

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, "SMC" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 184/JP/2021
निर्धारण वर्ष/Assessment Years : 2012-13

Smt. Kanchan (Widow) S/Shri Dinesh Kumar Sharma & Shri Yogesh Kumar Sharma (Sons) L/Hears of Sh. Sita Ram Sharma, Somani Building Station Road, Jaipur	बनाम Vs.	Income-tax Officer, Ward 3(2), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGWPS2443P		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Sh. K. L. Moolchandani (ITP)
राजस्व की ओर से/ Revenue by : Smt. Monisha Choudhary(JCIT)

सुनवाई की तारीख/ Date of Hearing : 19/04/2022
उदघोषणा की तारीख/Date of Pronouncement: 06/05/2022

आदेश/ ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by the assessee is arising out of an order passed by the National Faceless Appeal Centre [here in after referred to as NFAC] by dated 19-08-2021 for the assessment years 2012-13. The assessee has raised the following grounds of appeal:-

"1. On the facts and in the circumstances of the case, the Id. AO has legally and factually erred in not making discreet enquiries as per directions of the Hon'ble ITAT Jaipur Bench, Jaipur to find out the Truth. For the purpose, the Ld. AO was required to examine the trading account of the appellant vice versa witness critically as to how such trading transactions were finally squared up. Instead of undertaking such discreet enquiries, the Id. AO felt satisfied with the formal verification u/s

133(6) of the Act without examining these details critically, in absence of this exercise, no conclusive and logical findings can be arrived at. Thus the findings so arrived at on the basis of such formal enquiries were factually and legally incorrect and illogical so the same deserved to be quashed summarily.

2. On the facts and in the circumstances of the case, the Id. AO has factually and legally erred in appreciating the facts of the case in right perspective to conduct the discreet enquiries to find out the Truth. Thus the assessment order so passed is devoid of merits and deserved to be quashed summarily.

3. On the facts and in the circumstances of the case, the Id. Hon'ble Faceless Appeal Centre have factually and legally erred in not taking note of such deficiencies in the Assessment Order and had decided the appeal on the basis of the invalid assessment order as pointed out above. Thus the Authorities below have legally and factually erred in not passing a well reasoned order after addressing the various contentions as made by the appellant in the Assessment and Appeal Proceedings. Thus the orders so passed by the Authorities Below are devoid of merits and deserves to be quashed.

4. On the facts and in the circumstances of the case, the Authorities Below have erred to appreciate the provisions of Evidence Act correctly. As per provisions of Evidence Act, the onus is on the concerned Authorities to decide the correctness of the evidences as procured by the concerned parties in support of their contentions. The Authorities Below had failed to undertake such exercise to find out the Truth by making independent and discreet enquires. In absence of this exercise, the findings of the Authorities Below do not hold good, to be quashed summarily.

5. On the facts and in the circumstances of the case, the Authorities Below have factually erred in not appreciating the Principles of Accountancy and the Provisions of Section 68 of the Act in right perspective. The Provisions of section 68 of the Act do not come into play in respect of the 'Outstanding Trade Debtors' and the 'undisputed' and 'admitted' sales recorded in the regular books. Once the Sales and the 'Outstanding Trade Debtors' are accepted and are not disputed by the Revenue, then the provisions of section 68 of the Act do not come into Play as per Accountancy principal and provisions of the Income Tax Act. Thus the Authorities Below have erred in

invoking the provisions of section 68 of the Act to make addition of Rs.3,19,380/-. Thus the addition of Rs.3,19,380/-made by the id. AO and confirmed by the Appeal Centre is bad in law and the same deserves to be deleted summarily.

6. *On the facts and in the circumstances of the case, the National Faceless Appeal Centre, Delhi has legally and factually erred in passing the appellate order in a mechanical manner solely on the plea that the purchaser did not make such cash payments without verifying such claim of the purchaser in the back-ground of various contentions of the appellant and the sale vouchers as adduced in support of receiving such cash payments. Thus the appeal order so passed without critically verifying the contentions of the parties, is bad in law. Thus the addition so confirmed on the basis of such formal enquiries deserved to be deleted.*

7. *The appellant craves the right to add, amend and alter the grounds on or before the hearing."*

2. The hearing of the appeal was concluded through audio-visual medium on account of Government guidelines on account of prevalent situation of Covid-19 Pandemic, both the parties have placed their written as well as oral arguments during this online hearing process.

3. The concise fact related to this appeal as culled out from the folder are as under:

"Assessment in the case was completed under sec. 143(3) of the Income-tax Act, 1961 on 27.03.2015 at a total assessed income of Rs.8,18,770/- against income of Rs.4,99,390/- declared by the assessee in his return of income for the year under consideration filed on 27.09.2012. While completing the assessment in the case it was found that no payments were made by M/s Vijay Laxmi Agro Implements during the year under consideration. As such, the amount of Rs.3,19,380/- credited by the assessee in the name of M/s Vijay Laxmi Agro

Implements was nothing but unaccounted money of the assessee himself which was credited in the name of M/s Vijay Laxmi Agro Implements. Accordingly, the addition of Rs.3,19,380/- was made to the total income of the assessee treating it as undisclosed income of the assessee.

2. Against the above order the , assessee filed an appeal before the Commissioner of Income-tax (Appeals)-I, Jaipur who in turn vide Order dated 19.07.2017 in Appeal ITA No.71/2015-16 dismissed the appeal of the assessee and confirmed the additions made by the Assessing Officer.

3. Aggrieved from that order the assessee filed an appeal before the Hon'ble ITAT, Jaipur Bench, Jaipur. The Hon'ble ITAT vide Order dated 08.01.2018 in ITA No. 725/JP/2017 set aside and restored the issue to the file of the AO to relook the matter.

4. In view of the above directions of Hon'ble ITAT, the case was fixed for hearing on dated 12.11.2018 vide Notice under sec. 142(1) dated 31.10.2018 by the assessing officer. On the said date, in view of the request of the assessee, the case was adjourned for 15.11.2018. Accordingly, the assessee appeared along with Shri Gopal Lal Sharma, CA and Authorized representative and submitted written submission along with the following details:-

- i. Copy of Ledger Account of M/s Vijay Laxmi Agro Implements in the Books of M/s Shri Sharma & Co.*
- ii. Copy of all invoices issued in the name of M/s Vijay Laxmi Agro Implements.*
- iii. Copy of Cash Ledger showing payment details received from M/s Vijay Laxmi Agro Implements.*

5. It is pertinent to mention here that, copy of Ledger Account of M/s Vijay Laxmi Agro Implements in the Books of M/s Shri Sharma & Co was already supplied by the assessee

during the course of assessment proceedings under sec. 143(2) of the Income-tax Act, 1961. However, the copy of invoices issued in the name of M/s Vijay Laxmi Agro Implements were not available on the records as never furnished by the assessee during the assessment proceedings. Therefore, in view of Qui sentit Commodum sentire debet et Onus (He who derives the advantage ought to sustain the burden) vide Order Sheet entry dated 16.11.2018 the assessee was required to produce his witness viz. M/s Vijay Laxmi Agro Implements, Rampura Dabari for the verifications of the above-mentioned facts. Accordingly, the case was fixed for hearing on 26.11.2018.

6. On the date i.e 26.11.2018, the assessee himself appeared and expressed his inability to produce his witness viz. M/s Vijay Laxmi Agro Implements, Rampura Dabari. In view of inability expressed by the assessee to produce his own witness in support of his contention, a letter dated 26.11.2018 calling information under sec. 133(6) of the Income-tax Act, 1961 was issued to M/s Vijay Laxmi Agro Implements, Rampura. Dabari along with 'a copy the material furnished by the assessee thereby requiring to clarify Inc details furnished by the assessee.

7. In response thereto M/s Vijay Laxmi Agro Implements, Rampura Dabari filed letter dated 12.12.2018 wherein it has been stating as under:-

निवेदन है कि आपके द्वारा दिनांक 26.11.2018 को दिये गये नोटिस में जो सूचना चाही गई है। वो हम हमारे जवाब दिनांक 24.03.2015 को प्रस्तुत कर चुके हैं। जिसमें हमने मैसर्स श्री शर्मा एण्ड कम्पनी से सम्बन्धित सभी जानकारियों दी थी जो कि चाहे गये निर्धारण वर्ष से सम्बन्धित थी।

अतः आप हमारे दिनांक 24.03.2015 को दिये गये जवाब को ही इस नोटिस का जवाब मानकर कार्यवाही complete करें।

M/s Vijay Laxmi Agro Implements has also furnished a copy of its earlier dated 24.03.2015 along with the aforesaid information/reply.

