

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

BEFORE SHRI D.T. GARASIA, JUDICIAL MEMBER

**ITA No.7638/M/2016
Assessment Year: 2009-10**

**ITA No.7639/M/2016
Assessment Year: 2010-11**

M/s. Mahalaxmi Automobiles, Junction of SV Road, Dahisar (East) Mumabi -400 068 PAN: AABFM0707F	Vs.	Income Tax Officer 25(1)(3), Bandra (E), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Manoj Kale, A.R.
Revenue by : Miss N. Hemalatha, D.R.

Date of Hearing : 01.08.2017
Date of Pronouncement : 04.10.2017

ORDER

Per D.T. Garasia, Judicial Member:

The above titled appeals have been preferred by the assessee against the order dated 21.11.2016 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment years 2009-10 & 2010-11.

2. The short facts of the case are that a search and seizure action under section 132 of the Act was carried out in the case of assessee and its associate concerns and directors on 25.08.2009. M/s. J. Kumar Infraprojects Ltd. (JKIL) is promoted by Shri Jagdishkumar

Gupta, who is chairman and managing director. During the search, it was found that JKIL had inflated its purchases by debiting bogus bills in the name of various parties. The cheques were issued against the bogus bills were encashed through cheque discounters/bogus billers. The cash so generated was introduced in the form of “share application money” through entry providers in the books of various companies of this group. The assessee has produced the various parties who have given bogus bills. It was also mentioned that assessee is one of the parties from whom JKIL had admittedly taken the bogus purchase bills of Rs.75,88,733/- in F.Y. 2008-09 and JKIL had admittedly paid commission of Rs.94,859/- i.e. 1.25% of bill amount in cash to the assessee in respect of such bogus purchase bills. On this information the case was reopened calling for details of the transaction entered into with the assessee in both the assessment years. JKIL informed the Assessing Officer (hereinafter referred to as the AO) that bills of assessee were provided to them by broker who specializes in the business of bogus bills. The broker brought this bill to their office and collected the cross bearer cheque from assessee. The commission is paid to broker. They have never met the proprietor/partner of assessee. After the reply, the AO has made the additions of Rs.94,859/- & Rs.57,088/- in A.Y. 2009-10 and in A.Y. 2010-11 respectively.

3. The appeals were carried to the Ld. CIT(A) and the Ld. CIT(A) dismissed the same.

4. During the course of hearing, the Ld. A.R. submitted that the assessee had filed the written reply to the show cause notice and contended that assessee has not received such amount. Moreover, they have also produced the copy of bank statement of current account No.1654 in New India Company Co-operative Bank from 01.04.08 to 31.03.2009 for A.Y. 2009-10 and they submitted that they have not received any amount. Therefore, there is no question of making addition.

5. The Ld. A.R. submitted that if JKIL had inflated his purchase by debiting bogus bills in the name of various parties, the cheques were issued against the bogus bills were encashed through cheque discounters/bogus billers. The AO has not made any enquiry that who has encashed the cheque from the bank. Moreover, assessee has not received any commission. The assessee has not paid commission. Therefore, no addition can be called for.

6. On the other hand, the Ld. D.R.'s objection is that the assessee has issued bogus bills through brokers and the statement was given by JKIL and they have confirmed that the commission was paid in cash. Therefore, no such evidence can be brought out by the department.

7. I have heard the rival contentions of both the parties. Looking to the facts and circumstances of the case, a search and seizure action under section 132 of the Act was conducted in case of JKIL. The investigation has been recorded as statement of one of the persons

from JKIL who has stated and confirmed in writing that assessee has provided the bills by broker who is specialized in business of bills. I have gone through the reply from the JKIL wherein they have stated that broker has brought this bill to their office and collected the cross bearer cheque from assessee. The commission is paid to broker. They have never met the proprietor/partner of assessee nor any other person visited their office. They were unable to confirm or state whether the bill belongs to assessee or not. They have produced the copy of ledger account. I find that the broker has collected the cross bearer cheque from JKIL. Therefore, the AO should have made enquiry from the bank as to who has encashed this amount of bearer cheque and ultimately whether the money has gone to the assessee or not. Without making such enquiry only on the basis of statement of the JKIL no addition can be made.

During the course of hearing, the Ld. D.R. submitted that matter may be restored to the AO.

8. I find that assessee has already appeared before the AO and the Ld. CIT(A) and addition is very small amount. The assessee has produced all the evidences with books of accounts and statement of the bank. Therefore, assessee has complied with all the necessary information. In absence of making full enquiry and without examination of broker AO has made these additions which are not tenable. Therefore, I delete the same in both the assessment years.

9. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 04.10.2017.

**Sd/-
(D.T. Garasia)
JUDICIAL MEMBER**

Mumbai, Dated: 04.10.2017.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.