

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

श्री आर.पी.तोलानी, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI R.P. TOLANI, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 792/JP/2012
निर्धारण वर्ष/Assessment Year : 2009-10

The ITO Ward- 5 (1) Jaipur	बनाम Vs.	Shri Radhey Shyam Agarwal 31, Agarwal Sadan, Santosh Nagar Colony, Brahmपुरi, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAECs 2610 M		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Vijay Goyal
राजस्व की ओर से/ Revenue by: Shri Purshottam Kashyap, Addl. CIT

सुनवाई की तारीख/ Date of Hearing : 03/11/2015
घोषणा की तारीख/ Date of Pronouncement : 20 /11/2015

आदेश / ORDER

PER R.P. TOLANI, JM:-

The Revenue has filed an appeal against the order of the Id. CIT(A)-II, Jaipur dated 23-07-2012 for the assessment year 2009-10 wherein following grounds have been raised by the Revenue.

“On the facts and in the circumstances of the case and in law the Id. CIT(A), Jaipur has erred in:-

(i) *deleting the addition of Rs. 37,45,366/- made by the AO on account of suppressed production without appreciating the fact that the assessee had not been able to explain the discrepancy of excess 7282.1 sq. ft carpet which have been washed during the year without there being any opening stock or production during the year.*

(ii) deleting the addition of Rs. 7,03,798/- on account of impugned income u/s 41(1) of the I.T. Act, 1961 without appreciating the fact that the assessee had not provided the confirmation or the present address of the party i.e. M/s. Laxmi Carpet Enterprises and assessee failed to prove that the amount was actually payable to said party as on 31-03-2009.’’

2.1 Brief facts of the case are - The assessee is an individual and prop. of M/s R.S International which is engaged in manufacturing & trading of carpets as also the partner in M/s Agarwal Krishi Farm. Return of total income of Rs. 3,62,880/- was filed on 30/09/2009. The assessing officer completed the assessment vide order dated 30/12/2011 by rejecting the books under section 145(3) and making following additions :-

a)	Suppressed production	Rs. 37,45,366/-
b)	U/s 41(1) of Income Tax Act, 1961	Rs. 7,03,498/-
c)	Low House hold withdraw	Rs. 63,730/-
	Total Additions	Rs. 45,12,594/-

2.2 Aggrieved from the order of Id AO, the assessee filed first appeal challenging rejection of books of accounts u/s 145(3) and additions on merits. The Id CIT(A) by detailed observations held the action of rejection of books to be unjustified by following observations:

..... The AO rejected the books of account of the assessee without having any cogent reason and without considering the reply and material furnished before him during the course of assessment proceedings. The assessee had maintained proper books of account including stock records which were audited by Chartered Accountant except stock records which was produced

before the AO during the course of assessment proceedings and no defect was pointed out by the AO in these records. The Auditors of the assessee had certified that the books of account of the assessee showed true and fair profit. Reliance is placed on the decision of St. Teresa's Oil Mills vs. State of Kerala (76 ITR 365) wherein Hon'ble Kerala High Court held that accounts regularly maintained in the course of business had to be taken as correct unless there was a strong and sufficient reason to indicate that they were unreliable. Further the sales of the assessee was hundred percent export sales or sales to export house and the same were also verifiable. There were no local sales. Therefore, it could not be said that the appellant had sold the alleged goods in the local market out of books of account. I therefore, hold that the AO was not justified in making the impugned addition on account of suppression of production. I accordingly direct the AO to delete the addition of Rs. 37,45,366/- made by him. These grounds of appeal are allowed.''

Besides on merits also CIT(A) deleted all the above additions, aggrieved from the order of Id. CIT(A) the revenue is in appeal before us. It shall be pertinent to mention that revenue has not raised any ground against the order of Id. CIT(A) for upholding the books of accounts, thus the Revenue's grounds in appeal are only on the merits of additions.

2.3 Apropos first ground, Id. AO was of the view that there was discrepancy in the carpet washing a/c to the tune of production of 7282.11 sq. feet as no evidence of carpets rewashing was produced; quality details of carpet 9x9 normal as mentioned in computerized sheet was not submitted; 1892 sq. feet were not in opening stock or the quality manufactured during the year; 7282.11 sq. feet washed and finished carpets were not shown in production records; consumption of yarn recorded in the yarn stock register was unverifiable;

quantity wise stock tally was not produced; weaving contractors were not produced and cost of production was not verifiable. On the basis of these observations Id. AO treated the 7282.11 sq. feet carpets as suppressed production which was sold out of the books resulting into addition of Rs. 37,45,366/-.

2.4 In first Id CIT(A) by detailed findings mentioned at page 12-19 of his order held that there were no alleged discrepancies in the stock of washed carpets, the confusion was caused by a defective computer statement which was clarified and washed carpet stock was reconciled by assessee before AO which he failed to appreciate, consequently the addition was deleted.

2.5 Ld. DR relied on the order of CIT(A) and contends that Id. AO has listed out various deficiencies in the books of accounts and rightly rejected the books of accounts and disallowed the expenditure. Observations and findings in the order of Id. AO are relied on.

2.6 Ld. Counsel for the assessee Shri Vijay Goyal on the other hand contends that revenue in the first place has not challenged the order of Id. CIT(A) in respect of allowing assessee's grounds in respect of rejection of books. Besides the so called deficiencies were duly explained before Id. AO, who did not consider the material on record and Id. CIT(A) duly appreciated all the facts, figure and reconciliations and awarded the relief. Brief facts are contended to be that the carpet industry in Jaipur works on set prevalent market practices. As in earlier years, assessee maintains regular books of accounts and relevant record

of stock is duly maintained. Ld. AO except raising some superficial issues, has not pointed out any discrepancy in material terms in the details of figures of record of carpet production as furnished by the assessee which are duly supported by contractors job bills, stock register and other relevant record. The production of the carpet is carried out through job workers/contractors and the production is duly inventoried in the record and sales are duly supported by invoices. Therefore, the production record of the carpets is fully supported by the evidence and no defect whatsoever is indicated by Id. AO in this behalf. The discrepancy as alleged by AO was only a misunderstanding on the part of AO on a printout which was fully explained by the assessee in assessment proceedings itself which finds its place at PB page 70-76.

- a) As per prevalent trade practice, the carpet weaving work is assigned to laborers, by supplying them particular quality of yarn based on fixed formula in term of ratio of consumption of yarn per sq. ft. carpet. To avoid workers misuse of yarn by claiming excess consumption or inflating the weight of carpet by soaking in water/moisture or putting the carpet in dust etc.; a formula for yarn consumed in per sq. ft. carpet production is agreed. Thus assessee receives manufactured carpets in terms of sq. feet and the ratio of fix consumption of yarn. It may vary in some cases according to weaving quality. The contentions made before Id. AO are supported by relevant evidence and confirmations from job workers placed at PB Page 77 to 83. Ld AO. Failed to appreciate the evidence, confirmations, explanation and made the addition.
- b) The contractors are issued raw material i.e. cotton, woolen, silk yarn, tani, theda by challans; copy is retained each by contractor and assessee. Relevant stock entries are made in the stock ledger of respective contractor which tallies with such challans. On delivery of carpets the payment is made to contractors by verifying these challans. Ld. AO discarded the

entire record only because challans were signed, summarily discarding the entire reconciliation of stock by the assessee. There is no prevalent requirement for signing of challans as most of the times, the yarn is received by employees of the contractors who are unwilling to sign. Thus Id. AO's adverse inference about consumption of yarn is bereft of verification of confirmation letters of job workers, yarn issue, return memos and stock registers, other records and reconciliation furnished by the assessee. Assessee requested that in case of any doubt, contractors may be called, however entire evidence submitted was rejected in summary manner ignoring the specific request for issue of summon u/s 131 of Income Tax Act. In the absence of verification of reconciliation and further inquiry the adverse inference drawn by Id. AO is without any cogent basis. Ld. CIT(A) rightly appreciated that the assessee maintains contractor wise stock register with details of material issued, return memo on delivery of finished goods, material consumed as per fix parameters for different quality of carpets and stock of raw material lying with contractors. is verifiable from stock ledger of such contractor.

