

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

BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER

ITA No. 1196/Del/2019
Assessment Year: 2010-11

G.B. SYSTEM ELECTRICAL PVT. LTD., C/O SH. KAPIL GOEL, ADV. F-26/124, SECTOR-7, ROHINI, DELHI - 110 085 (PAN: AACCG9315P)	Vs.	ITO, WARD 10(1), NEW DELHI
(Appellant)		(Respondent)

ITA No. 1468/Del/2019
Assessment Year: 2010-11

GAJENDRA PAL SINGH C/O SH. KAPIL GOEL, ADV. F-26/124, SECTOR-7, ROHINI, DELHI - 110 085 (PAN: AQOPS3163Q)	Vs.	ITO, WARD BARAUT, DISTT. BAGHPAT U.P.
(Appellant)		(Respondent)

Assessee by	Sh. Kapil Goel, Advocate
Department by	Sh. S.L. Anuragi, Sr. DR.

ORDER

These 02 appeals have been filed by the separate assessees against the respective orders passed by the different Ld. CIT(A) pertaining to assessment year 2010-11. In both the appeals, the assesses have raised many grounds, but Ld. Counsel for the assessee has argued only ground no. 4 in ITA No. 1196/Del/2019 & Ground no. 5 in ITA No. 1468/Del/2019

which are similar and legal in nature. For the sake of convenience, I am only reproducing the legal ground no. 4 in ITA No. 1196/Del/2019 and ground no. 5 raised in other Appeal i.e. ITA No. 1468/Del/2019 as under:-

Ground No. 4 in ITA No. 1196/Del/2019 (AY 2010-11)

4. *That on the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in not deleting the addition made by the AO which was also unlawful and made in violation of principles of natural justice as no back material including statements of Mr. Jain during his search are confronted and cross examined to assessee during assessment proceedings despite repeated requests made in this regard which is sufficient to strike down the assessment framed.*

Ground No. 5 in ITA No. 1468/Del/2019 (AY 2010-11)

5. *That the Ld. CIT(A) has erred in not appreciating that the assessment is invalid and illegal as the principles of natural justice have been completely violated and no opportunity of cross examination of Late Sh. Chriranji Lal Sharma was provided to the*

appellant despite the specific request made before AO on 27.11.2017 and CIT(A) and during appeal proceedings cross examination with son of assessee cannot justify the illegal proceedings initiated u/s. 148 of the Act.

2. Since common legal ground has been raised by the assesseees in both the appeals, except difference in figures, hence, the appeals were heard together and are being disposed of by this common order for the sake of convenience, by dealing with ITA No. 1196/Del/2019 (AY 2010-11) – G.B. SYSTEM ELECTRICAL P. LTD. VS. ITO and the result thereof will apply *mutatis mutandis* to other appeal i.e. GAJENDRA PAL SINGH VS. ITO (ITA No. 1468/DEL/2019) (AY 2010-11).

3. At the time of hearing Ld. Counsel for the assessee stated that similar legal ground no. 4 involved in this appeal has already been decided in favour of the assessee by the Hon'ble Supreme Court of India in the case of Andaman Timber Industries vs. Commissioner of Central Excise, Kolkata-II 281 CTR 241. Hence, he requested that the legal ground no. 4 may be decided in favour of the assessee by deleting the addition in dispute in this appeal by respectfully follow the above ratio. He also draw my attention towards the orders of the AO as well as Ld. CIT(A) regarding the issue involved in ground no. 4 which has been raised by the Asessee before the AO and CIT(A) and the same has not been adjudicated properly, which is contrary to the law as laid down by the Hon'ble Supreme Court of India in the case of Andaman Timber Industries

vs. Commissioner of Central Excise, Kolkata-II (Supra). He also filed the copies of various decisions of the Tribunal in which the ITAT by respectfully following the aforesaid decision of the Hon'ble Supreme Court of India in the case of Andaman Timber Industries vs. Commissioner of Central Excise, Kolkata-II (Supra) decided the similar issue in favour of the assessee and deleted the addition in dispute. In view of above, he requested to follow the aforesaid ratio of the Hon'ble Supreme Court of India in the case of Andaman Timber Industries vs. Commissioner of Central Excise, Kolkata-II (Supra) and allow the appeal of the assessee by deleting the addition in dispute.

4. On the contrary, Ld. DR relied upon the orders of the authorities below.

5. I have heard both the parties and perused the records, especially the orders of revenue authorities as well as the Paper Book filed by the Ld. Counsel for the assessee in which the assessee has filed the copies of the various decisions rendered by the Tribunal, Hon'ble Delhi High Court and the decision of the Hon'ble Supreme Court of India in the case of Andaman Timber Industries vs. Commissioner of Central Excise, Kolkata-II (Supra). I am of the considered view that exactly similar issue as involved in this appeal vide ground no. 4 has already been decided by the Hon'ble Supreme Court of India in the case of Andaman Timber Industries vs. Commissioner of Central Excise, Kolkata-II (Supra), in favour of the assessee wherein the Hon'ble Supreme Court of India has held as under:-

"According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating

Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their

ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them. As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the Adjudicating Authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the price list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above. We may also point out that on an earlier occasion when the matter came before this Court in Civil Appeal No. 2216 of 2000, order dated 17.03.2005 was passed remitting the case back to

the Tribunal with the directions to decide the appeal on merits giving its reasons for accepting or rejecting the submissions. In view the above, we are of the opinion that if the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the Show Cause. We, thus, set aside the impugned order as passed by the Tribunal and allow this appeal.”

5.1 Respectfully following the above ratio of the Hon'ble Supreme Court of India, I am of the view that assessee has made a request before the AO as well as before the Ld. CIT(A) for giving adequate opportunity for cross examination of witnesses whose statements have been used by the revenue authorities against the assessee for making the addition in dispute, but the same ground has not been properly adjudicated which is in violation of natural justice. In my view the finding of the AO as well as Ld. CIT(A) is contrary to the law as laid down by the Hon'ble Supreme Court of India, as reproduced above in the case of Andaman Timber Industries vs. Commissioner of Central Excise, Kolkata-II (Supra). Therefore, on the anvil of the above ratio, the impugned order is not sustainable in the eyes of law, hence, respectfully following the same, I delete the addition in dispute and allow the appeal of the assessee.

6. In the result, both the appeals filed by the different assessee are allowed.

The decision is pronounced on 14/08/2019.

**Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER**

Dated: 14/08/2019

"SRB"

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi