

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : D : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA Nos.6062 to 6065/Del/2016
Assessment Years: 2008-09 to 2011-12

ACIT,
Central Circle-4,
New Delhi.

Vs Jakson Ltd.,
A-43, Phase II,
Noida Extension,
Noida.

PAN: AAACJ5347C

(Appellant)

(Respondent)

Assessee by	:	Shri Ved Jain, CA
Revenue by	:	Smt. Naina Soin Kapil, Sr. DR
Date of Hearing	:	04.09.2019
Date of Pronouncement	:	06.09.2019

ORDER

PER R.K. PANDA, AM:

ITA Nos.6062 to 6064/Del/2016 filed by the Revenue are directed against the common order dated 23rd September, 2016 of the CIT(A)-23, New Delhi, relating to assessment years 2008-09, 2009-10 and 2010-11 respectively. ITA No.6065/Del/2016 filed by the Revenue is directed against the order dated 28th September, 2016 of the CIT(A)-23, New Delhi for assessment year 2011-12. Since

identical grounds are taken by the Revenue in all these appeals, therefore, these were heard together and are being disposed of for the sake of convenience.

ITA No.6062/Del/2016

2. The grounds raised by the Revenue are as under:-

“On the facts and in the circumstances of the case the Id.CIT(A) has erred in:

1. The order of the CIT(A) is not correct in law and facts.
2. On the facts and in the circumstances of the case the Id.CIT(A) has erred in deleting the addition of Rs.1,07,69,589/- made by the A.O. on account of bogus purchases.
3. The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.”

3. Facts of the case, in brief, are that the assessee is a company engaged in the business of manufacture and sale of electric generating sets. It filed its return of income on 29.09.2008 declaring the total income at Rs.6,81,94,190/-. A search and seizure action u/s 132 of the Act was conducted on Jaksons Group of cases on 3rd October, 2013. In response to notice u/s 153A, the assessee filed its return of income declaring the income of Rs.6,81,94,190/- on 23rd January, 2015. The Assessing Officer completed the assessment u/s 143(3) read with section 153A of the IT Act determining the total income at Rs.8,03,77,030/- wherein he made addition of Rs.1,07,69,589/- on account of bogus purchases. Similar addition has been made for different assessment years which are as under:-

2009-10	-	Rs.1,46,46,039/-
2010-11	-	Rs.2,05,12,926/-

2011-12 - Rs.1,04,01,980/-

4. In appeal, the Id.CIT(A), following the decision of the of the Hon'ble Delhi High Court in the case of *CIT vs. Kabul Chawla reported in 234 Taxman 300*, deleted the addition on the ground that the addition is not based on any incriminating material found during the course of search.

5. Aggrieved with the order of the CIT(A), the Revenue is in appeal before the Tribunal.

6. We have considered the rival arguments made by both the sides, perused the orders of the authorities below and the paper book filed on behalf of the assessee. We have also considered the decision cited above. We find the original return in the instant case was filed on 29th September, 2008 declaring the total income at Rs.6,81,94,190/-. The first search in the instant case took place on 10th February, 2010 and the Assessing Officer completed the assessment u/s 153A of the IT Act on 30th December, 2011 determining the total income at Rs.6,96,07,439/- wherein addition of Rs.12,80,963/- was made u/s 14A of the Act and addition of Rs.1,32,286/- was made on account of income from scrap sale disallowed u/s 80IB of the Act. The Tribunal, vide order dated 21st December, 2015 vide, ITA No.6788/Del/2013, deleted the addition on the ground that since no incriminating material was unearthed during the course of search, the addition made by the Assessing Officer are unsustainable. Thereafter, search u/s 132 of the Act was initiated in the case of the assessee company on 3rd October, 2013. During the

course of second search operation also no incriminating material was found which is evident from the copy of the assessment order. We find the Assessing Officer on the basis that notices issued u/s 133(6) of the Act to various parties on the registered addresses which remained uncomplied with, made addition of Rs.1,07,69,589/- to the total income of the assessee on account of bogus purchases. We find the Id.CIT(A) deleted the same following the decision of the Hon'ble Delhi High Court in the case of *CIT vs. Kabul Chawla (supra)* on the ground that no incriminating material was found during the course of search and the addition is not based on any incriminating material and the assessment was not pending. We, therefore, find no infirmity in the order of the CIT(A) deleting the addition so made by relying on the decision of the Hon'ble Delhi High Court in the case of *CIT vs. Kabul Chawla (supra)* which has subsequently been followed by the Hon'ble Delhi High Court in the case of *PCIT vs. Varun Beverages Ltd. in ITA 561/2019, order dated 02.07.2019*. We, therefore, uphold the order of the CIT(A) and dismiss the grounds raised by the Revenue.

ITA Nos.6063 to 6065/Del/2016 (A.Ys: 2009-10 to 2011-12)

7. After hearing both the sides, we find the grounds raised by the Revenue in all these appeals are similar to the grounds raised in ITA No.6062/Del/2016 (A.Y. 2008-09). We have already decided the issue and the grounds raised by the Revenue have been dismissed. Following the similar reasonings the grounds raised by the Revenue are dismissed.

8. Even otherwise also, the tax effect involved in the grounds raised by the Revenue in the above appeals except ITA No.6064/Del/2016 (A.Y. 2010-11) are below Rs.50 lakhs being the monetary limit prescribed for filing of appeals before the Tribunal. Therefore, in view of the CBDT Circular No.17/2019 dated 8th August, 2019 raising the monetary limits for filing of the appeals by the Revenue before the Tribunal to Rs.50 lakhs and the subsequent clarification dated 20th August, 2019 to the effect that the said Circular is applicable even to pending appeals, the appeal filed by the Revenue is not maintainable. In view of the above discussion, all the appeals filed by the Revenue are dismissed.

9. In the result, all the four appeals filed by the Revenue are dismissed.

The decision was pronounced in the open court on 06.09.2019.

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 06th September, 2019

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi