

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI C.N. PRASAD (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 4111/MUM/2019
Assessment Year: 2010-11**

Dy. Commissioner of Income
Tax-12(1)(1),
Room No. 128C, 1st Floor,
Aayakar Bhavan, Churchgate,
Mumbai-400020.

Appellant

M/s American Spring & Pressing
Works Pvt. Ltd.,
Aspee House, B.J. Patel Road,
Post Box No. 7602 Malad (W),
Mumbai-400064.

**PAN No. AAACA 8979 P
Respondent**

Revenue by : Mr. Brajendra Kumar, DR
Assessee by : Mr. B.P. Purohit, AR

Date of Hearing : 06/01/2021
Date of pronouncement : 18/01/2021

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the Revenue. The relevant assessment year is 2010-11. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-20, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) r.w.s. 147 the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the Revenue read as under :

1. Whether on the facts and circumstances of the case and in law, Ld. CIT(A) was justified in deleting the addition of Rs.1,88,768/- made by the AO on account of

- bogus purchases without appreciating the fact that assessee failed to establish the genuineness of the purchases.
2. On the facts and circumstances of the case the ITAT is requested to entertain this appeal though the tax effect is below the monetary limit prescribed in the CBDT instruction no.3/2018 dated 11.07.2018 as amended on 20.08.2018 as the case falls in the exception provided in para 10(e) of the said instruction in as much as the addition is based on information received from external sources in the nature of law enforcement agencies, namely, Sales Tax Authorities.
 3. The appellant submits that the order of the Ld. CIT(A) on the grounds be set aside and that of the Assessing Officer be restored.

3. Briefly stated, the facts of the case are that the assessee filed its return of income for the assessment year (AY) 2010-11 on 30.09.2010 declaring total income at Rs.2,15,36,770/-. On receipt of information from the Sales Tax Department, Government of Maharashtra that the assessee had obtained accommodation entries of Rs.15,10,144/- from Jay Enterprises, the Assessing Officer (AO) reopened the assessment by issuing notice u/s 148 dated 23.03.2015. In response to it, the assessee filed a reply stating that the return originally filed on 30.09.2010 may be treated as return in response to notice u/s 148 of the Act. During the course of reassessment proceedings, the AO issued notice u/s 133(6) dated 01.09.2015 to Jay Enterprises in the address given by the assessee for verification of the transaction. This was followed by a reminder dated 11.12.2015 to Jay Enterprises. However, there was no response from Jay Enterprises. By the said notice u/s 133(6), M/s Jay Enterprises was requested by the AO to furnish the following information/details/documents :

1. Copies of Income Tax Returns, computation of income, Balance Sheet and Profit & Loss account with Annexures and Schedules thereto for the A.Y. 2010-11.
2. Purchase orders, invoices, lorry receipts, check post entries, gate entries, goods receipt notes, issue of material, production record of consumption, delivery challans, Octroi charges in relation to the goods supplied to the assessee from A.Y. 2009-10 to till date.
3. Extract of Bank Statement(s) reflecting the relevant entries in relation to transactions with the assessee company till date.
4. Copy of ledger account in relation to the assessee company from A.Y. 2009-10 to till date.
5. Details of goods purchased by the assessee, which were supplied to the aforesaid parties, along with copy of purchase bill and ledger account of the parties from whom goods were purchased.

As recorded by the AO, the assessee *vide* its letter dated 30.11.2015 filed objections to the notice issued u/s 148 of the Act. The said objections were disposed off by the AO *vide* his office order dated 11.12.2015. Subsequently, the assessee *vide* letter dated 04.01.2016 again filed objections to the re-assessment proceedings. The AO gave a reply to the assessee *vide* letter dated 01.02.2016 along with a copy of the sworn statement dated 12.08.2011 recorded by Shri Girish B. Shah, Proprietor of M/s Jay Enterprises before the Sales Tax Authorities along with his affidavit-cum-declaration stating that he had never entered into any true sale or purchase transactions through the proprietorship firm M/s Jay Enterprises.

During the course of reassessment proceedings, as recorded by the AO the assessee filed copy of ledger account of Jay Enterprises in its books of accounts and also purchase bills of the above party.

However, the AO was not convinced with the above reply of the assessee on the ground that as per the information received from the Sales Tax Department, Government of Maharashtra, the assessee had obtained bogus purchase bills amounting to Rs.15,10,144/- from M/s Jay Enterprises and therefore, estimated the profit @ 12.5% on the disputed purchases of Rs.15,10,144/-, which comes to Rs.1,88,768/-. Accordingly, the AO made an addition of Rs.1,88,768/- to the income shown by the assessee.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that *vide* order dated 28.03.2019, the Ld. CIT(A) deleted the disallowance of Rs.1,88,768/- made by the AO by observing that :

“4.4.1 I have considered the rival contentions. I find that the AO has relied entirely on the information received from the DGIT investigation. In the course of reassessment proceedings, the AO could not point out any discrepancy in the appellant's books of account or records. Nor has the AO pointed out any non-compliance or default on the part of the appellant in furnishing any information or document called for. In the course of assessment proceedings the AO issued notice under section 133(6) calling for information from Jay Enterprise. The AO has stated that Jay Enterprise did not furnish information. It appears from the tenor of the impugned order that the AO treated the non-compliance by Jay Enterprise as an evidence that the purchase claimed by the appellant was not genuine. Clearly, the non-compliance by Jay Enterprise cannot be an evidence against the appellant. In para 4.5 of the assessment order, the AO has referred to “anomalies with regard to the purchase bills procured from aforesaid hawala parties as pointed out in the preceding paragraphs”. But I find from the assessment order that the no such anomalies were mentioned in the paras preceding para 4.5 of the order.

4.4.2 In view of the above, I hold that the AO was not justified in disallowing 12.5% of the purchases claimed to have been made from Jay Enterprises. Accordingly, I direct the AO to relieve the disallowance of Rs.1,88,768/-. In the result, ground of appeal No. 1 is allowed.”

5. Before us, the Ld. Departmental Representative (DR) relies on the judgment of the Hon’ble Bombay High Court in *Pr. CIT v. Jakharia Fabric (P.) Ltd.* (2020) 118 taxmann.com 406 (Bom) and submits that in the facts and circumstances of the case, the AO has rightly estimated the profit @ 12.5% on the disputed purchases of Rs.15,10,144/- and made an addition of Rs.1,88,768/-.

On the other hand, the Ld. counsel for the assessee relies on the order of the Ld. CIT(A) and submits that the same be affirmed.

6. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decisions are given below.

In *Jakharia Fabric (P.) Ltd.* (supra), it is held by the Hon’ble Bombay High Court that “where information was received by the Assessing Officer to the effect that eight parties from whom purchases were made by the assessee, engaged in job work of dying of fabrics were hawala dealers who had issued bogus bills and he treated aforesaid purchases as bogus purchases, since without purchase of materials, it was not possible for assessee to complete job work of dying and entire purchases could not be added as bogus, profit element embedded in such transaction had to be added to total income of assessee.”

As mentioned earlier, the AO had informed *vide* letter dated 01.02.2016, the assessee of the nature of transactions by enclosing a copy of the sworn statement dated 12.08.2011 recorded by Shri Girish B. Shah, Proprietor of M/s Jay Enterprises, before the sales tax authorities along with his affidavit-cum-declaration stating that he had never entered into any true sale or purchase transaction through his proprietorship firm M/s Jay Enterprises. Further, there was no response by M/s Jay Enterprises to the notice u/s 133(6) issued by the AO. However, as recorded by the AO, the assessee filed before him copy of the ledger account of the said party in assessee's books of accounts and also the purchase bills.

In such a scenario, we are of the considered view that the ratio laid down in *Jakharia Fabric (P.) Ltd.* (supra) observing that profit element embedded in such transaction has to be added to the total income of the assessee is applicable to the present case. The nature of business in the instant case is manufacturing and selling of agricultural equipments and implements. Considering the nature of business of the assessee, we set aside the order of the Ld. CIT(A) and direct the AO to estimate profit @ 4% on the disputed purchases of Rs.15,10,144/- and make an addition of Rs.60,400/-only.

7. In the result, the appeal is partly allowed.

Order pronounced in the open Court on 18.01.2021.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;
Dated: 18.01.2021
Alindra, P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Assistant Registrar)
ITAT, Mumbai

		Date	Initials	
	Original dictation pad is enclosed at the end of file			
1.	Draft dictated on: Computer	14.01.2021		Sr. PS/PS
2.	Draft placed before author:	14.01.2021		Sr. PS/PS
3.	Draft proposed & placed before the second member:			JM/AM
4.	Draft discussed/approved by Second Member:			JM/AM
5.	Approved Draft comes to the Sr. PS/PS:			Sr. PS/PS
6.	Order pronounced on:			Sr. PS/PS
7.	File sent to the Bench Clerk:			
8.	Date on which file goes to the Head Clerk:			Sr. PS/PS
9.	Date on which file goes to AR			
10.	Date of dispatch of Order:			