

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

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 351/JP/2019
निर्धारण वर्ष / Assessment Years : 2012-13

Shri Sanjay Agarwal S/o Shri Nirmal Agarwal Prop. M/s Bhagwati Food & Spices, D-1, II Floor, Chandpole Anaj Mandi, Jaipur.	बनाम Vs.	The ITO, Ward-3(3), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AIEPA 0587 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Nikhilesh Kataria (CA)
राजस्व की ओर से / Revenue by : Smt. Runi Pal (ACIT)

सुनवाई की तारीख / Date of Hearing : 09/12/2020
उदघोषणा की तारीख / Date of Pronouncement : 01/03/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

The assessee has filed the present appeal against the order of Id. CIT(A)-I, Jaipur dated 16.02.2018 pertaining to assessment year 2012-13 wherein the assessee has taken the following grounds of appeal:-

- "1. The assessment order passed u/s 144 is bad in law as well as on facts of the present case as the same is framed without proper service of notices u/s 142(1) & 142(2)/144 and hence, the same may please be quashed.*
- 2. The Id. AO erred in law as well as on the facts of the present case in not providing opportunity of being heard and passing the order ex parte.*

3. The Id. CIT(A) erred in law as well as on the facts of the present case in ignoring the remand report received from AO.

4. The Id. AO erred in law as well as on the facts of the present case in rejecting the books of accounts of the assessee and applying a GP rate of 0.69% as against 0.38% declared by the assessee and the Id. CIT(A) erred in confirming the same.

5. Rs. 49,56,217/- The Id. AO erred in law as well as on the facts of the present case in making trading addition without proper appreciation of facts on record and the Id. CIT(A) erred in sustaining the same."

2. During the course of hearing, the Id. AR submitted that the assessee didn't want to press the ground Nos. 1 & 2. Further, application for raising additional ground of appeal was withdrawn. Hence, these two grounds are dismissed as not pressed and additional grounds are dismissed as withdrawn at the admission stage.

3. During the course of hearing, the Id A/R submitted that the assessee derives income from trading in various commodities and he has filed the return of the income on 04-09-2012 declaring an income of Rs.14,07,110/- The case was taken up for scrutiny and the notice U/s 143(2) was sent on 08-08-2013. However, the same could not be served as the assessee was not found available at the given address. Therefore the same was served by affixture on 13-09-2013. For the similar reason, the later notices also could not be served and the last such notice was served through affixture on 11-03-2015. On account of non-appearance of the assessee, the AO proceeded to make *ex-parte* assessment and accordingly, he has estimated G.P. rate of 0.69% on declared sales of Rs.1,57,35,47,863/- which gave gross profit of Rs.1,08,57,480/-. The

assessee declared gross profit of Rs. 59,01,264/- and as such an addition of Rs. 49,56,217/- was made to the total income of the assessee. In the first appeal, the assessee submitted complete documents and records before the Id. CIT(A) and the same were accepted as additional evidence. In remand proceedings, the Id. AO has accepted the trading results of the assessee but the Id. CIT(A) rejected the remand report and went on to sustain the original trading addition. Now the assessee has filed this appeal.

4. In the aforesaid factual background, the Id. AR submitted that there has been a valid and bonafide reason for non appearance before the AO in assessment proceedings. A detailed explanation has been made before the Id. CIT(A) as well as before the AO in remand proceedings and the Id. CIT(A) has duly accepted the reasons and admitted all the additional evidences submitted by the assessee. The relevant para of Id. CIT(A) at page 8 para (iii) reads as under:-

“iii) During the appellate proceedings, the appellant has filed a number of documents as additional evidences under rule 46A of the IT Rules, which were forwarded to the AO for its comments and for making necessary enquiries thereof. These additional evidences were admitted as the assessment order was passed u/s 144 of the act, since no compliance was made by the appellant, during the assessment proceedings, before the AO, on account of change of its earlier address and in the interest of natural justice. The AO has submitted its remand report as under:”

Therefore, there being bona fide reason for non-appearance before the AO in original assessment proceeding, no adverse interference to be called for. In any case, in the remand proceedings, all the directions were fully complied with, while submitting all the desired information and documents.

5. It was further submitted that the trading results are fully accepted by the AO in the remand report. The remand report submitted by the AO is appearing at page 10 of the Id. CIT(A) order and the relevant extract of the same read as under:-

"In connection with the remand report, an opportunity was provided to the assessee vide letter no. 1695 dated on 27.01.2017 to submit all supporting documents/evidences for verification which could justify his claim by fixing on 06.02.2017. In response to the same, the A/R of the assessee has submitted the reply on 28.02.2017. I have carefully gone through the submission of the Ld. A/R of the assessee and found satisfactory. All supporting evidences/documents i.e. copy of rent receipt, supporting change of address, copy of ITR along with computation of total income, copy of tax audit report along with balance sheet and profit and loss account for the year ended on dated 31.03.2012, copy of speed post delivery details, sale and purchase bills, confirmations, quantitative details, copies of VAT returns, ledger accounts of commodities etc. have been produced by the assessee for the year under consideration.

In view of the above, I want to draw your kind attention that the then Assessing Officer was not justified to make an addition on account of trading addition of Rs.49,56,217/-. All notices was

dispatched at the address of B-2, New Grain Mandi, Chand Pole, Jaipur instead of- DI, IIInd Floor, Chand pole Anaj Mandi, Jaipur and that the address was wrong and due to this assessee could not get notices. On perusal of assessment order, there is no specific reason mentioned in the assessment order to take the rate of G.P at 0.69% of gross receipt whereas, the assessee has shown G.P. rate of 0.38 %. The sale of assessee has substantially increased during the year and hence not comparable. However, the trading results of the assessee are duly supported with documentary evidences as discussed above. Commodity trading loss and Cardamom trading loss are also fully supported with documentary proofs and the same were accepted in the original assessment proceedings also and hence require no interference.”

6. It was submitted that the Id. CIT(A) in an incorrect and unjustified manner has rejected the remand report: The Id. CIT(A) dealt with the remand report of the AO at clause (v) at page 12. The same reads as under:-

“v) In its remand report, the AO has accepted the submissions of the appellant as made during the remand proceedings. However, it appears that the AO has not examined the matter in the correct perspective and the documents filed by the appellant as additional evidences were not analyzed properly and thus, the remand report of the AO is to be ignored and no cognizance could be given to it. Therefore, in view of the totality of facts and circumstances of the

case, it is held that the AO was justified in rejecting the books of account of the appellant u/s 145(3) of the Act.”

7. It was submitted that the Id. CIT(A) only made passing remark that the additional evidences were not analyzed properly. However, the fact remains that the Id. CIT(A) has not pointed even a single defect in the additional evidences submitted by the assessee. There is no iota of evidence or fact put on record by the Id. CIT(A) to support his conclusion that the evidences were not analyzed properly. In fact the Id. AO analyzed the complete details and discussed in remand report and remark by the Id. CIT(A) is a loose and passing remark without any supporting evidence. No specific direction by the Id. CIT(A) to the Id. AO:

8. It was submitted that the order of Id. CIT(A) makes it amply clear that the Id. CIT(A) just sent the additional evidences submitted by the assessee to the AO for examination and there is nothing on record to suggest that the additional evidences were to be analyzed in any particular manner. Further there is no other specific direction for the AO. In these circumstances, it is completely unjustified on the part of the Id. CIT(A) to conclude that the Id. AO failed to make proper analysis of the additional evidences whereas the fact is that the remand report of the AO is fully supported by evidences submitted by the assessee.

9. It was further submitted that the Id. CIT(A) kept complete silent before passing of order. It is notable that after receiving of remand report of the Id. AO, the Id. CIT(A) has kept complete silence on the same. The Id. CIT(A) has not communicated anything to the Id. AO to

make any further enquiry nor pointed out specific defect in the remand report of the AO.

10. It was further submitted that no specific defect pointed out by the Id. CIT(A). As submitted above, the Id. CIT(A) has not pointed out any defect whatsoever in the details and evidences submitted before him in support of trading results declared by the assessee. Further, the Id. CIT(A) duly accepted the confirmations of debtors and creditors submitted before him and also failed to point out any defect in the sales and purchases bills placed before him. The Id. CIT(A) has absolutely nothing to say accepted loosely saying that the AO did not make requisite enquiry and even then it was not stated what further enquiry the AO was supposed to make.

11. It was further submitted that the Id. CIT(A) put himself in the shoes of the AO by rejecting his remand report and in these circumstances, it was incumbent upon him to make further enquiry if it was of the view that the remand report of the AO was deficient. But the Id. CIT(A) has not made a single independent enquiry even though it has summarily rejected the remand report of the AO.

12. It was submitted that as already pointed out that there was absolutely nothing with the Id. CIT(A) to suggest that there remained any discrepancy in the trading results disclosed by the assessee which was fully supported with the documentary evidences on record and in contrast, the remand report of the AO was fully supported with reasons and basis as would appear from the remand report. Therefore, in these circumstances, a summary rejection of the remand report was uncalled for. In these facts and circumstances, the Id. CIT(A) was completely

unjustified in rejecting the remand report submitted by the Id. AO and hence, trading addition has to be completely deleted while accepting the remand report submitted by the Id. AO.

13. It was further submitted that the assessee has maintained complete books of accounts of the assessee including cash book, journal, ledger, purchases and sales book and the same were duly audited and the complete audit report was duly available with the department as the same were filed online. The same were again submitted during the course of appellate proceedings. There is a specific observation of the auditor at clause 9(b) regarding the books of accounts. Further the auditor has not pointed out any specific defects in the books of accounts maintained and as such it is incorrect observation of the Id. CIT(A) that no books of accounts were maintained.

14. It was further submitted that preceding year results are not comparable with year under consideration. It was submitted that the AY 2012-13 was an exceptional year in so far as the turnover during the year was extraordinarily high as compared to preceding years. The comparative trading results as appearing at page 7 of the assessment order would show the following turnover in three years:

A.Y.	Turnover	G.P. Rate
AY 2010-11	Rs.7832925	11.69%
AY 2011-12	Rs. 11671818	11.15%
AY 2012-13	Rs. 1573547863	0.38%

Thus it can be seen that there has been extraordinary jump in the turnover of the assessee and it has increased almost 130 times during the year under consideration. Thus the trading results of the assessee is not at all comparable from the preceding year and the results are to be seen specifically with regard to circumstances prevailing during the year.

15. It was further submitted that the assessee has maintained complete books of accounts which were duly audited and further day to day quantitative details have also been maintained and therefore, the trading results are to be accepted. However still the fall in G.P. rate can very well be explained and rather apparent from the books of accounts maintained by the assessee. It was mainly due to fall in prices of cardamom which significantly contributed to the fall in G.P. rate. As would be apparent from the cardamom account placed at PB 302-317, the comparative prices were as follows:

Date	Rs. (Opening/closing balance rate)
01.04.2011	Rs 1106.54 (Opening balance rate)
01.07.2011	Rs. 630/-
31.03.2012	Rs. 553.02 (closing balance rate)

Thus there has been consistent fall in the prices of the cardamom which has significantly contributed to the fall in overall G.P. rate and in fact the entire stock of the assessee came at half of the prices as at the start of the year the rate of cardamom was Rs.1106 per qtls. which became Rs.553 at the end of the year. This itself clearly explains the fall in G.P. rate and in any case, the complete books of accounts are fully supported with bills, vouchers and evidences.

16. It was further submitted assessee has maintained the complete day to day quantitative details of all the goods traded by it. Even the quantitative details are part of the audited financial statements and the same is appearing at PB 30. Complete details including sales and purchases ledger, bills and vouchers submitted. We may also submit that the assessee has submitted the complete evidences in support of its trading results. Some of such evidences are as under:

Audited inventory summary	PB 30
Sale ledgers VAT	PB 117-143
Purchases ledgers VAT	PB 144-155

All the above ledgers are fully reconciled with the financial statements Day to day inventory ledgers

Cardamom	PB 302-317
Jaifal	PB 318
Black paper	PB 319
Guar	PB 320-323

All the above day to day quantitative details are duly reconciled with the audited financial statements and quantitative details taken by the auditors.

17. It was further submitted in each of the commodity ledger as appearing above, the closing stock is properly valued and the same has been adopted by the assessee. The auditors have not pointed out any

defect in the calculation of closing stock nor any of the lower authorities raised any question on valuation of closing stock. Therefore, there remained no reason for rejecting the trading results of the assessee.

18. It was also submitted that the complete bills and vouchers in support of the transactions disclosed in the financial statements. We have placed copies of the bills and transportation details of the purchases made by the assessee and the same are placed at PB 155-301. We may also submit that the assessee was regularly filing the VAT returns and being assessed with the sales tax department. We have placed the copies of quarterly VAT returns which are placed at PB 329-360 and the annual return is placed at PB 324-328. The complete turnover is fully reconciled with the books of accounts of the assessee as well as the financial statement. We may submit that the assessee has submitted the confirmations from various parties including debtors and creditors which were appearing in the balance sheet of the assessee. It is notable that all such balances as appearing in the balance sheet of the assessee have been fully accepted by the Id. CIT(A) without raising any question. Therefore, it was complete unfair on the part of the Id. CIT(A) not to accept the trading results of the assessee.

19. It was submitted that the Id. CIT(A) has discussed the issue of commodity trading loss of Rs. 15,13,132/- as well as cardamom trading loss of Rs. 21,83,559. In this regard, it was submitted that the Id. CIT(A) has duly accepted the transaction as would appear from the following para of the CIT(A) order at page 16 of its order

“xiii) In view of the above discussion, it is crystal clear that the loss amounting to Rs.15,13,132/- and Rs.21,83,559/- claimed by the

appellant on account of 'commodity trading loss' and ' cardamom square off trade loss' respectively in its profit and loss account is nothing but a speculative loss, which cannot be allowed to be set off against non-speculative income. Even, the appellant has failed to prove the genuineness of such losses."

It is clear from the above that the Id. CIT(A) was fully satisfied with the genuineness of the transaction itself though it was stated to be speculation loss. In any case there is no evidence otherwise on record for not accepting such loss claimed by the assessee. Therefore, there is no reason to take any adverse inference on the trading results of the assessee for the reason of these losses

20. It was also submitted that these losses are not part of the trading results as would appear from the perusal of the audited trading account of the assessee which is placed at PB 32 where it can be seen that this have been shown separately in the profit and loss account. Even then no separate additions made on this account thereby accepting the same.

21. It was submitted that the transactions related to the trading loss claimed in the profit and loss account were not of speculative nature and rather these were purchases and sales transactions with delivery of goods. It is submitted that the parties to whom these payments have been made towards these transactions have acted as agent of the assessee. These transactions of purchases and sales were carried out by those parties on clear instructions of the assessee. The assessee is a trader in goods and initially made purchases of goods through these parties with the expectation of rise in prices and got stocked same with

the agent itself. But in contrast the prices have fallen as discussed earlier and also apparent from the cardamom account and therefore, the assessee was forced to sale as there were not sufficient funds with the assessee to make payment to his agent. Accordingly, loss on these transactions has been booked by the assessee as a difference between sales and purchases price. We may submit that the complete transactions of this trade was through banking channels only and even none of the lower authorities has questioned the genuineness of the transaction. No adverse evidence on record. It is submitted that the transaction is fully confirmed by the respective parties and the confirmations and the details of complete transactions are placed from PB 11-15. It is notable that the Id. CIT(A) has nothing to say on these confirmations and further no further enquiry was made by the Id. CIT(A) to suggest that these confirmations were not correct. In any case, the confirmations were fully supported with the documentary evidences on record and therefore the same has to be accepted. It was accordingly submitted that trading additions so sustained by the Id CIT(A) be deleted.

22. Per contra, the Id. DR relied upon the order and findings of Id. CIT(A) which reads as under:-

"(iii) During the appellate proceedings, the appellant has filed a number of documents as additional evidences under Rule 46A of the IT Rules, which were forwarded to the AO for its comments and for making necessary enquiries thereof. These additional evidences were admitted as the assessment order was passed u/s 144 of the Act, since no compliance was made by the appellant, during the assessment proceedings, before the AO, on account of change of its earlier address and

in the interest of natural justice. The AO has submitted its remand report as under:

Remand report

"In this connection, it is submitted that an assessment order was passed on 30.03.2015 in the case of Sh. Sanjay Agarwal, D-1, IInd Floor, Chandpole Anal Mandi, Jaipur, for A.Y. 2012-13 u/s 144 of the I.T. Act, 1961 The following additions were made in the assessment order:-

1 Addition was made of Rs. 49,56,217/ on account of trading addition by taking G.P. at the rate of 0.69% on gross receipt of Rs. 1,57,35,47,863/- while, the assessee has already shown G.P at the rate of 0.38% on gross receipt, which comes to Rs. 59,01,264/-. Penalty proceedings u/s 271(1)(c) was initiated by the A.O.

During the appellate proceedings, the assessee has claimed as under:-

"I, Sanjay Agarwal S/o Shri Nirmal Agarwal aged 45 years, resident of D-1, IInd Floor, Chandpole Anaj Mandi, Jaipur do hereby solemnly is as under.

That, the trading addition of Rs. 49,56,217/- was made while framing ex-parte assessment due to non appearance before the Ld. Assessing Officer as the notice sent remained unreserved at the place of assessee which was B-2, New Grain Mandi, Chandpole Bazar, Jaipur.

That, the address with the Ld. Assessing Officer was rented and I have left the place in the early 2013 itself and my new address is D-1, IInd Floor, Anaj Mandi, Chandpole, Jaipur A copy of rent receipt dated 30.06.2013 of new premises is enclosed for your kind perusal.

That, I have not received any notice for A.Y. 2012-13 issued by the Ld. Assessing Officer which is also clear from the fact that even the first notice was served through affixture.

That, I was informed by my authorized representative to immediately submit some details which I have submitted through speed post the copies of which are enclosed herewith.

That, there was no mala fide intention behind not attending the assessment proceedings and it was only due to genuine reason of change of residence.

In connection with remand report, an opportunity was provided to the assessee vide letter No. 1695 dated on 27.01.2017 to submit all supporting documents/evidences for verification which could justify his claim by fixing on 06.02.2017. In response to the same, the AIR of the assessee has submitted the reply on 28.02.2017. I have carefully gone through the submission of the AIR of the assessee and found satisfactory. All supporting evidences/documents i.e. copy of rent receipt, supporting change of address, copy of ITR along with computation of total income, copy of tax audit report along with balance sheet and profit & loss account for the year ended on dated 31.03.2012, copy of speed post delivery details, sale & purchase bills, confirmations, quantitative details, copies of VAT returns, ledger accounts of commodities etc. have been produced by the assessee for the year under consideration.

In view of the above, I want to draw your kind attention that the then Assessing Officer was not justified to make an addition on account of trading addition of Rs. 49,56,217/-. All notices was dispatched at the address of B-2, New Grain Mandi, Chandpole, Jaipur instead of D-1, IInd Floor, Chandpole Anaj Mandi, Jaipur and that the address was wrong and due to this assessee could not get notices. On perusal of assessment order, there is no specific reason mentioned in the assessment order to take the rate of G.P. at 0.69% of gross receipt whereas, the

assessee has shown G.P. rate of 0.38%. The sale of assessee has substantially increased during the year and hence not comparable. However, the trading results of the assessee are duly supported with documentary evidences as discussed above. Commodity trading loss and Cardamom trading loss are also fully supported with documentary proofs and the same were accepted in the original assessment proceedings also and hence require no interference."

(iv) I have duly considered the submissions of the appellant, assessment order, remand report of the AO and the material placed on record. It is an admitted fact that no compliance was made by the appellant before the AO during the assessment proceedings and thus there is no question of verification of trading account of the appellant. In fact, during the appellate proceedings, it was submitted by the appellant that its books of accounts for the year under consideration have been misplaced, therefore, the trading results of the appellant could not be verified, even during the appellate proceedings

(v) In its remand report, the AO has accepted the submissions of the appellant as made during the remand proceedings. However, it appears that the AO has not examined the matter in the correct perspective and the documents filed by the appellant as additional evidences were not analyzed properly and thus, the remand report of the AO is to be ignored and no cognizance could be given to it,

Therefore, in view of the totality of facts and circumstances of the case, it is held that the AO was justified in rejecting the books of account of the appellant u/s 145(3) of the Act.

(vi) It may be mentioned that the during the year under consideration, the turnover of the appellant was abnormally high in comparison to the earlier years as stated on page 3 of the

assessment order. It is pertinent to mention here that for AY 2010-11 and 2011-12, the turnover was to the tune of Rs. 78.32 Lac and Rs. 116.71 Lac respectively, whereas for the year under consideration, it was Rs. 157.35 Crore. In the AY 2010-11 and 2011-12, the appellant has declared GP rate of 11.69 % and 11.15 % respectively, whereas for the year under consideration, it was only 0.38%. The AO after taking into account various discrepancies as stated on page No. 4 of the assessment order including loss of Rs, 15,13,132/- and Rs. 21,83,559/- has applied GP rate of 0.69% and has made trading addition of Rs. 49,56,217/-.

(vii) It is to be noted that the appellant has debited a sum of Rs. 15,13,132/- and Rs. 21,83,559/- on account of 'commodity trading loss' and 'cardamom square off loss trade' respectively in its profit and loss account. The appellant has filed a copy of account of M/s Venkatesh Spices wherein loss of Rs. 15,08,175/- was shown in respect of 'cardamom trade'. It is noted that through debit notes, amounts of Rs. 11,25,000/- and Rs. 57,50,000/- were debited in the account of the appellant on 05.04.2011 and 17.04.2011 for purchase of 1000 Kgs and 5000 Kgs. of cardamom respectively. It is further noted that vide credit notes, amounts of Rs. 43,47,775/- and Rs. 9,99,050/- were credited on 24.05.2011 and 08.08.2011 for square off of 5000 Kgs. and 1000 Kgs. of cardamom respectively and in the process a loss of Rs. 15,08,175/- was claimed by the appellant in its profit and loss account. It is pertinent to mention here that except filing the confirmed copy of account, no other document was filed relating to purchase and sale of 6000 (1000+ 5000) Kgs. of cardamom. It is noted that the appellant has also claimed a loss of Rs. 6,75,384/- from Guhan Traders but no documentary evidence was filed by it. It may be mentioned that this amount of Rs. 6,75,384/- is a part of loss of Rs. 21,83,559/- on account of cardamom square off trade.

(viii) Regarding the loss of Rs. 15,13,132/-, the appellant has filed copies of a certificate from S. Sanasiraj and credit note and debit note thereof. It is noted from the debit note issued by S. Sanasiraj that 5000 Kgs. of cardamom were purchased on 07.04.2011 for a sum of Rs. 54,50,000/-. It may be mentioned that in the said debit note, it was stated that 'the above cardamom have been stocked with us at your risk. VAT/ CST will be paid by you at the time of delivery'. Further, it is noted from the credit note issued by S. Sanasiraj that 5000 Kgs. of cardamom was sold / square off for a sum of Rs. 39,37,500/-.

(ix) In view of these facts, vide order sheet entry dated 26.07.2017, the appellant was required to furnish the following information:

- Bills in respect of loss claimed in profit and loss account*
- Evidence regarding taking and giving of delivery of goods in respect of above transaction*
- Whether these purchases / sales were routed through stock register, if any, maintained by it. If yes, why separate entries were made in the profit and loss account and why the same were not routed through the trading account.*

(x) Vide its reply date nil, filed in this office during the course of appellate proceedings on 04.09.2017, it was submitted by the appellant that:

"Pleas' refer to further queries raised by your goodself on the above issue. In this regard, we bag to submit as under:

1.1 Nature of Transactions: We may again reiterate that the transactions related to the trading loss claimed in the profit and loss account were not of speculative nature and rather these were purchases and sales transactions with delivery of goods. It is submitted that the parties to whom these payments have been made towards these transactions have acted as agent of the assessee. These transactions of purchases and sales were carried

out by those parties on clear instructions of the assessee. The assessee is a trader in goods and initially made purchases of goods through these parties with the expectation of rise in prices and got stocked same with the agent itself But in contrast the prices have fallen and therefore, the assessee was forced to sale as there were not sufficient funds with the assessee to make payment to his agent. Accordingly, loss on these transactions has been booked by the assessee as a difference between sales and purchases price.

1.2 Sale and Purchases Transactions with Delivery We have already submitted the confirmed copy of account from Venkatesh Spices and also debit & credit note and confirmation from S Sansirraj (PB. 29-32). It is abundantly clear from the perusal of the communication that they have made transactions on behalf of the assessee acting as an agent and the relationship with the assessee remained as principal to agent. The entire transactions wore delivery transactions entered on instructions of the assessee and as such the assessee was bound by the trade entered into by them and accordingly rightly treated the same as sales and purchases transactions.

1.3 No Transportation Taken Place: We may also submit that in the above cases, there was no transportation of the goods to the assessee and it was only the case where these agents purchased goods on our behalf, stocked them and thereafter sold the goods on instruction of the assessee. Transporting of goods in other states to the place of the assessee would have been very costly and as such the goods were kept with these agents only.

1.4 Sale & Purchases Made by Agent Not Required to be Part of Turnover: We may also submit that as the transactions have been booked on net basis the same were not required to be added in the respective amounts of sales and purchases. It is further submitted that as the agent of the assessee made these sales and purchases, whatever liability was there in this regard is

discharged by those parties only and the assessee is nothing to do with the same. Having added the respective amount in the sales and purchases account of the assessee would not have made any difference.

1.5 Very Common Business Practice: We may submit that this is a very common business practice in the commodity business where purchases and sales are made by the agents on behalf of the traders and the difference are settled if ultimately the person is unable to lift the goods from the agent.

1.6 Ld, ITO Already Accepted Transactions in Assessment Proceedings Itself We may also submit that the Id. ITO has already accepted the transaction in assessment proceedings itself in as much as the complete supporting papers were sent to it and the same were delivered to him before passing of the order Therefore, no adverse inference is otherwise called for.

In the above facts and circumstances of the case, the loss shown by the assessee may please be accepted in totality and oblige "

(xi) It is evident from the above that reply to the specific queries raised by order sheet entry dated 26.07.2017 was given in a roundabout way, which establish that no delivery of goods was taken at the time of purchase and no delivery was given at the time of sale. It is evident that these transactions do not form part of the trading account of the appellant as these were not included in the purchase and sale declared by the appellant in its trading account.

(xii) In its submission, it was stated by the appellant that these persons were acting as agents of the appellant and these transactions were undertaken on behalf of the appellant and the transactions made by the agents, were not required to be a part of the turnover. These submissions are of no help to the appellant as the appellant has not filed any document which may reveal that from whom the so

called agents have purchased the goods and to whom these goods were sold by these so called agents. The appellant has not placed on record any accounting standards according to which the sales and purchases made by the agents do not form part of the turnover of the principal. As stated earlier, no document was filed in response to loss of Rs. 6,75,3841- from Guhan Traders.

(xiii) In view of the above discussion, it is crystal clear that the loss amounting to Rs. 15,13132/- and Rs. 21,83,559/- claimed by the appellant on account of 'commodity trading loss' and 'cardamom square off trade loss' respectively in its profit and loss account is nothing but a speculative loss, which cannot be allowed to be set off against non-speculative income. Even, the appellant has failed to prove the genuineness of such losses.

(xiv) Therefore, in view of the above discussion and looking to the totality of facts and circumstances of the case, it is held that the AO was justified in making trading addition of Rs. 49,56,217/- to the income of the appellant. It is clarified here that no separate addition is required to be made on account of above discussed loss of Rs. 36,96,691/- (21,83,559 + 15,13,132), claimed by the appellant in its profit and loss account, as this amount is being considered to be covered under the trading addition of Rs. 49,56,217/- made by the AO."

23. We have heard the rival contentions and perused the material available on record. In this case, the AO has rejected the books of accounts and has estimated G.P. rate of 0.69% on declared turnover as against G.P rate of 0.38% declared by the assessee and made a trading addition of Rs. 49,56,217/- in the hands of the assessee. The AO has stated that when the books of accounts are rejected, it is duty of the AO

to deduce true and fair income of the assessee and it is open to him to take a higher percentage consistent with the state of trade in the locality or with any special circumstances of the assessee which warrants higher rate of profits. Thereafter, he has referred to the discrepancies noticed in the books of accounts and stated that the assessee has failed to give evidence regarding payment of duties and taxes amounting to Rs 5,45,677/- and loss claimed in the profit/loss account amounting to Rs 36,96,691/- and thereafter went ahead and make an addition of Rs 49,56,217/- largely representing the aforesaid two figures which remain unverified. To our mind, the addition so made is neither reflective of state of trade in the locality nor demonstrate any special circumstances of the assessee rather the additions have been made basis the discrepancies found in the books of accounts which are more in the nature of unverified payment of taxes and claim of losses. Once the books of accounts are rejected, the AO has to estimate the profits based on his best judgment and either the past year results or comparative profits declared in similar line of trade in commodities could be a guiding factor. Regarding past year results, it is an admitted position of Revenue that past year results cannot be made a guiding factor and the assessee has also contended that given the exceptional circumstances where the turnover has increased by almost 130 times, the past year results are not reflective of state of affairs of current year. There is nothing on record in terms of comparative profits declared in similar line of trade in commodities. Further, the assessee has explained the substantial fall in G.P rate due to fall in prices of cardamom where the prices have reduced by almost half the rate at the end of the year as compared to beginning of the year. Therefore, we find that there is no rational basis for

estimating the gross profit rate by the AO even where the books of accounts are rejected. In fact, in the remand report submitted to the Id CIT(A), the AO has admitted that there is no specific reason mentioned in the assessment order to estimate the gross profit rate of 0.69% as against declared gross profit rate of 0.38%. Further, the AO has acknowledged the fact that turnover has increased substantially during the year and the trading results are duly supported with documentary evidences. Regarding commodity and cardamom trading losses of Rs 36,96,691/-, the Id CIT(A) has also recorded a finding that these are speculative losses and are not part of trading account of the assessee and thus, doesn't effect the trading results so declared by the assessee. In the results, the trading additions so made by the AO and confirmed by the Id CIT(A) is hereby directed to be deleted.

In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 01/03/2021.

Sd/-

(संदीप गोसाई)
(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 01/03/2021.

***Santosh**

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

1. अपीलार्थी / The Appellant- Shri Sanjay Agarwal, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-3(3), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 351/JP/2019 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

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