

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" Bench, Mumbai**

**Before Shri G.S. Pannu, Accountant Member
and Shri Sandeep Gosain, Judicial Member**

ITA No. 5671/Mum/2015
(Assessment Year: 2011-12)

A C I T 1(2)-1 Room No. 535, 5th Floor Aayakar Bhavan, M.K. Road Mumbai 400020	Vs.	M/s. Nickunj Eximp Enterprises P. Ltd. 93, Sri Jorawar Bhavan M.K. Road, Mumbai 400020
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PAN – AABCN0991K

Appellant

Respondent

Appellant by: Shri T.A. Khan
Respondent by: Shri J.P. Bairagra

Date of Hearing: 07.03.2018
Date of Pronouncement: 30.05.2018

ORDER

Per G.S. Pannu, AM

This appeal has been filed by Revenue against the order of the CIT(A)-2, Mumbai dated 24.09.2015 for A.Y. 2011-12.

2. In this appeal Revenue has raised the following ground of appeal: -

“1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition on account of unreconciled sales of Rs.79,22,268/- without appreciating the fact that primary evidence in respect of the sales was neither examined by the AO nor at the appellate stage.”

3. Briefly put the relevant facts are that the respondent assessee is a company engaged, inter alia, in the business of import and sale of various industrial products such as machineries, accessories, jewellery manufacturing machines and raw material used in the manufacturing of jewellery and trading in other industrial products as well as generation of power through Wind Mill. In the course of assessment proceedings the AO had made various additions, inter alia, on account of unreconciled balance

4. Before us the only point raised by Revenue is the reiteration of the Ground of appeal raised, which has been reproduced by us in the earlier part of this order. The point made in the Ground of appeal is that the primary evidence in respect of the sales has not been examined. However, we find that the basis sought to be advanced in the ground of appeal was in fact the case sought to be made out by the AO in the course of assessment. In fact the relevant discussion in the assessment order reveals that the only reason for making the addition was the difference in the amount of sales confirmed by M/s. Kailash Jewels in response to a communication issued by the AO under Section 133(6) of the Income Tax Act, 1961 (hereinafter "the Act"). The CIT(A) has demonstrated that the explanation of the assessee with respect to the reconciliation of the difference, which was very much before the AO itself, clearly showed that the difference could not be treated as unexplained income. The finding recorded by the CIT(A) in this regard are not sought to be challenged by the Revenue at all. Moreover, at the time of hearing the learned counsel for the assessee referred to the Paper Book filed wherein is placed the material that was before the lower authorities on the basis of which the CIT(A) has recorded the relevant finding. Based on the same, in our view, the reconciliation of sales as made out by the assessee and accepted by the CIT(A) is borne out of the record which was before the CIT(A) and therefore we find that the finding of the CIT(A) deserves to be confirmed. We hold so.

5. The other aspect is with regard to the difference of `75,51,417/- in the case of M/s. Shruti Art P. Ltd. In this context the relevant facts are that the AO noted that the sales to the said party was declared by the assessee at `6,84,83,052/- whereas as per the confirmation received from the said concern the sales were to the tune of `7,60,34,469/-, whereby the then AO added the difference of `75,51,417/- to the returned income as unexplained income.

6. On this aspect also, we find that before the CIT(A) assessee enumerated that it had furnished relevant explanation and also the reconciliation, which has been reproduced by the CIT(A) in para 4.3 of his order. The assessee submitted that it clarified to the AO itself that the total sales were to the tune of `6,91,08,236/- and not `6,84,83,052/- and the difference was also explained by a reconciliation statement. Ostensibly, the reconciliation statement notes the difference as on account of reversal entry of cheque bounced, which has been wrongly considered by the AO as part of sales; on account of VAT on sales being separately accounted for under the head 'Duties and Taxes', freight charges separately booked by the assessee; and, also discount allowed. On account of the aforesaid elements, the difference between sales declared by the assessee and that confirmed by M/s. Shruti Art P. Ltd. stood reconciled. The CIT(A) has examined the submission on the basis of supporting invoices/ledger accounts and has recorded a finding that the difference cannot be treated as unaccounted income.

7. In the above background, before us the learned D.R. has not made any factual assertion to controvert the findings of the CIT(A). The primary reason advanced against the order of the CIT(A) is similar to what has been considered by us in the earlier part of this order while dealing with the addition made on account of M/s. Kailash Jewels. Our reasoning in the earlier paras would apply herein also and therefore we find no reason to disregard the conclusion of the CIT(A). Notably, on this ground also we find that the CIT(A) has based his decision on the relevant material, copies of which have been placed in the Paper Book filed before us. In this view of the matter we find no reason to interfere with the ultimate decision of the CIT(A), which we hereby confirm. Thus the ground of appeal raised by Revenue is dismissed.

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

Order pronounced in the open court on 30th May, 2018.

Sd/-
(Sandeep Gosain)
Judicial Member

Sd/-
(G.S. Pannu)
Accountant Member

Mumbai, Dated: 30th May, 2018

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -2, Mumbai*
4. *The CIT - 1, Mumbai*
5. *The DR, "B" Bench, ITAT, Mumbai*

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.