

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH: CHENNAI**

श्री जॉर्ज माथन, न्यायिक सदस्य एवं  
श्री ए. मोहन अलंकामणी, लेखा सदस्य के समक्ष

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER, AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1899/Mds/2017  
निर्धारण वर्ष /Assessment Year: 2009-10

The Asst. Commissioner of Income- Tax,  
Corporate Circle-2,  
Madurai-625 002.  
**(अपीलार्थी/Appellant)**

**Vs.** M/s.Shri Ramalinga Mills Ltd.,  
212, Ramasamy Nagar,  
Aruppukottai-626 159.  
[PAN: AADCS 8769 A]  
**(प्रत्यर्थी/Respondent)**

**Cross-Objection No.143/Mds/2017**  
निर्धारण वर्ष /Assessment Year: 2009-10

M/s.Shri Ramalinga Mills Ltd.,  
212, Ramasamy Nagar,  
Aruppukottai-626 159.  
[PAN: AADCS 8769 A]  
**(अपीलार्थी/Appellant)**

**Vs.** The Asst. Commissioner of –  
Income Tax,  
Corporate Circle-2,  
Madurai-625 002.  
**(प्रत्यर्थी/Respondent)**

Assessee by : None  
Department by : Mr.Sailendra Mamidi, Pr.CIT  
सुनवाई की तारीख/Date of Hearing : 16.01.2018  
घोषणा की तारीख /Date of Pronouncement : 16.01.2018

**आदेश / O R D E R**

**PER GEORGE MATHAN, JUDICIAL MEMBER:**

ITA No.1899/Mds/2017 is an appeal filed by the Revenue against the Order of the Commissioner of Income Tax (Appeals)-1, Madurai, in ITA No.348/2011-12 dated 15.05.2017 for the AY 2009-10 and CO

No.143/Mds/2017 is a Cross-Objection filed by the assessee in ITA No.1899/Mds/2017.

2. Mr. Sailendra Mamidi, Pr.CIT, represented on behalf of the Revenue and 'None' represented on behalf of the assessee.

3. It was submitted by the Ld.DR that the only issue in the Revenue's appeal was against the action of the Ld.CIT(A) in deleting the addition made towards the excess purchase price paid for ginned cotton. It was a submission that in the course of the assessment, the AO had examined a sample of 43 transactions for purchase of ginned cotton. The Ld.DR drew our attention to Page Nos.3 & 4 of the Assessment Order. It was a submission that out of the 43 sample purchases examined, it was noticed that the assessee has made 14 purchases at the price lesser than average monthly price fixed by the Cotton Association of India, Mumbai and in respect of the remaining 29 purchases, the purchase price paid by the assessee was in excess of the average monthly price announced by the Cotton Association of India, Mumbai. Consequently, the AO had arrived at percentage sample of 3.167% and had extrapolated the said excess price in respect of the 29 purchase samples to the whole of the purchases made by the assessee and thus computed the excess purchase price paid by the assessee and had made an addition. It was a submission that the Ld.CIT(A) on the ground that no specific defects had been pin pointed by the AO in the books of accounts maintained by the assessee as also on the

ground that even in the remand proceedings, the AO was unable to prove the purchases were made by the assessee, are not genuine and had deleted the addition. The Ld.DR vehemently supported the order of the AO. It was a submission that the order of the Ld.CIT(A) was liable to be reversed. In respect of the Cross-Objection, It was submitted by the Ld.DR that the same is in support of the order of the Ld.CIT(A).

4. We have considered the rival submissions. A perusal of the Assessment Order clearly shows that other than making an estimated addition, the AO has not verified the purchases though he has taken 43 samples. The assessee's business is at Aruppukottai, Tamil Nadu. The Cotton Association of India, Mumbai, admittedly, provides the average purchase price in respect of the ginned cotton. The AO has not been able to specifically point out as to how or to whom the assessee has paid the excess price. In fact, out of the 43 samples, 11 cases have been found where the purchase price is lesser than the average monthly price announced by the Cotton Association of India, Mumbai. Further, the differential in the purchase price as recorded by the assessee and the average price as specified by the Cotton Association of India, Mumbai, in respect of the said samples where the excess is found is only 3.167%, this admittedly, is a very small variation. A perusal of the order of the Ld.CIT(A) more specifically at Page Nos.8 to 10 in Para Nos.4.2 & 4.3 shows that Remand Report had been called for from the AO and even after four years, the AO could not prove that the purchases made by the

assessee were not genuine nor was able to unearth any adverse material against the assessee regarding the excess purchase price of cotton. In fact, a perusal of the Cross-Objection filed by the assessee shows that the assessee has referred to another decision of the Co-ordinate Bench of this Tribunal in the case of M/s.Tamil Nadu Jaibharath Mills Ltd., and M/s.Shri Govindaraja Mills (P) Ltd., in ITA Nos. 7 & 8/Mds/2016 dated 13.04.2016. In the said decision, the Co-ordinate Bench of this Tribunal, on identical circumstances representing the identical methodology adopted by the AO has held as follows:

*6. Now coming to the excess purchase price paid for ginned cotton, the Ld. D.R. submitted that the Assessing Officer has taken 55 numbers on random basis for examination. The price paid by the assesseees was compared with average monthly price announced by the CAI. Out of 55 purchases made, for 19 purchases, the assesseees have purchased at a price less than the average monthly price of CAI. For remaining 36 purchases, the price paid by the assesseees was excess of price announced by CAI. Therefore, the excess price paid by the assesseees for 36 purchases was taken as income of the assessee.*

*7. We have considered the submissions of the Ld. Departmental Representatives and perused the relevant material available on record, including the written submission filed by the assessee. Admittedly, the assesseees are maintaining books of account. The CAI fixed a rate for purchase of cotton by taking the condition prevailing in a particular locality. However, the price of the cotton would vary depending upon the moisture condition and the quality. The assesseees have purchased some of the cotton at CAI rate and the assesseees have also purchased some of the cotton at lesser than the price fixed by CAI. In some of the purchases, the rates were higher than the rate fixed by CAI. These are all the prices paid by the assesseees in purchasing the raw material. The purchase is not in dispute. The fact that the books of account maintained by the assesseees is not in dispute. The Assessing Officer has not taken any pain to examine the vendors and farmers from whom the cotton was purchased by the assesseees. Simply by placing reliance on the rate fixed by CAI, the Assessing Officer found that the assesseees have paid excess price. This Tribunal is of the considered opinion that the rate fixed by the CAI is only a guideline rate for purchasing the cotton. The guideline rate would vary depending upon the quality and other factors which is relevant in purchasing the cotton. The assesseees have, in some cases, paid price lesser than what was fixed by CAI. It means that the quality of cotton purchased by the assesseees in such cases is not normal. In some cases, the assesseees have admittedly paid little more than what was fixed by the CAI. Therefore, it means that the quality of cotton may be above the average or normal. These are the items which have to be decided by the businessman and the Assessing Officer cannot step into the shoes of businessman and expect that the assessee has to purchase a particular material for a particular cost. In the absence of regularity mechanism governing the vendors and farmers selling the material/cotton at a price over and above the rate fixed by CAI, this Tribunal is of the considered opinion that the Assessing Officer is not justified in making the addition on the basis of the rate fixed by CAI. The rate fixed by CAI is only a guideline and there is no restriction for the assesseees to purchase cotton either at lesser or higher rate than the one fixed by the CAI. In those circumstances, the CIT(Appeals) has rightly deleted the addition made by the Assessing Officer. This Tribunal do not find any reason to interfere with the orders of the lower authority and accordingly the same is confirmed.*

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8. *In the result, both the appeals of the Revenue are dismissed.*

5. This being so, respectfully following the decision of the Co-ordinate Bench of this Tribunal in the case of M/s.Tamil Nadu Jaibharath Mills Ltd., and M/s.Shri Govindaraja Mills (P) Ltd., referred to supra, on identical findings, the findings of the Ld.CIT(A) on this issue stands confirmed.

6. In the result, the appeal filed by the Revenue stands dismissed and the Cross-Objection being in support of the order of the Ld.CIT(A) and as we have already confirmed the order of the Ld.CIT(A), the Cross-Objection stands dismissed as infructuous.

7. In the result, the appeal filed by the Revenue and the Cross-Objection filed by the assessee stands dismissed.

Order pronounced in the Open Court on January 16, 2018 at Chennai.

**Sd/-**

**(ए. मोहन अलंकामणी)**

**(A. MOHAN ALANKAMONY)**

**लेखा सदस्य/ACCOUNTANT MEMBER**

**Sd/-**

**(जॉर्ज माथन)**

**(GEORGE MATHAN)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: January 16, 2018.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त (अपील)/CIT(A)

4. आयकर आयुक्त/CIT

5. विभागीय प्रतिनिधि/DR

6. गार्ड फाईल/GF