

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH: 'B', NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(THROUGH VIDEO CONFERENCE)

ITA NOS. 2032 & 2033/KOL/2017 & 107/KOL/2018

A.YRS. : 2009-10; 2010-11 & 2011-12

M/S BHOTIKA TRADE & SERVICES PVT. LTD., EPMS VASANT SQUARE MALL, PLOT-A, SECTOR-B, POCKET-V, COMMUNITY CENTRE, SF-11, 2 ND FLOOR, VASANT KUNJ, NEW DELHI - 110 070 (PAN: AACCB5790K)	Vs.	DCIT, CIRCLE-9(1), P-7, CHOWRINGHEE SQUARE, KOLKATA - 700069
(Appellant)		(Respondent)

Assessee by	Sh. Ved Jain, Advocate, & Ms. Umang Luthra, Advocate
Department by	Sh. M. Baranwal, Sr. DR.

ORDER**PER H.S. SIDHU, JM:**

These 03 appeals filed by the Assessee are directed against the respective impugned orders dated 31.07.2017 passed by the Ld. CIT(A)-16, Kolkata and Order dated 22.12.2017 passed by the Ld. CIT(A)-3, Kolkata in relation to assessment years 2009-10, 2010-11 & 2011-12 respectively. Since the grounds raised in these appeals are inter-linked, hence, the

same were heard together and are being disposed of by this common order for the sake of convenience by dealing with ITA No. 2032/Kol/2017 (AY 2009-10).

2. The grounds raised in ITA No. 2032/Kol/2017 (AY 2009-10) read as under:-

1. That the Ld. Deputy Commissioner of Income Tax Circle 9(1) Kolkata, is not justified to reopen the assessment simply on the basis of satisfaction recorded by some other authority (i.e. third party) like Sale Tax, Mumbai but did not record his own satisfaction, reopening of the assessment has been held bad.
2. That the Deputy Commissioner Of Income Tax is also not justified by disallowing Rupees 46,52359/- on account of packing materials on the ground that the claim of purchase of packing materials amounting to Rs. 46,52,359/- from the two parties are bogus. Against the order we preferred an appeal before the CIT Appeal-16 Kolkata. The CIT (Appeal) dismissed the appeal and confirmed the Assessing Officer Order on the ground that the Assessing Officer has clearly made out the case of bogus purchases on the basis of the report from Sale Tax Department and the Assessing Officer made detailed enquiry also and the parties were non-existent. The CIT(A) before passing the order ignored all the related documents, details submission, records and without ascertaining the facts just confirmed the Assessing Officer order and dismissed the appeal.
3. That any other grounds of appeal may kindly be allowed at the time of hearing.

3. The grounds raised in ITA No. 2033/Kol/2017 (AY 2010-11) read as under:-

1. That the Ld. Deputy Commissioner of Income Tax Circle 9(1) Kolkata, is not justified to reopen the assessment simply on the basis of satisfaction recorded by some other authority (i.e. third party) like Sale Tax, Mumbai but did not record his own satisfaction, reopening of the assessment has been held bad.
2. That the Deputy Commissioner Of Income Tax is also not justified by disallowing Rupees 1,44,09,707/- on account of packing materials on the ground that the claim of purchase of packing materials amounting to Rs. 1,44,09,707 from the four parties are bogus. Against the order we preferred an appeal before the CIT Appeal-16 Kolkata. The CIT (Appeal) dismissed the appeal and confirmed the Assessing Officer Order on the ground that the Assessing Officer has clearly made out the case of bogus purchases on the basis of the report from Sale Tax Department and the Assessing Officer made detailed enquiry also and the parties were non-existent. The CIT(A) before passing the order ignored all the related documents, details submission, records and without ascertaining the facts just confirmed the Assessing Officer order and dismissed the appeal.
3. That any other grounds of appeal may kindly be allowed at the time of hearing.
4. The grounds raised in ITA No. 107/Kol/2018 (AY 2011-12) read as under:-

1. That the Joint Commissioner Of Income Tax is not justified by disallowing Rupees 28,87,110/- on account of packing materials on the ground that the claim of purchase of packing materials amounting to Rs. 28,87,110/- from the four parties are bogus. Against the order we preferred an appeal before the CIT

Appeal-3 Kolkata. The CIT (Appeal) dismissed the appeal and confirmed the Assessing Officer Order on the ground that the issue has already decided against the appellant by my predecessor for the assessment year 2009-10. My predecessor has relied on the findings of the sale tax authorities and has confirmed the addition made by the AO. Further, on perusal of the assessment order, it is observed that the statement of all four parties, the so called suppliers, were recorded wherein they have confirmed that no goods have been supplied and only bills have been issued. The CIT(A) before passing the order ignored all the related documents, detailed submission, records and without ascertaining the facts just confirmed the AO order on the basis of the predecessor order and dismissed the appeal.

2. That any other grounds of appeal may kindly be allowed at the time of hearing.

5. The brief facts relating to the issue as stated by the AO in his assessment order dated 29.02.2016 at page no. 1 & 2 are reproduced as under:-

"The return was filed by the Assessee electronically on 30.9.2009 showing total income of Rs.6,89,06,990/-. The return was processed by CPC, Bangalore under section 143(1) on 22.02.2011, resulting in a demand of Rs.92,26,310/-. Thereafter the same was rectified by CPC, Bangalore on 31.01.2013 thereby reducing the previous demand to Rs. 12,54,040/-.

The case was reopened under section 147 of the IT Act, 1961 on the basis of information received from DGIT(Inv.), Mumbai that during operation conducted by the Sales Tax Department, Mumbai, against certain entry operators, it was found that M/s Amit Trading Co. and M/s. D. D. Corporation were engaged in providing bogus entries. The list of beneficiary Companies has been forwarded and it is found that Bhotika Trade & Services Pvt. Ltd., the assessee company, is one of the beneficiary companies and had obtained purchase entries amounting to Rs.37.90.028/- from M/s Amit Trading Co. and Rs,55,14,690/- from M/s. D. D. Corporation totaling to Rs.93,04,718/-. Thus, the Assessee has obtained bogus entries to the tune of Rs.93,04,718/- from the entry operators viz. M/s. Amit Trading Co. and M/s D.D. Corporation and in the process has inflated its purchases and understated the income to that extent.

During the relevant year, the Assessee is engaged in trading of electrodes, tools, spares etc. and also derives income from commission. During the FY 2008-09 the Assessee Company has shown sales of Rs. 21,82,56,704/- and Rs. 10,07,05,844/- as commission.

Accordingly, notice u/s.148 of the IT Act, 1961 was issued on 26.03.2014 and duly served upon the assessee company on 02.04.2014. However, the Assessee filed a reply on 03.04.2014 requesting to treat the original return of income filed on 30.09.2009 vide Acknowledgment No. 97342861300909 as return in response to notice under section 148 and further requesting to provide copy of reasons for reopening the case under section 148. Accordingly, a letter was issued to the Assessee on 10.04.2014 intimating the reason for reopening the case under section 148. Thereafter, statutory notices were issued and duly served upon the assessee company.

Subsequently, notice under section 142(1) along with questionnaire was issued to the Assessee on 12.12.2014 fixing the case for hearing on 29.12.2014. Sri S N Agarwal, Authorised Representative of the Assessee Company appeared on the different dates to explain the return. Assessee's AR filed its written explanation alongwith the party-wise details of packing material expenses for the instant vide letter dated 27.7.2015 and after considering all the documentary evidences filed by the Assessee, AO held that the revised alleged purchases from the Sales Tax Department amounting to Rs. 18,95,014/- from M/s Amit Trading

Co. and Rs. 27,57,345/- from M/s DD Corporation totaling to Rs. 46,52,359/- are bogus in nature. Thus, the assessee has obtained bogus entries to the tune of Rs. 46,52,359/- which was disallowed and added back to the income of the assessee company by the AO.

5.1 Against the assessment order, assessee appealed before the L.d CIT(A) who vide his impugned order dated 31.7.2017 has dismissed the appeal of the assessee. Aggrieved with the impugned order dated 31.07.2017 of the Ld. CIT(A)-16, Kolkata, assessee is in appeal before the Tribunal.

6. At the time of hearing, Ld. Counsel for the assessee reiterated the contentions raised by the Assessee in the written submissions and requested that the reopening of the assessment may be quashed. He further submitted that assessee has filed all the documentary evidences supporting the claim of the assessee and AO has not made any enquiry to falsify the evidences filed by the assessee. Therefore, assessee has discharged his onus as required under the law, therefore, the addition in dispute may be deleted. In support of his arguments, he filed the written submissions in the shape of synopsis which are reproduced as under:-

"No Enquiry by the Assessing officer (AO)

1. It is a settled law that if the assessee has produced material evidences, it was upto the AO to make proper enquiry, and if the AO fails to make any

effort in this direction, no addition could be made on this ground.

2. In this regard reliance is placed on the judgement of CIT vs Fair Finvest Ltd ITA no. 232/2012 dated 22-11-2012, wherein Hon'ble Delhi High Court has held that where AO doesn't carry any inquiry after assessee has submitted its reply, the addition can't be sustained. The relevant findings at page no. 7 para 6 of this judgement reads as under-

"6. This Court has considered the submissions of the parties. In this case the discussion by the CIT(Appeals) would reveal that the assessee has filed documents including certified copies issued by the Registrar of Companies in relation to the share application, affidavits of the Directors, Form 2 filed with the ROC by such applicants confirmations by the applicant for company's shares, certificates by auditors etc. Unfortunately, the assessing officer chose to base himself merely on the general inference to be drawn from the reading of the investigation report and the statement of Mr. Mahesh Garg. To elevate the inference which can be drawn on the basis of reading of such material into judicial conclusions would be improper, more so when the assessee produced material. The least that the assessing officer ought to have done was to enquire

into the matter by, if necessary, invoking his powers under Section 131 summoning the share applicants or directors. No effort was made in that regard, in the absence of any such finding that the material disclosed was untrustworthy or lacked credibility the assessing officer merely concluded on the basis of enquiry report, which collected certain facts and the statements of Mr. Mahesh Garg that the income sought to be added fell within the description of Section 68.

7. Having regard to the entirety of facts and circumstances, the Court is satisfied that the finding of the Tribunal in this case accords with the ratio of the decision of the Supreme Court in Lovely Exports (supra). 8. The decision in this case is based on the peculiar facts which attract the ratio of Lovely Exports (supra; Where the assessee adduces evidence in support of the share application monies, it is open to the assessing officer to examine it and reject it on tenable grounds. In case he wishes to rely on the report of the investigation authorities, some meaningful enquiry ought to be conducted by him to establish a link between the assessee and the alleged hawala operators; such a link was shown to be present in the case of Nova Promoters & Finlease (P) Ltd. (supra) relied upon by the revenue. We are therefore not to be

understood to convey that in all cases of share capital added under section 68, the ratio; Lovely Exports (supra) is attracted, irrespective of the facts, evidence and material. substantial question of law arises. The appeal is accordingly dismissed. "

3. *Similar view was taken by the jurisdictional High Court in the case of*

i. *CIT vs Goel Sons Golden Estate P Ltd. ITA no. 212/2012 dated 11-4-2012.*

ii. *CIT vs Gangeshwari Metal Pvt Ltd ITA No. 597/2012 dated 21.1.2013.*

4. *Relying on the judgement of Delhi High Court, the Delhi bench of the Tribunal in the case of ACIT vs. Panchanan International P. Ltd ITA No. 50/D/2011 dated 23-11-2012 at Page no. 5 Para 8 & 9 held as under:*

"8. We have heard the rival submissions of both the parties and have gone through the material available on record. We find that the assessee had accepted share application money of ₹. 10,00,000/- through banking channel and had filed details/documents regarding the above said companies. The Assessing Officer without going into the documents and without conducting any enquiry rejected the details and made the addition. The Ld CIT(A) after going through

the submissions made by the Ld AR had rightly deleted the addition. The judgment of Hon'ble High Court in the case of Goel Sons Golden Estate Pvt Ltd. squarely fits in the facts and circumstances of the present case. In that case, the assessee had accepted .30 iakhs as share application money from five companies and had filed confirmations, PAN Numbers, bank statement, balance sheet etc. with the Assessing Officer. The Assessing Officer did not conduct any enquiries and made the addition. The relevant observation of Hon'ble High Court are reproduced below:-

"We have examined the said contention and find that the assessee during the course of assessment proceedings has filed confirmation iettters from the companies, their PAN number, copy of bank statements, affidavits and balance sheet. The Assessing Officer did not consequent thereto conduct any inquiry and closed the proceedings. This is a case where the Assessing Officer has failed to conduct necessary inquiry, verification and deal with the matter in depth specially after the affidavit/confirmation along with the bank statements etc. were filed. In case, the Assessing Officer had conducted the said enquiries and investigation probably the challenge made by the revenue would be justified. In the absence of these

inquiries and non verification of the details at the time of assessment proceedings, the factual findings recorded by the Assessing Officer were incomplete and sparse. The impugned order passed cannot be treated and regarded as perverse. The appeal is dismissed as no substantial question of law arises. ”

9. Following the various judicial pronouncements including above, we are of the opinion that the case of the assessee is squarely covered by the above judgment and therefore the Ld CIT(A) had rightly deleted the addition. In view of the above, we do not find any reason to interfere in the order of Ld CIT(A).

Similar view has been taken in the case of CIT vs Expo Globe Industrial Ltd IT A No. 1257/2011 dated 20-7-2012 where Nova Promoters has been distinguished.

Relying upon the judgement of Goel Sons Golden Ltd (Supra) the Delhi Bench of ITAT in the case of ITO vs India Texfab Marketing Ltd ITA no. 1177/D/2012 dated 5-10-2012 deleted the addition.

The Delhi Benches of ITAT has passed order in the case of DCIT vs M/s. G S Control P Ltd ITA no. 1560/Del/2010 dated 13-3-2015 dismissed the appeal and held :

"14. We have considered the rival submission and perused the entire material available on record. The AO had made addition of Rs. 80 lacs out of the total share application money amounting to Rs. 2,40,00,000/-. Thus, rest of the amount had been accepted by AO. From the assessment order it is evident that AO has merely relied on general information regarding the impugned 4 companies in respect of which addition was made as they were known entry providers. The AO has pointed out that details were provided by these companies but since the directors of these companies were not produced, he made the addition. No inquiries were conducted by AO to find out the genuineness of the transactions and creditworthiness of the companies who had applied for the share application money in the assessee company. We find considerable merit in the argument of Id. counsel for the assessee that merely because the directors were not produced the addition could not be made in view of the decision of Hon'ble Delhi High Court in the case of Victor Electrodes Ltd. (supra) and also in the case of Nova Promoters (supra) also Hon'ble Delhi High Court had clearly distinguished between the cases where AO had carried out detailed inquiry and then arrived at a finding regarding accommodation entries and those

cases where AO did not carry out any inquiry and merely made addition on general basis.

The inquiry for arriving at a proper conclusion is a sine qua non and that cannot be dispensed with by making general observations. We find that the decision in the case of Goel Sons Golden Estate P. Ltd. is squarely applicable to the facts of the present case, wherein in paras 2 & 3 it has been observed as under:

"2. Learned counsel for the appellant submits that the order passed by the Tribunal is perverse and in fact one S.H. Mallick had given a statement, which is re-produced in the assessment order saying that he had provided accommodation entries and the said statement conclusively proves that share money of 30,00,000Z- allegedly received by the respondent- assessee from 5 companies are sham and bogus transactions .

3. We have examined the said contention and find that the assessee during the course of assessment proceedings has filed confirmation letters from the companies, their PAN number, copy of bank statements, affidavits and balance sheet. Thereafter the Assessing Officer had asked the assessee to produce the said Directors/ parties. Assessee expressed its inability to produce them. The

Assessing Officer did not consequent thereto conduct any inquiry e - dosed the proceedings. This is a case where the sssessing Officer has failiad to condLr necessary inquiry, verification and deal with the matter in depth specially after the affidav: confirmation along with the bank statements etc. were filed. In case the Assessing Officer had conducted the said enquiries and investigation probably the challenge made by the Revenue would be justified. In the absence of these inquiries and nonverification of the details at the time of assessment proceedings, the factual findings recorded by the Assessing Officer were incomplete and sparse. The impugned order passed cannot be treated and regarded as perverse. The appeal is dismissed as no substantial question of law arises."

Reliance is also placed on the judgement of Hon'ble ITAT Jodhpur in the case of ITO vs.Permanand, ITA No. 275(Jodh.) of 2005. dated 11.8.2006, wherein it has been held that:

"4. After hearing the rival submissions, we are in total agreement with the learned AO [sic- CIT(A)] as well as with the learned Authorised Representative, because no such addition can be made in the hands of the assessee on the basis of observations made by a third party. In this case, the addition rests mainly

only on the observations of the Sales-tax Department. The assessee was never associated with the enquiries made by the Sales-tax Department to that extent. The satisfaction of the AO himself is of the prime importance while making assessment of an income and these duties cannot be performed by substituting the satisfaction of someone else. The assessee did pay for the purchases he made from the above two parties through cheque as is evident from the above chart. The statements or even the affidavits of the sellers named above cannot be utilized against the assessee in view of the decision of the Hon'ble Supreme Court given in the case of Kishan Chand Chella Ram vs. CIT (1980) 19 CTR (SC) 360 : (1980) 125 ITR 713 (SC). Their Lordships of the Hon'ble Supreme Court in the above case (and in so many other cases) has given a ruling that a statement made by a third party cannot be relied in the case of the assessee unless an opportunity is given to him to confront the said statement by way of cross-examination, etc. Admittedly, no such opportunity was given to this assessee to confront the above sellers in the given case. In our considered opinion, the assessee has discharged the primary onus cast on him by s. 69 of the Act by showing the purchases, their entries in the books of accounts, payments by v/ay of account payee cheque,

producing the vouchers of sales of the goods. The AO has miserably failed to bring on record any clinching evidence to prove that these alleged purchases were verily bogus and not genuine. The AO has not arrived at a judicious conclusion after applying his own mind. Strangely enough, the AO has half-heartedly accepted certain quantum of purchases because out of total purchases aggregating Rs. 9,93,442, he has disallowed only a peak of Rs. 3,36,852. This finding of the AO is paradoxical. The AO did not make requisite investigation against the two sellers. Recently, this Bench took a similar decision in the case of ITO vs. Vinod Kumar, Prop., Vinod Brothers, Sriganaganagar, in ITA No. 623/Jd/2005; Asst, yr. 1999-2000, dt. 17th Dec., 2005, on identical facts by holding that on the basis of third party's observation, no addition can be made. Therefore, by following the above decision and in view of our foregoing observations, we confirm the impugned deletion and dismiss ground No. (i) of the appeal.

5. Ground No. (ii) relates to addition of Rs. 55,632 made by the AO by holding that the assessee did not pay any sales-tax to the Department or Mandi tax on 'Arhat' on the purchases made from the above two parties and thus made extra profit @5.6 per cent. The AO added this amount by multiplying 5.6 per cent with total purchase value of Rs. 9,93,442 In

view of our above findings, where we have held that the purchases are genuine, no such addition can be made. Consequently, we dismiss this ground of appeal also”.

Reliance is also placed on the judgement of Hon’ble Bombay High Court, in the case of Pr. CIT vs. Nikhil Arun Kumar Jhaveri. ITA No. 480 of 2017, dated 1/7/2019, wherein it has been held as under:

“4. The Tribunal was, therefore, of the opinion that the addition could not have been made with the aid of section 69C of the Act relying merely on the proceedings in connection with another party carried by the Value Added Tax Department of the State. The Commissioner (Appeals) in his detailed independent Judgment while deleting additions made by the Assessing Officer, made following observations:

“5.5 I have carefully considered the observations of the A.O. in assessment order as well as in remand report; the submissions of the appellant along with cross-objection against the remand report and the case laws referred to and relied upon by the appellant. The only issue in all the grounds of appeal is the disallowance of purchase amounting to 1,63,15,869/u/ s. 69C of the income Tax Act, 1961 as unexplained expenditure.

That the appellant has furnished the copy of Tax Invoice prepared under MVAT Act, 2002 with full details and signature. When the sale is made by the person registered under MVAT Act, 2002 then he is duty bound to issue his tax invoice w'th date, Name and Address of Purchase party, particulars of goods, calculation of MVAT with rate as applicable declaration under MVAT Act, 2002 and accordingly the three invoice produced by the appellant from the supplier M/s. Shree Enterprise reflects Date, Name of the Purchaser with Address, TIN Number, PAN and declaration under MVAT Act, 2002, the said Tax Invoices were duly signed. The appellant has also filed photocopy of three invoices with quantitative Tally with A.O. and since the tax invoices contained signature the same do not suffer from any defect.

It is a fact that the purchases have been made through Account Payee cheque only and the same are duly reflected in the bank statement of the appellant. The jewellery purchases have been sold and the considerations were received during the year.

The appellant has made payment to the supplier out of the said considerations and hence the source of acquisition is explained. The appellant maintains books of accounts including Stock Register and the

same are audited by the auditor. The A.O. has at no stage countered the evidence produced by the appellant ;and no mistakes have been noticed/ found from the quantitative tally co-relating inward and outward of the Jewellery. The purchase was co-related property with the sales. The A.O, has also not rejected the books of accounts u/s 145 of the Act to disapprove the Trading and P & L Account or conducted any independent enquiry to establish his contentions that the said purchases were bogus as if there were no purchases at all. The appellant established his claims by furnishing relevant Tax Invoice, Bank statements.

Since the appellant has offered to taxation sales to M/s.Pransukhlal & Sons Jewellers, he is entitled to deduction of consequent purchases from Shri Enterprise resulting in tax payment on the profit margin only. Otherwise, the disallowance of purchases from Shree Enterprise of 46,01,040/65,05,236/and 52,09,593/will result in double taxation.

There cannot be sales without corresponding purchases and both the things cannot be taxed simultaneously resulting in taxing of Turnover instead of income. Since, there is no evidence of the appellant receiving any money back in respect of the

purchases, in question, the purchases could not be held to be bogus. The A.O. has made additions merely on the basis of observations made by the Sales Tax Department, for which he has not conducted; any independent enquiries where as the appellant has discharged its primary onus by producing books of accounts with Stock Register, payment which was made by way of Account Payees cheque, Tax Invoices and bank statements during the assessment proceedings. Hence, such addition could not be sustained. In the case of INCOME TAX OFFICER vs. PERMANAND (2007) 107 TTJ (Jd)395 it was held that, "AO could not make addition in the hands of the assessee merely on the basis of observations made by the Sales-tax Department that the purchases made by the assessee from certain parties were bogus, without conducting independent enquiries ITO v. Vinod Chand, Prop. Vinod Brothers (ITA No.623/Jd/2005, dt. 17th Dec. 2005) followed; Kishan Chand Chella Ram vs. CIT(1980) 19 CTR (SC) 360: (1980) 125 ITR 713 (SC) applied."

5. *It can, thus, be seen that the Commissioner (Appeals) and the Tribunal concurrently came to the factual finding that the Department has no independent material to come to the conclusion that the purchases made by the assessee of gold and silver were either nongenuine or that the same were*

made out of assessee's known source. As noted by the Commissioner (Appeals), the purchases were made through banking channel. The Assessing Officer had not rejected the books of accounts of the assessee.

6. Being a pure question of fact, no question of law arises. The learned counsel for the Revenue, however, attempted strenuously to contend that the findings are perverse relying on several decisions in this respect. We are, however, of the opinion that the Commissioner (Appeals) and the Tribunal have taken into consideration the entire material on record to come to the factual finding. No question of law, therefore, arises. The income tax appeal is dismissed.

10. In the present case assessee has led all evidences. Thereafter no meaningful enquiry has been conducted by the AO, therefore addition made by the AO is unsustainable."

7. On the contrary, Ld. DR relied upon the orders of the revenue authorities especially the impugned order and stated that AO has rightly reopened the assessment on the basis of information, therefore, in view of the decision of the Hon'ble Supreme Court of India in the case of ACIT vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. dated 23.05.2007 in Appeal (Civil) No.

2830 of 2007, the legal ground may be decided against the assessee. He has filed the copy of the aforesaid judgement.

7.1 But as regards to the merits of the case, in spite of the various opportunities given by the revenue authorities the assessee has not substantiated the claim. Therefore, the revenue authorities have rightly rejected the claim of the assessee and Ld. CIT(A) has rightly dismissed the appeal of the assessee.

8. We have heard both the parties and perused the relevant records, especially the orders passed by the revenue authorities and the synopsis filed by the Ld. Counsel for the assessee as well as the case laws relied by both the parties alongwith the documentary evidences filed by the assessee in the shape of paper book containing pages 1-100 in which the assessee has attached the copy of acknowledgement of ITR alongwith its computation of income; copy of Audited Financials; copy of Tax Audit Report; copy of notice under section 148 dated 26.3.2014; copy of reasons recorded dated 10.4.2014; copy of objection submitted before the AO dated 19.5.2014 alongwith enclosures viz. (a) details of packaging material charges debited in the P&L account, (b) detail of party wise packing charges paid during the year, (c) details of packing charges paid to Amit Trading Company and DD Corporation, (d) documents of Amit Trading Company i.e. Ledger Account in the books of the assessee, copy of purchase bills, copy of assessee's bank statement showing the

payments, documents with regard to DD Corporation viz. ledger in the books of the assessee, copy of purchase bills, copy of assessee's bank statement showing the payment; copy of letter issued by the AO dated 21.5.2014; copy of statement recorded in the case of M/s DD Corporation; copy of rely submitted before the AO dated 27.7.2015 alongwith enclosures i.e. copy of confirmation of accounts by Amit Trading Company, copy of confirmation of accounts by DD Corporation and copy of written submissions filed before CIT(A) dated 28.3.2017. No doubt that Ld. Counsel for the assessee has raised the legal ground challenging the reopening of the assessment on the basis of satisfaction recorded by some other authorities i.e. 3rd party (Sales Tax Department). As per the arguments advanced by the Ld. Counsel for the assessee that AO has reopened the assessment on the basis of the specific information and made assessment u/s. 143(1) of the Act. We have gone through the orders passed by the revenue authorities as well as arguments advanced by both the parties and also perused the judgement passed by the Hon'ble Supreme Court of India in the case of ACIT vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. dated 23.05.2007 in Appeal (Civil) No. 2830 of 2007 (Supra), the relevant paras of the judgement are reproduced as under:-

"17. The scope and effect of section 147 as substituted with effect from April 1, 1989, as also sections 148 to 152 are substantially different from the provisions as they stood prior to such substitution. Under the old provisions of section 147, separate clause (a) and (b) laid down the circumstances under which income escaping

assessment for the past assessment years could be assessed or reassessed. To confer jurisdiction under section 147 (a) two conditions were required to be satisfied firstly the AO must have reason to believe that income profits or gains chargeable to income tax have escaped assessment, and secondly he must also have reason to believe that such escapement has occurred by reasons of either (i) omission or failure on the part of the assessee to disclose fully or truly all material facts necessary for his assessment of that year. Both these conditions were conditions precedent to be satisfied before the AO could have jurisdiction to issue notice under section 148 read with section 147(a). But under the substituted section 147 existence of only the first condition suffices. In other words, if the AO for whatever reason has reason to believe that income has escaped assessment it confers jurisdiction to reopen the assessment. It is however to be noted that both the conditions must be fulfilled if the case falls within the ambit of the proviso to section 147. The case at hand is covered by the main provision and not the proviso.

18. So long as the ingredients of section 147 are fulfilled, the AO is free to initiate proceeding under section 147 and failure to take steps under section 143(3) will not render the AO powerless to initiate reassessment proceedings even when intimation under section 143(1) had been issued.

19. Inevitable conclusion is that High Court has wrongly applied Adanis case (supra) which has no application to the case on the facts in view of the conceptual difference between section 143(1) and Section 143(3) of the Act.

20. Learned counsel for the respondent submitted that other points are available to be raised. Since no other point was urged before the High Court, we find no reason to examine if any other point was

available. The appeal is allowed without any orders as to costs."

8.1 After going through the judgment passed by the Hon'ble Supreme Court of India in the case of ACIT vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. dated 23.05.2007 in Appeal (Civil) No. 2830 of 2007 (Supra), we are of the view that the reopening of the assessment on the basis of the specific information is legally valid. Hence, respectfully following the aforesaid judgment of the Hon'ble Supreme Court of India in the case of ACIT vs. Rajesh Jhaveri (Supra), the legal issue raised by the assessee in ground no. 1 in assessment year 2009-10 & 2010-11 is dismissed.

9. As regards the merits of the case, after hearing both the parties and perusing the documentary evidences filed by the assessee alongwith written submissions as well as the case laws relied upon by both the parties, we are of the considered view that the Assessee has filed all the documentary evidences for the purchase of packaging material amounting to Rs. 46,52,359/- from two parties namely (i) M/s DD Corporation and (ii) M/s Amit Trading Co. The assessee has also filed the copy of the purchase bill with challan of both the parties, party confirmation, registration certificate and statement of payment with bank statement which the assessee has already submitted before the AO as well as before the Ld. CIT(A) in the shape of paper book. Assessee has also filed the documentary evidences before us in the shape of paper book mentioned above. Keeping in view of the facts and

circumstances as explained above and the documentary evidences filed by the assessee for substantiating the claim of assessee and establishing the genuineness of purchase of packing material amounting to Rs. 46,52,359/- from the afore-mentioned two parties which has not been falsified by the AO by making any enquiry or producing any documentary evidences contrary to the evidences filed by the assessee. Even otherwise, Ld. DR has not filed any contrary evidences before us to falsify the claim of the assessee. Therefore, on the basis of the documentary evidences filed by the assessee for substantiating the claim and the genuineness of purchase packing material amounting to Rs. 46,52,359/- from two parties i.e. M/s DD Motors Corporation and M/s Amit Trading Co. are quite genuine. We are of the view that Ld. CIT(A) has wrongly dismissed the appeal filed by the assessee by upholding the order of the Assessing Officer on merits which is not sustainable in the eyes of law. Keeping in view of the facts and circumstances of the case as explained above, the addition confirmed by the Ld. CIT(A) is not tenable under the law, hence, the same deserve to be deleted. Accordingly, we delete the addition in dispute and allow the ground no. 2 in the appeal no. 2032/Kol/2017 (AY 2009-10).

10. Following the consistent view as taken in ITA No. 2032/Kol/2017 (AY 2010-11) as aforesaid, the similar additions in dispute in the ITA No. 2033/Kol/2017 (AY 2010-11) & ITA No. 107/Kol/2018 (AY 2011-12) also stand deleted.

11. In the result, the ITA No.107/Kol/2018 (AY 2011-12) is allowed and ITA No. 2032/Kol/2017 & 2033/Kol/2017 (AY 2009-10 & 2010-11) are partly allowed.

The decision is pronounced on 07.10.2020.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-

(H.S. SIDHU)
JUDICIAL MEMBER

“SRB”

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi