

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "D" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI O.P. KANT ACCOUNTANT MEMBER**

I.T.As. No.6066, 6067/DEL/2016  
Assessment Years 2012-13 & 2014-15

Asst. CIT, Central Circle-04, New Delhi.	v.	M/s. Jakson Limited, A-43, Phase-II, Noida Extension, NOIDA.
TAN/PAN: AAACJ5347C		
(Appellant)		(Respondent)

I.T.A. No.6068/DEL/2016  
Assessment Year 2012-13

Asst. CIT, Central Circle-04, New Delhi.	v.	M/s. Jakson Engineers Ltd. A-43, Phase-II, Noida Extension, NOIDA.
TAN/PAN: AAACJ5347C		
(Appellant)		(Respondent)

Appellant by:	Shri J.K. Mishra, CIT-DR		
Respondent by:	Shri Ved Jain & Ms. Umang Uppal, Adv.		
Date of hearing:	14	01	2020
Date of pronouncement:	23	01	2020

**ORDER**

**PER AMIT SHUKLA, J.M.:**

The aforesaid appeals have been filed by the Revenue against the common order dated 28.09.2016 passed by Ld. CIT(A)-XXIII, New Delhi.

2. At the outset, ld. counsel for the assessee submitted that

in so far as appeals for the Assessment Years 2012-13 and 2014-15 are concern, the tax effect in both the appeals are below prescribed monetary limit of Rs.50 lac in view of CBDT Circular No.17/2019 dated 08.08.2019. He has filed a separate tax calculation wherein the tax on disputed amount for the Assessment Year 2012-13 is Rs.24,12,788/- and Rs.32,91,299/- for the Assessment Year 2014-15.

3. Ld. DR also admitted that the tax effect on the disputed issue is much below Rs.50 lacs.

4. Accordingly in view of CBDT Circular No.17/2019 dated 08.08.2019, the appeals of the Revenue for the Assessment Years 201-13 and 2014-15 are dismissed as not maintainable.

5. In so far as appeal relating to Assessment Year 2012-13 in the case of M/s. Jackson Engineering Ltd. in ITA No.6066/Del/2016, the Revenue is aggrieved by deletion of addition of Rs.1,83,96,122/- made by the Assessing Officer on account of bogus purchases.

6. The facts in brief are that the original return of income was filed by the assessee u/s.139(1) on 30.09.2012 declaring total income of Rs.47,40,63,460/-. A search and seizure action was conducted in Jakson Group of cases u/s.132 on 30.10.2013. Accordingly, notice u/s.153A was issued on 22.09.2014 in response to which assessee has filed return of income showing income of Rs.47,40,63,460/-. Ld. Assessing

Officer during the course of assessment proceedings required the assessee to provide details of various parties along with confirmation from whom purchases have been made to sum of Rs.10 lacs. In response to which assessee had furnished the details. Ld. Assessing Officer had issued notices to 39 parties and in respect of one particular party, namely, M/s. New Jain Spares, reply could not be received to the Assessing Officer and accordingly, he treated the purchases made from M/s. New Jain Spare sum of Rs.1,83,96,122/- as bogus purchases.

7. Before the Ld. CIT(A), the assessee vide grounds no.4 and 5 submitted that the addition made by the Assessing Officer are beyond the scope of Section 153A, because there is no incriminating material found during the course of search belonging to the assessee. In support, reliance was placed upon the judgment of Hon'ble Delhi High Court in the case of **CIT vs. Kabul Chawla, 380 ITR 573 (Del.)** and **PCIT vs. Meeta Gutgutia, (2017) 325 ITR 526**. Apart from the legal issue, on merits also the assessee submitted that the notices issued u/s.133(6) to M/s. New Jain Spares was responded late by the said party and the said party has filed its reply on 19.04.2016 before the Assessing Officer along with following documentary evidences like confirmation of account; income tax return, VAT return, bank statement in pen drive. Ld. CIT (A) in so far as validity of the addition within the scope of assessment u/s.153A has observed that same was not pressed. Accordingly, the same was dismissed by the Ld. CIT

(A). However, on merits the Ld. CIT(A) has deleted the said addition after observing and holding as under:

*“4.4 Ground No.08 in Assessment Years 2011-12 & 2012-13 of M/s. Jakson Ltd. and Assessment Year 2012-13 of M/s. Jakson Engineers Ltd. and Ground no.4 of Assessment Year 2014-15 of M/s. Jakson Ltd. relate to addition on account of bogus purchases from M/s. New Jain Spares. The facts of the matter are matter are that the AO, vide questionnaire u/s 142(1) of the Act dt. 12.10.2015, asked the appellant to submit confirmation from persons from whom purchases above Rs. 10,00,000/- were made and the AO simultaneously issued letters u/s 133(6) of the Act to these persons and thereafter vide his letter dt. 23.02.2016 the AO asked the appellant to produce some of the 39 parties from whom replies were not received, but in the assessment order the AO has not listed the parties in respect of whom replies were not received. The appellant has submitted copy of the AO’s letter dt. 23.02.2016 in respect of AY 2008-09 to 2014-15 at page- 41 to 43 of the paper book (PB) and at pages-77 to 79 of the PB for M/s Jakson Engineers Ltd. wherein the AO has listed 39 parties in both the cases and all the assessment years under consideration from whom replies were not received. Subsequently, vide show cause notice u/s 142(1) of the Act dt. 11.03.2016 in all these cases the AO asked the appellant as to why purchases made from five parties be not considered as bogus. Though the AO has not discussed*

*in the assessment order, apparently in terms of the reply of the appellant and submissions of confirmation of accounts, invoices and payment details with bank statement copies the AO accepted the purchases from 38 parties in all these cases. In respect of purchase from M/s New Jain Spares (NJS) the appellant had replied before the AO on 29.03.2016 that this party was not cooperative with them and was not willing to furnish the confirmation/details, duly mentioned at para 4.4 page 4 of the order, and therefore the AO treated the purchase from NJS as bogus in both the cases and in all these assessment years. Thus, the purchase from NJS has effectively been treated as bogus presumably only due to non-confirmation from NJS in spite of all the relevant details submitted by the appellant before the AO including copy of invoices, payment documents with bank statement copy and the ledger account of books? The appellant, vide its reply dt. 29.02.2016 submitted before the AO also mentioned that not only the payments are through banking channel, NJS was duly registered with VAT authorities and were filing that returns regularly and in view of the fact that the notices u/s 133(6) and 131 were duly received by NJS and they were not willing to file the details. The appellant has submitted copy of the reply of NJS submitted to the AO and I duly receipted on 19.04.2016 in the AO's office confirming the transaction with the appellants alongwith confirmation of accounts, ITR, VAT return and bank statement in pen drive. Thus, even the*

*purchase from the 39th party, NJS, stands confirmed though received in the office of the AO after 31st March, but this is significant since the AO has not pointed out any other discrepancy in the accounts of the appellant or payment against the purchases from NJS and there is no adverse material brought on record except for the non-receipt of reply from NJS. The appellant has otherwise argued that when the notices u/s 133(6) and 131 of the Act were duly served only because NJS did not submit reply to the AO it cannot be concluded that NJS was non-existent at the given address and that the purchases from them were bogus for which the Ld. AR has relied upon various judgments including that of the Hon'ble Supreme Court in CIT Vs. Orissa Corpn. 159 ITR 78 (SC). I am inclined to agree with the appellant's AR on this account.*

*4.4.2 It is pertinent to know that the appellants are engaged in the business of manufacturing Electrical DG Sets for which they are purchasing various raw material and spare parts from different persons. The appellant has purchased pump for C/N/K Series and B Series, EOT Crane, VCB Panel, NGR Panel, HT Transformer, Heat Oven, Air Compressor, Grinder, MLG/ARC Welding Machine, Hydraulic Pallet, Instlaterial-N material and various other items as per the invoices of NJS filed with PBs which are utilized by the appellant in the manufacturing and assembly of Electric DG sets, the end product of the appellant, and the appellant is not trading in these items,*

*and therefore without bringing out any adverse material and adverse inference that equivalent and commensurate DG sets were not manufacture by the appellant it cannot be concluded that purchases of such material was not made. It is also to be noted that the total sales of the electrical DG sets were to the tune of Rs.831.27 crore, Rs.739.31 crore, Rs.628.07 crore and Rs.238.65 crore against purchases of material/spares of Rs.715.80 crore , Rs.630.55 crore, Rs. 175.30 crore and Rs.205.27 crore in the case of the two appellants for the respective assessment years while purchase disallowed is Rs.1.04 crore Rs. 1.84 crore, Rs.0.61 crore and Rs.0.74 crore only. It is not the case of the AO that the appellant was trading in the items purchased from NJS and that purchases from NJS were utilized by the appellant for inflating expenses and suppressing the profits. In fact, as also contended by the appellant's AR, the AO has not given any adverse finding that the finished product of the appellant and the sales thereof as per the audited books of account of the appellants are not genuine nor has he given any adverse finding that the payments made against the purchases through banking channel are not genuine and he has also not rejected the books of account.*

*4.4.3 . The appellant was asked to submit the details of total purchases and the purchases from NJS in the preceding years in the case of M/s Jakson Ltd. which have been submitted and is summarized hereunder:*

AY	Total Purchases	Purchases from NJS	Addition in assessment u/s 153A/143(3) dt. 26.11.2012/30.11.2016 pursuant to search on 10.02.2010
2004-05	163.03	1.47	Only addition u/s 14A
2005-06	205.94	0.56	Only addition u/s 14A
2006-07	294.82	2.18	Only addition u/s 14A
2007-08	431.55	2.31	Addition on account of 14A and disallowance u/s 80IB on account of scrap sale.
2008-09	465.15	1.18	Same as AY 2007-08
2009-10	473.97	1.56	Only addition u/s 14A
2010-11	581.77	2.05	Only addition u/s 14A

*It is observed that the appellant have been regularly purchasing material from NJS in the preceding years, payments have been made to banking channels and even the outstanding payment of preceding year was paid in the succeeding year, and since AY 2004-05 till AY2010-11 the purchases from NJS had been accepted in the assessments made u/s 153A/143(3) on 30.12.2011 pursuant to the earlier search on 10.02.2010 by the same AO.*

*4.4.4. In view of these facts and circumstances the addition made on account of the purchases from LJS in both the cases in all the assessment years under consideration are deleted.”*

8. Before us, ld. counsel for the assessee, Mr. Ved Jain submitted that admittedly here in this case the assessment for the Assessment Year 2012-13 was not pending at the time of search and had attained finality, because return of income was filed on 30.09.2012 and till 30.09.2013 no notice u/s

143(2) was issued and served. Thus, in absence of any notice issued u/s. 143(2), the said return of income has attained finality. Further, on the issue of addition of bogus purchases, no incriminating material or document was found during the course, and therefore, such an addition was beyond the scope of Section 153A r.w.s. 2<sup>nd</sup> proviso thereto has held by the Hon'ble Jurisdictional High Court in the case of **CIT vs. Kabul Chawla, 380 ITR 573 (Del.)** and **PCIT vs. Meeta Gutgutia, (2017) 325 ITR 526**. On merits, he strongly relied upon the order of the Ld. CIT (A).

9. On the other hand, ld. DR submitted that once this issue has not been pressed before the Ld. CIT (A), assessee cannot raise this issue before the Tribunal. On merits, he submitted that the reply sent by the party was received after the completion of the assessment proceedings, and therefore, matter should be restored back to the Assessing Officer to examine the veracity of the purchases from the said party because Assessing Officer did not get any opportunity at the appellate stage.

10. We have heard the rival contentions and perused the relevant findings given in the impugned orders. In so far as the validity of addition of Rs.1,83,96,122/- is concerned, on the ground that no incriminating material has been found during the course of search and therefore, same is beyond the scope of assessment u/s.153A, we find that though the said ground was raised before the Ld. CIT(A). However it was not

pressed, although, Ld. CIT (A) has deleted the addition on merits. Even though the respondent assessee has not raised legal ground or has not pressed, but that does not preclude the respondent assessee to challenge any legal issue and he can very well challenge or support the order of the Ld. CIT (A) on legal ground if the entire basis of the addition is either without jurisdiction or beyond the scope of provision of the Act. Thus being a legal issue, we do not find any fetter that same cannot be entertained before the Tribunal even if the said ground has not been pressed especially when the said issue does not require any investigation of facts and is clearly borne out from the records and the findings given in the impugned order. Accordingly, we hold that assessee is not precluded from raising the legal issue before us. Admittedly and from the bare perusal of the assessment order, it is seen that addition on account of bogus purchases is not based on any evidence or incriminating material found during the course of search and seizure action *albeit* same has been made on the basis of information already on record in the form of audited balance sheet and books of account. It is also an admitted position that at the time of search, i.e., on 30.10.2013, the assessment for the Assessment Year 2012-13 has attained finality and was not pending assessment. Therefore, in terms of second *proviso* to Section 153A it cannot be reckoned as abated assessment. Now it is a well settled principle under the jurisdiction of Hon'ble Delhi High Court that in the case of unabated assessment, addition over

and above the earlier assessment can only be made if any incriminating material or document is found during the course of search. This principle has been upheld and reiterated in the case of **Kabul Chawla and Meeta Gutgutia (supra)**. Accordingly, additions made by the Assessing Officer are held to be beyond the scope of Section 153A and same are deleted. Accordingly, the appeal of the Revenue is dismissed.

11. In the result, all the three appeals of the Revenue are dismissed.

**Order pronounced in the open Court on 23<sup>rd</sup> January, 2020.**

Sd/-  
**[O.P. KANT]**  
**ACCOUNTANT MEMBER**  
DATED: 23<sup>rd</sup> January, 2020  
PKK:

Sd/-  
**[AMIT SHUKLA]**  
**JUDICIAL MEMBER**