Apropos the adverse inference about discrepancy in unwashed carpets, Id. AO re-produced quantity tally of unwashed carpets of the assessee for the FY 2008-09 details are as under:-

Particulars	Sq Ft
Opening Stock	23018
Add:- Carpet Manufactured during the year	55990.39
Total	79008.39
Less carpet Washed during the year	69277.39
Closing balance of carpets	9739.00

The above tally was caused by a computer statement wherein the line of opening stock was not printed due to problem in the computer system. After noticing the computer printing mistake, assessee resubmitted the correct print out tally of unwashed carpets as under:-

Particulars	Sq Ft
Opening Stock	29877
Add:- Carpet Manufactured during the	55990.39

year	
Total	85867.39
Less carpet Washed during the year	76136.39
Closing balance of carpets	9731.00

The main difference is in figure of opening stock, which was reconciled by figure against the closing stock as on 31-03-2008. (PB 221), which shows the closing stock of 29877 sft against unfinished carpet. This inadvertent printing mistake has been held by AO as unexplained discrepancy for rejecting the books and making the addition. The reconciliation offered by assessee is as under:-

Reconciliation of difference in washing of carpets
AY 2009-2010

	Particulars	PB page	Sq Ft
	Opening Stock of unwashed carpets reported in Revised Q Tally for washing submitted (Copy at PB pg 93) and also verifiable by closing stock statement of Previous year (PB 221)	93, 221,	29877
Less	Opening Stock of Unwashed Carpets shown in Original Q Tally (Incorrect) for washing submitted	85	23018
	Difference on account of reporting of wrong figure of opening stock in original Q tally submitted to AO		6859
Add	Carpets Rewashed	94 to 99	323.08
Add	Excess figure taken in Show Cause Notice (PB pg 68-69) Replied to AO (PB pg 70) 76559.50-76459.47		100.03
	Total Difference (alleged as suppressed Production)		7282.11

d) The summary of washing expenses submitted to the AO on the basis of correct chart is as under: -

During the year under consideration the assessee paid total washing charges of Rs. 24,29,699/- to M/s Mehboob Carpet Finishing Centre detail of which is as under: -

- | | | |
|----|--|------------------|
| a) | 30411.00 sq. feet carpet @ Rs. 20/- per sq. feet | Rs. 6,08,220.00 |
| b) | 45725.39 sq. feet carpet @ Rs. 32/- per sq. feet | Rs. 14,63,212.44 |

Total New carpets washed 76136.39 sq. feet carpet Rs. 20,71,432.44

Add: -

- a) 6993.89 sq. feet carpet @ Rs. 50/- per sq. feet
(Antique wash) Rs. 3,49,863.50
- b) Carper Re-washed
178.00 sq. feet carpet @ Rs. 20/- per sq. feet Rs. 3760.00
145.08 sq. feet carpet @ Rs. 32/- per sq. feet Rs. 4642.56

Total Washing Charges debited in trading a/c Rs. 24,29,699/-

Thus during the year under consideration 76136.39 sq. feet new carpets were washed by the assessee and 323.08 sq. feet carpets were rewashed.

- e) The opening stock of unwashed carpets of AY 2008-09 are verifiable from the figures submitted in the assessment proceedings of AY 2007-08 and audited books of account for AY 2007-2008 and AY 2008-2009. The Q tally of unwashed carpet for AY 2008-2009 was as under:-

Opening unwashed carpets as on 01.04.07 26771 sq. feet
(Qty tally submitted during assessment proceedings of AY 2007-08 is at **PB Page 231**)

Add: -Carpets manufactured during FY2007-08 66724.14 sq.feet
9x9 (PB 223) =11091
9x9HT (PB 224)=18895.14
10x10 w/s (PB 225)=36738
Total 66724.14

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Less: - Carpets washed during FY 2007-08 63618.14 sq. feet
9x9 (PB 223) =16920
9x9HT (PB 224)=13674.14
10x10 w/s (PB 225)=32916
10x10 wool (PB 225) 108

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Total 63618.14

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Closing stock of unwashed carpets as on 31.03.08 29877 sq. feet
Wrongly taken at 23018 sft in original Q Tally (PB 85) and correctly taken at 29877 sft in corrected Q Tally (PB 93)

The summary of washing charges of carpets as for FY 2007-08 is as under: -

- a) 27765.725 sq. feet carpet @ Rs. 20/- per sq. feet Rs. 5,55,314/-
b) 32962.000 sq. feet carpet @ Rs. 32/- per sq. feet Rs. 10,54,784/-
c) 2866.00 sq. feet carpet @ Rs. 45/- special wash Rs. 1,28,970/-

Total New carpets washed 63618.14 sq. feet carpet Rs. 17,39,068/-

Add: -

14322.225 sq. feet carpet @ Rs. 50/- per sq. feet Rs. 7,16,111/-
(Antique wash)

Total Washing Charges debited in trading a/c Rs. 24,55,179/-

The audited balance sheet and profit & loss account of AY 2008-09 are placed at PB Page 232 to 233, from above figures it is clear that the stock details of production of unwashed carpets for AYs 2007-08, 2008-09 and 2009-10 are fully verifiable from stock records. AO has not pointed out any defect in these figures, working and reconciliation submitted by the assessee.

Apropos attendance of weaving contractors, during the course of assessment proceedings, the assessee submitted the confirmation letter of Job wok contractors placed at PB pg 72, 74. Ld. AO asked to assessee to produce only two contractors naming M/s Lavi Enterprises and M/s Manju Carpets. The assessee replied that the proprietor of M/s Manju Carpets is out of station and will be back by 28 or 29th December, 2011; Proprietor of M/s Lavi Enterprises having given confirmation was not ready to appear before the AO. As assessee has no statutory power to enforce the personal presence of party, it was requested to issue summon and assessee is ready to deposit the cost of evidence, if so required. However, instead of making further inquiries ld. AO summarily rejected all the confirmations filed by assessee.

Apropos the requirement of Qty. detail of stock and verification of comparative cost of production Qty wise details as well as stock records AYs 2007-08, 2008-09 and AY 2009-10 is as under: -

AY	9x9	9x9HT	10X10 Wool Silk	Wool Silk SPI	12 X 12 & 14X 14 Wool Silk	Pure silk 12X12	10 X10 Wool
09-10	235.08	286.66	459.65	609.65	723.36	771.73	283.02 (opening stock)
08-09	233.43	291.42	461.82	609.71	NA	NA	283.02
07-08	227.00	292.49	576.29	NA	NA	NA	283.02

From the above chart, it is clear that production cost slightly increased in the case of 9x9 quality which is due to the reason that cost of woollen yarn in AY 2007-08 was Rs. 59.59 per sq yard while it increased to Rs. 62.78 per sq. yard in AY 2009-10. Therefore the ld. AO is not correct in holding that the cost of production is not open to verification. The production cost of the current year is very close to the production cost in AY 2007-2008 and AY 2008-2009, therefore, it is very highly unjustifiable to allege that the assessee has shown less production in books of account. Had the production was shown at lesser figure on the same input cost, than the cost of production per unit would be high, which is not in the case of the assessee.

2.7 In respect of unwashed carpet 9x9 and 9x9 (normal) the production cost of both the carpets is same. For the production and sale purpose, these two are not separate items. These are separate item only for limited purpose of washing whether meant for “normal” washing or for

“special” washing. Therefore, for records maintained for washing purpose only 9x9 normal was mentioned. During the year under consideration no special wash was got done by the assessee therefore the both the qualities was of same cost and at the end of the year there was no separate qty, therefore in the chart showing cost of production only cost of 9x9 carpet was calculated. Ld. AO rejected the past history and submission of the assessee only on presumption and assumption ignoring the correct stock tally and stuck to the incomplete Qty. tally which was submitted by mistake and duly revised. The following past history of the assessee was not considered at all.

a) Cost of Production

AY	9x9	9x9HT	10X10 Wool Silk	Wool Silk SPI	12 X 12 & 14X 14 Wool Silk	Pure silk 12X12	10 X10 Wool
09-10	235.08	286.66	459.65	609.65	723.36	771.73	283.02 (opening stock)
08-09	233.43	291.42	461.82	609.71	NA	NA	283.02
07-08	227.00	292.49	576.29	NA	NA	NA	283.02

