

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", JAIPUR
श्री एन.के.सैनी, उपाध्यक्ष एवं श्री संदीप गोसाईं, न्यायिक सदस्य के समक्ष
BEFORE: SHRI N.K. SAINI, VICE PRESIDENT & SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./ITA No. 1271/JP/2018
निर्धारण वर्ष / Assessment Year :2014-15

I.T.O., Ward-1(2), Ajmer.	बनाम Vs.	Shri Bhagchand Jain, 52/24, Babu Mohalla, Kesarganj, Ajmer.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AERPJ 6311 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

C.O. No. 42/JP/2018
(Arising out of ITA No. 1271/JP/2018)
(Assessment Year: 2014-15)

Shri Bhagchand Jain, 52/24, Babu Mohalla, Kesarganj, Ajmer.	बनाम Vs.	I.T.O., Ward-1(2), Ajmer.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AERPJ 6311 G		
Objector		Respondent

राजस्व की ओर से / Revenue by: Smt. Runi Pal (Addl.CIT-DR)
निर्धारिती की ओर से / Assessee by: Shri Mahendra Gargieya (Adv)
& Shri Devang Gargieya (Adv)

सुनवाई की तारीख / Date of Hearing : 29/11/2021
उदघोषणा की तारीख / Date of Pronouncement : 10/01/2022

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

The appeal filed by the revenue and the cross objection filed by the assessee arise against the order of the Id. CIT(A), Ajmer dated 20/09/2018 for the A.Y. 2014-15. The grounds taken in the revenue's appeal and assessee's C.O. are as under:

“Grounds of Revenue’s appeal:

1. *The Ld.CIT(A) grossly erred in law, by invoking the provisions of section 145(3) of the I.T. Act, 1961 on his own during appeal proceedings while the section unambiguously mandates that only the AO can invoke the provisions of section 145(3). Thus, the Ld.CIT(A) acted beyond jurisdiction and perversely allowed relief of Rs. 2,23,42,465/- (2,43,03,809 - 19,61,344);*
 - 1.1 *Ld.CIT(A) erred in deleting the addition of Rs. 2,23,42,465/- made on account of suppressed sale and unexplained investment in purchase including expenses, without appreciating that the assessee failed to reconcile the figures of opening stock, purchase and sales, freight as shown in VAT returns with return of income & audit report, specially when the Ld.CIT(A) himself accepted that there is no explanation with regard to the difference in figures of sales and freight as appearing in the VAT returns and in the audited books of accounts;*
 - 1.2 *Ld.CIT(A) erred in deleting the addition of Rs. 2,23,42,465/- by considering that the AO cannot pick and choose some figures (sales) from the VAT return and some figures (opening stock, purchase and freight) from the audited books of accounts, to assess the income of the assessee whereas the AO took the value of sales, purchases and freight expenses from audit report & ITR and compared the same with the figures of VAT returns, for making the additions;*
2. *The Ld. CIT(A) erred in restricting the disallowance out of various expenses from Rs. 2,31,962/- to Rs. 1,15,981/-, without appreciating that the assessee failed to produce bill/vouchers for verification before the AO;*
3. *The appellant craves to add, amend, alter, delete or modify the above ground of appeal before or at the time of hearing.*

“Grounds of assessee’s C.O.:

1. *That the learned Commissioner of Income-Tax (Appeals) Ajmer erred in maintaining the addition of Rs. 1961344/- by Considering*

the G.P. rate 4% on the estimated turnover of Rs. 10 Cross without appreciating the full facts & circumstances of the Case. The Vat returns can never be based for considering the actual sales as per audited books of accounts maintained regularly as per eternal purchase & sales Vouchers.

- 2. That as admitted the AO Cannot pick & Choose same figures (Sales) from the Vat return & same figures (Op-Stock purchases & freight) from the audited books of accounts to asses the actual income & specially when profit ascertained as per audited results & Vat returns both are same.*
- 3. That as per true facts on records, the AO failed to prove any purchases recorded in books tallied with audited accounts found either bogus or inflated & there is no such finding in assessment order against the assessee in this regard.*
- 4. That as admitted the AO has not found any adverse Comments either from tax Auditors or in his investigation for such difference in sales as per VAT returns & as per books. The books figures always accepted till not found wrong &/or false from tills. As per books all turnover as per sale bills found duly recorded & nothing was found wrong & out of the books. The reasons for difference was due to bonafide mistake of accountant & for which no show Cause notice was given for explanation &/or reply the rejection of books of accents u/s 145 (3) the addition could have been made as per GP rate of past records &/or immediate previous years which was 2.84% only as per submissions.*
- 5. That as decided in series of judgements of higher court the post history is the best judge for estimation of profit in Case of rejection of books of accounts u/s 145(3). There was no adverse Comments of Tax Auditors as per his Audit report & past history of the Case.*
- 6. That similarly the CIT (Appeals) also erred in maintaining the adhere disallowances of expressions @ 50% of Rs. 231962/- i.e. Rs.115981/- which is quite wrong & unjustified in view of quantum of empresses & found with external Vouchers & also showing without specific defect in vouchers.*

7. *That all above additions maintained were against the law & written submission provided in detail with covered & binding judgements. The he maintained the additions against the law.*
8. *That the assessee reserves his rights to add amend or alter any of the grounds on a before the hearing of cross objections or at the lime of haring of Appeal.*

2. The hearing of the appeal and C.O. were concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. The brief facts of the case are that the assessee is engaged in the business of trading of old iron material. The assessee e-filed his return of income on 26/11/2014 declaring total income of Rs. 5,59,530/-. The case was selected for scrutiny under CASS and notices were issued to the assessee. The A.O. after discussing all the facts and circumstances as well as the documents placed before him passed assessment order U/s 143(3) of the Income Tax Act, 1961 (in short, the Act) determining total income of assessee at Rs. 2,48,63,340/- by making various additions.

4. Being aggrieved by the order of the A.O., the assessee carried the matter before the Id. CIT(A), who after considering the submissions of both the parties as well as material placed before him, given part relief to the assessee. Against the order of the Id. CIT(A), the revenue is in appeal challenging the order of the Id. CIT(A) and the assessee is in cross

objection challenging the order of the Id. CIT(A) for giving part relief to the assessee.

5. Ground No. 1 to 1.2 of the revenue's appeal and grounds Nos. 1 to 5 of the assessee's cross objection are interrelated and interconnected and relates to challenging the order of the Id. CIT(A) in giving relief of Rs. 2,23,42,465/- to the assessee and the assessee's grievance relates to challenging the order of the Id. CIT(A) in confirming the addition of Rs. 19,61,344/- by considering the GP rate of 4% on the estimated turnover of Rs. 10 crores.

6. The Id. D.R. appearing on behalf of the Revenue has relied on the order of the A.O. and submitted that the impugned order passed by the Id. CIT(A) is not proper and passed without application of mind.

7. On the other hand, the Id. AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the Id. CIT(A) and also relied on the written submissions filed before the Id. CIT(A) as well as before us. The contentions made in the written submissions are reproduced as under:

"1. Firstly, we strongly rely our written submissions filed before the Id. CIT(A) on 11.05.2017 (PB 35-36). The relevant extract of the same are reproduced hereunder for the sake of convenience (reproduced at Pg-12 & 13 of the Id.CIT(A)):

".....2. The figures of purchases and sales recorded in books of accounts are duly supported by proper bills. The same are produced before your Honour for verification. Further, we may submit that out of total purchases of Rs. 11,63,26,383/-, 63.21% of purchases i.e. Rs. 7,35,35,597/-are being made from railways whose genuineness cannot be doubted at all. Further. All the purchases including purchases from railways or other parties are duly recorded in books of accounts and are supported by proper bills/other supporting evidences which are being produced herewith. It is requested to get the same verified from the Assessing Office, if your goodself find it appropriate.

3. Likewise, the amount of Sales of Rs. 9,40,65,836/- also is supported with the invoices issued by the assessee. Copy of the ledger account alongwith the invoices copy are being produced herewith.

4. The figure of opening stock is same as the figure of closing stock of last year(PB 1 & 4). Since, both the figures are duly vouched, verified and certified by the Tax Auditor, the genuineness of the same cannot be doubted. Also, the figures of-direct expenses incurred by the appellant as recorded in books of accounts were duly vouched, verified and certified by the Tax Auditor and no discrepancy therein was noticed by him. Further, there was no discrepancy in the figures of closing stock as per VAT return(PB 56) as per Tax Audit Report (PB 4).

A chart showing trading account of the appellant as appearing in Tax Audit Report and appellant's specific comment against each of those items appearing in Tax Audit Report is enclosed herewith for your Honour's ready reference. Also, as stated above all the bills of purchases and sales recorded by the appellant in its books of accounts are hereby produced for verification.

The assessee further submitted as under:

Sl.No	Particulars	Remark
1.	- Summary of Purchases made from railway & other parties.	Annexure A.1 Annexure A.II

	- Summary of Partywise Purchases made during the year. -Party wise ledger accounts as referred in the summary of partywise purchases made.	(1-3) (Annexure A.III (1-57)(PB 17-21)
2.	Summary of Sales made under various Annexure B.1 heads during the year. - Summary of Party Wise Sales made Annexure during the year B.I I (1-S) - Party wise ledger accounts as referred in the summary party wise sales made.	Annexure B.1 (PB 42) Annexure B.II (1-5) Annexure B.III (1-124)
3.	Copy of VAT return for the assessment year 2013-14 (1-6)	Annexure C (1-6)(PB 54-65)

"....On careful perusal of the details/documents submitted and produced before your Honour for verification, your Honour would observe that purchases, sales, opening stock and closing stock recorded by the appellant in its books of accounts are verifiable and cannot be doubted. Thus, the additions made by the Ld. AO merely relying on the figures submitted in VAT return is without any merits and deserves to be deleted. Therefore, no addition can be made either on the pretext of unexplained investment or for the reason of inflated purchases."

2.1 Pertinently, during the remand proceedings, the assessee produced purchase and sales bills, freight vouchers alongwith computerised ledgers/books of accounts before the AO, which was duly examined and verified by the AO. The AO did not point out any defect in the books of account vis-a-vis bills and vouchers. The AO categorically accepted in the remand report that the assessee has maintained the complete books of account. The purchase, sales and expenses are fully vouched & verifiable except few vouchers for expenses, which were missing. Thus the assessee has maintained everything to the extent practicable and possible moreover the accounts were subjected to tax audit (PB 1-8).

The Id. AO during the remand proceedings examined the books of a/c`s verified the vouchers of expenses but did not reject the same u/s 145. He

also found that the figures of opening stock, purchase, sales, freight, gross profit and closing stock in the books of accounts are in agreement with the audit report (audited financial statement).He, though raised, an objection that "the production of books of accounts at present is no means inspiteof ample opportunities fiven to the assessee.....". However, when the assessee produced books of accounts, no defect therein was pointed out therein. Hence, the aforesaid comment/observation is irrelevant.

2.2 The relevant finding of the AO in his remand report (reproduced at Pg-10 of CIT(A) order are as under:

".....CA attended the proceedings from time to time and produced the purchase and sales vouchers, freight bills with the computerized ledgers for examination. These have been examined on test check basis. Moreover, verification has been made regarding the vouchers/bills with reference to the books of accounts produced and few of the expenses vouchers were missing i.e. freight bill, vehicle expenses, petrol etc. During the course of examination, it was noticed that the assessee could not reconcile the figures of-opening stock, purchases and sales, freight gross profit and closing stock with reference to the VAT returns filed from the books of accounts but the figures of audit report are same in the books.

In such circumstances and the facts of the case, it can be easily ascertain that the assessee has maintained the books of accounts but in the absence of the proper supporting vouchers the entire claim of the expenses cannot not be allowable."

3. Valid reason behind mistakes committed in the VAT return: It is further submitted and clarified that it was unfortunately due to mistake committed by the accountant Shri Madhav Somani of the assessee, who could fill wrong figures and filed the VAT returns to which, the assessee was not a contributory. As a usual practice the accountant use to upload VAT returns himself which even did not required to be signed by the assessee. It is a matter of common knowledge that VAT returns are

generally prepared by the accountant itself by their own experience and knowledge.

Moreover, in this VAT Audit was also not required hence such return was being filed (whether periodically or annually) without verification or attestation by independent expert / by Id. Chartered Accountants. Therefore, the facts and figures itself shows that the accountant committed mistake in taking the opening stock i.e. he wrongly filled in VAT return at Rs.3,26,14,956/- as against Rs.1,03,11,148/- based on the audited accounts and to stop the resultant further mistakes in the consequent figures of GP and Closing Stock, it will be noted that he has been able to maintain the figure of Closing Stock at Rs.3.53 Cr. at both the places as also the Gross Profit of Rs.20.35 Lakh at both the places. To implement this, he appears to have changed the figure of the purchases and recorded it at Rs.9.50 Cr. as against Rs.11.63 Cr. To repeat the entire sales and purchase are fully vouched and established rather at the time of original assessment proceedings as also during the remand proceedings therefore, these figures could not be disputed. The figures shown in the audited accounts based on the regularly maintained books of accounts duly verified by the Id. Tax Auditor and further verified by the AO during the remand proceedings, could not be faulted with.

Pertinently, the AO and Id. CIT(A) has also not faulted with the figures of opening stock, purchases, sales, freight, gross profit and closing stock shown in the audited annual statement of accounts. That being the factually admitted position, it is only the VAT return which is the faulted one and in absence of any independent verification / examination by any other expert of the field or the Chartered Accountant or by the VAT Authority or in absence of VAT audit, the VAT return alone could not have been blindly believed as done by the AO. The Revenue is stressing on the figures of VAT returns unwarrantedly.

4. No independent corroborative evidence brought on record:4.1 It is surprising to note that the AO has solely relied upon the figures given in the VAT return. He completely failed to support his inference or conclusion of the alleged suppression/ inflation of sale/ purchase with the help of any other corroborative evidence. It is not the case of the revenue that the Id. Chartered Accountant who audited the accounts u/s 44 AB, has adversely commented in the audit report supporting the AO. No inquiry was made from Commercial Tax Department (or any other government department) w.r.t the alleged differences as noticed by him between the figures of the VAT return and inthe audited accounts nor it is his case that the accountant, supported his case. In other words, there is no direct cogent evidence of suppression of sales or of bogus purchase/ unexplained investment.

It is beyond understanding as to why the AO has given so much credence to the VAT return even though it was neither filled by a qualified expert, nor it was examined or verified by any Chartered Accountant, meaning thereby VAT return was not at all worth reliance as against the regularly maintained books of accounts and the audited annual statements based thereon audited by a Chartered Accountant.

4.2 The law is well settled that accounts regularly maintained are binding upon the AO u/s 145 if not specifically rejected invoking section 145(3) of the Act and consequently, no addition is legally possible. Kindly refer para 1.1 and 1.2 of this submission for more details.

4.3 Similarly as per S. 34 of the Indian Evidence Act-1872 accounts, which are maintained and kept in the 'regular course of business', are having evidentiary value after the relevant entries are proved by oral evidence or are admitted. Kindly refer Jay Engineering Works Ltd. Vs. CIT (1978) 113 ITR 389 (Del)held that: "In the present case, the relevant books of account in which detailed information as to the expenses which were

claimed as deductions for the asst. yrs. 1962-63 and 1963-64 are destroyed by fire in November, 1962. Under the Indian Evidence Act secondary evidence of the contents of these account books would have to be adduced if they were to be used to prove any fact. The external auditors of the assessee-companies had, however, made their annual reports under s. 227(2) of the Companies Act, 1956, to the members of the company on the accounts examined by them and on the balance-sheets and profit and loss accounts for these two years. These reports do not doubt the correctness of the expenses, deductions of which were claimed by the assessees. Under s. 227(3)(b) and (c) the auditor's report had to state whether in their opinion proper books of account as required by law have been kept by the company and whether the company's balance-sheets and profit and loss accounts were in agreement with the books of account and returns. Under s. 209 of the Companies Act, the assessee-company was required to maintain proper books of account with reference to the receipts and expenditure taking place in the business of the assessee. The account books maintained by them must be such as to give a true and fair view of the state of affairs of the companies."

5. No motive: The AO has not applied his mind that if there was/ could be some motive to the assessee particularly when the figures of the gross profit and the closing stock were the same in at both the places. Consequently, there was no loss to revenue in any manner nor it is so alleged. In other words, the AO unwarrantedly stressed upon the wrong figures filled in the VAT return when compared with the audit report and made it a sole basis of the impugned addition. Such a basis though could be sufficient to arouse suspicion in the mind of AO but could not have been a valid basis, (unless corroborated by independent evidences) to make a huge addition. Even otherwise, these mistakes are revenue neutral because there are equal amount addition and deletion. Kindly refer the chart enclosed with submission. Further, an allegation remains a mere

allegation unless proved. Suspicion can-not take the place of reality, are the settled principles kindly refer Dhakeshwari cotton Mills 26 ITR 775 (SC).

6. Entire amount of the alleged suppressed sale of Rs. 20,00,000/-, even assuming if it is so (though not conceding), cannot be added in as much as it is not the allegation of the AO what to talk of proving the same that the corresponding amount of the purchases towards such alleged suppressed sale, was also unrecorded. In other words, the corresponding purchases towards the alleged suppressed sale of Rs. 20,00,000/- were already recorded in the books of accounts and therefore, at the best or at the worst it was only NP which could be applied. The law is settled in this behalf. Kindly refer CIT vs. President Industries (2002) 258 ITR 654 (Guj.) held that: Reference—Question of law—Question about addition towards sales out of books—No material or finding indicating purchase of goods out of books—Finding of Tribunal that only profits on unaccounted sales could be brought to tax—No referable question of law arose

Also refer CIT v/s Mehta Gwar Gum & Co. (2008)12 DTR219 (Raj),), ITO v/s B. D. Dal & Oil Industries (1192) 40 ITD 180 (JP), Tarachand Shantilal v/s ITO (1987) 28 TTJ 128(JP).

7. Documents / Evidence has to read in its entirety:

7.1 It is submitted that if an evidence has to be read it has to be read in its entirety. The law is well settled that a document has to be read in his entirety. One cannot be permitted to read and choose that part of an evidence which suits him best and to ignore the other, which goes against him.

7.2 Kindly refer Hissaria Brothers v/s ACIT 22 TW 684 (JD) wherein it was held that the seized document has to be read in its entirety and the parties are not allowed to read only that part which is suitable to it. Glass Lines Equipments Co. Ltd. vs. CIT (2002) 253 ITR 0454 (Guj)

Interpretation of documents - Documents must be read as a whole. It is a well settled canon of interpretation that a document has to be read as a whole" it is not permissible to accept a part and ignore the rest of the document. Lal Chand Agarwal V/s ACIT 21 TW 213 (JP) in no case AO can be allowed to consider a part of a particular document as true being favourable Revenue and other part of the very document as false since that is favourable to appellant - Duality of the approach of AO is not fair.

8. We strongly rely upon the Written Submissions, Rejoinders etc. filed before Id. CIT(A) time to time and reproduced in the CIT(A) order. Therefore, the allegation of the revenue in its GOA-1.1& 1.2, are not valid.

9. We also strongly rely upon the findings by the Id. CIT (A) (to the extent they are not adverse to the respondent assessee). Hence this ground of revenue deserves to be dismissed.

Submissions of Cross Objection:

1.1 Invalid Application of S.145 by CIT(A): At the outset, it is submitted that it is an admitted fact that the AO has not invoked S.145 (3) of the Act though he discussed the difference in the figures found on a comparison between the VAT return & the audited accounts but then he made a half-hearted attempt only. It is not their case of serious defects calling for the wholesome rejection of the accounts. Even in the remand proceedings, when the assessee produced complete books of account before the AO, the AO did not comment on the applicability of S.145(3), which is an incorrect finding and hence in the remand report, the AO accepted that the assessee maintained books of accounts stating as under (refer CIT(A) Pg-10):

"In such circumstances and the facts of the case, it can be easily ascertain that the assessee has maintained the books of accounts.....assessment order"

1.2 Deptt. challenges S. 145 applicability: This fact is also evident from the DGOA-1 itself taken by the revenue where they have challenged the very jurisdiction of the Id. CIT(A) to invoke the S.145(3) of the Act. Thus, it is evident that S.145(3) was not applied. In view of this legal and factual position, otherwise the impugned addition so made, is completely illegal being without jurisdiction in as much as regularly maintained books of accounts are binding upon the AO as per S.145(1) and unless the same are rejected on any of the grounds, no addition can be made. The settled legal position is that unless S.145 is invoked or a clear and categorical finding is recorded, the results as declared by the assessee as per the method of accounting regularly employed by it, has to be accepted. In absence of any such finding, the revenue does not get any jurisdiction to make any trading addition whatsoever. Kindly refer CIT vs. Maharaja Shree Umaid Mills Ltd. 192 ITR 565 (Raj.)(DPB 1-3), M/s Bansilal Abirchand Spg. & Wvg. Mills 75 ITR 260 (Bom), DCIT v. Mewar Textile Mills Ltd. 21 Tax World 821 (JP).

2.1 The Id.CIT(A) did not appreciate the facts and the legal position in as much as the law u/s145(3) specifically provides only three basis to invoke S. 145, viz(i) Where the AO is not satisfied about the correctness/completeness of the accounts (ii) where the method of accounting provided in Sub Sec. (1), is not followed or (iii) the Accounting Standards as notified u/s 145(2) have not been followed by the appellant. There appears no dispute on the last two conditions, however it is only the first ground i.e., the incorrectness and incompleteness of the accounts, if any, which can be considered in this case. However, in this case the Id. CIT(A) has utterly failed to prove that the figures relied upon by the assessee in the audited accounts were incorrect or incomplete in any manner. Though he has also alleged that there was a difference between the figures of the sales shown in the accounts & VAT return but did not make an independent inquiry from the concerned VAT authorities.

Even the contention of the assessee that it was only an unintended clerical mistake, was also not looked into. Thus, leaving the entire issue half way, he assumed that the figures were incorrect. Similarly, he did not whisper a single word as to how he could say that the accounts are incomplete, without giving any specific instance.

2.2 The assessee has maintained all the books of account consisting of cash book, ledger of purchase, sale, etc. The entire sales, purchases and expenses are fully vouched. The accounts are audited u/s 44AB of the Act(PB 49-51). Further the audit report and other details were duly produced before the AO. Thus, the Id. CIT(A) not having established any of the three conditions, could not have invoked S.145(3). Since it was a conscious decision taken by the AO not to invoke S.145(3), the Id. CIT(A) could not have acted as a revisionary authority. If the action / order of the AO was erroneous and prejudicial to the interest of the revenue, it was only the Id. CIT(A) who could have invoked S.263 but the Id. CIT(A) could not have stepped into. Therefore, the Id. CIT(A) has clearly acted beyond his jurisdiction. This extent only, we agree with the revenue and do not oppose GOA 1.

2.3 Pertinently, in the remand proceedings, the AO has verified vouchers / bills with reference to the books of accounts produced and he fully agreed that the book of accounts and audited financial statements are same stating as under:

"During the course of examination, it was noticed that the assessee could not reconcile the figures of opening stock, purchases and sales, freight, gross profit and closing stock with reference to the VAT returns filed from the books of accounts but the figures of audit report are same in the books. Thus, the AO is completely satisfied with the books of accounts and audited financial statements are correct, verifiable and cannot be doubted. AO has not pointed out any defects in the books of account maintained by the assessee. Therefore, merely difference in the VAT return and Audit report figure is not a good basis for invoking S.145(3).

2.4 Alternatively, minor irregularities, even assuming were there, cannot be made a basis of the rejection of the books of account or of trading addition. Kindly refer Padampath Ramgopal 76 ITR 719 (SC).

Thus, there was no valid basis at all to apply Sec. 145 in this case. Hence the same may please be quashed and in consequence thereof, the impugned addition of Rs. 19,61,344/- also deserves a complete deletion.

3.1. Fair estimation required - Legal Position: At the very outset, it is submitted that even invoking of S.145 does not confer blind powers upon the AO and he is not at liberty to assess the income at whatever figure he wants. He is bound to make an honest estimation of income, keeping in view of the material available on record, past history of the case, local knowledge and repute of the assessee. He is also supposed to collect necessary material for the purpose, if so required. An arbitrary, capricious and wild estimation, as done in the present case, are not at all permitted in the eyes of the law. The Id. AO however did not confirm to its settled requirement. Kindly refer Jotram Shershing vs. CIT 2 ITR 119 (All).

3.2 Addition Need Not Be Made, even if Sec.145 Invoked: In the case of CIT v/s Gotan Lime Khaniz Udyog 256 ITR 243 (Raj), it has been held that mere rejection of books of accounts need not necessarily lead to additions to the returned income. It was also held that the books of account, together with past history of the case as also material collected by the AO (of course, after confronting the appellant) should be considered for estimation of income. Also refer M/s Rishab Construction (P) Ltd. 38 TW 8 (JP) wherein it has been held that trading result should not be disturbed in a case wherein these are better than last year results even if provision of S. 145(3) are applicable. These principles are directly applicable on the facts of this case.

4.1 Past History-Best Guide: We may submit that past history has been held to be the best guide in the cases of fair estimation. Kindly refer

Kindly refer CIT v/s Gupta K.N. Construction Co. (2015) 116 DTR 377 (Raj), CIT v/s Inani Marbles 316 ITR 125 (Raj). However, it will appear that in the present case, the Id. CIT(A) has not made a fair estimation in conformity of the above settled judicial guideline. The assessee, this year declared GP rate of 2.17% on sales of Rs.9,40,65,836/- as against GP rate of 2.84% on sales of Rs.6,64,75,224/- (Refer AO Pg- 3-4) in the immediately preceding year (i.e. A.Y.2013-14). Thus, there was a minor fall of 0.67%, which is within the acceptable range.

4.2 Justified reason behind declined in G.P.: It is further submitted that there were justified reasons behind the minor fall of 0.67% of GP rate in as much as the assessee deals in iron scrap and during the financial year 2013-14 (A.Y. 2014-15) there was a big down fall in iron market and to survive in market the assessee has to reduce his margin, which resulted in sharp increase in the sales. In support of the same, the assessee submitted iron sector report of financial year 2013-14 which shows the ratio and reason of decline in iron market. However, no adverse finding given by the AO in the assessment proceedings as well as in the remand proceedings.

4.3 In any case, the appellant's turnover jumped by 141% at Rs. 9.40 Crores this year from 6.64 Crores last year. Needless to say that to achieve such abnormal increase in the turnover, one has to compromise on its margins and such a fact certainly deserved consideration in the matters of fair estimation) Ref.CIT v/s Amrapali Jewels (P) Ltd. (2012) 65 DTR 196 (Raj). Further GP declared even at 1.61% on the turnover of Rs. 11.12 Cr. in AY 2012-13 stood accepted.

5. We strongly rely upon the Written Submissions, Rejoinders etc. filed before Id. CIT(A) time to time and reproduced in the CIT(A) order. Therefore, the allegation of the revenue in its GOA-1.1& 1.2, are not valid.(PB 22-46 & 52-53).

6. We also strongly rely upon the findings by the Id. CIT (A) (to the extent they are not adverse to the respondent assessee). Hence this ground of revenue deserves to be dismissed. Hence, the impugned addition kindly be deleted in full."

8. We have heard the Id. Counsels of both the parties and have perused the material placed on record. We have also deliberated upon the decisions cited in the orders passed by the authorities below as well as cited before us and we have also gone through the orders passed by the revenue authorities. From perusal of the record, we noticed that the Id. CIT(A) has dealt with the issue in para 4.3 to 4.8 of his order by holding as under:

"4.3 I have gone through the assessment order, statement of facts, grounds of appeal, written submission, remand report and rejoinder carefully. It is seen from the assessment order that in this case the return of income was filed declaring total income at Rs. 5,59,530/- and the total income was assessed at Rs. 2,48,63,339/-. In other words, the assessed income was 4444% of the returned income. The rate of gross profit declared by the appellant was 2.17% on the turnover of Rs. 9,40,65,836/- as against the rate of GP of 2.84% on the turnover of Rs. 6,64,75,224/- declared in the immediately preceding assessment year.

4.4 During the course of assessment proceedings, information from the Sales Tax Department was obtained by the AO and it was noticed by the AO that the figures of opening stock, purchases, sales and freight declared in the VAT return were

different from the figures appearing in the audited books of accounts of appellant, on the basis of which the return of income was filed. The AO has given the different figures appearing in VAT return and audited books of accounts as under:

<i>Particulars</i>	<i>As per VAT Return</i>	<i>As per Audit Report and IT Return</i>	<i>Difference (effect on profit)</i>
<i>Opening Stock</i>	<i>3,26,14,956/-</i>	<i>1,03,11,148/-</i>	<i>(1-) 2,23,03,808/-</i>
<i>Purchases</i>	<i>9,50,22,574/-</i>	<i>11,63,26,383/-</i>	<i>(-) 2,13,03,809/-</i>
<i>Sales</i>	<i>9,60,65,836/-</i>	<i>9,40,65,836/-</i>	<i>(-) 20,00,000/-</i>
<i>Freight</i>	<i>17,48,940/-</i>	<i>7,48,940/-</i>	<i>(+) 10,00,000/-</i>
<i>Gross Profit</i>	<i>20,38,656/-</i>	<i>20,38,656/-</i>	<i>-</i>
<i>Closing Stock</i>	<i>3,53,59,291/-</i>	<i>3,53,59,291/-</i>	<i>-</i>
			<i>Nil</i>

4.5 *On the basis of the difference in the figures of purchases as appearing in the VAT return (Rs. 9,50,22,574) and the figures as appearing in audited books of accounts (Rs. 11,63,26,383), the AO treated the amount of Rs. 2,13,03,809/- (Rs. 11,63,26,383 — Rs. 9,50,22,574) as inflated purchases. On the basis of the figures of sales as appearing in VAT return (Rs. 9,60,65,836) and the figures as appearing in the audited books of accounts (Rs. 9,40,65,836), the AO treated the amount of Rs. 20,00,000/- (Rs. 9,60,65,836 — Rs. 9,40,65,836) as suppressed sale. Accordingly, additions of Rs. 2,13,03,809/- and Rs. 20,00,000/- were made on account of inflated/ bogus purchases and suppressed sale respectively. The AO has ignored the difference in the amount of opening stock and freight as appearing in the VAT return (Rs. 3,26,14,956 and Rs.*

17,48,940) and amount as appearing in the audited books of accounts (Rs. 1,03,11,148 and Rs. 7,48,940).

4.6 The appellant has contended that the return of income has been filed on the basis of audited books of accounts. The AO has not pointed out any instance of inflated/ bogus purchases or suppressed sale. All the purchases of the appellant are fully verifiable and complete details of all the purchases in the form of bill/ vouchers and proof of payment made towards the purchases recorded in the audited books of accounts are available. The AO has also not pointed out any instance of sale having been made out of books of accounts by the appellant. The figures of inflated purchases and suppressed sales have been worked out by the AO on the basis of the figures appearing in the VAT return. According to the appellant, no addition can be made by the AO by picking only selected figures (purchase and sale) from the VAT return and ignoring the other figures (opening stock and freight). The AO has to make assessment either on the basis of the figures as appearing in the audited books of accounts, on the basis of which the return of income has been filed by the appellant, or on the basis of the figures as appearing in VAT return. The gross profit declared in the VAT return (Rs. 20,38,656) and in the audited Profit & Loss Account is same. Therefore, the AO whether he makes assessment on the basis of figures appearing in the audited books of accounts or VAT return, no addition could have been made in the income declared by the appellant.

4.7 During the course of appellate proceedings, the copy of VAT returns and Profit & Loss Account of the F.Y. 2012-13 (A.Y. 2013-14) was also filed by the appellant. It can be seen that the figures of closing stock as appearing in the VAT return and audited books

of accounts of the F.Y. 2012-13 was also different, which are also reproduced for ready reference as under:

<i>Particulars</i>	<i>As per VAT Return</i>	<i>As per Audit Report and IT</i>	<i>Difference</i>
<i>Closing Stock</i>	<i>32614956</i>	<i>10311148</i>	<i>22303808</i>

From the above, it can be seen that the opening stock of Rs. 3,26,14,956/- appearing in the VAT return for F.Y. 2013-14 (A.Y. 2014-15) was the same figures which was appearing at closing stock at the VAT return of F.Y. 2012-13 (A.Y. 2013-14).

- 4.8 *I am in agreement with the contention of the appellant that the AO cannot pick and choose some figures (sales) from the VAT return and some figures (opening stock, purchases and freight) from the audited books of accounts, to assess the income of the appellant under the Income Tax Act. If the AO was of the view that the appellant was maintaining two sets of books of accounts then he could have made the assessment by adopting the figures of any one set of books of accounts, which according to AO was correct or reliable. But the AO, for the purpose of assessing the total income of the appellant cannot choose some figures from VAT return and some figures from the audited books of accounts. The appellant had furnished complete details of the purchases recorded in the audited books of accounts. The AO has not carried out any investigation to show that any of the purchases recorded in the books of accounts was bogus or inflated. If any investigation in this regard was made by the AO, no finding of such investigation has been discussed in the assessment order. Major purchases of the appellant are from Indian Railways and complete details of remaining purchase parties is also available. Therefore, I am of the considered view that the AO has not been able to prove any of the purchases debited in the P&L*

account as bogus or inflated. But it is also true that there is no explanation with regard to the difference in figures of sales and freight as appearing in the VAT return (Rs. 9,60,65,836 and Rs. 17,48,940) and in the audited books of accounts (Rs. 9,40,65,836 and Rs. 17,48,940). Therefore, I am of the considered view that the books of accounts of the appellant on the basis of which the return of income has been filed by the appellant are also not correct or reliable. The book results declared in such books of accounts cannot be accepted true and correct. Correct profit cannot be deduced from the books of accounts of the appellant. Therefore, the book results declared by the appellant has to be rejected by invoking the provisions of Section 145(3). Even in the written submission filed by the appellant himself it has been stated that "in case the addition made on account of inflated purchases, expenses and suppressed sales are confirmed by your honour, then the addition to the total income on the account of the same should be restricted to the amount derived by applying the gross profit rate declared and accepted by the department, as income tax can be levied to the income earned and not on gross receipts". In view of the discussion made above, the book result declared by the appellant are rejected by invoking the provisions of Section 145(3), as neither the figures of sales reported by the AO in the audited books of accounts are reliable (because in the audited books of accounts, sales declared is of Rs. 9,40,65,836/- and the sales declared in the VAT return is Rs. 9,60,65,836) nor the rate of GP declared by the appellant can be accepted as correct. The appellant had declared gross profit rate of 2.84% in the immediately preceding assessment year and rate of gross profit of 3.24% in the immediately subsequent assessment year. Therefore, I am of the considered view that it would be fair and

reasonable to estimate the gross profit of the appellant at the rate of 4% on the estimated turnover of Rs. 10 crore. The gross profit of the appellant works out to Rs. 40 lac. As the appellant had declared gross profit of Rs. 20,38,656/-, therefore, the addition of Rs. 19,61,344/- (Rs. 40,00,000 — Rs. 20,38,656) is hereby confirmed and remaining addition of Rs. 2,23,42,465/- (Rs. 2,43,03,809 — Rs. 19,61,344) is deleted.”

9. We observed from perusal of the record that the assessee is engaged in the business of trading of old iron material. During the year under consideration, the assessee e-filed his return of income declaring total income at Rs.5,59,530/-.The assessee declared Gross Profit of Rs.20,38,656/- giving GP rate of 2.17% at total turnover of Rs.9,40,65,836/- as against Gross Profit of Rs.18,85,420/- giving GP rate of 2.84% at total turnover of Rs.6,64,75,224/-last year. During the assessment proceedings, the AO called for information u/s 133(6) of the Act from the Bank of Baroda and from the Sales Tax Department. In response to which information from the Sales Tax Department was received on 15.12.2016, from which, the AO noticed variations in the VAT return filed and in the Trading Account details attached with the Audit Report for the subjected year. The alleged variations are as under:

Particulars	As per VAT Return (Rs.) (PB-56)	As per Audit Report and IT Return (Rs.)	Difference (Rs.)

Opening Stock	3,26,14,956/-	1,03,11,148/-	(+)2,23,03,808/-
Purchases	9,50,22,574/-	11,63,26,383/-	(-)2,13,03,809/-
Sales	9,60,65,836/-	9,40,65,836/-	(-)20,00,000/-
Freight	17,48,940/-	7,48,940/-	(+)10,00,000/-
Gross Profit	20,38,656/-	20,38,656/-	-

When the assessee was asked to clarify variation in figure of Trading Account as per Tax Audit report vis-a-vis the figures of VAT return, the assessee vide letter dated 26.12.2016 submitted that the variation is because of clerical mistake of accountant, however Gross Profit declared in the VAT return and in TAR is the same. However, by rejecting assessee's reply, the AO held that the assessee failed to explain the variation between the figures of Tax Audit report and the VAT return and finally he made addition of Rs.20,00,000/- on account of suppressed/undisclosed sales, and Rs.2,23,03,809/- on account of bogus/inflated/unexplained investment in purchases including expenses vide order dated 29.12.2016 u/s 143(3) of the Act.

10. We also observed from perusal of the record that the Id. CIT(A) called for remand report from the AO. The AO in turn issued notice no. 478 dated 24.07.2017 to the assessee and in pursuance thereof, the assessee produced books of account along with vouchers before the AO. After perusal of written submissions, remand report and rejoinder, the Id.

CIT(A) applied GP rate of 4% as against 2.17% declared by the assessee which resulted into the addition of Rs.19,61,344/-.

11. Having considered the rival contentions and carefully perused the material placed on record, we observed that in this case the return of income was filed declaring total income at Rs. 5,59,530/- and the total income was assessed at Rs. 2,48,63,339/-. In other words, the assessed income was 4444% of the returned income. The rate of gross profit declared by the assessee was 2.17% on the turnover of Rs. 9,40,65,836/- as against the rate of GP of 2.84% on the turnover of Rs. 6,64,75,224/- declared in the immediately preceding assessment year. During the course of assessment proceedings, information from the Sales Tax Department was obtained by the AO and it was noticed by the AO that the figures of opening stock, purchases, sales and freight declared in the VAT return were different from the figures appearing in the audited books of accounts of appellant, on the basis of which the return of income was filed. The AO has given the different figures appearing in VAT return and audited books of accounts as under:

Particulars	As per VAT Return	As per Audit Report and IT Return	Difference (effect on profit)

Opening Stock	3,26,14,956/-	1,03,11,148/-	(1-) 2,23,03,808/-
Purchases	9,50,22,574/-	11,63,26,383/-	(-) 2,13,03,809/-
Sales	9,60,65,836/-	9,40,65,836/-	(-) 20,00,000/-
Freight	17,48,940/-	7,48,940/-	(+) 10,00,000/-
Gross Profit	20,38,656/-	20,38,656/-	-
Closing Stock	3,53,59,291/-	3,53,59,291/-	-
			Nil

On the basis of the difference in the figures of purchases as appearing in the VAT return (Rs. 9,50,22,574) and the figures as appearing in audited books of accounts (Rs. 11,63,26,383), the AO treated the amount of Rs. 2,13,03,809/- (Rs. 11,63,26,383 — Rs. 9,50,22,574) as inflated purchases. On the basis of the figures of sales as appearing in VAT return (Rs. 9,60,65,836) and the figures as appearing in the audited books of accounts (Rs. 9,40,65,836), the AO treated the amount of Rs. 20,00,000/- (Rs. 9,60,65,836 — Rs. 9,40,65,836) as suppressed sale. Accordingly, additions of Rs. 2,13,03,809/- and Rs. 20,00,000/- were made on account of inflated/ bogus purchases and suppressed sale respectively. The AO has ignored the difference in the amount of opening stock and freight as appearing in the VAT return (Rs. 3,26,14,956 and Rs. 17,48,940) and amount as appearing in the audited books of accounts (Rs. 1,03,11,148 and Rs. 7,48,940). The assessee has contended that the return of income

has been filed on the basis of audited books of accounts. The AO has not pointed out any instance of inflated/ bogus purchases or suppressed sale. All the purchases of the assessee are fully verifiable and complete details of all the purchases in the form of bills/vouchers and proof of payment made towards the purchases recorded in the audited books of accounts are available. The AO has also not pointed out any instance of sale having been made out of books of accounts by the assessee. The figures of inflated purchases and suppressed sales have been worked out by the AO on the basis of the figures appearing in the VAT return. According to the assessee, no addition can be made by the AO by picking only selected figures (purchase and sale) from the VAT return and ignoring the other figures (opening stock and freight). The AO has to make assessment either on the basis of the figures as appearing in the audited books of accounts, on the basis of which the return of income has been filed by the assessee or on the basis of the figures as appearing in VAT return. The gross profit declared in the VAT return (Rs. 20,38,656) and in the audited Profit & Loss Account is same. Therefore, the AO whether he makes assessment on the basis of figures appearing in the audited books of accounts or VAT return, no addition could have been made in the income declared by the assessee.

12. During the course of appellate proceedings, the copy of VAT returns and Profit & Loss Account of the F.Y. 2012-13 (A.Y. 2013-14) was also filed by the assessee. It can be seen that the figures of closing stock as appearing in the VAT return and audited books of accounts of the F.Y. 2012-13 was also different, which are also reproduced for ready reference as under:

Particulars	As per VAT Return	As per Audit Report and IT	Difference
Closing Stock	32614956	10311148	22303808

From the above, it can be seen that the opening stock of Rs. 3,26,14,956/- appearing in the VAT return for F.Y. 2013-14 (A.Y. 2014-15) was the same figures which was appearing at closing stock at the VAT return of F.Y. 2012-13 (A.Y. 2013-14). Therefore, we are in agreement with the contention of the assessee that the AO cannot pick and choose some figures (sales) from the VAT return and some figures (opening stock, purchases and freight) from the audited books of accounts, to assess the income of the assessee under the Income Tax Act. If the AO was of the view that the assessee was maintaining two sets of books of accounts then he could have made the assessment by adopting the figures of any one set of books of accounts, which according to AO was correct or reliable. But the AO, for the purpose of assessing the total income of the assessee cannot choose some figures from VAT return and some figures from the audited

books of accounts. The assessee had furnished complete details of the purchases recorded in the audited books of accounts. The AO has not carried out any investigation to show that any of the purchases recorded in the books of accounts was bogus or inflated. If any investigation in this regard was made by the AO, no finding of such investigation has been discussed in the assessment order. Major purchases of the assessee are from Indian Railways and complete details of remaining purchase parties are also available. Therefore, we are of the considered view that the AO has not been able to prove any of the purchases debited in the P&L account as bogus or inflated. But it is also true fact that there is no explanation with regard to the difference in figures of sales and freight as appearing in the VAT return (Rs. 9,60,65,836 and Rs. 17,48,940) and in the audited books of accounts (Rs. 9,40,65,836 and Rs. 17,48,940). Therefore, we are of the view that the books of accounts of the assessee on the basis of which the return of income has been filed by the assessee are also not correct or reliable. The book results declared in such books of accounts cannot be accepted true and correct. Correct profit cannot be deduced from the books of accounts of the assessee. Therefore, the book results declared by the assessee was rightly rejected by invoking the provisions of Section 145(3) of the Act. Even in the written submission filed by the assessee before Id. CIT(A), the assessee has stated that *"in case the addition made on account*

of inflated purchases, expenses and suppressed sales are confirmed by your honour, then the addition to the total income on the account of the same should be restricted to the amount derived by applying the gross profit rate declared and accepted by the department, as income tax can be levied to the income earned and not on gross receipts". In view of the discussion made above, we uphold the invoking the provisions of Section 145(3) of the Act, as neither the figures of sales reported by the AO in the audited books of accounts are reliable (because in the audited books of accounts, sales declared is of Rs. 9,40,65,836/- and the sales declared in the VAT return is Rs. 9,60,65,836) nor the rate of GP declared by the assessee can be accepted as correct. The assessee had declared gross profit rate of 2.84% in the immediately preceding assessment year and rate of gross profit of 3.24% in the immediately subsequent assessment year. The case laws relied upon by the Id. AR are not applicable as per facts of the present case, therefore, considering the totality of facts and circumstances, we found that the Id. CIT(A) has passed a speaking and reasoned order discussing all the details of the case of the assessee, as far as the rejection of books of account, thus we uphold the order of Id. CIT(A) to the extent it has upheld the rejection of books of account of the assessee.

13. Now coming to the additions confirmed by the Id. CIT(A) to the extent of Rs. 19,61,344/- is concerned, in this regard, it has been categorically submitted by the Id. AR that even if books of account of the assessee were rejected still no additions could have been made and in this regard, the Id. AR has relied upon the decision in the case of **CIT Vs Gotan Lime Khaniz Udyog 256 ITR 243 (Raj)**. It was further submitted by the Id. AR that in case any addition was required to be made or confirmed by the Id. CIT(A) then in that eventuality, a fair estimation was required to be made and while making the said fair estimation, past history of the assessee was the best guide. It was further submitted by the Id. AR that he had placed on records documents which shows justified reasons behind decline in minor fall in the G.P. for the year under consideration.

14. Whereas on the contrary, the Id. DR has strongly relied upon the order passed by the Id. CIT(A) as far as the additions to the tune of Rs. 19,61,344/- is concerned.

15. After having gone through the facts of the present case, we are of the view that even after invoking Section 145 of the Act, ipso facto does not confer blind powers upon the A.O. to make additions and in our view, the A.O. is not had liberty to assess the income of the assessee at

whatever figures he wants. The A.O. is bound to make an honest estimation of income keeping in view the material available on record, past history of the case, local knowledge and repute of the assessee. At the same time, the A.O. is also supposed to collect necessary material for the purpose, if so required. An arbitrary, capricious and wild estimation is not permitted in the eyes of the law and in this regard, we relied upon the decision of Hon'ble Allahabad High Court in the case of **Jotram Shershing vs. CIT 2 ITR 119 (All)**. As far as past history of the present case is concerned, the assessee in the year under consideration declared G.P. rate of 2.17% on sale of Rs. 9,40,65,836/- as against GP rate of 2.84% on sales of Rs.6,64,75,224/- in the immediately preceding year i.e. A.Y.2013-14. Thus, in this way, there was a minor fall of 0.67%. It is an undisputed fact that the assessee deals in iron scrap and according to the Id. AR, during the financial year 2013-14 there was a big down fall in iron market and to survive in market, the assessee has to reduce his margin, which resulted in sharp increase in the sales. In support of the said contention, the assessee had also placed on record iron sector report of financial year 2013-14 which shows the ratio and reason of decline in iron market. However, no adverse findings were given by the AO in the assessment proceedings as well as in the remand proceedings. It is important to mention here that the assessee's turnover jumped by 141% at Rs. 9.40 Crores this year from

6.64 Crores last year. We are of the view that to achieve such abnormal increase in the turnover, one has to compromise on its margins and such a fact certainly deserved consideration as far as the matter of fair estimation is concerned. While reaching to this conclusion, we also draw strength from the decision of Hon'ble Jurisdictional High Court in the case of **CIT v/s Amrapali Jewels (P) Ltd. (2012) 65 DTR 196 (Raj)**. At the same time, we cannot lose sight of the fact that the GP declared even at 1.61% on the turnover of Rs. 11.12 Cr. in assessee's own case in AY 2012-13 was also accepted by the Revenue. Thus, considering the totality of the facts and circumstances of the case, we restrict the addition to the tune of Rs. 10.00 lacs and remaining additions are directed to be deleted. We order accordingly. Hence, grounds No. 1 to 1.2 of the Revenue's appeal and grounds No. 1 to 5 of the assessee's C.O. are partly allowed.

16. Ground No. 2 of the Revenue's appeal and ground No. 6 of the assessee's C.O. are also interrelated and interconnected and relates to challenging the order of the Id. CIT(A) in giving relief of Rs. 1,15,981/- to the assessee on account of various expenses.

17. The Id. DR has relied on the order of the A.O. whereas on the contrary, the Id AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the Id. CIT(A) and also relied on

the written submissions filed before the Bench and the same is reproduced below:

"1.1 Mere suspicion: At the outset it is submitted that the assessee has maintained complete Books of account and other subsidiary record and all the expenses are fully and duly supported by vouchers. A bare reading of the order of lower authority shall reveal that in almost all the cases the disallowances have been made on ad hoc basis, simply on mere suspicion, surmises and conjectures. No specific instance of any nature whatsoever has been given by the AO in the impugned order to support his contention with the documentary evidence that the expenditures were incurred for non-business purposes, element of personal user was there. An allegation remains a mere allegation unless proved. Suspicion can-not take the place of reality, are the settled principles kindly refer Dhakeshwari cotton Mills 26 ITR 775 (SC).

All the above expenses were fully supported by vouchers which were even produced before the Id. AO during the remand proceeding as admitted by him [refer Pg-10 of Id. CIT(A)]. The Freight, Telephone expenses, Petrol & Diesel Expenses and Vehicle Expenses were dully supported by Bills and vouchers etc. In these expenses there was no possibility of personal user.

1.2 Businessman is the best judge: It is settled that a businessman is the best judge to take care of its own interest & to take decisions and the AO is not supposed to intervene therein nor he can replace the assessee. Here, whatever decisions were taken by the assessee, has to be understood as taken out of commercial expediency. Kindly refer T.T. (P) Ltd. v/s CIT (1980) 121 ITR 551 (Kar), CIT v/s Udhoji Shrikrishnadas (1983) 139 ITR 827 (MP) JK Woolen Manufacturers 72 ITR 612 (SC).

1.3 Reasonable Claim made: It is submitted that looking to a huge turnover of more than Rs.9.40crores (approx.), claim of expenditure is otherwise very meager. Thus such a meager claim to achieve such a huge turnover is not at all unjustified. All these expenses were incurred exclusively for businesses purpose and are under the provisions of the Act. Pertinently, despite increasing turnover, the claimed expenses are equal to / less than expenses claimed in the preceding year. Kindly refer refer a chart herein below:

Name of Head	Exp. claimed	Disallowed by AO	% of disallowance	% of Exp. on Turnover of this year	% of Exp. on turnover of previous year
Turnover				Rs.9,40,65,836/-	Rs.6,64,75,224/-
Freight	7,48,940/-	1,87,235/-	25% of Total Expenses & 50% restricted by the Id. CIT(A) i.e. Rs.1,15,981/-	0.80%	0.64%
Petrol & Diesel Exp.	58,948/-	14,737/-		0.06%	0.08%
Telephone Expenses	16,784/-	4,196/-		0.017%	0.02%
Vehicle Expenses	42,947/-	10,737/-		0.05%	0.05%
Depreciation	60,229/-	15,057/-		0.06%	0.10%
Total	Rs.9,27,848/-	2,31,962/-			

1.4 Depreciation is a statutory allowance:Further disallowance of Dep. on vehicles is also not warranted with the facts and merits of the case as Dep. being a statutory allowance and hence cannot be restricted on the basis of personal use as held by Hon'ble ITAT Jaipur Bench (B) in ITA no. 373/JP/2002 in case of Triveni Pharma (2006) 35 T.W. 64 (Jp) and also in Kailash Chand Gupta v/s DCIT 35 Tax World 36 (Jp). No such disallowance was made in past.

2. We strongly rely upon the Written Submissions, Rejoinders etc. filed before Id. CIT(A) time to time and reproduced in the CIT(A) order. Therefore, the allegation of the revenue in its GOA-1.1& 1.2, are not valid.(PB 22-46 & 52-53).

3. We also strongly rely upon the findings by the Id. CIT (A) (to the extent they are not adverse to the respondent assessee). Hence this ground of revenue deserves to be dismissed.

Therefore, also the entire disallowance, so made may kindly be deleted in full. Accordingly, the appeal of revenue to be dismissed."

18. Having considered the rival contentions and from perusal of the record, we found that, as per the the assessee has maintained complete Books of account and other subsidiary record and all the expenses are fully supported by vouchers. A bare reading of the order of lower authority shall reveal that in almost all the cases the disallowances have been made on ad hoc basis, simply on mere suspicion, surmises and conjectures. No specific instance of any nature whatsoever has been given by the AO in the impugned order to support his contention with the documentary evidence that the expenditures were incurred for non-business purposes, element of personal user was there. An allegation remains a mere allegation unless proved. Suspicion can-not take the place of reality, are the settled principles as has been held by the Hon'ble Supreme Court in the case of **Dhakeshwari cotton Mills 26 ITR 775 (SC)**. All the expenses were fully supported by vouchers which were even produced before the AO during the remand proceeding and the same were admitted by him [refer Pg-10 of Id. CIT(A)]. The Freight, Telephone expenses, Petrol & Diesel Expenses and Vehicle Expenses were dully

supported by Bills and vouchers etc. In these expenses there was no possibility of personal user. It is a settled law that a businessman is the best judge to take care of its own interest & to take decisions and the AO is not supposed to intervene therein nor he can replace the assessee. Here, whatever decisions were taken by the assessee, has to be understood as taken out of commercial expediency. In this regard, we rely on the decisions in the case of **T.T. (P) Ltd. v/s CIT (1980) 121 ITR 551 (Kar)**, **CIT v/s Udhoji Shrikrishnadas (1983) 139 ITR 827 (MP)** and **JK Woolen Manufacturers 72 ITR 612 (SC)**.

19. It was submitted by the Id. AR that looking to a huge turnover of more than Rs.9.40crores (approx.), claim of expenditure is otherwise very meager. Thus such a meager claim to achieve such a huge turnover is not at all unjustified. All these expenses were incurred exclusively for businesses purpose and are under the provisions of the Act. Pertinently, despite increasing turnover, the claimed expenses are equal to/ less than expanses claimed in the preceding year. In this regard, a chart mentioning the details of expenses is as under:

<i>Name of Head</i>	<i>Exp. claimed</i>	<i>Disallowed by AO</i>	<i>% of disallowance</i>	<i>% of Exp. on Turnover of this year</i>	<i>% of Exp. on turnover of previous year</i>
<i>Turnover</i>				<i>Rs.9,40,65,836/-</i>	<i>Rs.6,64,75,224/-</i>
<i>Freight</i>	<i>7,48,940/-</i>	<i>1,87,235/-</i>	25% of Total Expenses	<i>0.80%</i>	<i>0.64%</i>
<i>Petrol & Diesel Exp.</i>	<i>58,948/-</i>	<i>14,737/-</i>		<i>0.06%</i>	<i>0.08%</i>

Telephone Expenses	16,784/-	4,196/-	& 50% restricted by the Id. CIT(A) i.e. Rs.1,15,98 1/-	0.017%	0.02%
Vehicle Expenses	42,947/-	10,737/-		0.05%	0.05%
Depreciation	60,229/-	15,057/-		0.06%	0.10%
Total	Rs.9,27,848/-	2,31,962/-			

Further disallowance of depreciation on vehicles is also not warranted with the facts and merits of the case as depreciation being a statutory allowance and hence cannot be restricted on the basis of personal use as has been held by Coordinate Bench of this Tribunal in **ITA no. 373/JP/2002 in case of Triveni Pharma (2006) 35 T.W. 64 (Jp) and also in Kailash Chand Gupta v/s DCIT 35 Tax World 36 (Jp).**

Considering the totality of the facts and circumstances as well as case laws relied upon by the Id. AR, we found merit in the contentions raised by the assessee, therefore, we direct to delete the additions confirmed by the Id. CIT(A) with regard to various expenses. We order accordingly.

20. In the result, appeal of the Revenue is dismissed and the cross objection of the assessee is partly allowed.

Order pronounced in the open court on 10th January, 2022.

Sd/-
(एन.के.सैनी)
(N.K. SAINI)
उपाध्यक्ष / Vice President

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 10/01/2022

***Ranjan**

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

1. अपीलार्थी / The Appellant- The I.T.O., Ward-1(2), Ajmer.
2. प्रत्यर्थी / The Respondent- Shri Bhagchand Jain, Ajmer.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 1271/JP/2018 & CO 42/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar