

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA Nos.2903 & 2904/PUN/2016
निर्धारण वर्ष / Assessment Years : 2010-11 & 2011-12

M/s. Joto Abrasives Pvt. Ltd.,
G 35, MIDC, Ambad,
Nashik-422007.

PAN : AAACJ5827D

.....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Circle-1,
Nashik.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sanket Joshi,
Revenue by : Shri Pankaj Garg

सुनवाई की तारीख / Date of Hearing : 20.03.2019

घोषणा की तारीख / Date of Pronouncement : 25.04.2019

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

There are two appeals under consideration involving the assessment years 2010-11 and 2011-12. Both the appeals of the assessee are against the common order of the CIT(A)-1, Nashik dated 17.08.2016.

2. In both the appeals, the issues raised in the grounds are identical and it relates to the bogus purchases addition and sustainability of the same when the assessee's request for cross-examination was not granted by the Assessing Officer/CIT(A).

3. Briefly stated the relevant facts include that the assessee is a company and is engaged in the business of manufacturing and exporting

of Grinding Wheels. The assessee filed the return of income declaring total income of Rs.51,91,060/- for the assessment year 2010-11 and Rs.1,73,70,240/- for the assessment year 2011-12.

4. Bringing our attention to the assessment order, ld. Counsel for the assessee submitted that this is a case for *ex-parte* reassessment order made u/s 147 r.w.s. 144 of the Act. It is an admitted fact that the information/material gathered from the Sales Tax Department of Maharashtra Government was not handed over to the assessee. Bringing our attention to the order of the CIT(A), the ld. Counsel for the assessee submitted that the assessee made a request for cross-examination of the suppliers of the material with make a special reference. Bringing our attention to the contents of para 5.1 of the order of the CIT(A), the ld. Counsel for the assessee submitted that no opportunity for cross examination was granted. The contents of para 5.1 vide Item No.3 of the order of the CIT(A) was brought to our attention. Therefore, he summarized that this is a case where the cross-examination was requested by the assessee and the same was not granted by the lower authorities. The CIT(A) failed to give the direction to the Assessing Officer for grant of such cross-examination and ignored the legal requirement and the set principles of natural justice in these legal matters.

5. Further, bringing our attention to the order of the Tribunal in assessee's own case vide ITA No.2902/PUN/2016 for the assessment year 2009-10 order dated 28.03.2018, ld. Counsel for the assessee

submitted that the Tribunal in the said decision (supra), relying on the binding judgement of the Hon'ble Supreme Court in the case of M/s. Andaman Timber Industries vs. CIT vide Civil Appeal No.4228/2006 dated 02.09.2015 (SC), allowed the appeal of the assessee and deleted the addition only on the ground that the cross-examination was not granted to the assessee.

6. On hearing this legal issue, we find from the said order of the Tribunal for the assessment year 2009-10 (supra), the assessee was given the relief on this account by relying on another decision of the Tribunal in the case of Anita Sanjay Agrawal vs. ITO and others in ITA Nos.2622 to 2624/PUN/2016. The contents of paras 7 and 8 of the order of the Tribunal for the assessment year 2009-10 (supra) are relevant in this regard. For the sake of completeness, the said paras 7 and 8 of the order of the Tribunal (supra) are extracted hereunder :-

“7. We heard both the sides on the legal aspect of the issue relating to correctness of making additions at the back of the assessee by the Assessing Officer without granting benefit of cross examination of the assessee. In our view, this issue is covered in favour of assessee by virtue of decision of Pune Bench of the Tribunal in the case of Anita Sanjay Agrawal Vs. ITO and others in ITA Nos.2622 to 2624/PUN/2016. For the sake of completeness, relevant para is extracted herein below:

*“25. The facts and issues arising before us are squarely covered by the facts and issues before the Hon'ble Supreme Court in M/s. Andaman Timber Industries Vs. Commissioner of Central Excise (supra) and applying the said principle / ratio to the facts of the present case, we hold that where the assessee had sought cross-examination of the witnesses at the earliest stage i.e. while objecting to the reasons recorded for reopening the assessment, which duly has been acknowledged by the Assessing Officer in his order disposing of objections raised by the assessee against reopening of assessment. **But the Assessing Officer though asked the assessee to collect the statement but failed to allow cross-examination though he admitted that the same would be allowed in due course of time. On a later date, the Assessing Officer concludes that the letters sent under section 133(6) of the Act to the dealer were returned back.***

But the same cannot be reason for denying cross-examination. In the absence of allowing cross-examination of witnesses used against the assessee, where the addition was made in the hands of assessee on the basis of aforesaid statements recorded by the Sales Tax Department, we hold that no addition on account of bogus purchases can be made in the hands of assessee. The assessee had also established factum of trail of goods. Accordingly, we delete the addition made on account of bogus purchases. The grounds of appeal raised by the assessee are thus, allowed.

Considering the above, we are of the opinion that the facts are comparable and thus the decision of the Tribunal apply to the legal issue raised by the assessee in Ground No.3(c) of the appeal. On facts, it is evident that the benefit of cross examination was not granted to the assessee before making addition. Further, the order of the AO/CIT(A) do not indicate furnishing the copies of the statements of the suppliers to the assessee before making assessment. Nevertheless, the assessee furnished evidences by way of purchase bills, lab test reports showing the fact relating to manufacture of goods. Therefore, the addition made by AO without granting cross examination is unsustainable. Reliance is placed on the ratio of Hon'ble Apex Court in the case of M/s. Andaman Timber Industries Vs. CIT (supra) and the decision of the Tribunal in the case of Anita Sanjay Agrawal Vs. ITO (supra). Accordingly, the ground No.3(c) raised by the assessee is allowed.

Considering our decision above, the remaining grounds raised by the assessee on merits are dismissed as being academic.

8. *In the result, appeal of the assessee is partly allowed."*

7. Considering the above legal proposition and also the facts relating to the failure of the Assessing Officer as well as the CIT(A) in granting the benefit of cross-examination to the assessee, we are of the opinion that both the appeals are required to be allowed in favour of the assessee on this legal ground. Thus, the relevant ground raised by the assessee in both the appeals on this issue is allowed.

8. Considering our decision above in the relevant ground on the legal issue, the other remaining issues raised by the assessee in both the

appeals become academic exercise and the same are dismissed as academic.

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

Order pronounced on 25th day of April, 2019.

Sd/-
(विकास अवस्थी /VIKAS AWASTHY)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(डी. करुणाकरा राव/D. KARUNAKARA RAO)
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 25th April, 2019.
Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Nashik.
4. The CCIT, Nashik.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.