

आयकर अपीलीय अधिकरण "K" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL "K" BENCH, MUMBAI
BEFORE SHRI D.T. GARASIA, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 6974/Mum/2016

(निर्धारण वर्ष / Assessment Year: 2009-10)

Juhu Beach Resorts Ltd. J.W. Marriott Hotel, Juhu Tara Road, Juhu Mumbai 400049	बनाम/ v.	DCIT CC4(2) Air India Bldg, 19 th Floor, Nariman Point, Mumbai 400021
स्थायी लेखा सं./PAN : AAACJ0912D		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri. Sunil K Ramani Shri. Vinay Sinha
Revenue by :	Shri. V. Jenardhanan

सुनवाई की तारीख / **Date of Hearing** : 08-11-2017

घोषणा की तारीख / **Date of Pronouncement** : 14.11.2017

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the assessee, being ITA No. 6974/Mum/2016 for assessment year 2009-10, is directed against the appellate order dated 01.09.2016 passed by learned Commissioner of Income Tax (Appeals)-52, Mumbai (hereinafter called "the CIT(A)"), for assessment year 2009-10, appellate proceedings had arisen before learned CIT(A) from the assessment order dated 01.02.2016 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3) r.w.s. 147 of the Income-tax Act, 1961 (hereinafter called "the Act").

2. The grounds of appeal raised by the assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

- “ 1. The learned CIT (A) erred in not deleting the addition of Rs. 8,35,972/- made by the Assessing Officer on the ground that purchases of fruit juice to the extent made by the appellant are bogus.
2. The learned CIT (A) failed to appreciate that payment for the purchases had been made through account payee cheques and that appellant had produced before the Assessing Officer copy of ledger account, copy of invoices, copy of bank account showing the payments to the parties.
3. The learned CIT(A) erred in stating that Supreme Court in *Kachwala Gems Vs. JCIT - 288 ITR 10* has held that cheque payments do not prove the genuineness of purchase when no such statement appears to be contained in said Supreme Courts decision.
4. The learned CIT (A) failed to appreciate that the two suppliers of the goods viz *Reliance Enterprises & Deep Enterprises* had duly appeared before state S. T. Authorities and therefore they cannot be said to be non-traceable.
5. The learned CIT(A) failed to note that as held in *ITO Vs. Kachwala Gems - 33 SOT 27 Jaipur*, after completion of transaction, the buyer has no control over seller and cannot produce him before A.O.
6. The learned CIT (A) failed to appreciate that the appellant is a seven-star hotel catering mainly to foreigners and fruit juices were purchased to be served to the guests.
7. The learned CIT(A) failed to appreciate that when the appellant company had declared a very high income of Rs. 67.51 crores, and appellant's accounts are duly audited, the purchase to the extent of Rs. 8.35 lakhs cannot be held as non-genuine.
8. It is prayed that the disallowance of Rs. 8,35,972/- made by the Assessing Officer may please be deleted.
9. The appellant craves liberty to add, amend, alter and lor withdraw any of the above grounds of appeal.”

3. The brief facts of the case are that the assessee is running a five star hotel under the name and style of J W Marriot at Mumbai. The dispute between the rival parties is in very narrow compass . The assessee filed return of income declaring income of Rs.67,51,85,833/- . The assessment was framed by Revenue u/s. 143(3) vide orders dated 01.03.2013 wherein

income assessed was Rs.67,63,15,694/- . The information was received by the AO from the DGIT, Mumbai which was further based on the information received from the Maharashtra VAT Department that the assessee has made bogus purchases from Hawala Dealers as under:-

Hawala TIN	Hawala PAN	Hawala Dealer Name	F.Y.	Amount
27730203683V	-	Reliance Enterprises	2008-09	7,73,136
57750595164V	-	Deep Enterprises	2008-09	62,836

The proprietors of aforementioned hawala dealers have admitted in the statement recorded under oath before Sales Tax Department that they have only issued bogus bills/accommodation entries without supplying any material which led to the reopening of the concluded assessment u/s. 147 by issuance of notice dated 31-03-2015 u/s. 148 which was duly served on the assessee on 31.03.2015, which happens to be after four years from the end of the assessment year (A.Y.) but within six years from the end of the A.Y. . The AO asked the assessee to substantiate the transactions and prove genuineness of the above stated purchase transactions . The assessee could not submit following details:-

- i. Copy of purchase order*
- ii. Copy of agreement for the condition of payment*
- iii. Transport details of the goods delivered.*
- iv. Loading and unloading bills.*
- v. Copy of stock register*
- vi. Copy of in-ward and out-ward register.*
- vii. Bank statement for the period from 01-04-2008 to 31-03-2009.*

However, the assessee submitted unsigned / unstamped bank statement wherein payments were made through bank to these parties, which was also considered not reliable by the AO . These parties could not be produced by the assessee before the A.O and notices sent by the A.O u/s. 133(6) to these parties returned unserved. The AO deputed inspector to make verifications w.r.t. these two parties who stated that no such parties existed on the given address. The assessee also could not furnish confirmation of transactions from these parties. This led to the additions of the 100% of the said alleged bogus purchases by the AO . The assessee however submitted that assessee

is running five-star hotel and the goods purchased from these two parties are juices of various types which are supplied to guest visiting the hotel. The assessee submitted copy of ledger account , invoices and bank book showing the transactions but the AO rejected the contentions of the assessee as the assessee failed to provide other documents like copy of purchase order, copy of agreement for the condition of payment, transport details of the goods delivered, loading and unloading bills , copy of the stock register and copy of inward and outward register and bank statement from April 2008 to March 2009 were also not produced by the assessee . The AO rejected books of accounts of the assessee u/s 145(3) . The assessee also could not produce these parties before the AO.The AO made additions of the 100% of alleged bogus purchases as the assessee could not prove genuineness of the said alleged purchase transactions, vide assessment order dated 01-02-2016 passed by the AO u/s 143(3) r.w.s. 147 .

4. The assessee filed first appeal before learned CIT(A) who confirmed the addition as the assessee could not prove the genuineness of the transactions, vide appellate order dated 01-09-2016.

5. The assessee carried the matter in appeal before the tribunal by filing second appeal and Ld. Counsel for the assessee at the outset submitted that assessee is running five star hotel under the name and style of J.W Marriott at Mumbai. It was submitted at the outset that assessee has declared income of Rs. 67.51 crores in the return of income filed with the revenue . It was submitted that the total food and beverages purchased by the assessee was to the tune of Rs. 21.97 crores and these are miniscule purchases to the tune of Rs.8.35 lacs which was alleged as bogus purchases as against total purchases to the tune of Rs. 21.97 crores . It was submitted that the assessee being highly reputed entity will not indulge in such activities and that too for an amount involved which is too small vis-a-vis total purchases of food and beverages. However, it is submitted , without prejudice , by Ld. Counsel for the assessee that to end the litigation reasonable estimation of profit may be made. He submitted that ledger account , copies of invoices as well as payments through bank were made which are reproduced in the paper book filed with the tribunal . He also drew our attention to the purchase order copies which are also filed in the paper book along with the

stock registers which are placed in paper books filed with the tribunal. The assessee also relied on several judgment which are placed in paper book page 101 to 136 . It was submitted that all the relied upon documents such as purchase order copies , tax invoices issued by these dealers, stock register, account payee cheque, bank statement were all submitted before the authorities below which are now filed in paper book page no. 1 to 100 before the tribunal. It is submitted by Ld. Counsel for the assessee that it is not possible at this stage to produce parties from whom purchases were made nor it is possible to procure confirmation from these parties although the purchases were genuine. On the other hand, the Ld. DR for the Revenue submitted that appellate order of the learned CIT-A be confirmed.

6. We have considered rival contention and perused the material on record. We have observed that the assessee is running five star hotel and assessee has declared income to the tune of 67.51 crore in the return of income filed by the assessee with Revenue on 29.09.2009 . The case was selected for scrutiny and the income was assessed at Rs. 67.63 crores by the AO vide assessment framed u/s. 143(3) on 01.03.2003 . The assessee is running five star hotel under name and style of J W Marriot and had made purchases to the tune of Rs. 21.97 crores towards food and beverages . Based upon the information received by the A.O from the DGIT, Mumbai which information was further based upon the information received from Maharashtra Sales Tax Department that assessee has purchased material to the tune of Rs. 8,35,972/- from two alleged bogus parties who are listed as hawala dealers by Maharashtra VAT Department and they have deposed in statement recorded on oath before Maharashtra VAT Department that they have not supplied any material to the assessee but have only issued bogus bills , the case was reopened by the AO u/s. 147 and notices were issued dated 31.03.2015 u/s. 148 which were served on the assessee on 31.3.2015 itself . The said two parties and details of alleged bogus purchases are as under:

Hawala TIN	Hawala PAN	Hawala Dealer Name	F.Y.	Amount
4 7730203683V	-	Reliance Enterprises	2008-09	7,73,136
5 7750595164V	-	Deep Enterprises	2008-09	62,836

The A.O during reassessment proceedings issued notices u/s. 133(6) to these two parties which notices returned unserved. Inspector was deputed by the AO to trace the parties but the same could not be located at the addresses furnished by the assessee. The assessee also could not produce these parties before the authorities below. The assessee had stated to have purchased fruit juices from these parties which was claimed to have been used for serving to the guest visiting the assessee's hotel . The assessee has however furnished copies of purchase orders , copies of invoices, copies of stock register, copies of bank statement and the copy of cheques issued for making payment to these two parties . The purchases are appearing in the books of accounts of the assessee and onus is on the assessee to prove the genuineness of the purchase transaction. These parties have deposed in statement recorded on oath before the Maharashtra VAT authority that these parties have not undertaken any business but have issued only bogus bills without supplying any material. Thus keeping in view the entire factual matrix of the case on the touchstone of preponderance of human probabilities and also keeping in view that stock records were produced by the assessee before authorities below , end of justice will be met in this case if the additions are sustained to the tune of 12.5% of the said bogus purchases which will meet the end of justice to cover undisclosed income/profit embedded in these purchases which was earned by the assessee in obtaining material physically without invoices from grey market at lower price while at the same time obtaining bill from these parties at higher values to suppress profits. Our decision is also based upon Hon'ble Supreme Court decision in the case Kachwala Gems v. JCIT, (2007) 288 ITR 10(SC). We order accordingly.

7. Hence in the result appeal of the assessee is partly allowed.

Order pronounced in the open court on 14.11.2017

आदेश की घोषणा खुले न्यायालय में दिनांक: 14.11.2017 को की गई ।

Sd/-
(D.T. GARASIA)
JUDICIAL MEMBER

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Mumbai, dated: 14.11.2017

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench, E
6. Master File

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BY ORDER

**DY/ASSTT. REGISTRAR
ITAT, MUMBAI**