



ITA No.7457/Mum/2016
M/s. JIK Industries Ltd.
Assessment Year-2008-09

आयकर अपीलीय अधिकरण “एफ” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.7457/Mum/2016
(निर्धारण वर्ष / Assessment Year:2008-09)

DCIT-2(2)(1) Room No.545, 5 th floor Aaykar Bhavan, M.K. Road Mumbai-400 020	बनाम/ Vs.	M/s. JIK Industries Ltd. 1-3, Gundecha Chambers N.M. Road, Fort Mumbai-400 023.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AABCJ-2982-J		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri Sushil Kumar Poddar-Ld. CIT-DR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Sulabh Patel- Ld. AR

सुनवाई की तारीख/ Date of Hearing	:	09/10/2019
घोषणा की तारीख / Date of Pronouncement	:	13/11/2019

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member):-

1. Aforesaid appeal by revenue for Assessment Year [in short referred to as ‘AY’] 2008-09 contest the order of Ld. Commissioner of Income-Tax (Appeals)-50, Mumbai, [in short referred to as ‘CIT(A)’], *Appeal No. CIT(A)-50/IT-431/2013-14* dated 29/08/2016 on following grounds of appeal: -



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On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in allowing relief to the assessee to the extent impugned in the grounds enumerated below:

Grounds of appeal

1. Whether on the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the disallowance made by the AO which are as per the provisions of clause (b) to sub-section (1) of section 153A which clearly empowers the AO to reassess the total income of six assessment years immediately preceding the assessment year relevant to the A.Y in which the search is conducted without limiting the enquiries and addition to the incriminating document found during the course of search & seizure."

2. Whether on the facts and circumstances of the Ld. CIT(A) was right in allowing the appeal of the assessee when the language of the order suggests that assessee's ground of appeal is not allowed.

2. Opening the arguments, Ld. CIT-DR drew our attention to the impugned order to submit that the quantum additions have wrongly been deleted by Learned first appellate authority by relying upon the decision of Hon'ble Bombay High Court rendered in **CIT V/s Continental Warehousing Corporation (Nhava Sheva) Ltd. 58 Taxmann.com 78** ignoring the fact that incriminating statement justifying additions for the year under consideration were recorded during search proceedings and the additions were made on the basis of incriminating statements and therefore, the reliance on the said decision was mis-placed. Our attention has been drawn to the assessment order to fortify the said submissions. The Ld. AR submitted that the impugned order would not require any interference.

3.1 Facts on record would reveal that the assessee being resident corporate assessee stated to be engaged in the business of manufacturing of crystal items and chemicals, was assessed for year under consideration u/s 143(3) r.w.s. 153A of the Act on 21/03/2013 wherein the assessee was saddled with aggregate quantum additions of Rs.503.12 Lacs as tabulated



on page-60 of the quantum assessment order. The additions were made on three counts-(i) Addition on account of alleged bogus purchases; (ii) Addition on account of unexplained share premium; (iii) Addition on account of unexplained loans.

3.2 The assessee group was subjected to search proceedings on 04/02/2011 wherein various incriminating documents were found & seized from assessee's premises and computer backups were taken. It was alleged that the assessee was involved in taking bogus bills of purchases and indulged in manipulation of account. In response to notice u/s 153A dated 30/04/2012, the assessee filed return of income for AYs 2005-06 to 2011-12. The return for AY 2008-09 was filed at *Nil* on 27/06/2012 with a delay of 27 days. The key persons of the assessee were its two directors viz. (i) Shri Rajendra G. Parikh; (ii) Shri Aditya G.Parikh. The assessee had floated various subsidiary companies and stated to be associated with many entities.

3.3 The original return of income was filed by the assessee u/s 139(1) on 30/09/2008 declaring loss of Rs.336.76 Lacs which was assessed u/s 143(3) on 25/11/2010 at loss of Rs.306.91 Lacs.

