

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F', NEW DELHI)**

**BEFORE SHRI J. S. REDDY, ACCOUNTANT MEMBER AND
SHRI KULDIP SINGH, JUDICIAL MEMBER**

I.T.A. No.1702/Del/2013
(Assessment Year 2009-10)

Replika Press Pvt. Ltd.,
B-214, Ashok Vihar,
Phase I, Delhi
GIR / PAN : AAACR1084L
(Appellant)

Vs. DCIT, Circle 15(1),
New Delhi

(Respondent)

Appellant by : Shri K. Sampath, Adv.
Respondent by : Smt. Kesang Y Sherpa, Sr. DR

Date of hearing: 31.12.2015

Date of Pronouncement: 05.02.2016

ORDER

PER KULDIP SINGH, JM:

The appellant, M/s. Replika Press Pvt. Ltd.(hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 01.02.2013 passed by Ld. CIT(A) XVIII, New Delhi qua the Assessment Year 2009-10 on the ground that:

“That on the facts and in the circumstances of the case and in law the action of the authorities below in abandoning the book version of sales and profit and in making additions arising out of timing difference in sales of -

- i) Rs.13,17,916/-to Random House Publishers (I) P. Ltd.;*
- ii) Rs.1,17,48,220/- to Jaypee Brothers Medical Publishers Pvt. Ltd.;*
- iii) Rs. 1,26,190/- to MMS E-Education Pvt. l.td.:*

- iv) *Rs. 2,74,643/- to Thieme Medical and Scientific Publishes Pvt. Ltd.;*
- v) *Rs.67,100/- to Wishwa Prakashan Publishers & Exports Pvt. Ltd. & ' 1714/- to Sara Books P. Ltd.*
is arbitrary, erroneous, misconceived and illegal and must be quashed.”

2. Briefly stated, the facts of this case are: during the processing of return of income filed by the assessee declaring income of Rs.5,64,96,160/- qua Assessment Year 2008-09, was subjected to scrutiny and consequent upon statutory notice issued, Mr. Jayant Khullar, CA/AR attended the proceedings on behalf of the assessee and furnished details. From the ITS information, Assessing Officer gathered that the assessee had received an amount of Rs.81,69,098/- from M/s. Random House Publishers India Pvt. Ltd., whereas from the details, it is noted that the assessee had booked an amount of Rs.75,84,142/- and Assessing Officer called upon the assessee to reconcile the same. The assessee claimed that the balance amount of Rs.5,84,956/- has been booked in the subsequent financial year. To verify this fact, information was called u/s 133(6) from the concerned parties, which indicated that they have booked the expenditure of Rs.89,02,058/- , which is more than what has been booked by the assessee and information available under ITS. The receipt of assessee were required to be at Rs.89,02,058/- as against the booked amount of Rs.75,84,142/- booked by the assessee and consequently, the difference of Rs.13,17,916/- was added to the income of the assessee being undisclosed receipt.

3. From the ITS information, it was further gathered by the Assessing Officer that the assessee had received an amount of Rs.5,75,55,867/- as against the amount of Rs.4,67,25,440/- booked by the assessee leading to the difference of Rs.1,08,30,427/-. The assessee claimed the difference to be on account of billing done in the next year whereas client has booked sales in this year on commercial invoice basis. Finding the explanation of the assessee not satisfactory, amount of Rs.1,17,48,220/- was added to the income of the assessee being concealed income / suppressed sales.

5. From the ITS information, Assessing Officer further gathered that the assessee had received an amount of Rs.2,93,730/- from MMS E-Education Pvt. Ltd., Rs.8,51,730/- from Thieme Medical and Scientific Publishers Pvt. Ltd. an Rs.2,33,684/- from Wishwa Prakashan Publishers and Exports P. Ltd. whereas the assessee had booked an amount of Rs.1,67,540/-, Rs.5,77,087/- and Rs.1,66,584/- respectively. The assessee explained the difference of Rs.1,26,190/-, 2,74,643/- and Rs.67,100/- on account of billing booked at the invoice of payment instead of on goods received basis / billing done in next year. Finding the explanation of the assessee not satisfactory, the Assessing Officer added an amount of Rs.1,26,190/-, Rs.2,74,643/- and Rs.67,100/- to the income of the assessee being concealed income. Similarly, in case of M/s. Sara Books Pvt. Ltd., payment of Rs.1,56,750/- has been shown whereas the assessee has booked Rs.1,54,856/- and the difference of Rs.1,714/- remained unexplained and the same is added to the income of the assessee.

6. The assessee carried the matter before Ld. CIT(A) who has dismissed the appeal. Feeling aggrieved, the assessee carried the matter before the Tribunal by filing the present appeal.

7. Ld. A.R. for the assessee, challenging the impugned order, contended that the reconciliation statement to tally the difference pointed out, has been filed by the assessee and Ld. CIT(A) has declared the accounts books as correct; that Ld. CIT(A) has erred in confirming the addition made by the Assessing Officer on account of difference in timing of sales and purchase made by the assessee. However, on the other hand, Ld. D.R. relied upon the order passed by Ld. CIT(A).

8. We have heard both the Ld. Authorized representatives and perused the material placed on record in the light of the orders of authorities below and the facts and circumstances of the case.

9. The sole question arises for determination in this case is, *“as to whether Ld. CIT(A) has erred in confirming the addition made by the Assessing Officer due to lack of reconciliation of sale and profits in the books of accounts by the assessee company.”* Undisputedly, the reconciliation and explanation furnished by the assessee to explain the difference of timing in the sales and profits incorporated in the books of accounts in the ITS information available has not been accepted by the Assessing Officer during assessment proceedings who has thereby made the addition in question.

10. Ld. CIT(A) in order to confirm the addition made by the Assessing Officer, returned the findings to the following effect:

“4.5 I have carefully considered the assessment order, submissions, remand report, and rejoinder thereof. 1116 facts of the case as per assessment order me that as per ITS information available with the assessing Officer the assessee had made sales to various parties as under:

| S. No | Name of the parties | ITS information | Sales as per return | Difference/ addition |
|-------|---|-----------------|---------------------|----------------------|
| 1 | M/s. Random House Publishers (I) Pvt. Ltd. | 81,69,098 | 75,84,142 | 5,84,956 |
| 2 | M/s. Jaypee Brothers Medical Publishers Pvt. Ltd. | 5,756,55,867 | 4,67,25,440 | 1,08,30,427 |
| 3 | M/s.MMS E-Education Pvt. Ltd. | 2,93,730 | 1,67,540 | 1,26,190 |
| 4 | M/s. Thieme Medical * Scientific Publishers Pvt. Ltd. | 8,51,730 | 5,77,087 | 2,74,643 |
| 5 | M/s. Wishwa Prakahana Publishers & Export Pvt. Ltd., | 2,33,684 | 1,66,584 | 67,100 |
| 6 | M/s. Sara Books Pvt. Ltd. | 1,56,570 | 1,54,856 | 1,714 |

As there was difference in the amount of sales booked information available in ITS data in respect of the above six parties, the assessing Officer sent notices u/s 133(6) of the I.T. ACI, 1961 to verify the sales as per their ledger accounts. The response was as under:-

(i) M/s Random House Publishers. [I] Pvt. Ltd., informed that it had booked purchases during the financial year 2008-09 from M/s. Replika Press Pvt. Ltd. Pvt. Ltd. to the tune of Hs. 8902.058/- whereas as per ITS information this figure was Rs.81,69,098/- which was higher than the Information of ITS data, and the assessee has shown the sales booked for this party as Rs.75,84,142/- in its ledger. The difference of Rs.13,17,916/- was added to the income of the assessee as undisclosed receipts for the year.

(ii) M/s. Jaypee Brothers Medical Publishers Pvt. Ltd. informed that it had booked purchases to the tune of Rs. 5.65_.60.0741- whereas the assessee had shown sales to this party at Rs. 4,67,25,440/- and as per ITS information sales to his party was Rs. 5,75,55,867/-. The difference of Rs.1,08,30,427/- was added to the income of the assessee for the year. Also in this case the AO detected a difference in opening balance and closing balance of Rs.

9,17,793/- and added the total difference of Rs. 1,17,48,2201- to the total income of the assessee as suppressed sales.

(iii) Rs. 2,93,730/- from MMS E-Education Pvt. Ltd. as against Rs.1,67,50/- booked by the assessee. The amount of difference of Rs.1,26,190/- was added as suppressed sales for the year.

(iv) Rs.8,51,730/- from M/s. Thieme Medical and Scientific Publishers Pvt. Ltd. as against Rs.5,77,087/- booked by the assessee. The amount of difference of Rs.2,74,643/- was added as suppressed sales for the year.

(v) Rs.2,33,684/- from M/s. Wishwa Prakashan Publishers & Exports Pvt. Ltd. as against Rs 1,66,584/- booked by the assessee. The amount of difference of Rs. 67,100/- was added as suppressed sales for the year.

(vi) M/s. Sara Books PIA. Ltd. had shown payment of Rs.1,56,570/- whereas the assessee has booked Rs.1,54,856/-. The amount of Rs.1,714/- was added to the income of the assessee.

The additional evidence filed by the appellant was examined by the Assessing Officer who reported that during the remand proceedings, the assessee company explained that the company consistently and continuously following the accounting policy. Accounting Standard -9 and recognizes its revenue on the basis of Excise invoice which issued only at the time, when the goods / books are actually and physically gets out of its factory premises Whereas, the parties are following some other accounting policies and booked ale purchases sometimes at the lime of giving purchase order / before receiving the physical delivery of goods / books and sometimes they booked purchases at the time of making the payment and tried to establish its contention that the only reason of differences is mainly due to timing of booking the purchase / sales. The assessee further submitted that it has already submitted schedules regarding accounting policies and the method or revenue recognition during the assessment proceedings as a part of audited balance sheet.

During the remand proceedings the assessee company has provided reconciliation statement prepared in respect of each party which

also contains the information quantity & volume wise, and per the reconciliation statement all the differences are tallied as on closing balance on 31.03.2012. The Assessing Officer was therefore, convinced that the differences were tallied and the difference noticed by the earlier Assessing Officer was on account of different accounting policies being followed by the Appellant Company and by the Purchasing parties.”

11. From the perusal of the impugned order, records relied upon by the parties and arguments addressed by the Ld. A.R., we are of the considered view that Ld. CIT(A) has erred in confirming the addition made by the Assessing Officer for the following reasons:

i) that when the Ld. CIT(A) has accepted the reconciliation statement tallying all the differences of closing balance as on 31.03.2012 made by the Assessing Officer during the remand proceedings, Ld. CIT(A) was not expected to proceed on the basis of conjectures and surmise;

ii) that the findings of Ld. CIT(A) that the documentary evidence accepted by the Assessing Officer during remand proceedings, do not seem to be reliable, are not based upon any cogent reasons, because the difference earlier noted by the Assessing Officer during assessment proceedings was only on account of different accounting policies being adopted by the assessee company and by the purchasing parties and this difference could only be further reconciled by verifying the records of purchasing parties;

iii) that when Ld. CIT(A) has herself recorded the findings that the Assessing Officer during remand proceedings should have

verified all these facts before accepting the reconciliation statement of the assessee company, she was not right to proceed with the confirmation of addition without getting the due verification done;

iv) that Ld. CIT(A) being a quasi judicial authority is required to provide an opportunity of being heard to the parties before deciding the matter.

12. In the instant case, Ld. CIT(A) has disputed the reconciliation statement, accepted by the Assessing Officer during remand proceedings, without getting the same verified from the purchasing parties. So, we are of the considered view that the matter is required to be restored to the Ld. CIT(A) to decide afresh after providing opportunity of being heard to the parties concerned.

13. Resultantly, the appeal filed by the assessee is allowed for statistical purposes.

14. Order pronounced in the open court on 05th Feb., 2016.

Sd./-

Sd./-

(J. S. REDDY)
ACCOUNTANT MEMBER

(KULDIP SINGH)
JUDICIAL MEMBER

Date: 05.02.2016

Sp.

Copy forwarded to:-

1. The appellant
2. The respondent
3. The CIT
4. The CIT (A)-, New Delhi.
5. The DR, ITAT, Loknayak Bhawan, Khan Market, New Delhi.

True copy.

By Order (ITAT, New Delhi)

| S.No. | Details | Date | Initials | Designation |
|-------|--|--------|----------|-------------|
| 1 | Draft dictated on | 13/1 | | Sr. PS/PS |
| 2 | Draft placed before author | 21/1 | | Sr. PS/PS |
| 3 | Draft proposed & placed before the Second Member | | | JM/AM |
| 4 | Draft discussed/approved by Second Member | | | AM/AM |
| 5 | Approved Draft comes to the Sr. PS/PS | 5/2/16 | | Sr. PS/PS |
| 6 | Kept for pronouncement | 5/2 | | Sr. PS/PS |
| 7 | File sent to Bench Clerk | 8/2 | | Sr. PS/PS |
| 8 | Date on which the file goes to Head Clerk | | | |
| 9 | Date on which file goes to A.R. | | | |
| 10 | Date of Dispatch of order | | | |