

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ , मुंबई ।

IN THE INCOME TAX APPELLATE TRIBUNAL "J" BENCH, MUMBAI

BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER AND

SHRI ASHWANI TANEJA, ACCOUNTANT MEMBER

आयकर अपील सं /I.TA No. 4760/Mum/2013

(निर्धारण वर्ष / Assessment Year: 2009-10

The ACIT-13(2), Aaykar Bhavan, Mumbai-400 020	बनाम/ Vs.	Shri Janak Bhupatrai Doshi, C/o M/s. Shah Bhupatrai Hirachand, 212/16, Samuel Street, Rang Mahal, 3 rd Floor, Masjid Bunder, Mumbai-400 09
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स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.AAAPD 7409A

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
अपीलार्थी ओर से/ Appellant by:		Shri Ajay
प्रत्यर्थी की ओर से/ Respondent by:		Shri Bhupendra Shah

सुनवाई की तारीख / Date of Hearing :22.02.2016

घोषणा की तारीख /Date of Pronouncement :29.04.2016

आदेश / O R D E R

PER C.N. PRASAD, JM:

This appeal is filed by the Revenue against the order of the Ld. CIT(A)-24, Mumbai dated 22.03.2013 pertaining to assessment year 2009-10.

2. The Revenue has raised following grounds of appeal :

1.(i) "On the facts and in the circumstances of the case and in law, the Id. CIT (A) has erred in restricting the addition made by the AO in respect of purchases of 'Almond-in-Shell' made from Jaylons Impex India Pvt. td., of

Rs.2,31,03,785/- to Rs.51,78,963/- and in respect of purchases of 'Pistachio Kemal' made from Sai Enterprises of Rs.8,94,696/- to Rs.3,70,765/-."

(ii) "While doing so, the Id. CIT(A) has erred in not appreciating the fact that the assessee had not made any payment to suppliers for supply of inferior quality of goods.

(2) "On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the disallowance of interest expenses in respect of the above loans / credits."

3. Brief facts are that assessee is engaged in the business of dealer in Gum, Pulses Chemicals & Dryfruits. The assessee filed his return of income on 27.9.2009 declaring NIL income. The assessment was completed u/s. 143(3) on 21.12.2001 determining the income at Rs. 50,65,860/-. While completing the assessment, the Assessing Officer made addition of Rs. 2,31,03,785/- and Rs. 8,94,696/- in respect of inferior quality of Almond In-Shell and Pistachio Kernal. The Assessing Officer held that the purchases made by the assessee for Almond In-Shell and Pistachio Kernal during the year are not allowable as not genuine expenses.

4. On appeal, the Ld. CIT(A) partly deleted the addition/disallowances made by the Assessing Officer.

5. The Ld. Departmental Representative vehemently supports the order of the Assessing Officer in making addition/disallowance towards inferior quality of purchases of Almond In-Shell and Pistachio Kernal treating them as not genuine purchases by the Assessing Officer.

6. The Ld. Counsel for the assessee supports the order of the Ld. CIT(A) in partly deleting the addition /disallowance.

7. We have heard the rival contentions and perused the orders of the lower authorities. The Assessing Officer while completing the assessment reduced the cost of Almond In-Shell and Pistachio Kernal from the purchases holding that the assessee had purchased inferior quality of goods and therefore incurred loss. He concluded that the purchases are not genuine observing that loss on poor quality of supply of item should be borne by the supplier and not by the assessee. The Ld. CIT(A) has analyzed the submissions and the contentions of the Assessing Officer in detail and partly sustained the additions observing as under:

“Assessee has submitted that Assessing Officer erred in making addition in respect of purchase of almond in shell of Rs: 2,31,03,785/-. It is observed from the records that assessee had shown a net loss of Rs. in the P&L A/c Rs. 2,06,71,168/- and called for details of trading activity in various items. It was noticed by the Assessing Officer that assessee had incurred gross loss of Rs. 48,12,324/- in trading activity and gross loss of Rs. 51,78,963/- in trading in almonds in shell which resulted in net loss of Rs. 2,06,71,168/- also after deducting the expenses of business . totalling Rs. 3,13,51,813/-. It was further noticed by the Assessing Officer that assessee had incurred these trading losses totalling Rs. 51,78,963/- mainly in respect of trading in almond in shell. Assessing Officer called for details and found out that these trading losses in respect of almond in shell consisted of trading with M/s Jaylon Impex India Pvt. Ltd., Mumbai and assessee had effected total purchases of Rs. 3,89,87,641/- from Jaylon Impex India Pvt. Ltd. of almond in shell and other commodities but losses had occurred in respect of trading in almond in shell of Rs. 51,78,963/- with this party. Assessing Officer also noticed that assessee had not made payment of Rs. 2,31,03,785/- to M/s. Jaylon Impex India Pvt. Ltd. in respect of purchases of Rs. 2,31,03,785/- out of total purchase of Rs. 3,13,51,813/- to the seller of goods, that is Jaylon Impex India Pvt. Ltd. till the end of 31/3/2009, that is the end of financial year.

4.2.3 It is observed from the records that (1) assessee effected purchases of Rs. 3,13,51,813/- from 14/5/2008 to 29/11/2008 during F.Y. 2008-09 relevant to A.Y.2009-10 regularly despite defective goods being supplied by M/s. Jaylon Impex India Pvt. Ltd. in May and August 2008 and also made payments to M/s. Jaylon Impex India Pvt. Ltd. in September, October, November and December 2008 and in February 2009 despite the fact that assessee had already given interest free loan of Rs. 1,68,78,835/- and interest free advance of Rs. 3,49,02,030/- to M/s. Jaylon Impex India Pvt. Ltd. in the beginning of the year and which was outstanding as 31/3/2009, (2) Assessee kept on purchasing and selling goods from/to Jaylon Impex India Pvt. Ltd. even after May and August 2008, (3) Assessee has effected further loan transactions and purchase transactions with Jaylon Impex India Pvt. Ltd. during FY 2009-10 relevant to A.Y 2010-11 resulting in ultimate squaring up of all the accounts with Jaylon Impex India Pvt. Ltd. to a balance recoverable of Rs. 8,40,517/- only on 31/3/2010. All these facts clearly indicate that assessee could have extracted a reduction in purchase price from Jaylon Impex India Pvt. Ltd. in respect of purchase of almond in shell even though assessee's condition vis-a-vis Jaylon Impex India Pvt. Ltd., was little precarious in view of loan and advances already given by him. However, keeping in view the entire facts of the case it would appear that incurring of losses in purchase of defective goods from M/s. Jaylon is not fully justifiable. After all the assessee has been in the business for last several years and no prudent businessman transacts in this fashion. This is buying goods, finding it defective later on, and reconciling with the same. The assessee's explanations and submissions are not convincing to favour his stand. It also appears from the records that AO's action in adding entire purchases totalling Rs. 2,31,03,785/- without considering the entirety of all the transactions of purchase, sales and loan/advances transactions is also without merit. Keeping in view, entire facts of assessee's case it is held that additions to the extent of loss of Rs. 51,78,963/- incurred by the assessee out of total additions of Rs. 2,31,03,785/- are confirmed and balance additions of Rs. 1,79,24,822/- are deleted.

4.2.4. Facts of the case are similar with the difference that total purchases made from M/s Shri Enterprises, Mumbai totalled Rs.

38,94,696/- during the FY 2008-09 relevant to AY 2009-10 and amount payable and receivable by assessee from M/s Shri Enterprises as on 31/3/2009 were Rs. 8,94,696/- and Rs. 10,89,762/- respectively and net balance receivable as on 31/3/2009 from Shri Enterprises was Rs. 1,95,066/-. Assessee effected total purchases of 8000 KG of Pistachio Kernels from Shri Enterprises at Rs. 38,94,696/- from 5/12/2008 to 7/2/2009 and sold these to five traders in Navi Mumbai Market for Rs. 35,23,931/- and incurred a gross loss of Rs. 3,70,765/- in these transactions. Amount payable as on 31/3/2009 was Rs. 8,94,696/- and receivable was Rs. 10,89,762/- thus leaving a net receivable balance of Rs. 1,95,066/-. Reasons given by the assessee in respect of these transactions are also similar. AO made a similar addition of Rs. 8,94,696/- on account of outstanding amount payable to Shri Enterprises, Mumbai and assessee is in appeal on the issue. In view of similarity of circumstances and facts of the case, addition of Rs. 8,94,696/- is not justified, however incurrence of loss of Rs. 3,70,765/- by the assessee in respect of similar transactions is also not justified. Keeping in view, the facts of the case the loss of Rs. 3,70,765/- incurred by the assessee is directed to be added back. Thus this ground of appeal is partly allowed”.

8. The Revenue could not rebut any of the above findings of the Ld. CIT(A). On reading of the order of the Ld. CIT(A), we do not find any infirmity in restricting the additions to the extent of loss suffered by the assessee and not the entire purchases of the items. Thus, we sustain the order of the Ld. CIT(A) and dismiss Revenue’s grounds.

9. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 29th April, 2016.

Sd/-

Sd/-

(ASHWANI TANEJA)

(C.N. PRASAD)

लेखा सदस्य / ACCOUNTANT MEMBER

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 29th April, 2016

व.नि.स./ Rj , Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,
मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार

(Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai