

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

**Before Sh. T. S. Kapoor, Accountant Member**

**ITA No. 4729/Del/2018 : Asstt. Year : 2008-09**

**ITA No. 4730/Del/2018 : Asstt. Year : 2009-10**

**ITA No. 4731/Del/2018 : Asstt. Year : 2010-11**

**ITA No. 4732/Del/2018 : Asstt. Year : 2011-12**

**ITA No. 4733/Del/2018 : Asstt. Year : 2012-13**

**ITA No. 4734/Del/2018 : Asstt. Year : 2013-14**

Sh. Punit Jian, Prop. M/s Khaas Vihidam, 2740/1, Roshan Pura, Nai Sarak, Delhi-110006	Vs	Income Tax Officer, Ward-46(2), New Delhi-110002
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAHPJ1955C</b>		

**Assessee by : Sh. Pawan Saldi, Adv. &  
Sh. Maneesh Jain, Adv.**

**Revenue by : Sh. S. L. Anuragi, Sr. DR**

<b>Date of Hearing: 28.05.2019</b>	<b>Date of Pronouncement: 29.05.2019</b>
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**ORDER**

These are six appeals filed by assessee against separate orders of Id. Commissioner of Income Tax (Appeals)-16, New Delhi all dated 27.04.2018.

2. The assessee has taken similar grounds of appeal and these were heard together, therefore, for the sake of convenience a common and consolidated order is being passed.

3. For the sake of completeness, the grounds of appeal taken by assessee in ITA No. 4729/Del/2018 are reproduced below:

*"1. Confirming the action of the Assessing Officer in initiating proceedings u/s 147/148 of the Income-tax Act, 1961 without their being any plausible reason to believe leading to escapement of income;*

*2. Confirming the addition made to the returned income in a sum of Rs.155,608/- in holding that the assessee has not purchased anything and has merely inflated his purchases.*

*3. Appellant craves leave to amend or withdraw any of the grounds and/or raise any further ground in accordance with the provisions of Law.*

*4. The appellant prays that both the above actions being arbitrary, erroneous and unlawful must be quashed with directions for appropriate"*

4. At the outset, the Id. Authorized Representative submitted that Assessing Officer had initiated reassessment proceedings without any plausible reason to believe leading to escapement of income and in this respect stated that details written submissions were filed before Id. Commissioner of Income Tax (Appeals) and on which he has wrongly decided against the assessee.

5. As regards the issue on merits, the Id. Authorized Representative submitted that the Assessing Officer had made additions in these cases on the basis of some alleged bogus purchases from certain group of persons. It was submitted that Hon'ble Supreme Court of India in the case of Tejua Rohit Kumar Kapadia has dismissed the Revenue's appeal against the order of Hon'ble High Court of Gujarat wherein the Hon'ble High Court had dismissed the appeal of Revenue under similar facts and circumstances. The Id. AR submitted that the Hon'ble High Court has held that where the purchases were duly supported by bills and payments were made by account payee cheque and where supplier

has confirmed the transaction and where there was no evidence to show that the amount was received back to the assessee and where the sales has been made out of such purchases, the addition cannot be made. The Id. AR further placed his reliance on the decision of Hon'ble Tribunal in the case of Nitin Gupta where in ITA No. 2266/Del/2017 vide order dated 06.04.2018, the Hon'ble Tribunal has decided the issue in favour of the assessee under similar facts and circumstances. The Id. AR further argued that in fact, in this case one of the supplier M/s AVI Exports was same as was there in the few years in the case of assessee. Therefore, it was prayed that the appeals of the assessee be allowed.

6. The Id. Departmental Representative, on the other hand, submitted that Id. CIT(A) has already dismissed the legal grounds taken by the assessee by relying on the decision of Hon'ble Delhi High Court in the case of Pr. CIT Vs Paramount Communication Pvt. Ltd. (2017) 392 ITR 444 and therefore, the legal grounds taken by the assessee cannot be allowed. Arguing on the merits of the case, the Id. DR submitted that on the basis of investigation report, the suppliers from whom the assessee had taken bills was found to be an entry provider and therefore, the Id. CIT(A) has rightly upheld the addition.

7. I have heard the rival parties and have gone through the material placed on record, I find that earlier the appeals were set aside by Hon'ble Tribunal to the Id. CIT(A) with a direction to decide the case *de novo* after affording adequate opportunity of being heard. The Id. CIT(A) has dismissed the legal grounds relying on the order of Hon'ble Delhi High court in the case of Pr. CIT Vs Paramount Communication Pvt. Ltd. (2017) 392 ITR 444. The Id. AR has not seriously made any arguments in support of his contention against the initiation of proceedings u/s 147

of the Act. I do not find any infirmity in the order of Id. CIT(A) to this extent and therefore, ground no. 1 in these appeals is dismissed.

8. Now coming to the merits of the additions, I find that Assessing Officer on the basis of information held that Sh. Rajendra S. Jain was a leading entry operator in Mumbai who was indulging in providing accommodation entries in the form of bogus purchases/sales. The Assessing Officer observed that assessee had made certain purchases from Sh. Rajendra S. Jain and his associates in which Sh. Rajendra S. Jain was associated as proprietor or Director or as partner. The Assessing Officer further observed in the assessment order that Sh. Rajendra S. Jain had admitted that he alongwith other associates was indulging into accommodation entries. The Assessing Officer observed that assessee had booked purchases in various years from the companies of Sh. Rajendra S. Jain and associates. Therefore, he held that these are bogus purchases and held these to be adjustment entries only and therefore, made addition as undisclosed investment u/s 69 of the Act. The Id. CIT(A) has also confirmed the action of Assessing Officer.

9. Before me, the Id. AR has placed on record, an order of Hon'ble Supreme Court in the case of Tejua Rohit Kumar Kapadia wherein the Hon'ble Court had dismissed the appeal filed by Revenue against the order of Hon'ble High Court of Gujarat. The Hon'ble Gujarat High Court had decided the issue in favour of the assessee by framing the following question of law:

*"Whether on the facts and circumstances of case and in laws the Appellate Tribunal was justified in treating the bogus purchase of Rs.5,19,86,285/- legitimate only on the basis that purchases are duly supported by bills and all the payments were made by account payee cheques by overlooking findings of the Investigation Wing in the case of Shri Kulwant Singh Yadav, who was running shroff business and he in his statement on oath stated that he issue*

*acknowledgment to the beneficiary on receipt of cheque and delivered cash and the assessee was one of the beneficiaries?"*

10. The findings on the question of law are reproduced below:

*"2. The Assessing Officer had disallowed purchase expenditure of Rs. 5.19 crores making the additions treating the purchases as bogus. The assessee carried the matter in appeal. CIT(Appeals) allowed the appeal inter-alia on the ground that all payments were made by the assessee by Account Payee cheque. The assessee was in fact, a trader. All purchases made from M/s. Raj Impex were found to have been sold and sales were also accepted by the Assessing Officer. The Revenue carried the matter in appeal before the Tribunal. The Tribunal dismissed the earlier making following observations:*

*"31. We have given a thoughtful consideration to the orders of the authorities below. There is no dispute that the purchases made from M/s. Raj Impex were duly supported by bills and all the payments have been made by account payee cheques. There is also no dispute that M/s Raj Impex have confirmed all the transactions. There is no evidence to draw the conclusion that the entire purchase consideration which the assessee had paid to M/s. Raj Impex had come back to the assessee in cash.*

*32. It is also true that no adverse inference has been drawn so far as the sales made by the assessee is concerned. We also find that the entire purchases made by the assessee from M/s. Raj Impex have been accounted by Raj Impex and have paid the taxes accordingly. Considering the facts in totality well appreciated by the First Appellate Authority, we do not find any error or infirmity in the findings of the First Appellate Authority. Ground No.1 is accordingly dismissed."*

*3. It can thus be seen that the appellate authority as well as the Tribunal came to concurrent conclusion that the purchases already made by the assessee from Raj Impex were duly supported by bills and payments were made by Account Payee cheque. Raj Impacts also confirmed the*

*transactions. There was no evidence to show that the amount was recycled back to the assessee. Particularly, when it was found that the assessee the trader had also shown sales out of purchases made from Raj Impex which were also accepted by the Revenue, no question of law arises."*

11. The Id. AR has also placed on record an order of ITAT New Delhi in ITA No. 2266/Del/2017 in the case of Nitin Gupta where the Hon'ble Tribunal had decided the issue in favour of assessee in respect of purchase from one of the group companies M/s AVI Exports which also happen to be one of the suppliers in the case of present assessee also. I find that Hon'ble Tribunal has decided the issue in favour of assessee by observing that assessee had furnished copy of invoices, sales tax registration number, bank statements, ITR copies and PAN numbers. The Hon'ble Tribunal had also observed that the assessee had made the payment for purchase through banking channel. In the present cases from the paper book, I find that assessee had filed written submissions to Assessing Officer as well as to Id. CIT(A) wherein the assessee had enclosed the proof of payment made to suppliers alongwith copy of purchase bills. However, the authorities below have not commented on the merits and documents furnished by the assessee. Therefore, I deem it appropriate to remit the issue back to the Id. CIT(A) who should decide the issue in view of the documents furnished by assessee as well as in view of judgment of Hon'ble Supreme Court in the case of Tejua Rohit Kumar Kapadia.

12. Needless to say that assessee will be provided sufficient opportunity of being heard.

13. In the result, the appeals of the assessee are allowed for statistical purposes.

(Order pronounced in the Court on 29<sup>th</sup> day of May, 2019 at New Delhi)

**Sd/-**  
**(T. S. Kapoor)**  
**Accountant Member**

**Dated: 29/05/2019**

\*Subodh\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**