3.4 Upon perusal of assessee's bank account, it was seen that the assessee routed heavy transactions along with its subsidiaries through bank accounts of non-functional / non-existent entities and ultimately cash was withdrawn from fictitious bank accounts. It was found that the assessee was indulging in obtaining large scale accommodation bills to inflate



expenses so as to bring in its unaccounted black money into the books thereby reducing taxable income.

3.5 Simultaneous searches were also carried on the same date in case of some of entry providers, one of which was Shri Dilip Jayantilal Shah. The said person, in statement u/s 132(4), admitted to have given bogus bills to various entities as per the requirements. The relevant extract of the statement given by Shri Dilip Jayantilal Shah has already been extracted in the quantum assessment order. In response to question no.9, the said person, inter-alia, specifically confirmed that all the bills taken by the assessee from certain entities were bogus and there was no actual delivery of goods or services. Similar statement u/s 132(4) was recorded from another entry provider i.e. Shri Rajendra Jayantilal Shah who corroborated these facts. The aforesaid facts led Ld. AO to form an opinion that the assessee was in the practice of using bogus bills to siphon off the profit of the business thereby evading taxes. The details of transactions found during search operations were confronted to the assessee and the assessee was show-caused to prove the genuineness, identity, creditworthiness and capacity to handle such large volume of transactions in view of the statement given by Shri Dilip Jayantilal Shah.

3.6 The details of purchases made by assessee for various AYs has been tabulated on page no.9 of the quantum assessment order. The total purchases made for the year under consideration amounted to Rs.38.61 Lacs out of which purchases under doubt were Rs.35.84 Lacs.



3.7 During search operations, it transpired that another entity namely M/s Sai Consultancy Services Pvt. Ltd., was being owned, controlled and managed by Shri Rajendra G. Parekh through proxy / dummy employees namely i.e. Shri Vicky Oswal and Shri Nilesh Pichule. The dummy directors had apparently no means to operate an entity of such a magnitude. In his statement, Shri Vicky Oswal admitted that the said entity was created only with a view to manipulate the transactions of the assessee company. Similar statements were recorded from Shri Hemandra Choksi, director of another entity namely M/s Swiss Brain Systems (India) Private Limited who could not adduce evidence to prove that the transactions carried out by the said entity with the assessee were genuine.

3.8 The statement of the director of the assessee company Shri Rajendra Parikh was also recorded u/s 132(4), wherein the director, inter-alia, contended that the transactions were genuine. However, the details could not be furnished readily and further time was sought for submission of relevant details and documentary evidence in support of the transactions.

3.9 In the above background, a detailed show-cause notice was issued to the assessee on 22/02/2013 asking for requisite information and documentary evidence with respect to the genuineness of the transactions. The assessee failed to furnish the requisite details and also failed to produce the books of account which led to the issuance of another notice on 08/03/2013 wherein the assessee was again directed to file the requisite information and documentary evidence in support of the transactions. However, the assessee again failed to produce books of



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account and prove the genuineness of the transactions. Consequently, the copies of assessee's bank statements were procured from different banks and summarized and upon perusal of these transactions, a conclusion was drawn that unaccounted money was routed back into the accounts of the assessee. It also transpired that some of the bank accounts were not reflected in the financial statements. Finally, the assessee was saddled with aggregate additions of Rs.503.12 Lacs viz. (i) Addition on account of alleged bogus purchases for Rs.38.61 Lacs; (ii) Addition on account of unexplained share premium Rs.162.81 Lacs; (iii) Addition on account of unexplained loans Rs.301.70 Lacs.

4. Aggrieved, the assessee agitated the quantum assessment before learned first appellate authority, *inter-alia*, by contending that the assessment had attained finality u/s 143(3) on 25/11/2010 and since no incriminating documents were seized and the additions were not based on any incriminating material, the additions were not sustainable in view of decision of Hon'ble Bombay High Court rendered in **CIT V/s Continental Warehousing Corporation (Nhava Sheva) Ltd. 58 Taxmann.com 78**. The said argument found favor with Ld. CIT(A), who deleted the additions by observing as under: -

7.4 I have considered the submissions of the AR. In para 5.1 of the Remand Report dated 12.11.2014, the AO failed to rebut the claim of the appellant that there is no seizure of any incriminating document relating to the A.Y.2008-09 and that assessment for the A.Y. 2008-09 had attained finality before the date of the search. Therefore, the appellant's case is squarely covered by the decision of the Hon'ble jurisdictional Bombay High Court in case of Commissioner of Income-tax-II, Thane v Continental Warehousing Corporation (Nhava Sheva) Ltd, Bharati Vidyapeeth Medical Foundation cited above. In that case, the Hon'ble High Court has held that no additions can be made for unabated assessments which have achieved finality and for which no



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incriminating material has been found in the course of the search conducted u/s 132 of the Act.

7.5 In view of the decision of the Hon'ble jurisdictional Bombay High Court cited above, I hold that the AO erred in making additions which are not based on any seized material. Accordingly, I direct the AO to delete the additions which are subject matter of grounds no.5,6,7,8,9 & 10. In the result, the grounds 5,6,7,8,9&10 are treated as allowed.

Aggrieved, the revenue is under appeal before us.

5. Upon due consideration of facts as enumerated by us in the preceding paragraphs, we are unable to subscribe to approach adopted by first appellate authority in deleting the impugned additions. It is noted that the additions were deleted merely on the basis of remand report that no incriminating material was found during the search operations overlooking the fact that computer back up was seized during the search operation along with incriminating material. Nothing has been brought on record regarding the content of the seized material which would corroborate the findings that no incriminating material was found for the year under consideration.

6. It is also noted that search proceedings were triggered against the assessee in the background of the fact that the assessee obtained accommodation purchase bills of high magnitude so as to evade taxes which stood corroborated by the statements of various suppliers / associated persons as recorded u/s 132(4) on the date of search. Nothing on record would suggest that any of such statement was ever retracted by any one of them subsequently and therefore, these statements, in our considered opinion, had substantial evidentiary value and the onus was



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squarely on assessee to prove that the transactions were genuine. No such onus was ever discharged by the assessee. In fact, the assessee failed to produce books of accounts and file requisite documentary evidences at the time of search proceedings, assessment proceedings as well as during appellate proceedings and merely harped on the point that no incriminating material was found in the search proceedings. The incriminating material was always to be seen with reference to the books of account being maintained by the assessee and the books of accounts were never produced. The findings of Ld. AO that few bank accounts were not even reflected in the financial statement, would also assume importance, in this regard.

7. It is also important to note that the director of the assessee company, in statement u/s 132(4), sought time to furnish requisite information / documentary evidences to prove the genuineness of the transactions but failed to produce the same also could not refute the allegations that it obtained bogus bills from various suppliers. Therefore, we are unable to subscribe to the approach adopted by learned first appellate authority. Hence, on the facts and circumstances of the case, we deem it fit to set-aside the order of learned first appellate authority and restore the matter back to Ld. CIT(A) for appreciation of factual matrix in the light of investigation being carried out by Ld. AO and re-adjudicate the same in accordance with law. The assessee, in turn, is directed to substantiate its claim that no additions would be warranted for the year under



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consideration. Needless to add that adequate opportunity of being heard shall be granted to the assessee.

8. The Ld. AR has placed on record the decision of Tribunal in assessee's own case for AY 2006-07, ITA No.7456/Mum/2016 dated 07/02/2019, in support of his arguments. However, upon perusal, we find the facts of AY 2006-07 are distinguishable since no addition on account of bogus purchases was made in that year and the additions, whatever made, were not based on any incriminating material. The same is also clear from the table extracted by Ld. AO at para 60 of the quantum assessment order. Therefore, we find the decision for AY 2006-07 inapplicable to this year.

9. In the result, the appeal stands allowed for statistical purposes.

Order pronounced in the open court on 13th November, 2019.

Sd/-

(Saktijit Dey)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 13/11/2019

Sr.PS:-Jaisy Varghese

आदेश की प्रतिलिपि ढि ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant



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2. प्रत्यर्धी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**