

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

श्री गगन गोयल, लेखा सदस्य एवं श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष
BEFORE: SHRI GAGAN GOYAL, AM & SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA No. 259/JPR/2025
निर्धारणवर्ष / Assessment Year : 2017-18

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|--|-------------|-------------------------|
| Shri Vinod Gupta Uma Traders Jeevan Mandi, Surajgarh, Jhunjhunu. | बनाम Vs. | The ITO, Jhunjhunu. |
| स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: ABDPG1123E | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारिती की ओरसे / Assessee by : Shri Siddharth Ranka, Adv. &
Shri Saurav Harsh, Adv.
राजस्व की ओरसे / Revenue by: Shri Rajesh Ojha, CIT-DR

सुनवाई की तारीख / Date of Hearing : 23/06/2025
उद्घोषणा की तारीख / Date of Pronouncement: 15/07/2025

आदेश / ORDER

PER: NARINDER KUMAR, JUDICIAL MEMBER .

Feeling aggrieved by order passed by Learned CIT(A), NFAC, Delhi, on 04.01.2025, u/s 250 of the Income Tax Act, 1961 (in short "the Act"), the assessee filed present appeal.

2. The impugned order relates to the assessment year 2017-18 whereby Learned CIT(A) disposed of the appeal, while setting aside assessment order dated 25.05.2023, and while exercising power u/s

251(1)(a) of the Act, directed the Assessing Officer to make fresh assessment in accordance with rules within the time lines prescribed u/s 153(3) of the Act.

3. It may be mentioned here that vide assessment order dated 25.05.2023, total income of the assessee was assessed at Rs. 4,15,43,530/- due to variation/addition of Rs. 4,05,71,650/-.

Basis of said addition was bogus accommodation entries said to have been availed of by the assessee under the guise of certain purchase/sales. The Assessing Officer observed that the accommodation entries were provided by the following three entities controlled by Shri Ashok Kumar Gupta:-

- Umesh Kumar Vivek Kumar (prop. vivek Gupta, Nephew of Ashok Kumar Gupta) for an amount of Rs. 1,80,00,262/-.
- Mahavir Prasad Suresh Kumar (Prop. Suresh Kumar servant of Ashok Kumar Gupta) for an amount of Rs. 24,74,879/- & Rs. 25,26,009/-
- S A Agro Internation (Prop. Sandeep Gupta, son of Ashok Gupta) for an amount of Rs. 1,75,71,650/-.

4. As noticed above, Learned CIT(A) set aside the above assessment order with directions to the Assessing Officer to make fresh assessment.

Feeling aggrieved by the said directions contained in the impugned order, the assessee appellant is before this Appellate Tribunal.

5. Arguments heard. File perused.

6. When the assessee was before Learned CIT(A), by way of challenge to the above said assessment order, in para 4 of the impugned order, Learned CIT(A) observed that the Assessing Officer passed an ex-parte order u/s 147 r.w.s 144 of the Act.

Learned Counsel for the appellant has submitted that the assessment order could not be termed to be an ex-parte order when the assessee submitted its response to the two notices i.e. u/s 148 and 142(1) of the Act.

7. Record reveals that the Assessing Officer issued to the assessee notice dated 9.1.2023 under section 143(2) of the Act, but the assessee failed to furnish any reply thereto.

That is how, show cause notice dated 28.4.2023 was issued to the assessee-appellant under first proviso to section 144 of the Act, but he failed to furnish any response.

Proviso to section 251(1) of the Act stipulates that where the appeal before the Commissioner (Appeal) is against an order of assessment made under section 144, he may set aside the assessment and refer the case back to the Assessing Officer for making a fresh assessment.

Clause (c) of sub-section (1) of section 144 of the Act provides that if any person having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of section 143, Best judgment assessment is to be made taking into account all relevant material which the Assessing Officer gathers.

8. In this situation, Learned DR has rightly submitted that the assessee-appellant failed to furnish reply to show cause notice dated 28.4.2023 issued for 4.5.2023, and as such CIT(A) was empowered to exercise powers under section 251(1) of the Act in case of assessment order passed under section 144 of the Act.

9. As is available from the assessment order dated 25.05.2023 as per specific information available on Insight portal under High Risk CRIU/VRU information, uploaded by the office of DDIT (Inv.), Unit-6(2), New Delhi, a survey u/s 133A of the Act was carried out on 30.11.2018 at premises - Room No. 210 & 212, 4107, Naya Bazar, Delhi i.e. of Shri Ashok Kumar Gupta, Shri Sandeep Gupta & Shri Anuj Gupta.

10. Said survey revealed that the abovesaid persons were engaged in providing accommodation entries of non-genuine purchases as well as non-genuine sales to various parties, details of which were collected during survey.

11. Statement of abovesaid Ashok Kumar Gupta was also recorded, during survey proceedings, wherein he admitted his involvement in providing accommodation entries by issuing bogus bills in lieu of certain commission. As result of the survey, it transpired that the assessee was one of the beneficiaries of accommodation entries regarding bogus purchases in its books of accounts relating to the financial year 2016-17 and to the tune of Rs. 4,05,71,650/-, through dummy/paper concerns namely, M/s Umesh Kumar Vivek Kumar, SA Agro International and Mahaveer Prasad Suresh Kumar, which were controlled and managed by the above said Shri Ashok Kumar Gupta.

12. Admittedly, notice u/s 148 of the Act was issued to the assessee on 26.07.2022. Thereupon, the assessee furnished his return of income. Thereafter, notice u/s 143(2) of the Act was issued to the assessee on 09.01.2023, but the assessee did not submit any response thereto.

However, when notice u/s 142(1) of the Act was issued to the assessee on 30.01.2023, the assessee furnished his response that he had actually made transactions through said entities and that payments were made through banking channels.

The assessee also submitted balance sheet of M/s Uma Traders, Proprietorship of Shri Vinod Kumar Gupta-the assessee, bank statement

of account maintained by HDFC Bank, for the period from 01.04.2016 to 31.03.2016, audit report, acknowledgment of return of income with computation of income details of purchase and sales during financial year 2016-17, and statement of his own account with State Bank of India.

13. The Assessing Officer observed in the assessment order that during survey proceedings, above named person-Shri Ashok Kumar Gupta, when examined u/s 131(1)(A) of the Act, stated on oath that he had provided accommodation entries regarding purchase and sales to many entities, through his various entities.

14. As is available from the assessment order, when Shri Ashok Kumar Gupta was subsequently examined on oath on 28.01.2020, 03.03.2020 and 19.02.2021, as regards the entities controlled by him during the period i.e. financial year 2012-13 to financial year 2018-19, he confirmed to have provided accommodation entries to various individuals and entities as regards purchases and sales.

In the assessment order, it was further observed that during survey proceedings, certain digital devices were impounded and relevant data was extracted from there, which coupled with the statement of said Shri Ashok Kumar Gupta revealed that the assessee appellant was one of the beneficiaries, who had obtained accommodation entries regarding bogus

transactions through above named, three entities controlled by him, Shri Ashok Kumar Gupta.

Additional Evidence before Learned CIT(A)

15. Record reveals that Learned CIT(A) observed in the impugned order that for the first time the assessee appellant submitted in the appellate proceedings before him Learned CIT(A), following documents :-

| Description of documents | Remarks |
|--|---|
| 1. Written submission explaining the contention of the appellant 2. Copy of ITR & computation filed on 03.11.2017 along with the audit report. 3. Copy of purchase ledger of Umesh Kumar Vivek Kumar along with the purchases bills and Bank statement reflecting the payment to the seller. 4. Copy of ledger of Mahaveer Prasad Suresh Kumar along with the sale bills and banks statement reflecting the payment received from purchaser. 5. Copy of purchase ledger of S.A. Agro International along with the purchase bills and banks statement reflecting the payment to the seller. 6. Copy of Form 49-A dated 04.12.2016 i.e. certification of carrying goods out of state along with the Vehicle Challan. 7. Copy of commodity wise ledger. | The documents/evidences have prima facie potential material having bearing on the outcome of the assessment of true income. |

16. In other words, as per observations made by Learned CIT(A) in the impugned order, the above said documents were stated to have not been submitted by the assessee before the Assessing Officer. That is why, Learned CIT(A) was of the opinion that the issues raised by the appellant

required extensive enquiry and verification, which was not possible during appellate proceedings.

Accordingly, in order to provide another chance to the appellant to present his case, Learned CIT(A) remitted the matter to the Assessing Officer for fresh assessment.

17. It may be mentioned here that before Learned CIT(A), the assessee appellant raised additional grounds i.e. jurisdiction for issuance of notice u/s 148 of the Act, and that the approval for re-opening was obtained from the Pr. Commissioner of Income Tax instead of Pr. Chief Commissioner of Income Tax. Both these were raised as ground Nos. 1 and 2 in Form No. 36 presented before Appellate Tribunal.

18. It may also be mentioned here that even though initially in the course of arguments, Learned counsel for the appellant touched the two additional grounds raised before Learned CIT(A), but faced with certain submissions put forth from the side Ld. DR for the department, learned counsel for the appellant opted not to press any of the said two grounds before us.

Accordingly, the said two grounds raised in Form No. 36 are hereby dismissed or rejected, same having not been pressed before us.

19. Herein, the applicant claims himself to be proprietor of M/s Uma Traders, which is involved in trading and agro-based Industry.

20. Survey action was conducted under section 133A of the Act at room No.201,212 and 4107, Naya Bazar, Delhi, belonging to Ashok Kumar Gupta, Sandeep Gupta and Anuj Gupta which led to discovery of material disclosing that said persons had provided accommodation entries of non genuine purchase and non-genuine sales to various parties.

During survey proceedings, statement of Sh. Ashok Kumar Gupta was also recorded under section 131(1A) of the Act in which he supported the version to have provided accommodation entries of non genuine purchases and non genuine sales to various parties. In addition thereto, incriminating material contained in certain digital devices was also taken into consideration.

21. As regards purchases, on behalf of the assessee-appellant, it has been submitted that out of total purchases of Rs. 24,00,07,948/- made during the year under consideration, purchases to the tune of Rs. 3,55,70,762/-were made from Umesh Kumar Vivek Kumar and SA Agro International.

As regards sales, case of the appellant is that during the year under consideration, its total sales were Rs.24,41,41,900/-whereas the sales made to Mahaveer Prasad Suresh Kumar were to the tune of Rs. 50,00,888/-.

Contention raised on behalf of the appellant is that the Assessing Officer did not take into consideration the documents and rather, he simply relied on the statements recorded.

It has also been submitted that the Assessing Officer did not reject the account books of the assessee and invoked provisions of section 68 of the Act.

In this regard, in the written submissions, Learned counsel for the appellant has submitted as under:

“4.12. That it is settled law that the provisions of section 68 of the Act are not applicable where the amount in question represents purchases made on credit, as the same has been paid through account payee cheques on close of the year, which are verifiable from the bank statements; that the provisions of section 68 can only be invoked where any sum is found credited in the books of an Assessee, maintained for any previous year, whereas it is not the case of the assessee that it has taken any Loan or Deposit from the said creditors and not even the amount of purchases is found credited in the books of the assessee; that on the contrary, the amount of purchases is a debit in the books of the Assessee and thus, the provisions of section 68 are not applicable for the purpose of allowability and disallowability of any deduction, as section 68, which is a deeming provision, is applicable only when any sum is found credited in the books of the assessee and the assessee is not able to explain the nature and source of such credit. We rely upon:

- Hon'ble Allahabad High Court in CIT v. Pancham Dass Jain (205 CTR 444, has held that the provisions of section 68 of the I.T. Act are not attracted to the amounts representing purchases made on credit.
- Hon'ble Allahabad High Court in CIT v. Jagdish Prasad Tewari (220 Taxman 141, has held that where the assessee had made payments to the creditors through cheques, merely because some creditors had not confirmed the receipts, no addition as cash credit could be made to the assessee's income.
- Hon'ble Gujarat High Court in the case of CIT v. Nangalia Fabrics Pvt. Ltd. 40 taxmann.com 206 has held: We have considered the rival submissions and the

materials placed on record. The purchases are supported by bills, entries in the books of account, payment by cheque and quantitative details. Assessing Officer did not find any inflation in purchase price or inflation in consumption or suppression of the production. The addition had been made only on the ground that the parties are not traceable. Assessee had made payment through crossed cheques and assessing officer did not find that payment made came back to assessee. Assessing Officer has made addition in respect of the outstanding amount as on 31.3.2001 which has been cleared in the succeeding years. The ratio of the creditor to the purchases is normal considering the past records of the assessee. The creditors were outstanding owing to liquidity as assessee is also required to get credit in respect of sales also. Even otherwise provision of section 68 is not attracted to amounts representing purchases made on credit as held in the case of Panchan Dass Jain cited supra. The addition for bogus purchases cannot also be sustained in full or in part in view of the various cases/laws cited by the assessee and in view of the facts that the decision of Vijay Proteins Ltd. and Sanjay Oil Cake Industries are not applicable to the facts of the assessee's case. Assessee's case is covered by the decision of Hon'ble Gujarat High Court in case of Kashiram Textile Mills. In view of the matter, addition made by the assessing officer is deleted. Ground No.1 of Assessee's appeal is allowed and ground No.1 of Revenue's appeal is dismissed.

- Hon'ble ITAT Bangalore Bench in Madhu Solanki v. ITO [2021 (8) TMI 373] has held:

"15. Similar view has been expressed by Hon'ble Delhi High Court in the case of CIT vs. Ritu Anurag Agarwal reported in 2009 (7) TMI 1247 as under:-

"This finding of AO remained undisturbed before the CIT(A) as well and has been accepted by the ITAT. Proceeding on this basis, the ITAT observed that the sales, purchases as well as gross profits as disclosed by the assessee have been accepted by the Assessing Officer. Once this is accepted, we are of the opinion that the approach of the ITAT was correct inasmuch as the Assessing Officer did not consider this aspect while making additions of sundry creditors under Section 68 of the Income Tax Act. As there was no case for disallowance for corresponding purchase, no addition could be made under Section 68 inasmuch as it is not in dispute that the creditors outstanding related to purchases and the trading results were accepted by the AO. We are, therefore, of the opinion that no substantial question of law arises for consideration in this case. The appeal is accordingly dismissed."

16. The Ld D.R placed his reliance on the decision rendered by the Bangalore bench of ITAT in the case of Suresh Kumar T. Jain (supra), which was also confirmed by Hon'ble Karnataka High Court, vide its order dated 20-11-2018

passed in ITA No.160 of 2010. The Ld D.R contended that the outstanding trade creditors could be added u/s 68 of the Act. We have gone through the above said decision and notice that the facts prevailing in that case were different. In the above said case, most of the creditors confirmed the outstanding balances as per their books of accounts, which were much lesser than the outstanding balances disclosed by the assessee before the High Court. Copies of confirmation letters received from the creditors were also furnished to the assessee, but he did not offer any explanation. Hence, it was considered to be a case of either payment outside books or cessation of liability. Under these set of facts, it was held that the addition made u/s 41(1) and 68 of the Act was justified.

17. In the present case, the facts are totally different. First of all, the outstanding balances related to the purchases made during the year under consideration and not brought forward balances. The AO did not get reply from both the trade creditors and hence he proceeded to assess the outstanding balances, while accepting the purchases made during the year & payments made during the year. The AO has made the addition u/s 68 of the Act and did not invoke provisions of sec. 41(1) of the Act. On the contrary, the assessee has shown that the payments have been made in the succeeding year through banking channels. Accordingly, we are of the view that the revenue could not rely upon the decision rendered in the case of Sureshkumar T Jain. Under these set of facts, we are of the view that the AO could not have made addition of trade creditors u/s 68 of the Act."

4.13. That it is settled law that the provisions of section 68 of the Act are not applicable on the sale transactions recorded in the books of accounts as sales are already part of the income which is already credited in P&L account. We rely upon:

- Hon'ble ITAT Jaipur Bench in ACIT v. Chandra Surana [2022 (12) TMI 750] has held: As also observed from the assessment order that the AO had not rejected the books of account of the assessee as no contrary material was available with him to reject the books of account of the assessee. As regards the addition made by the AO by applying the provisions of Section 68 it is noted that provisions of Section 68 are not applicable on the sale transactions recorded in the books of accounts as sales are already part of the income which is already credited in P&L account. There is no occasion to consider the same as income of the assessee by invoking the provisions of Section 68 of the Act. In view of the above deliberations and case laws relied upon by both the parties, we find that the AO was not justified in making an addition u/s 68 of the Act which has rightly been

deleted the Id. CIT(A) and we concur with his findings. Thus the appeal of the Revenue is dismissed.

- Hon'ble ITAT Jaipur Bench in Mahesh Kumar Gupta v. ACIT [2023 (3) TMI 1148] has held: Addition u/s 68 - cash deposits in bank account -non rejection of books of accounts HELD THAT: opinion of the assessing officer is required to be formed objectively with reference to the material available on record. Hence, application of mind is sine qua non for forming the opinion. The only reason placed by the Id. AO in his order that the full name, address or/and PAN of the customer to whom goods were sold in cash during the course of business below to the prescribed limit has not been given. It is voluntary to the customer to provide their personal information to the assessee while goods being sold and even the law does not mandate to the assessee up to an amount of Rs. 2 lac. The action of the Id. AO making an addition u/s 68 as unexplained cash deposit without rejecting the books of account is unwarranted. Even the Id.AO has not find any defects in the details submitted by the assessee and audited books were considered and accepted while finalizing the assessment. As relying on SHRI CHANDRA SURANA [2022 (12) TMI 750-ITAT JAIPUR] case we vacate the addition made under section 68 of the Act as the same cannot be made without rejecting the books of account of the assessee regularly maintained by the assessee and the said cash deposited is duly supported by the entries passed in the books of account and part of the sale accepted by the AO. Appeal of the assessee is allowed.
- Hon'ble Gujarat High Court in CIT v. Vishal Exports Overseas Ltd. [2012 (7) TMI 1110] has observed as under: Revenue carried the matter in appeal before the Tribunal. The Tribunal did not address the question of correctness of the CIT (Appeal)'s conclusion that amount of Rs. 70 lakhs represented the genuine export sale of assessee. The Tribunal however, upheld the deletion of Rs. 70 lakhs under section 68 of the Act observing that when the assessee had already offered sales realisation and such income is accepted by the Assessing Officer to be the income of the assessee, addition of the same amount once again under section 68 of the Act would tantamount to double taxation of the same income. In view of the above situation, we do not find any reason to interfere with the Tribunal's order.
- Hon'ble Rajasthan High Court in Harshil Chordia v. ITO [2008] 298 ITR 349 has observed as under:

"23. So for as question No. 2 is concerned, apparently when the Tribunal has found as a fact that the assessee was receiving money from the customers in hands against the payment on delivery of the vehicles on receipt from the dealer the question of such amount standing in the books of account of the assessee

would not attract Section 68 because the cash deposits becomes self-explanatory and such amounts were received by the assessee from the customers against which the delivery of the vehicle was made to the customers. The question of sustaining the addition would not arise".

22. As per written submissions on behalf of the appellant, before Learned CIT(A), in the Assessment Year under consideration its gross profit was **1.61%**, whereas in the Assessment year 2015-16 it was **3.70%**; and in the subsequent Assessment Year 2016-17, it was **3.28%**.

Learned counsel for the appellant has submitted that even if we accept the observations and calculations made by the Assessing Officer, same would lead to GP rate of 18.23%. The contention is that there is no possibility of such a high GP rate in agro-items industries.

Learned counsel has also submitted that as regards sale transactions, recorded in the books of accounts maintained by the assessee, the amount of sales being part of the income and having been credited in Profit & Loss Account, provisions of section 68 of the Act cannot be attracted as regards said income from the sales.

23. However, in the end, Learned counsel submitted that in the given facts and circumstances, having regard to the sales by the assessee, which were not doubted by the department, addition to the tune of about Rs.

12,50,000/-shall meet the ends of justice, as against addition of Rs. 4,05,71,650/-,

Learned DR has also submitted that this is a case where purchases were made by the assessee out of books of accounts, and in this way, the assessee routed unaccounted income on the basis of accommodation entries regarding purchases and sales, and further that there is no merit in the contentions raised on behalf of the appellant.

24. It is correct that sales having been reflected by the assessee in the books of accounts maintained by the assessee, the amount of sales already disclosed, cannot be part of such an addition. In case, sales reflected in the books of accounts are also made part of the addition under section 68 of the Act, it would amount to double taxation, as rightly submitted on behalf of the appellant.

However, it is significant to observe here that when, as per material available with the department, the goods are found to have not been received from the parties from whom same are shown to have been purchased, it can safely be said that such material was received by the assessee from a different source exclusively within the knowledge of the assessee and none else.

Therefore, it stands established that the assessee inflated the figure by showing higher amount of purchases, in the form of fictitious invoices, and by way of accommodation entries.

Considering the overall factual scenario, it would be just and proper to disallow certain percentage of the purchases found to be bogus transactions.

25. As noticed above, Learned counsel for the appellant submitted that in the given facts and circumstances, having regard to the sales by the assessee, which were not doubted by the department, addition to the tune of about Rs. 12,50,000/-shall meet the ends of justice, as against addition of Rs. 4,05,71,650/-,

Ld. DR for the department took time to ponder over this submission made on behalf of the appellant, and ultimately submitted that in the given facts and circumstances, when, as per material available with the department, the goods are found to have not been received by the party to whom same are shown to have been sold, it can safely be said that such material was never delivered by the assessee or received by the person, shown as the seller, and rather, to a person a different from the said person, exclusively within the knowledge of the assessee, and none else. At the same time, Learned DR for the department did not raise any

objection to restricting the addition only to the tune of Rs. 12,50,000/- in total, as against addition of Rs. 4,05,71,650/-.

26. Having regard to the facts and circumstances and the incriminating material collected during survey proceeding, we deem it a fit case to confirm the addition only to the extent of Rs. 12,50,000/-as regards the accommodation entries relating to bogus purchases.

Result

27. As a result, this appeal is disposed of and the impugned addition is restricted to Rs. 12,50,000/-. The Assessing Officer to make re-calculations.

File be consigned to the record room after the needful is done by the office.

Order pronounced in the open court on 15/07/2025.

Sd/-

(गगन गोयल)
(GAGAN GOYAL)
लेखा सदस्य / Accountant Member

Sd/-

(नरेन्द्र कुमार)
(NARINDER KUMAR)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 15/07/2025

*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Sh. Vinod Gupta, Jhunjhunu.
2. प्रत्यर्थी / The Respondent- ITO, Jhunjhunu.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur

ITA No. 259/JPR/2025
Sh. Vinod Gupta, Jhunjhunu

5. गार्डफाईल / Guard File ITA No. 259/JPR/2025)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar