

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'SMC', NEW DELHI)**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
ITA No:-4670/Del/2018
(Assessment Year: 2014-15)**

Jhabua Power Investments Ltd. Thapar House, 124 Janpath New Delhi PAN No. AADCG5445K	Vs.	Income Tax Officer Ward 13 (3) New Delhi
APPELLANT		RESPONDENT

Assessee by : Sh. P. C. Yadav, Advocate
Revenue by : Sh. S. L. Anuragi, Sr. DR

Date of Hearing : 21.05.2019
Date of Pronouncement : 22 .05.2019

ORDER

PER: N. K. BILLAIYA, AM

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals]-5, New Delhi dated 19.04.2018 for Assessment Year 2014-15.

2. The sum and substance of the grievance of the assessee that the CIT(A) erred in confirming the additions made by the A.O u/s 68 of the Act when the A.O has made the addition u/s 69C of the Act.

3. Facts on record show that the assessee filed its return of income on 23/09/2014. The return of income was selected for scrutiny assessment and accordingly statutory notices were issued and served upon the assessee.

4. During the course of the scrutiny assessment proceedings the A.O noticed that the assessee has made purchase of linen fabric to the tune of Rs. 4,97,589/- to verify the purchases. The assessee issued notices u/s 133(6) of the Act to M/s Kumar Sales from whom the purchases were made. The notice sent returned unserved, the same was confronted to the assessee and the assessee furnished new address M/S Kumar Sales. Thereafter, fresh notice was issued to M/s Kumar Sales at new address which was duly served. The A.O asked M/s Kumar Sales to confirm the transaction with supporting evidence. On receiving no plausible reply once again notice was issued and served upon M/s Kumar Sales. Once again, no reply was received and the A.O formed a belief that the assessee has claimed bogus expenses on account of purchase from M/s Kumar Sales and proceeded by making the addition of Rs.4,97,589/- u/s 69C of the Act.

5. The assessee assailed the assessment before the CIT(A) and strongly contended that the purchases are duly recorded in the books of accounts supported by invoices and, therefore, provisions of Section 69C do not apply on the facts of the case. It was further pointed out that the A.O has accepted the sales made out of the purchases.

6. The CIT (A) was convinced that Section 69C is not applicable on the facts of the case. However, the CIT (A) was of the opinion that the A.O should not have accepted the credit in the books amounting to Rs. 5,02,075/- as explained. The CIT(A) asked the assessee to show cause why the credit in the books of Rs.5,020,75/- be not treated as unexplained credit u/s 68 of the Act. The assessee filed a detailed reply dated 18/4/2018. In its submission, the assessee explained the sale transaction by furnishing copies of the sale invoices and also the banks statement showing that the money has been received through banking channel. The reply of the assessee did not find any favour with the CIT (A) who made addition of credit of Rs.5,02,075/- u/s 68 of the

Act. However, the assessee CIT(A) restricted the addition to Rs.4,97,589/-, the addition which the A.O made.

7. By this, the assessee before me. The counsel for the assessee reiterated what has been stated due before the lower authorities. Per contra, the DR strongly stated that since, the CIT(A) himself has not examined the genuineness of the credit entries. The matter may be restored to the file of the CIT(A) for fresh adjudication

8. I have carefully considered the order of the authorities below. It is not in dispute that the A.O made impugned addition of Rs. 4,97,589/- treating the purchases as bogus expenses. It is equally true that the purchases were debited in the regular books of account of the assessee. The sales out of the purchases were accepted by the A.O. I further find that the notices issued by the A.O on the address of M/s Kumar Sales were duly served. Nothing prevented the A.O to issue summons to M/s Kumar Sales to force its attendance and examine the transaction. I further find that the CIT(A) realizing that Section 69C is not applicable on the facts of the case invoked Section 68 of the Act. In find that the assessee

has furnished all the details of sales made to M/s Overseas and such details can be seen from the following chart:-

Details of sales:

S. No.	Date	Party Name	Quantity	Invoice amount
1	4/1/2014	M S Overseas	945	68,985
2	14/01/2014	M S Overseas	1,050	76,891
3	23/01/2014	M S Overseas	1,510	107,738
4	14/02/2014	M S Overseas	945	67,426
5	13/03/2014	M S Overseas	1,201	89,054
6	18/03/2014	M S Overseas	1,240	91,981
		Total	6,891	502,075

9. The sale invoices are exhibited at Pages 5 to 10 of the paper book. In my considered opinion, the power of the CIT(A) are co terminus to that of the A.O and, therefore, he should have examined the transaction if he wanted to invoke the provisions of Section 68 of the Act. Failing which the action of the CIT (A) cannot be upheld. The contention of the DR that fresh opportunity should be given to the CIT (A) to examine the transaction does not have any force. In my considered view, no second innings should be given to

examine the same set of facts which were very much before the lower authorities. I do not find any merit in the order of the CIT(A). I have accordingly direct the A.O to delete the addition of Rs. 4,97,589/-. The appeal filed by the assessee is accordingly allowed.

10. In result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 22 .05.2019.

Sd/-

(N.K.BILLAIYA)
ACCOUNTANT MEMBER

Dated: .05.2019

R.N

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELH

Date of dictation	21.05.2019
Date on which the typed draft is placed before the dictating Member	21.05.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	22.05.2019
Date on which the final order is uploaded on the website of ITAT	22.05.2019
Date on which the file goes to the Bench Clerk	22.05.2019
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	