8. Thus, M/s Vijay Laxmi Agro Implements has confirmed its earlier reply that no payments were made by M/s Vijay Laxmi Agro Implements during the year under consideration. As such, against the claim of the assessee of cash sales, M/s Vijay Laxmi Agro Implements, Rampura Dabari has denied to making cash payments of Rs.3,19,380/-. Therefore, in the event of denial of M/s Vijay Laxmi Agro Implements, Rampura Dabari the claim of the assessee of having cash sales to M/s Vijay Laxmi Agro Implement, Rampura Dabari cannot be accepted. It is pertinent to mention here that the onus is on the assessee to discharge the onus to explain the cash entries in his books of accounts. Further, in the case of CIT v. M.Ganapathi Mudaliar [1964] 53 ITR 623 (SC)/A, Govindarajulu Mudaliar v. CIT [1958] 34 ITR 807 (SC) it has been held that where the assessee has failed to prove satisfactorily the source and nature of a credit entry in his books and it is held that the relevant amount is the income of the assessee it is not necessary for the Department to locate its exact source. In the present case the assessee has failed to discharge his onus. Therefore, the aforesaid cash amount of Rs. 3,19,380/- credited by the assessee in the name of M/s Vijay Laxmi Agro Implements is treated as unaccounted money of the assessee himself which he credited in the name of M/s Vijay Laxmi Agro Implement, Rampura (Chomu). Accordingly, the above cash amount of Rs. 3,19,380/- is hereby treated as income of the assessee from undisclosed sources and added to the total income of the assessee."

4. In the second round of litigation against the confirmation of addition by the Id. AO, assessee preferred an appeal against the set-aside assessment order and the relevant finding of the Id. CIT(A) in this case is as under:

"4.2 **DECISION:** - The observations of the AO, submissions of the appellant and the material on record have been considered. The issue under dispute is in respect of a single addition of Rs. 3,19,380/- made by the AO. In the original assessment u/s. 143(3) of the Act the AO found that the appellant was unable to explain the source of the cash credit of Rs. 3,19,380/- satisfactorily. The contention of the appellant was that, the deposition of cash of Rs. 3,19,380/- was on account of payments received from one of the debtor of the appellant by name M/s. Vijayalaxmi Agro Implements. **It is seen that the fact that M/s. Vijayalaxmi Agro Implements was a debtor of the appellant was not disputed by the AO.** The dispute was only in respect of the claim made by the appellant that, the amount of Rs. 3,19,380/- shown as cash credits in the books of account of the appellant was on account of payments made by M/s. Vijayalaxmi Agro Implements. The AO in the original assessment conducted necessary enquiry. M/s. Vijayalaxmi Agro Implements submitted during the enquiry that, it has not made the payment of Rs. 3,19,380/- during the year under consideration as alleged by the appellant. The AO made addition of Rs. 3,19,380/- by considering the same as the undisclosed income of the appellant.

4.3 The CIT(A) confirmed the addition made by the AO, however the appellant filed appeal with ITAT contending that the CIT(A) has not considered additional evidences in the form of copies of cash ledger and invoices raised by the appellant against M/s. Vijayalaxmi Agro Implements. The ITAT restored the matter to the file of the AO for consideration of evidences. The AO, after considering the evidences requested the appellant to produce M/s. Vijayalaxmi Agro Implements for examination. The appellant failed to produce the witness before the AO. The AO also issued a letter u/s 133(6) of the Act, enclosing the evidences submitted by the appellant, to M/s. Vijayalaxmi Agro Implements seeking clarification of its stand vis-à-vis the claims made by the appellant. M/s. Vijayalaxmi Agro Implements in reply reiterated its earlier stand and refused to state anything further. The AO, in view of the denial of the claims made by the appellant by M/s. Vijayalaxmi Agro Implements came to a conclusion that the entries of cash credit of Rs. 3,19,380/- in the books of the appellant were unexplained and added the same to the total income of the appellant.

4.4 It can be seen from the assessment order under dispute that, the AO considered all the additional evidences submitted by the appellant which were not admitted by the CIT(A). These evidences were also provided to M/s. Vijayalaxmi Agro Implements, the witness of the appellant, during the assessment proceedings. Since, the dispute was regarding the claim made by the appellant that, the cash deposition of Rs. 3,19,380/- represented the payments received from M/s. Vijayalaxmi Agro Implements, it was incumbent on the appellant to prove that the said payment were made by M/s. Vijayalaxmi Agro Implements. Though, the appellant submitted copies of cash ledger showing the payments from M/s. Vijayalaxmi Agro Implements, it was also incumbent on the appellant to substantiate these entries with confirmation from M/s. Vijayalaxmi Agro Implements in that regard. The AO made necessary efforts in this regard by seeking information from M/s. Vijayalaxmi Agro Implements. Since, the witness, M/s. Vijayalaxmi Agro Implements reaffirmed its stand of not making such cash payments, the onus was on the appellant to prove to the contrary. The AO gave necessary opportunity to the appellant to produce M/s. Vijayalaxmi Agro Implements as his witness to prove his point, however, the appellant failed to make use of this opportunity. The appellant instead, has argued that, it was the responsibility of the AO to gather evidences supporting the claims made by the appellant, which were already refuted by the only witness provided by the appellant.

4.5 In view of the facts mentioned in the above paragraphs and the circumstances of the case it is clear that the appellant has failed to provide sufficient evidences to substantiate his claim that the cash credits of Rs. 3,19,380/- were on account of payments made by M/s. Vijayalaxmi Agro Implements. In absence of satisfactory substantiation, which has been brought out in detail in earlier paragraphs, the cash depositions of Rs. 3,19,380/- are required to be considered as unexplained cash credits, as per the provisions of section 68 of the Act. The AO is directed to treat the cash credits of Rs. 3,19,380/- as deemed income of the appellant by considering the same as unexplained cash credits u/s 68 of the Act. The ground No. 1 is dismissed."

5. As the assessee left heavenly abode, vide letter dated 25th January, 2022 legal heirs Smt. Kanchan (Widow) and Yogesh Sharma (Son) filed

modified Form No. 36 duly signed by them in the case of Late Sh. Sita Ram Sharma and requested as under:-

"Respected Sir,

Sub: Filing of Modified Form No. 36 in the case of Late Shri Sita Ram Sharma, Through Legal heirs Smt. Kanchan (Widow), S/Shri Dinesh Kumar Sharma & Shri Yogesh Kumar Sharma (Sons) L/H of Sh. Sita Ram Sharma, Somani Building Station Road, Jaipur-

Assessment year 2012-13 – Appeal No. 184/JP/21 –

In this case appeal was originally filed on 14-10-2021. However, the appellant Shri Sita Ram Sharma has expired on 19-12-2021. Hence the Modified Form No. 36 is submitted for kind consideration. Since the enclosures to the appeal form had already been submitted along with the original Form No. 36 submitted on 14.10.2021, hence these are not enclosed again.

2. However Power of Attorney of legal heirs is enclosed. Kindly acknowledge receipt of the above and do the needful. Thanking you."

6. Looking to the facts stated we have considered the revised form 36 filed by the legal heirs and taken up the appeal for hearing on merits. The Id. AR appearing on behalf of the assessee/legal heirs has placed their written submission which is extracted in below;

"This is second round of the appeal proceedings. Mainly, there is only one ground regarding addition of Rs.3,19,380/- made u/s 68 of the Act. Originally, the assessment order was passed on 27.3.2015 after making addition of Rs.3,19,380/- on account of the alleged unverifiable sale consideration received in cash from a purchaser M/s Vijay Laxmi Agro Implements against the outstanding trade credits of Rs.5,62,820/- as per account of M/s Vijay Laxmi Agro appearing in the 'Audited Books' of the appellant (Copy enclosed for ready reference – Placed at page No.1 to 3 of PB). The department did not dispute such trade credits of Rs.5,62,820/- as shown by the appellant in his Regular Books. The purchaser M/s Vijay Laxmi Agro had however denied to have made such cash payments of Rs.3,19,380/-, though the purchases of Rs.4,98,820/- from the appellant were found recorded in their books. The opening balance of Rs.92,000/- and the purchase of Rs.74,000/- through sale

voucher Bill No.3743 dated 9.2.2012 was denied by the purchaser, for which no explanation what-so-ever was offered by the purchaser. Thus the denial made by the purchaser was apparently incorrect as they (purchaser) had failed to explain as to how the out-standing credits appearing in their books were finally settled and squared up in absence of the cash payments towards such purchases. Thus the addition was made without verifying and examining the above facts. Accordingly, the appeal was filed against the addition so made, which was summarily dismissed by the then CIT (A) without examining the above vital facts on the plea that additional evidences filed under Rule 46A of IT Rules was not admissible. The Id. CIT (A) had also opined that since cash receipts were shown by the appellant against the sale proceeds which had been denied by the purchaser, so these cash receipts were to be taxed u/s 68 of the Act without examining the fact as to how the trading account was finally settled. Obviously such findings of the Id. CIT (A) were devoid of merits. Accordingly second appeal was filed before the honorable ITAT, Jaipur Bench, Jaipur.

In second appeal, having considered the above facts of the case as discussed at length in the written submissions made before them (copy enclosed for ready reference Placed at page No.9 to 12 of PB), the honorable ITAT, Jaipur Bench, Jaipur did not approve the findings of the Authorities Below and had allowed the appeal and restored the matter back to the file of the Id. Assessing Officer with the following findings:-

'the matter needs a relook at the level of the Assessing Officer particularly when the assessee has sold the goods to M/s Vijay Laxmi Agro and the payment has been denied in respect of these sales.'

2. *As per above directions of the honorable Bench, the Id. AO was 'specifically and categorically' required to conduct discreet enquiries regarding the genuineness of the 'undisputed sales'; particularly when the sales made to M/s Vijay Laxmi Agro were not disputed by the Department. In the circumstances, the denial of the purchaser regarding cash payment in respect of such purchases required re-look discreetly to arrive at 'fair' and 'logical' findings (kindly refer to para no. 4 of the appeal order of the H'ble ITAT, Jaipur, copy enclosed for ready reference Placed at page No.13 to 16 of PB).*

3. *Despite of such specific and categorical directions of the honorable Bench of ITAT, the Id. AO did not conduct discreet enquiries in the set-aside proceedings. Instead he had felt complacent in making formal enquiries u/s 133(6) of the Act and had opined that the details as furnished at original stage and the denial made by the purchaser at initial stage had not been rebutted by the appellant by procuring any fresh material in support of his contention in the set-aside proceedings. Thus the appellant had failed to discharge his onus to rebut the denial made by the purchaser. In support of such findings, the Id. AO had misinterpreted the provisions of the Evidence Act on the basis of a Latin quotation that it was onus of the appellant to negate the 'denial' of the purchaser. In support of such findings, the Id. AO had also incorrectly relied upon the view of honorable Supreme Court in the case of M/s M. Ganapathi Mudaliar (1964) 53 ITR 623 without appreciating the fact that such view of the honorable Supreme Court was having no bearing on the facts of the present case. Accordingly, the claim of the appellant was turned down and addition as made originally was maintained in the set-aside proceedings also. Obviously, such findings were devoid of merits and were contrary to the 'Principles of Evidence Act', 'Accountancy', 'Provisions of section 68 of the Act' and the 'directions of the honorable Bench'. While deciding this point, the Id. AO had failed to address the fact as to how the opening balance of Rs.92,200/- and the purchase of Rs.74,000/- on 3743 dated 9.2.2012 (duly acknowledged by the purchaser as evident from the sale voucher itself submitted during the course of set-aside proceedings) could be reconciled. The Id. AO had turned down the contentions of the appellant on the sole and lame excuse that he (the appellant) had failed to adduce fresh details and evidences in support of his contentions. In fact the appellant had fully discharged his onus as required by the Evidence Act by producing copy of the 'sale vouchers' (Copy enclosed for ready reference Placed at page No.17 to 24 of PB) duly signed by the purchaser to rebut the 'denial' of the purchaser. Thus the appellant had discharged his onus as per provisions of Evidence Act. It was for the Id. AO to examine the correctness of such voucher and to examine as to how such trading transactions were finally got settled and squared up. The Id. AO had failed to discharge his duty to verify this fact discreetly. Again, the Id. AO had failed to appreciate the fact that all the sales as shown to the purchaser were duly recorded in the books and were part of the turnover duly accepted by the department. In the circumstances, as to how the sale proceeds received in respect of such recorded and undisputed*

turn-over could be out of books as per Principles of Accountancy. As the sales under consideration stood duly recorded in the books and were already part of the turn-over recorded in the books duly accepted by the Department. At the most, turn-over could be taken as 'un-verifiable sales' on the face of the denial by the concerned party; By no stretch of imagination and Principles of Accountancy, no addition is called for on account of such un-verifiable sales as the sales stood already accounted for in the turn-over of the appellant duly accepted by the department. In the circumstances, no further addition is called for on account of such un-verifiable turn-over. Lastly, as per books, there appeared out-standing trade debtors of Rs.5,62,820/- on account of the sales shown to this purchaser. As per provisions of Law, section 68 of the Act do not come into play in respect of such out-standing trade debtor as the sales stood already accounted for in the trading results of the appellant. In the circumstances, no separate addition u/s 68 of the Act is called for on account of the alleged unverifiable sales. While finalizing the set-aside proceedings, the Id. AO did not take note of all these vital facts and did not address these points to pass a well reasoned and logical order as per directions of the honorable Bench. Thus the order so passed was a lop-sided order which deserved to be quashed summarily.

4. *In appeal also, the honorable National Faceless Appeal Centre (herein after referred as NFAC) did not take note of these vital facts and had focused their attention on one point only that in the set aside proceedings, the appellant had failed to discharge his onus to rebut the 'denial' of the purchaser as per Evidence Act. Thus the NFAC had also failed to address the vital facts of the case in right perspective and did not pass a well reasoned and logical order in respect of the above vital facts. The honorable NFAC had been solely guided by the mis-conceived findings of the Id. AO regarding 'ONUS' as discussed in the fore-gone paras. The findings of honorable NFAC are restricted in defining the scope of 'Onus' as per Evidence Act only; without dwelling upon the other vital facts of the case as elaborated hereinabove. For ready reference, the findings of honorable NAFC recorded in para 4.5 of the appeal order are re-produced hereunder for ready reference:*

'In view of the facts mentioned in the above paragraphs and the circumstances of the case it is clear that the appellant has failed to provide sufficient evidences to substantiate his claim that the cash credits of Rs.3,19,380/- were on account of payments made by M/s Vijayalaxmi Agro Implements. In absence of satisfactory

substantiation, which has been brought out in details in earlier paragraphs, the cash deposits of Rs. 3,19,380/- are required to be considered as unexplained cash credits as per the provisions of section 68 of the Act. The AO is directed to treat the cash credits of Rs.3,19,380/- as deemed income of the appellant by considering the same as unexplained cash credits u/s 68 of the Act. The ground no.1 is dismissed.'

5. *On going through the above appeal order, it would be noted that the H'ble NFAC have failed to address the following vital facts:*

(a) *As per directions of the honorable Bench, no discreet enquiries were made by the Authorities Below to examine the correctness and genuineness of the sales as shown by the appellant in his books duly accepted by the purchaser M/s Vijay Laxmi Agro Implements.*

(b) *The correctness of the sale vouchers duly signed by the purchaser was never questioned or disputed at any stage by either of the party.*

(c) *No enquiry was made in respect of the opening balance of Rs.92,200/- and the purchase of Rs.74,000/- shown on 9.2.2012 vide sale voucher no. 3743 duly acknowledged by the purchaser as per copy of sale voucher enclosed. The purchaser was never confronted about such sale-vouchers and its genuineness. In absence of such exercise, no logical findings could be arrived at.*

(d) *No discreet enquiry was made to find out as to how the trading account of the sales shown to the purchaser was finally settled and squared up in absence of any cash payment as denied by the purchaser.*

(e) *On denial of the cash payments, how the opening and closing balance in their trading account maintained in respect of these sales could be reconciled. The Authorities Below did not venture to verify this fact by conducting discreet enquiries.*

(f) *No valid addition can be made in respect of the alleged 'un-verifiable sales' as these sales stood already accounted for in the trading account and were automatically reflected in the trading results as per Accounting Rules.*

(g) *As per Evidence Act, the onus is on the party who denies the existence of any evidence. In the present case, the appellant had adduced the sale vouchers duly signed by the purchaser. Thus as per*

Evidence Act, it was for the purchaser M/s Vijay Laxmi Agro Implements to negate such evidence i.e. Sale Vouchers and cash payments etc. The Id. AO had however shifted such onus to the appellant incorrectly by misconceiving the provisions of the Evidence Act. The NAFC had also been guided by such misinterpretation of the provisions of Evidence Act and did not find fault with such faulty findings of the Id. AO to reverse the view taken by the Id. AO.

(h) The provisions of section 68 of IT Act do not come into play in respect of the 'Out-standing Debtors'. In the present case, the Authorities Below have incorrectly invoked the provisions of section 68 of the Act to make addition on account of the alleged 'Out-standing Debtors' which is patently and legally incorrect.

6. In the absence of the discreet enquiries as discussed above, no fair and logical conclusion could have been arrived at by the Authorities Below and the addition as made and confirmed by them on the basis of such illogical and lopsided enquiries is bad in law and the same deserves to be deleted summarily.

7. In addition to the above written arguments the Id. AR of the assessee argued that the department has not issued any show cause notice for rejection of the books of account. The receipt in question is arising out of the sales made to the party named M/s. Vijay Laxmi Agro Implements which is not proved to be bogus even by that party and they have just denied to given cash against sales, sales is supported by a delivery challan mentioning the vehicle number, items sold and is supported by a invoice having sr no. of bill book. The sale invoice shows complete details of the party and this invoice is as prescribed under the VAT laws. This sale made is accepted by the Id. AO and if so the cash receipt from such sales can be believed that it is unexplained. He further argued that even if the sales are made to anyone than also the receipt of cash of sales invoice will not come under the purview of provision of section 68 of the Act as the credit is perfectly proved by the sale of item and receipt of money in cash from the parties to whom the goods sold.

Not only that law neither prohibit the assessee to sold the goods on cash basis nor restricted under the law prevalent at that time to accept the cash on such sales. Thus, he prayed that the issue being very limited on this receipt of cash of sales proceeds may be deleted as it is not under the purview of the cash credit but it is the proceeds of the sales made.

8. Per contra the Id. DR stated that the source of cash receipt is not clearly established by the assessee in these two round of litigation for receipt of the money. AO has made an effort by issuing the notice u/s. 133(6) but no such information were filed by the party in whose name such cash receipt on account of sales is shown. Therefore, Id. DR heavily relied upon the findings of the lower authorities.

9. We have heard the rival contentions and persuaded the material available on record. The Id. AO in the second round of litigation admitted the fact that the appellant has made the sales supported by delivery challan and invoice and copy of party's ledger account. This sale since accepted and the receipt of the sales in cash cannot be considered as an amount of income under the provision of section 68 of the Act. As the credit in the books of account first is sales made as it is evident from the copy of the ledger filed by the assessee thus, the source of money received is clearly proved and there is no rejection of the books produced before the assessing officer. If the sales are accepted to have been made the related cash receipt recorded in the books of account arising out of the said sales is same receipt for which source is sales made. Thus, the separate receipt of cash on account such sales after accepting the cash sales as genuine the receipt does not fall within the purview of section 68 and thus the addition of Rs. 3,19,380/- is required to be deleted.

In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 06/05/2022

Sd/-

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 06/05/2022

*Ganesh Kumar

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

1. The Appellant- Smt. Kanchan (Widow), Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward 3(2), Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 184/JP/2021)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar