

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA No.151/Ind/2015

Assessment Year 2010-11

DCIT 2(1), Ujjain	Vs.	M/s Shriniwas Board & Paper Pvt. Ltd, 68 Industrial Area, Maxi Road, Ujjain
(Revenue)		(Respondent)
PAN AACCS7555D		

Revenue by	Shri K.G. Goel, Sr. DR
Assessee by	Shri S.S. Deshpande, CA
Date of Hearing	27.03.2019
Date of Pronouncement	01.04.2019

ORDER

PER MANISH BORAD, AM.

The above captioned appeal is filed at the instance of revenue pertaining to Assessment Years 2009-10 and is directed against the orders of Ld. Commissioner of Income Tax (Appeals) (in short 'Ld.CIT(A)'), Ujjain dated 10.12.2014 which is arising out of the order u/s 143(3) of the Income Tax Act 1961(In short the 'Act') dated 29.12.2011 framed by DCIT-2(1), Ujjain.

2. Revenue has raised following grounds of appeal;

1. *Whether on the fact and in the circumstances of the case the 1d. CIT(A) was justified in deleting the addition of Rs.3378921/- made by the AO on account of inflated purchase even when assessee failed to establish the genuineness of such claim, ignoring how the purchases has been at more r less constant rate hovering amount of Rs.7/- in respect of URD purchases while it fluctuates from Rs.3.5/- to Rs.4.28/~ , Rs. 6. 08/- , Rs.7. 77/- in respect of registered dealers. It is to be noted that as per the settled judicial principles payment has to be proved by the assessee while claiming expenditure.*

2. *Whether on the facts and in the circumstances of the case the Ld. C1T(A) was justified in deleting the addition of Rs.3378921/- made by the AD on account of inflated purchase even when no documentary evidence having independent evidentiary value was produced by the assessee.”*

3. Brief facts of the case as culled out from the records are that the assessee is a private limited company engaged in the manufacture of kraft paper. Assessment u/s 143(3) of the Act was completed on 29.03.2013 assessing income of Rs.92,01,128/- as against the income disclosed in the return of income filed on 24.09.2010 deleting income at Rs.22,66,320/- Following three additions were made;

(i) Disallowance of deduction u/s 80IB(3)(ii)	Rs.9,71,271/-
(ii) Bogus purchase	Rs.25,84,608/-
(iii) Purchased inflated	<u>Rs.33,78,921</u>
Total	<u>Rs.69,34,808/-</u>

4. Aggrieved with the order of Ld. A.O assessee preferred appeal before Ld. CIT(A) and partly succeeded. Thereafter revenue preferred appeal before the Tribunal against the additions confirmed by Ld. CIT(A) raising two grounds. Vide order dated 28.03.2017 in ITA No. 151/Ind/2015 Ground No.1 of the revenue's appeal was dismissed by the Tribunal. However as per Miscellaneous Application filed by the Revenue vide M.A.No. 108/Ind/2017 an apparent error was pointed out in the order of Tribunal that Ground No.2 remained to be adjudicated. This Miscellaneous Application of the revenue was allowed vide order dated 12.9.2018 and ITA No.151/Ind/2015 was recalled for the limited purpose of adjudicating Ground No.2 raised in Form No.36 by the revenue. During the course of recalled proceedings Ld. Departmental Representative vehemently argued and supported the order of lower authorities in relation to Ground No.2.

5. Per contra Ld. Counsel for the assessee submitted that Ground No. 1 & 2 both relates to the addition of Rs.33,78,921/-which was deleted by Ld. CIT(A). Hon'ble Tribunal vide its order dated 28.3.2017 has dismissed revenue's Ground No.1 thereby confirming the findings of Ld. CIT(A) deleting the addition of Rs.33,78,921/- made by Ld. A.O on

account of inflated purchases. As Ground No.2 also refers to the same addition of Rs.33,78,921/-, the same has already been dealt by the Tribunal while adjudicating Ground No.1 and therefore Ground No.2 also deserves to be dismissed.

6. We have heard rival contentions and perused the records placed before us. This appeal is recalled for adjudicating Ground No.2 raised by the revenue.

7. We observe that the Ld. A.O made following three additions;

(i) Disallowance of deduction u/s 80IB(3)(ii)	Rs.9,71,271/-
(ii) Bogus purchase	Rs.25,84,608/-
(iii) Purchased inflated	<u>Rs.33,78,921</u>
Total	<u>Rs.69,34,808/-</u>

8. As regards disallowance u/s 80IB(3)(ii) of the Act for Rs.9,71,271/- Ld. CIT(A) dismissed the assessee's ground. As regards addition for bogus purchase of Rs.25,84,608/- and addition for inflated purchases at Rs.33,78,921/-. Ld. CIT(A) deleted both the additions. In the normal course revenue should have filed appeal before Tribunal against both the additions deleted by Ld. CIT(A) but due to inadvertence or any other

reason best known to revenue in Form No.36 revenue raised following two grounds;

1. Whether on the fact and in the circumstances of the case the 1d. CIT(A) was justified in deleting the addition of Rs.3378921/- made by the AO on account of inflated purchase even when assessee failed to establish the genuineness of such claim, ignoring how the purchases has been at more r less constant rate hovering amount of Rs.7/- in respect of URD purchases while it fluctuates from Rs.3.5/- to Rs.4.28/~ , Rs. 6. 08/- , Rs.7. 77/- in respect of registered dealers. It is to be noted that as per the settled judicial principles payment has to be proved by the assessee while claiming expenditure.

2. Whether on the facts and in the circumstances of the case the Ld. C1T(A) was justified in deleting the addition of Rs.3378921/- made by the AD on account of inflated purchase even when no documentary evidence having independent evidentiary value was produced by the assessee.”

9. From perusal of the above two grounds we observe that revenue has only challenged the deletion of addition of Rs.33,78,921/- for inflated purchase in Ground No.1 and Ground No.2. No appeal has been filed against the deletion of addition for bogus purchases of Rs.24,85,608/-.

10. Now we find that Ground No.1 of the revenue appeal has already been decided by the Tribunal vide ITA. No.151/Ind/2015 dated 28.3.2017 thereby confirming the finding of Ld. CIT(A) observing as follows;

“2. From the order of the Tribunal dated 1.12.2015 in the assessee’s own case for the assessment year 2009-10 it is clearly discernible that the Tribunal has dismiss the appeal of the revenue, upholding the order of the learned CIT(A). The Tribunal observed that the assessee has explained the fact that it reduced the cost of raw material by making local URD purchases from local URD suppliers and the assessee had an option to make spot inspection and rejection, if found necessary, wherever quality does not find up to the mark and standards required for the assessee. This fact has not been controverted by the Assessing Officer for the assessment year 2010-11 also that the assessee has maintained record for URD local purchases except bills because Kabadies do not issue bills to whom assessee used to make local purchases of URD. After observing the above, the Tribunal concluded that the Assessing Officer was not right in applying the average rate of raw material by making comparison of the rates with RD & URD purchases and, hence, the impugned addition made by the Assessing Officer on the issue was rightly deleted by the learned CIT(A). On specific query by the Bench, the learned DR fairly accepted that the facts and circumstances of the case pertaining to the issue for the assessment year 2010-11 are similar to the assessment year 2009-10. Thus, we are unable to see any valid reason to take a different view from the view which has already been taken by the Tribunal for the assessment year 2009-10 and thus respectfully following the same, the sole ground of the revenue, being de void of merit, is dismissed.”

11. From the above decision of the Tribunal there remains no confusion that Ground No.1 relating to deletion of addition of Rs.33,78,921/- on account of inflated purchases have already been adjudicated and the

Revenue's Ground No.1 has been dismissed by the Tribunal.

12. Now as discussed above that in Ground No.2 Revenue has again challenged the addition of Rs.37,890,921/-. We therefore in the given facts and circumstances of the case as well as in view of the decision of the Tribunal dated 28.3.2017 are of the considered view that Revenue's Ground No.2 also deserves to be dismissed as the issue has already been decided by the Tribunal dismissing Ground No.1 of the appeal.

13. In the result appeal of the revenue is dismissed.

The order pronounced in the open Court on 01.04.2019.

Sd/-

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 01 April, 2019

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Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/
DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore