

IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH KOLKATA

BEFORE SHRI A. T. VARKEY, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA Nos.1336/Kol/2015

(निर्धारणवर्ष / Assessment Year: 2010-11)

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| ITO, Ward-2(3), Kolkata Aaykar Bhawan, P-7, 7 th Floor, Chowringhee Sq.,R/No.21 Kolkata – 700 069. | Vs. | M/s. Indus Integrated Information Management Ltd. BE-103, Salt Lake City, Kolkata – 700 064. |
| स्थायीलेखासं./जीआइआरसं./PAN/GIR No. :AABCI 2831 B | | |
| (Appellant) | .. | (Respondent) |

Appellant by : Shri Soumyajit Dasgupta, Addl. CIT (Sr. DR)

Respondent by : Shri Amit Kochar, Advocate

सुनवाईकीतारीख/ **Date of Hearing** : **02/05/2018**

घोषणाकीतारीख/**Date of Pronouncement** : **06/06/2018**

आदेश / O R D E R

Per Dr. A. L. Saini:

The captioned appeal filed by the Revenue, pertaining to Assessment Year 2010-11, is directed against an order passed by the Ld. Commissioner of Income Tax (Appeals)-4, Kolkata in appeal No.1809/CIT(A)-4/Ward-2(3)/Kol/14-15, dated 25.08.2015, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 25.03.2013.

2. The grievances raised by the Revenue are as follows:

"1. On the facts and circumstances of the case and in law, Id. CIT(A) has erred in deleting the addition of Rs.2,76,18,000/- which is bogus purchase as it was confirmed by the seller party that no transaction were made during the relevant financial year.

2. The appellant craves leave to add, alter, amend or modify the grounds of appeal during the course of hearing proceedings of this case."

3. The facts of the case may be briefly stated. During the assessment year the assessee company was engaged in the business of computer education and software development. The assessing officer noted that the assessee company had debited total purchases to the tune of Rs.3,00,15,868/- in the Profit & Loss account, in which purchase were shown in respect of M/s. IRIS Computers Ltd. at Rs. 2,38,68,000/- and in respect of M/s. India Cyber Learning Pvt. Ltd. at Rs. 37,50,000/-. The assessing officer issued notices u/s. 133(6) of the Act to these parties to verify the said purchases made by the assessee company. Both the parties viz. M/s. IRIS Computers Ltd. vide its reply dated 18.03.2013, and M/s. India Cyber Learning (P) Ltd. vide its reply dated 01.02.2013, denied to have any transactions during the F.Y.2009-10 relevant to the A.Y. 2010-11 with the assessee company. During the assessment proceedings, the assessee company was asked to show cause as to why the purchases totaling to Rs.2,76,18,000/-,(being Rs.2,38,68,000/- on account of M/s. IRIS Computer Ltd. plus Rs.37,50,000/- on account of M/s. India Cyber Learning Pvt. Ltd.) should not be treated as bogus expenditure and added back to the total income for the A.Y.2010-11.

In response, the assessee company replied that the purchases were made in the Financial Year 2009-10, while the sales were booked by the respective parties in the Financial Year 2010-11. The assessing officer rejected the contention of the assessee company and noted that had it been the fact, the seller parties would have confirmed it in their reply in response to notices u/s 133(6) of the Act. Accordingly, purchases amounting to Rs.2,76,18,000/- as discussed above was treated as bogus and added back to the total income of the assessee company.

4. Aggrieved by the stand of the Assessing Officer, assessee carried the matter in appeal before the CIT(A) with success. The Revenue is aggrieved

and is in appeal before this Tribunal. Learned Departmental Representative did not have much to say but he nevertheless relied upon the order of assessing officer. On the other hand, the Id. Counsel for the assessee has defended the order passed by the Id. CIT(A) .

5. We have heard learned arguments on both sides, perused the records, and we proceed to record our view and opinion on the issue under consideration. It is elementary that without purchases there could not have been any sales. The AO has accepted the sale figures so, therefore, question of rejecting the purchases simply because he did not receive any information, when notices were issued under section 133(6) of the Act, from parties, cannot be the sole reason to make the addition. It is to be kept in mind that the amount of sales by itself cannot represent the income of the assessee. The sale only represented the price received by the seller of the goods for the acquisition of which it has already incurred the cost. It is the realization of excess over the cost incurred that only forms part of the profit included in the consideration of sales. It is not the case of the Assessing Officer that investment by way of incurring the cost in purchasing the goods which has been sold has been made by the assessee and that has also not been disclosed. In the absence of such finding of fact, the question whether the entire sum of purchase cannot be treated as income in the relevant Assessment Year.

6. We note that the assessee had shown total purchase of Rs.3,00,15,868/- out of which purchase of Rs.2,38,68,000/- was related to M/s IRIS Computers Ltd and Rs.37,50,000/- was related to M/s Indra Cyber Learning (P) Ltd. On making cross verification by issue of notices u/s 133(6) of the Act, the above two parties denied to have had any transactions with the assessee company during the F.Y 2009-10. On being queried on the matter by the AO, the assessee replied that the purchases were made in the F.Y. 2009-10, while the sales were booked by the respective parties in this F.Y.

2010-11. Drawing adverse inference on this count, the AO added back the above two amounts totaling Rs.2,76,18,000/- as bogus purchase. We note that at the appellate stage the AR of the assessee filed written submission in this regard to the effect that the purchases were actually made in the F.Y 2009-10, while sales were booked by the respective parties in F.Y 2010-11. In support of such transactions, books of account together with supporting documents and evidences were produced before the AO during the course of the assessment proceedings as well as during the remand proceedings. That the sales relating to such purchases were also recorded in the books of the assessee during the relevant assessment year which fact the AO has admitted after perusal of the recorded books of account and documents & evidences.

7. As stated earlier, we note that all the evidences and books of account were produced before the AO for his further verification during remand stage, with regard to the purchase made from the two parties i.e. M/s IRIS Computers Ltd & M/s India Cyber Learning (P) Ltd. It was submitted before us that the invoices were raised to Government of Bihar on the last day of FY 2009-10 as per their instruction. It was for this reason that purchases were booked according to the purchase order issued to the companies who were treated as Sundry Creditors and corresponding sale was booked to Bihar Government. In the subsequent year neither purchase has been booked nor sale has been booked. Ledgers of sundry creditors along with purchase details for F.Y 2009-10 is filed and placed on record. From the documentary evidence, we note that from the list of sundry creditors as on 31.03.2011 i.e. the subsequent year, the above two companies do not figure in the list. Same is the case with the list of Sundry Debtor as on 31.01.2011 wherein the two companies do not figure.

8. For the sake of argument, even if we look from another angle, we do not find that there is any loss for the Revenue because in any case the

purchases and sales in respect of computers have to be allowed in the subsequent Assessment Year and the rate of tax being the same, it will be tax neutral so there is no prejudice to revenue on this score also.

That being so, we decline to interfere in the order passed by the Id. CIT(A) and his order on this issue is hereby upheld and the ground raised by the Revenue is dismissed.

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

Order is pronounced in the open court on 06/06/2018.

Sd/-
(A. T. VARKEY)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 06/06/2018

(RS, SPS)

Sd/-
(A. L. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant- ITO, Ward-2(3), Kolkata
2. प्रत्यर्थी/ The Respondent- M/s. Indus Integrated Information Management Ltd.
3. आयकरआयुक्त(अपील) / The CIT(A)-4
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, **कोलकाता**/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Senior Private Secretary,
Head of Office/D.D.O,
I.T.A.T, Kolkata Benches,
Kolkata.