

IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH KOLKATA
BEFORE SHRI S. S. GODARA, JM & DR. A.L. SAINI, AM

ITA No.564/Kol/2019
(Assessment Year: 2013-14)

| | | |
|------------------------------------------------------------|-----|------------------------------------------------------------------------------------------------------------------------------------|
| ITO, Ward-27(2), Haldia | Vs. | Shri Ajabull Khan Prop. of M/s Swapna Cashew Processing, Vill-Pania, Contai, Dist- Purba Medinipur, W.B-721433 |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : APYPK5127K | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |

Appellant by : Smt. Ranu Biswas, Addl. CIT
Respondent by : None

सुनवाई की तारीख / Date of Hearing : 14/02/2020
घोषणा की तारीख/Date of Pronouncement : 12/06/2020

आदेश / O R D E R

Per Dr. A. L. Saini, AM:

The captioned appeal filed by the Revenue, pertaining to Assessment Year 2013-14 is directed against the order passed by Commissioner of Income Tax(Appeals)-7, Kolkata in Appeal No.64/CIT(A)-7/Ward-27(2)-Hal/Kol/16-17 which in turn arises out of an assessment order passed by Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'), dated 22.03.2016.

2. At the time of hearing none appeared on behalf of assessee in spite of issuance of notice for hearing more than one occasion and Ld. Departmental Representative (DR), was present for the appellant Revenue. In the absence of any appearance by the assessee, the appeal is being disposed of *ex parte qua* the assessee, after hearing Ld. DR for the Revenue on merits in terms of Rule 24 of the Income Tax Appellate, Tribunal, Rules, 1963.

3. Ground No.1 raised by the Revenue reads as follows:

"1.That Id. AO has grossly violated the CBDT Instructions while passing the impugned assessment by not limiting himself within the issues only to be verified as directed by CBDT while selecting the case under CASS but widening the scrutiny in other matters, as such, the order impugned is bad in law and liable to be quashed."

This ground is general in nature therefore does not require adjudication.

4. Ground No.2 raised by the Revenue reads as follows:

"2.That the Id.AO erred for disallowing excess purchase price amounting Rs.1,75,07,965/- without considering the fact that the effect of such excess pricing had already been neutralized in the Profit & Loss A/c by way of enhancing the closing stock value of almost same value as observed in the assessment order also."

5. The facts qua the issue, which is stated in the assessment order are as follows:

"Meanwhile creditors parties viz. M/s Olam Agro India Limited, M/s Ijas Cashew company, M/s Ismail Enterprise and M/s Anchuvila Cashew has furnished ledger copies of assessee in their books which is found to be in wide variance with the claim of the assessee as analyzed below:

| Sl. No. | Party Name | Purchase | | | Closing Balance | | | Difference In between 5 & 8 |
|---------|---------------------|-----------------|--------------|-------------------------------|-----------------|--------------|-------------------------------|-----------------------------|
| | | As per assessee | As per party | Difference excess in purchase | As per assessee | As per party | Difference in closing balance | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 1 | Olam Agro | 39326792 | 29146362 | 10180430 | 9904420 | 0 | 9904420 | 276010 |
| 2 | Ijas Cashew company | 4326346 | 5591810 | -1265464 | -1165610 | 99854 | -1265464 | 0 |
| 3 | Ismail Enterprise | 4646238 | 4565788 | 80450 | 80450 | 0. | 80450 | 0 |
| 4. | Anchuvila Cashew | 7289870 | 4392392 | 2897478 | 3037937 | 0 | 3037937 | 140459 |
| | | | | | 11857197 | 99854 | | |

Para 4 : In respect of the discrepancies noted at Sl. No. 1 viz. M/s Olam Agro India Limited, A/R of the assessee submitted copies of Form 50A in order to justify his claim. In order to re-examine its authenticity a letter was further issued to the party vide this office letter no. ITO, Wd 27(2) Haldia/Ajabul Khan/133(6)/2015-16/641 dated

15.02.2016 along with copies of those documents. In reply the party admitted the quantity as claimed by the assessee but differed from the price/amount that claimed by the assessee against such quantity. In support of their claim they have submitted copies of bills that the assessee clearly mentioned that the assessee has claimed purchase in excess to the tune of Rs. 1,01,80,430/-. Thus, the assessee's claim failed to stand on cross examination of documents projected to be relied upon. Moreover, the assessee is found to have booked excess cost against the same quantity of purchase. The assessee finally failed to the log roll test and admitted to it by furnishing a written submission that has failed to produce. The said party reads:

"In the instant year, I carried the business of processing of cashew nut under the name and style 'Swapna Cashew Processing'. In the case of high sea purchases mainly from Anchuvila Cashews , Olam Agro India Ltd., Sri Gayathri Cashew the transporters in the course of dispatch, declared the value of said cashew nut before Kerala Commercial taxes department at certain floor rate [as per Circular No.28/2011, Dt. 03.12.2011 of Office of the Commissioner Commercial Taxes, Thiruvananthapuram - copy enclosed] that was different from the actual (vide High Seas Sale Agreement - enclosed) at which I purchased but more than that. In this matter I am also enclosing herewith copy of some declarations by the transporters before Kerala Commercial Department. In this situation to avoid litigation & complexities in the matter of valuation in the course of passing through various check posts in different states as well as entering in to the West Bengal I ought to declare the relevant purchase at such excess rate in way bills under WB VAT Rule, 2005 and also debited such overrated purchase in my books of accounts. By this process, during the year under consideration my purchase was overstated by around Rs.175.08 lacs (sheet enclosed) altogether which ultimately neutralized by enhancing the closing stock value as on last day of relevant financial year by almost same amount [closing Stock Valuation Sheet - enclosed]."

Relevant portion of the annexure to the above mentioned letter on overstated purchase is as under:

| Importer / Supplier | Purchase as per books of accounts | Purchases as per High Sea Purchase invoice | Purchases overstated in the books |
|-------------------------|-----------------------------------|--------------------------------------------|-----------------------------------|
| Ismail Enterprise | 4646238 | 4565788 | 80450 |
| Anchuvila Cashew | 7289870 | 4392392 | 2897478 |
| Olam Agro India Limited | 39326792 | 29146362 | 10180430 |
| Sri Gayatri Cashew | 25370370 | 21020763 | 4349607 |
| | | | 17507965 |

In view of the above Rs. 17507965/- found to have been claimed in exceeded to the actual purchase is now being disallowed and added back to the total income of the assessee."

6. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A) who has deleted the addition made by the Assessing Officer observing the followings:

“5.2. I have given a careful consideration of the issue at hand after perusal of the findings of the AO and the submissions made by the appellant along with the remand report of the AO and rejoinder filed by the appellant. The brief facts leading to the addition of 1,75,07,965/- was on account of discrepancies noticed between the appellant's books and the books of the concerned parties i.e. a) Ismail Merchants, b) Anchuvila Cashew c) Olam Agri India Ltd, and d) Gayatri Cashews. On verification from these parties the AO found that the appellant had overrated his purchases to the extent of 71,75,07,965/-. However, the fact which should not be lost sight of is that the quantity of purchases was tallying with the parties accounts vis-à-vis the appellant's books in this regard. The appellant made high sea purchases of raw cashews from Kerala Port and as per the Departmental of Commercial taxes, Kerala under the Kerala VAT Rules the price of such import was fixed at Rs.70/- per kg. This was also mentioned in the Circular No.28/11 dated 3.12.2011 issued by the Departmental of Commercial taxes, Kerala. The appellant irrespective of the prices of actual purchases as per the high seas agreement valued the raw cashews at 70/- per kg. under the State Rules, VAT and the Income Tax Rules and laws. It is in this manner that the appellant reflected the value of purchases of raw cashews in the audited accounts which resulted in excess value to the extent of 1,75,07,965/-. This was admitted by the appellant in the reply furnished by him during the course of assessment proceedings except for the difference of 80,450/- from Ismail Enterprises which was on account of difference in stock and not on price and therefore it was explained that the difference in the purchases was due to enhanced value was 1,74,27,515/- (1,75,07,965/- (-) 80,450/-).

5.3. The appellant had explained before the AO and also before me that in order to smoothly facilitate trade, commerce and carry on business smoothly without any complexities in bringing the cashews from the Kerala Port to West Bengal and pass through customs and other Statutory Authorities the product was value at 70/- per kg. in accordance with the Kerala State rules and guidelines. As per books of accounts, the appellant had closing stock of 1,90,65,746/- which was enhanced to 3,64,95,009/- by way of addition of such overstated purchase value thereby there was no revenue impact. I agree with the contentions of the appellant that there was no revenue impact and the appellant has conclusively proved that the enhanced purchase value was adopted to ease business and in conformity with the Kerala State Rules. Similarly, the appellant has also valued his closing stock resulting in neutralizing the impact of both the debit and credit sides of the books of accounts. The appellant's Net Profit was 0.88% as declared in the return of income and the assessed income after additions will result in Net Profit @18.62% which cannot be in conformity with the business as compared to preceding years where the Net Profit was 0.47%, 0.62% and in AY 11-12 @3%. Therefore, in view of the above findings, the additions made of 1,75,07,965/- stands deleted on merits.”

7. Aggrieved by the order of Id CIT(A), the Revenue is in appeal before us. We heard Id. D.R. for the Revenue and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We note that the addition of 1,75,07,965/- was on account of discrepancies noticed between the appellant's books and the books of the concerned parties i.e. a) Ismail Merchants, b) Anchuvila Cashew c) Olam Agri India Ltd, and d) Gayatri Cashews. On verification from these parties the AO found that the appellant had overrated his purchases to the extent of 71,75,07,965/-. However, the fact which should not be lost sight of is that the quantity of purchases was tallying with the parties accounts vis-à-vis the appellant's books in this regard. The appellant made high sea purchases of raw cashews from Kerala Port and as per the Departmental of Commercial taxes, Kerala under the Kerala VAT Rules the price was of such import was fixed at Rs.70/- per kg. This was also mentioned in the Circular No.28/11 dated 3.12.2011 issued by the Departmental of Commercial taxes, Kerala. The appellant irrespective of the prices of actual purchases as per the high seas agreement valued the raw cashews at 70/- per kg. under the State Rules, VAT and the Income Tax Rules and laws. It is in this manner that the appellant reflected the value of purchases of raw cashews in the audited accounts which resulted in excess value to the extent of 1,75,07,965/- and the said fact has been properly appreciated by Id CIT(A). That being so, we decline to interfere with the order of Id. C.I T.(A) in deleting the aforesaid additions. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed.

8. Ground No. 3 and 4 are interlinked and mixed therefore we take them together. Ground No. 3 and 4 raised by the Revenue reads as follows.

3. That the Id. AO has erred by not allowing shortfall in claim of purchase of Rs.12,65,464/- from M/s. Ijas Cashew even after noticed the same as 'under shown' and therefore violated

the spirit of the income tax law which states that all genuine expenses must be deducted to arrive into the taxable income.

4. That the learned AO has erred to add Rs.1,09,336/- being the gross profit earned estimated @ 8% on a fictitious sales amounting Rs.13,66,701/- but adduced no evidence as to the impugned sales transaction.

9. Brief facts qua the issue, as stated in the assessment order are reproduced below:

"The assessee is found to have purchased goods worth Rs. 1265464/- from M/s ljas Cashew Company during the relevant year under consideration. On confrontation on this issue AR of the assessee submitted copies of form 50A in order to justify his claim. In this regard M/s ljas Cashew Company was reissued with copies of form 50A for verification. In reply, the said party through their letter dated 26.02.2016 clearly mentioned that "Form no 50A of WBVAT is their documents only and nothing concerned to me." Payment mentioned in the ledger is also found in the bank statement of the assessee confirming said purchase. On this under -shown purchase Rs. 13,66,701/- (Rs. 12,65,464/- x 108/100) calculated @ 8% in absence of G.P. rate is treated as un-shown portion of gross turnover kept-out-of books. Therefore Rs.1,09,336/- being the profit made thereof is now being added to the total income of the assessee."

10. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A) who has partly deleted the addition observing the following:

"6.2. I have considered the submissions made by the AR of the appellant and also perused the assessment order. The issue at hand pertains to shortfall in claim of purchases of 12,65,464/- made from M/s ljas Cashew Company. It is seen that the appellant had purchased raw cashew from M/s ljas Cashew Company @ Rs.51.80 per kg. of total quantity of 1,07,950 kgs. for total consideration of 55,91,810/-. In conformity with the Kerala Commercial Taxes Rule the appellant valued the raw cashews at 39.89 per kg. and debited in their books 43,26,346/- on account of purchases made from M/s ljas Cashew Company thereby resulting in the difference of 12,65,464/- (55,91,810 - 43,26,346). In this manner the appellant had understated the purchases and over stated his profits. The reason for doing so i.e. reason for undervaluing the purchases is similar to the reasons as discussed in Ground No. 3 of this order (supra) being inter-alia for smooth operations of business and to have the cashews transported from the Kerala Port to West Bengal without any hassles. I have already addressed the similar issue in favour of the appellant considering the facts and circumstances surrounding the appellant's case in Ground No. 3. Similarly, this ground also stands on the same matrix plane. The cardinal point to be considered in this case is that the understatement of purchases in order to ease the business did not have any adverse revenue impact as

because the profits were overstated to that extent. Considering the factual position, I do not find much merit in the observation of the AO that the appellant had earned 8% profit of the purported sale outside the books which can only be construed as based on surmise and conjecture on the part of the AO. There is an apparent discrepancy between the goods purchased with that of the data contained in the P&L A/c to the extent of 510 kgs. In the quantity of the goods purchased and goods reflected in the P&L A/c the quantity actually purchased was 1,07,950 kgs. and the quantity debited in the P&L account was 1,08,460 kgs. and, therefore, there is a difference of 510 kgs. of overstatement in the P&L and considering the actual purchase price at 751.80 per kg., an amount of 26,418/- shall be added back and the appellant gets relief of 82,918/- (109336 - 26418/-). In view of the foregoing, these grounds are partly allowed.”

11. Aggrieved by the order of Id CIT(A), the Revenue is in appeal before us. We heard Id. D.R. for the Revenue and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We have heard and gone through the above noted findings of Id CIT(A). We did not find any infirmity in the order of Id CIT(A). That being so, we decline to interfere with the order of Id. C.I T.(A) in deleting the aforesaid addition partly. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed.

12. Ground No.5 raised by the Revenue reads as follows:

“5.That the Id. AO has erred to add Rs.4,16,469/- on account of two outstanding creditors as on the last day of financial year without mentioning the relevant section of the income tax Act, 1961 that allows to consider the same as income and adduced no evidence that the impugned differences represent any flow of funds or amount received by the assessee.”

13. Brief facts qua the issue, as stated in the assessment order are as follows:

"On the issue of Bogus-liability; Sundry creditor: From the table at Para 3 it is evident that the outstanding dues against the creditors shown by the assessee is differing by Rs.99,04,420/- in respect of M/s Olam Agro India Limited and Rs.30,37,937/- in respect of M/s Anchuvilla Cashew. In order to avoid telescopic addition net difference found after taking into account those amounts as already considered at Para – 4 above, net differences have been worked out to be of Rs.2,76,010/- and Rs.1,40,459/- against M/s Olam Agro India Limited and M/s Anchuvilla Cashew respectively. In view of the above

Rs.4,16,469/- (Rs.2,76,010 + Rs.1,40,459) is being added to the total income of the assessee."

14. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A) who has deleted the addition made by AO, observing the following:

"7.2. I have carefully considered the submission of the AR of the appellant along with the assessment order. The AO had made addition of Rs.2,76,010/- on account of difference in sundry creditor party M/s. Olam Agro India Ltd and Rs.1,40,450/- of Anchuvilla Cashew aggregating to total addition of 4,16,469/-. Party wise analysis and finding is as follows:

(a) Olam Agro India Ltd

In the case of Olam Agro India Ltd. the closing balance as per books of the appellant of Rs.99,04,420/- was due to overstating purchases to the extent of Rs.1,01,80,428/- and once the overstated purchases has been reduced the closing balance should have been reduced to 2,76,008/- as receivable by the appellant. The issue in respect of overstating purchases has already been settled as per Ground No. 3 of this order in favour of the appellant. The AO has made additions of Rs.2,76,010/- on account of the difference between the appellant and the creditor party who has shown Nil closing balance. It is seen that M/s Olam Agro India Ltd has passed a journal entry as on 18-09-2012 nullifying the closing balance of 2,76,010/-. In view of the fact that the purchases is not disturbed and tallying and the amount of 2,76,010/- is receivable by the appellant from the party which the party has passed a journal entry and nullified the same in their books would not justify additions in the books of the appellant and therefore, the AO is directed to delete the additions of Rs.2,76,010/- on account of difference of sundry creditor balance with M/s. Olam Agro India Ltd."

Likewise, the Id CIT(A) also deleted that addition in respect of other creditor namely, M/s Anchuvilla Cashew"

15. Aggrieved by the order of Id CIT(A), the Revenue is in appeal before us. We heard Id. D.R. for the Revenue and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id

CIT(A) and other materials brought on record. We have heard and gone through the above noted findings of Id CIT(A). We did not find any infirmity in the order of Id CIT(A). That being so, we decline to interfere with the order of Id. C.I T.(A) in deleting the aforesaid addition. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed.

16. Ground No.6 raised by the Revenue reads as follows:

"6.The learned AO has erred to consider Rs.18,937/- as income being the peak balance with HDFC Bank A/c.08481530004229, as observed undisclosed in closing bank balance, without providing any opportunity to explain that the same was a savings bank a/c having 'NIL' balance at the end of the relevant year.

17. Brief facts qua the issue, as stated in the assessment order are as follows:

"During the course of scrutiny proceedings information received from HDFC Bank, Contai Branch revealed that the assessee has been maintaining account no.08481530004229 with that branch. As the same does not figure either in the closing bank balance or in the list of bank accounts submitted so far it is treated as un-shown account. Therefore, Rs.18,937/- being the peak balance of that account as on 30.09.2012 is now being added to the total income of the assessee as undisclosed income from other sources."

18. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A) who has confirmed the addition made by AO observing the following:

8.2. I have considered the written submissions on the basis of the addition made of 18,937/- as peak balance of HDFC account No.08481530004229. The appellant has tried to justify by stating that the closing balance as on 31.3.2013 was Nil without addressing the issue as to why the account was not declared and disclosed by the appellant. The justification by the appellant that closing balance is Nil and therefore the peak balance addition cannot be made does not hold good for when the action of the AO is endorsed in making the addition of 18,937/- which stands confirmed. The question of accrued interest being offered for taxation will not exonerate the impugned credit from coming within the scope of taxation. Consequently, this ground stands rejected."

19. We note that Id CIT(A) has confirmed the addition made by assessing officer, which is in favour of Revenue. The Department should not have raised this ground. It seems to us that ground No.6 raised by the Revenue is wrong and therefore does not require adjudication.

20. Before parting, it is noted that the order is being pronounced after 90 days of hearing. However, taking note of the extraordinary situation in the light of the Covid-19 pandemic and lockdown, the period of lockdown days need to be excluded. For coming to such a conclusion, we rely upon the decision of the Coordinate Bench of the Mumbai Tribunal in the case of DCIT vs. JCB Limited in ITA No. 6264/Mum/2018 and ITA No. 6103/Mum/2018 for A.Y. 2013-14 order dated 14.05.2020.

21. In the result, the appeal filed by the Revenue is allowed to the extent indicated above.

Order pronounced in the open court on this 12/06/2020.

Sd/-
(S. S. Godara)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata;

Dated:...../06/2020

RS, Sr.PS

Sd/-
(A. L. Saini)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अद्येषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant- ITO, Ward-27(2), Haldia
2. प्रत्यर्थी / The Respondent.- Shri Ajabull Khan
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

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By Order

Assistant Registrar,
I.T.A.T, Kolkata Benches,
Kolkata.