From the above chart, it is clear that production cost slightly increase in the case of 9x9 quality which is also due to the main reason that cost of woolen yarn in AY 2007-08 was Rs. 59.59 per sq yard while due to increase in rate

the same was Rs. 62.78 per sq. yard in AY 2009-10. The cost of other carpets was lower in comparison to previous years.

b) Comparative chart of Turnover, Gross Profit, G.P

AY	Turnover	Gross profit	GP Rate
07-08	1,90,96,854.63	24,00,270.68	12.57%
08-09	2,56,13,509.31	30,98,529.94	12.10%
09-10	2,65,84,753.88	32,33,792.62	12.16%

The GP rate of the assessee is better in comparison to AY 2008-09. The slightly fall in GP in comparison to AY 2007-08 was because of the reason that the cost of Raw material increased and due to change in value of currency.

c) Consumption of Yarn

i) AY 2007-08 (The Q. tally of raw material consumed and good produced at PB Page 234 to 236)

Quality	Production in Sq. Feet	Consumption of Yarn (In kg.)	Yarn consumed per sq. feet carpet (In gms)
9x9	44635.500 (PB pg 234)	22317.750 (PB pg 236)	500
9x9 HT	15949.000 (PB pg 235)	7974.500 (PB pg 236)	500
10x10	188.000 (PB pg 235)	49.250 (PB pg 236)	262
10x10 wool Silk.	3342.000 (PB pg 235)	875.550 Yarn 668.400 silk (PB pg 236)	262 Yarn 200 Silk

- ii) AY 2008-09 (The Q. tally of raw material consumed and good produced at PB Page 237 & 223 to 224; 225)

Quality	Production in Sq. Feet	Consumption of Yarn (In kg.)	Yarn consumed per sq. feet carpet (In gms)
9x9	11091.00 (PB pg 223)	5545.500 (PB pg 237)	500
9x9 HT	18895.14 (PB pg 224)	9447.450 (PB pg 237)	500
10x10 wool silk	36738.00 (PB pg 225)	9184.100 Yarn (PB pg 237) 7347.350 silk (PB pg 237)	250 Yarn 200 silk

- iii) AY 2009-10 (The Q. tally of raw material consumed and good produced at PB Page 86 to 89 and 91)

Quality	Production in Sq. Feet	Consumption of Yarn (In kg.)	Yarn consumed per sq. feet carpet (In gms)
9x9	3102.000 (PB pg 86)	1551.000 (PB pg 91)	500
9x9 HT	5607.000 (PB pg 87)	2783.300 (PB pg 91)	496
10x10 wool silk	21181.500 (PB pg 87)	11595.312 yarn (PB pg 91) 9673.164 silk (PB pg 91)	250 Yarn 200 silk
Wool Silk Special	23539.890 (PB pg 88)		250 Yarn 200 silk
14x14 wool silk	96.000 (PB pg 88)		275 silk 175 yarn

Pure Silk 12x12	322.000 (PB pg 88)		350 silk
12x12 wool silk	2142.000 (PB pg 89)		275 silk 175 yarn

From the above chart it is clear that the consumption of assessee is not more than previous years and is in accordance with the formula of yarn consumption fixed by assessee and by contractors. The copy of assessment order of AY 2007-08 and AY 2008-09 are also placed on record.

2.8 Apropos allegation of suppressed production no incriminating evidence whatsoever was either detected or indicated by Id. AO. Mere alleged discrepancy in the washing of the carpet is presumed to be basis of addition for suppressed production and sale. No other independent material or inquiry has been brought on record to prove suppression of production. The production of the assessee is supported by the bill of job workers. Ld AO has failed to cite any comparable case or controvert the factual data and tables submitted during the course of assessment. The finding and additions being figment of imagination, surmises and conjectures of Id. AO cannot be sustained. Reliance is placed on:-

- (a) Dhakeswari Cotton Mills Ltd vs CIT 26 ITR 775 (SC)
- (b) Lal Chand Bhagat Ambica Ram Vs CIT 37 ITR 288 (SC)
- (c) Omar Salay Mohamad vs CIT 37 ITR 151 (SC)

In following judgments honourable courts have held that allegation of suppressed production cannot be based on minor technicalities such as low yield, higher wastage, higher consumption of electricity etc.:-

- (a) Oudh Sugar Mills Ltd . Union of India [1978] ELTJ 172_Hon'ble Supreme Court has held that in absence of any evidence for removal of goods without payment of duty, the average production can not be made basis for issue of show cause notice for suppression of production.
- (b) International Forest Co. v. CIT [1975] 101 ITR 721 Hon'ble J & K High court has held that in the case of a forest coupe, mere low yield of out-turn compared to earlier years was not sufficient to make an addition.
- (c) R. B. Bansilal Abirchand Spg. & Wvg. Mills v. CIT [1970] 75 ITR 260 Bombay High Court has held that the Officer's right under proviso to section 13 of the Indian Income-tax Act, 1922 (corresponding to proviso to section 145(1) of the Income-tax Act, 1961) arises only after a finding is recorded as to the unacceptability of the method and the irregularity of accounts kept. The mere fact that the percentage of dead loss of cotton was high in a particular year, the court held, cannot lead to an inference that thereby there has been suppression of the production in a spinning mill.
- (d) IAC vs Reliance Textile Industries Ltd 43 ITD 165 ITAT Bombay –A Bench has held that suppression of production can not be presumed on the basis of yield and addition on the basis of yield percentage can not be made
- (e) Income Tax officer Vs Arun Oil Industries 13 ITD 769 ITAT Jaipur Bench (TM) Held that when there is no information to indicate the yield shown by the assessee is low or manipulated, no addition can be made on the basis yield.

2.9 It is further contended that in the absence of the ground against the order of Id. CIT(A) allowing the assessee's ground on rejection of books, the correctness of books of the accounts stands accepted by the department. In this eventuality, the additions deserves to be deleted as the books are not challenged by the revenue before ITAT.

3.0 Apropos revenues second ground about addition u/s 41(1), Id. DR supported the order of Id. AO and contends that assessee failed to produce confirmation from M/s Laxmi Carpet Enterprises, therefore, AO was justified in drawing an adverse inference that impugned trading liability had ceased and adding the same u/s 41(1).

3.1 Ld. counsel for the assessee contends that the amount in question represents commission payable to M/s Laxmi Carpet Enterprises for arranging exports to a foreign party M/s Hassan Carpet Pvt Ltd. The sales and corresponding commission were entered in the books for FY 2006-07 and was payable on receipt of sale proceeds. Due to some disputes assessee was not able to recover the sale proceeds from said M/s Hassan Carpet Pvt Ltd since last 5 years, consequently payment of commission to M/s Laxmi Carpet was withheld pending realization of sale proceeds which lead to strained relationship; the party refused to give confirmation. Ld. AO without appreciating these simple commercial transactions and the fact the assessee had a lien over the payment due to pending dispute; arbitrarily held that assessee has failed to prove that the

amount was actually payable to M/s Laxmi Carpet Enterprises as on 31.03.2009; Holding it to be cessation of trading liability provisions of section 41(1) were arbitrarily applied and addition of Rs. 7,03,498/- is made on this account. It is vehemently contended that Id CIT(A) rightly appreciated the facts and by detailed observations held that there was no cessation of liability qua the commission payable to M/s Laxmi Carpet Enterprises and deleted the addition. It is contended that in assessee's own case for AY 2007-2008 was decided by Hon'ble ITAT in ITA No 1080/JP/2011 dated 25-01-2012 and on similar facts qua another party addition u/s 41(1) has been deleted copy thereof is placed at PB page 271 to 278. Further reliance is placed on the following decisions:-

- (i) CIT Vs Sugauli Sugar Works (P) Ltd (SC) 236 ITR 518 SC.
- (ii) The CIT-III Vs Shri Vardhman Overseas Limited (Delhi High Court ITA No 774/2009 order dated 23/12/2011) .
- (iii) UTTAM AIR PRODUCTS (P) LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX ITAT, DELHI 'C' BENCH (2006) 99 TTJ (Del) 718
- (iv) DEPUTY COMMISSIONER OF INCOME TAX vs. THAKKER DEVELOPERS ITAT, PUNE 'A' BENCH 115 TTJ (Pune) 841 : (2008)/ 6 DTR 238.

4.0 We have heard the rival contentions and perused the materials available on record. The Id. CIT(A) by detailed factual findings has allowed the assessee's grounds in first appeal to the effect the rejection of books by AO u/s 145(3) was unjustified. Revenue in this appeal has not challenged the order of

ld. CIT(A) on this issue. Thus assessee's books are to be treated as properly maintained and reflecting true and correct profits. The sales of the assessee were 100% export sales and completely verifiable, and according to the ld. CIT(A), there was no reason to reject the books of account.

4.1 On merits, the ld. CIT(A) by detailed findings has held that there was no discrepancy in rewashed carpet account as alleged by AO and a proper explanation was filed by the assessee in this behalf, during the course of assessment. Similarly, the confusion caused by defective computer print out in the case of 9x9 (normal) carpet was duly explained by filing the correct print out and tallying it with stock record. These findings of the ld. CIT(A) could not be controverted by the ld. DR apropos the paper book filed by the assessee. The consumption of yarn being normal and comparable with earlier years has been demonstrated by the assessee from the current stock details and preceding years trading, manufacturing and stocks details, which are tabulated above. The ld. CIT(A) has given clear finding of facts that :-

- (i) There was no difference in quantity of 9x9 unwashed carpet.
- (ii) The assessee carried the stock with the record of assessment year 2008-09.
- (iii) The production and stock of carpet was reconciled from washing charges paid by the assessee.
- (iv) The mistake in a column of inventory of 9x9 carpet was due to computer misprint which was properly reconciled by the assessee.

(v) The non-appearance of contractor M/s. Lavi Enterprises and M/s. Manju Carpets was duly explained by the assessee and the AO took no further efforts to enquire into the matter.

(vi) Further the adverse inference cannot be drawn against the assessee, more so, when every aspect of purchases, consumption and sales were reconciled by the assessee. The reconciliation of all these details have been well furnished by the assessee before the AO, Id. CIT(A) and before us also and part of which is reproduced above and contains the details in the written submission filed by the assessee.

Thus in the entirety of the facts and circumstances of the case, we find no infirmity in the order of the Id. CIT(A) deleting the addition on merits after duly appreciating the factual aspects and relying on the decision of Hon'ble Supreme Court in the case of Dhakeshwari Cotton Mills Ltd. vs. CIT, 26 ITR 775 (supra) and other cases mentioned above. Thus Ground No. 1 of the Revenue is dismissed.

5.0 Adverting to Ground No. 2, the export of carpet to M/s. Hasan Carpet (P) Ltd. was arranged through M/s. Laxmi Carpet Enterprises for which commission of Rs. 7,03,498/- claimed in F.Y. 2006-07 remained outstanding due to non-payment of sale proceeds by M/s. Hasan Carpet (P) Ltd. These facts have not been disputed by Id. DR, beside they clearly emerge from the record. Once, there is an impending dispute between assessee and M/s. Laxmi Carpet Enterprises then it cannot be assumed that liability for payment has ceased, consequently the provisions of Section 41(1) cannot be invoked against the assessee in view of these facts. Jaipur ITAT in assessee's own case for the assessment year 2007-08 and on similar facts in respect of another party has

deleted the similar type of addition u/s 41(1) of the Act. Besides the judgement in the case of CIT vs. Sugauli Sugar Works (P) Ltd. (SC) is also applicable to the facts of the assessee case. In view of these facts and circumstances and respectfully following the judicial precedents cited above, we uphold the order of the Id. CIT(A) on this issue also. Thus Ground No. 2 of the Revenue is dismissed.

6.0 In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 20 /11/2015.

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

Sd/-
(आर.पी.तोलाणी)
(R.P.Tolani)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 20 /11/ 2015

*Mishra

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

1. अपीलार्थी / The Appellant- The ITO, Ward- 5 (1), Jaipur
2. प्रत्यर्थी / The Respondent- Shri Radhey Shyam Agarwal, Jaipur
3. आयकर आयुक्त(अपील) / CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.792/JP/2012)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar