

आयकर अपीलीय अधिकरण "सी" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "C", MUMBAI**

श्री डि. करुणाकर राव, लेखा सदस्य एवं

श्री अमित शुक्ला, न्यायिक सदस्य के समक्ष।

**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER  
AND SHRI AMIT SHUKLA, JUDICIAL MEMBER**

**ITA No. : 5269/Mum/2011**

(Assessment year :2007-08)

ACIT – Cir -6(3), R. No. 522, 5 <sup>th</sup> Floor, Aayakar Bhavan, M K Road, Mumbai -400 020	<b>Vs</b>	M/s Premium Paper & Board Industries Ltd, 1 <sup>st</sup> Floor, John Robber Compound, Sewri Fort Road, Sewri (East), Mumbai -400 015 स्थयी लेखा सं.: <b>PAN: AAACG 3599 F</b>
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
Appellant by	:	Shri B S Bist
Respondent by	:	None

सुनवाई की तारीख /Date of Hearing : 20-07-2015

घोषणा की तारीख /Date of Pronouncement : 15-10-2015

**आदेश**  
**ORDER**

**अमित शुक्ला, न्या. स.:**

**PER AMIT SHUKLA, JM:**

The aforesaid appeal has been filed by the revenue against impugned order dated 21.03.2011 passed by CIT(A)-12, Mumbai for the quantum of assessment passed u/s 143(3) for the assessment year 2007-08 on the following grounds :-

*“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing the argument that the transaction on the basis of which Gross Profit had been estimated pertained to AY 2008-09, the claim never made before the AO.*

2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in accepting the argument of the assessee that both purchases and cheque payment were made in FY 2006-07 relevant to AY 2007-08 which is for total different transactions”.*

2. Despite service of notice to the respondent-assessee through Department, none appeared on behalf of the assessee on any of the dates nor any adjournment application was filed. Accordingly, appeal was heard after hearing Ld. DR in absence of assessee’s representative.

3. The brief facts are that, in this case return of income was filed at a loss of Rs. 56,32,720/- under the normal provisions of the Act and Book profit of Rs. 1,28,93,890/- was shown u/s 115JB. The assessment was completed at a loss of Rs. 34,71,729/- after making the disallowance u/s 14A at Rs. 6,145/- and addition on account of undisclosed income from alleged bogus purchases of Rs. 21,54,846/-.

4. The brief facts *qua* the main addition challenged by the revenue is that, a search and survey action was carried out in the case of a different person, Shri Praveen Kumar Jain and Pankaj Kumar Jain. During the course of such action, it was found that these persons were providing accommodation bill through following concerns, viz. New Planet Trading Co. Pvt Ltd and Oswal Trading India Pvt Ltd. The assessee was also found taking the accommodation bills, from these parties. The AO in the impugned assessment order has noted that, for the year under consideration the assessee had entered into a trading transaction of purchase, which was carried out with these concerns amounting to Rs. 1,00,42,997/-. These purchased goods were again sold to M/s ‘Capetown Mercantile Company Pvt Ltd’ and ‘Faststone Trading’ for an amount of Rs. 1,07,46,388/-. Thus, the net profit shown by the

assessee was at Rs. 7,03,391/- on these alleged transactions. The AO disagreed with the contention of the assessee that these were genuine transaction as in the statement recorded on 17.05.2008, Shri Pankaj Kumar Jain could not explain the genuineness of the transaction and these transactions were held to be in the nature of providing of accommodation bills. Accordingly, he rejected the books of accounts of the assessee u/s 145 and determined the undisclosed income in the following manner :-

*“The intention of the Assessee Company in entering into such a transaction is to not only inflate the purchases and sales but to give a true colour to the goods which have been sold outside the Books of Account. But, by doing this, the assessee has not brought the true profit to the books of account. As it is certain that the Assessee has sold the goods out of the books of account, the Gross Profit rate for the year under consideration on the aforesaid sale, as reduced by the profit declared by the assessee in the books of account of Rs.7,03,391/- is considered as the undisclosed income of the Assessee Company for the year under consideration. At this juncture, the Assessee Company might take a plea that they are entitled for expenses on this income and the net profit only can be taxed. However, this plea of the Assessee Company merits only rejection, as all the expenses are debited to the Profit & Loss Account. Moreover, the Assessee Company has not brought any evidence on record to prove any expenses incurred for earning of the income. As per Annexure 9 to the Tax Audit Rate, the G.P. Rate for the year under consideration is 28.46%. The undisclosed income is computed as under :-*

Purchase	1,00,42,997
Gross Profit @ 28.46%	28,58,237
Profit declared in the books of account	7,03,391
Undisclosed Income	21,54,846

5. Before the CIT(A), it was submitted that the transactions which has been doubted by the AO did not pertained to the year under consideration i.e. AY 2007-08 as the goods concern relate to the purchases made in December, 2007 and January, 2008 and, therefore, any addition if at all is called for, then same should have been considered in AY 2008-09. Alternatively, it was stated that the entire material purchases during the year has been sold and if there is no purchases then there could not have been any corresponding sales also. The assessee had also filed the details of the transaction for the AY 2008-09 to show that none of the transaction as said by the AO were entered into AY 2007-08.

6. The Ld. CIT(A) noted the entire facts and discussed the entire issue vide Para 4.2 to 4.5 of his appellate order and noted that the statement recorded of the Director of the assessee on 05.06.2008, establishes the fact that bills referred to in respect of Pankaj Kumar Jain in respect of New Planet Trading Co. Pvt. Ltd and Oswal Trading India Pvt Ltd, pertained to AY 2008-09 as the purchases were made in the month of December, 2007 and January, 2008. This is also evident from the cheque numbers, name of the bank, the person to whom cheques have been issued and the amount. However, he held that AO's observation about the non-genuineness of the purchases is otherwise correct and the assessee's books of account and trading result do not reflect true profit and therefore, books of accounts have rightly been rejected. But such an adverse inference cannot be taken for this year, that is, AY 2007-08, but in AY 2008-09. The relevant finding of the CIT(A) in this regard reads as under :-

*“4.4 Therefore, I find that the AO's observation that the genuineness of the purchase cannot be established and that these transactions as recorded by the AO in his books are only to inflate the purchases and sales of the appellant which has resulted in the true profit not being revealed was*

*absolutely correct. Therefore Books of accounts need to be rejected which I find that the AO has rightly done. I also find that the method adopted by the AO in applying the GP rate on the purchases held to be unproved cannot be faulted with. However what is to be considered here now is the year under which these transactions are to be considered for calculating the income of the appellant. I find that in the statement recorded of the director of the company on 5/6/2008 it has clearly been mentioned in the answer to question number 11 that the said purchases against which the cheques have been found pertain to December and January 2007/2008. This is indicative of the fact that the same would need to be dealt with this AY 2008-09 and not in this year that is AY 2007-08 as done by the AO. I also find that in the books of accounts for AY 2008-09 the appellant has taken into consideration the above mentioned purchases and the assessing officer while assessing the case of the appellant under section 143(3) has not disputed with this. The order of the assessment for AY 2007-08 is silent regarding the date of search undertaken.*

*4.5 However the letter dated 16.06.2008 of the Additional Director of Income Tax (Investigation) Unit –IX, Mumbai clearly states that the search action was conducted under section 132 of the Income Tax Act on 31.3.2008. The letter further goes to state that during the course of statement recorded of Shri Praveen Kumar Jain on 17.5.2008 in answer to question number 9, Shri Jain had clearly stated he had given accommodation entries in the year 2003, 2004 and 2005 to various parties. He had then proceeded to name a few parties. The appellant is not one of these parties. The cheque of the appellant found with Mr. Praveen Kumar Jain has further been discussed in the said letter. It has clearly been stated that as on date of the letter the appellant company had not paid any tax for AY 2008-09. The Additional Director of*

*Income Tax (Investigation) has proceeded to request the AO to look into the matter. It would therefore stand that the transaction under consideration related to AY 2008-09 and not AY 2007-08. Under the circumstances, I have no option but to give relief to the appellant regarding this addition in this year for the reason that the transactions do not pertain to AY 2007-08 but to AY 2008-09 as is very evident from the statement recorded and also from the letter of the Additional Director of Investigation dated 16.06.2008 even though the genuineness of the purchases remain to be established by way of nexus regarding payments made and goods brought. The addition so made is therefore deleted in the current year”.*

7. After hearing the Ld. DR and on perusal of the impugned order, we find that, so far as the factum of the transaction of purchases, that it pertains to the purchases made in December, 2007 and January, 2008 has not been rebutted by the department, either before CIT(A) or before us, which clearly indicates that at all any such addition of undisclosed income is to be made then same is to be considered in AY 2008-09 and not in the impugned assessment year. Therefore, the finding of the CIT(A) as recorded above is upheld and there could be no deviation without there being any adverse material or rebuttal by the Department. Accordingly, ground raised by the revenue are dismissed.

8. In the result, appeal of the revenue stands dismissed.  
Order pronounced in the open court on 15<sup>th</sup> October, 2015.

**Sd/-**  
(डि. करुणाकर राव)  
लेखा सदस्य  
**(D. KARUNAKARA RAO)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
(अमित शुक्ला)  
न्याईक सदस्य  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

**Mumbai, Date: 15<sup>th</sup> October, 2015**

प्रति/Copy to:-

- 1) अपीलार्थी /The Appellant.
  - 2) प्रत्यर्थी /The Respondent.
  - 3) The CIT(A) -12, Mumbai.
  - 4) The CIT – City -6, Mumbai.
  - 5) विभागीय प्रतिनिधि “सी”, आयकर अपीलीय अधिकरण, मुंबई/  
The D.R. “C” Bench, Mumbai.
  - 6) गार्ड फाईल \
- Copy to Guard File.

आदेशानुसार/By Order

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उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, मुंबई  
Dy./Asstt. Registrar  
I.T.A.T., Mumbai

\*चव्हान व.नि.स

\*Chavan, Sr.PS