudicate the same afresh, after affording an opportunity of hearing to the assessee.

11. Resultantly, the appeals of assessee in ITA No. 30/Alld/2020 is allowed and in ITA No. 31/Alld/2020 is allowed for statistical purposes.

Order pronounced in the open Court through video conferencing on 08.07.2021 at the time of hearing.

Sd/-  
**[VIJAY PAL RAO]**  
**JUDICIAL MEMBER**

DATED: 08/07/2021

PS: Rohit

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT-Allahabad, U.P.
5. DR – The Sr. DR, Aayakar Bhawan, Civil Lines, Allahabad, U.P.

By order

Assistant Registrar