

**IN THE INCOME TAX APPELLATE TRIBUNAL  
[DELHI BENCH "C": NEW DELHI]**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
(Through Video Conferencing)**

ITAs. 5031, 5033, 5069, 5070 & 5034/Del/2017  
(Assessment Years: 2008-09 2009-10, 2010-11, 2011-12 and 12-13,)

ACIT, Central Circle : 19, New Delhi.  (Appellant)	Vs.	M/s. Jay Ambey Aromatics, New Delhi – 110 066. SIDCO Industrial Complex, Near ESI Hospital, Bari Brahmana, Jammu (J & K) <b>PAN : AAEFJ6381K</b>  (Respondent)
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Assessee by :	None
Department by :	Ms. Sunita Singh [CIT] – DR;
Date of Hearing	15/07/2021
Date of pronouncement	15/07/2021

**ORDER**

**PER PRASHANT MAHARISHI, A. M.**

- 01 These four appeals are filed by the Revenue against separate orders of the Ld. Commissioner of Income Tax (Appeals)-27, New Delhi, for assessment years 2008 – 09 to 2011-12. All these appeals involved common issues. These were heard together and are being disposed of, for the sake of convenience, by this common order.
- 02 Another Appeal for assessment year 2012 – 13 is also filed by the revenue wherein the challenges by two the deletion of the addition of ₹ 424,341,000/- made by AO on account of bogus purchases on protective basis in the hands of the assessee and disallowance of ₹ 552,505/- on account of disallowance of the manufacturing expenses along with the rejection of the books of accounts u/s 145 (3) of the income tax act 1961.
- 03 Grounds of appeal raised by the Revenue for all these years are as under:-

**ITA. 5069/Del/2017 (Assessment year : 2008-09) :**

“1) The CIT (A) has erred on facts and in law in law and on facts in allowing the appeal of the assessee without truly appreciating the factual matrix of the case.

2) The Ld. CIT(A) has erred in law in relying on Kabul Chawla 61 taxman.com 412 (Delhi) and in holding that completed assessment could not have been interfered by the AO by making the assessment u/s 153A of the Act does not stipulates any such conditionality. In the relied case of CIT Vs Kabul Chawla, ITA No. 707/2014 and others dated 28.08.2015 (2015) 61 taxman.com 412 (Delhi) departments SLP is pending in Supreme Court and decision is still awaited.

3) The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in deleting the addition of Rs.79,57,01,894/- made by AO on account of bogus purchase.

4) The Ld. CIT(A) has erred in accepting assessee contention that the Supplier of goods have submitted the reply/confirmation in respect to notice u/s 133(6) when the Assessing Officer specifically mentioned that no reply were filed in response to notice u/s 133(6), therefore, assumption of the contention that they have filed the reply without verifying from the assessment records or referring the matter to AO is clear violation of rule 46A of the I.T. Act being additional evidence accepted in appellate proceedings.

5) The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in deleting the addition of Rs.15,76,20,249/- made by AO on account of disallowance of deduction u/s 80IB(4) of the Act.

6) The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in deleting the addition of Rs.1,10,76,317/- on account of disallowance of manufacturing expenses.

7) The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts allowing assessee's plea for rejection of books of account u/s 145(3) of the IT act, 1961.

8) (a) The order of the CIT(Appeals) is erroneous and not tenable in law and on facts;

(b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal. “

**ITA. 5031/Del/2017 (Assessment year : 2009-10) :**

“1) The CIT (A) has erred on facts and in law in law and on facts in allowing the appeal of the assessee without truly appreciating the factual matrix of the case.

- 2) The Ld. CIT(A) has erred in law in relying on Kabul Chawla 61 taxman.com 412 (Delhi) and in holding that completed assessment could not have been interfered by the AO by making the assessment u/s 153A of the Act does not stipulates any such conditionality. In the relied case of CIT Vs Kabul Chawla, ITA No. 707/2014 and others dated 28.08.2015 (2015) 61 taxman.com 412 (Delhi) departments SLP is pending in Supreme Court and decision is still awaited.
- 3) The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in deleting the addition of Rs.38,70,69,138/- made by AO on account of bogus purchase.
- 4) The Ld. CIT(A) has erred in accepting assessee contention that the Supplier of goods have submitted the reply/confirmation in respect to notice u/s 133(6) when the Assessing Officer specifically mentioned that no reply were filed in response to notice u/s 133(6), therefore, assumption of the contention that they have filed the reply without verifying from the assessment records or referring the matter to AO is clear violation of rule 46A of the I.T. Act being additional evidence accepted in appellate proceedings.
- 5) The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in deleting the addition of Rs. 1,20,40,153/- made by AO on account of disallowance of deduction u/s 80IB(4) of the Act.
- 6) The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in deleting the addition of Rs.84,54,928/-on account of disallowance of manufacturing expenses.
- 7) The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts allowing assessee's plea for rejection of books of account u/s 145(3) of the IT act, 1961.
- 8) (a) The order of the CIT(Appeals) is erroneous and not tenable in law and on facts;
- (b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal. “

**ITA. 5070/Del/2017 (Assessment year : 2010-11) :**

“1) The CIT (A) has erred on facts and in law in law and on facts in allowing the appeal of the assessee without truly appreciating the factual matrix of the case.

2) The Ld. CIT(A) has erred in law in relying on Kabul Chawla 61 taxman.com 412 (Delhi) and in holding that completed assessment could not have been interfered by the AO by making the assessment u/s 153A of the Act does not stipulates any such conditionality. In the relied case of CIT Vs Kabul Chawla, ITA No. 707/2014 and others dated 28.08.2015 (2015) 61 taxman.com 412 (Delhi)

departments SLP is pending in Supreme Court and decision is still awaited.

3) The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in deleting the addition of Rs.49,54,18,835/- made by AO on account of bogus purchase.

4) The Ld. CIT(A) has erred in accepting assessee contention that the Supplier of goods have submitted the reply/confirmation in respect to notice u/s 133(6) when the Assessing Officer specifically mentioned that no reply were filed in response to notice u/s 133(6), therefore, assumption of the contention that they have filed the reply without verifying from the assessment records or referring the matter to AO is clear violation of rule 46A of the I.T. Act being additional evidence accepted in appellate proceedings.

5) The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in deleting the addition of Rs.2,33,84,103/- made by AO on account of disallowance of deduction u/s 80IB(4) of the Act.

6) The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in deleting the addition of Rs.64,88,522/- on account of disallowance of manufacturing expenses.

7) The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts allowing assessee's plea for rejection of books of account u/s 145(3) of the IT act, 1961.

8) (a) The order of the CIT(Appeals) is erroneous and not tenable in law and on facts;

(b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal. “

**ITA. 5033/Del/2017 (Assessment year : 2011-12) :**

“1) The CIT (A) has erred on facts and in law in law and on facts in allowing the appeal of the assessee without truly appreciating the factual matrix of the case.

2) The Ld. CIT(A) has erred in law in relying on Kabul Chawla 61 taxman.com 412 (Delhi) and in holding that completed assessment could not have been interfered by the AO by making the assessment u/s 153A of the Act does not stipulates any such conditionality. In the relied case of CIT Vs Kabul Chawla, ITA No. 707/2014 and others dated 28.08.2015 (2015) 61 taxman.com 412 (Delhi) departments SLP is pending in Supreme Court and decision is still awaited.

3) The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in deleting the addition of Rs.17,64,47,250/- made by AO on account of bogus purchase from M/s. A.K. Trading Co. and from M/s. Om Trading Co.

4) The Ld. CIT(A) has erred in accepting assessee contention that the Supplier of goods have submitted the reply/confirmation in respect to notice u/s 133(6) when the Assessing Officer specifically mentioned that no reply were filed in response to notice u/s 133(6), therefore, assumption of the contention that they have filed the reply without verifying from the assessment records or referring the matter to AO is clear violation of rule 46A of the I.T. Act being additional evidence accepted in appellate proceedings.

5) The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in deleting the addition of Rs.2,47,04,117/- made by AO on account of disallowance of deduction u/s 80IB(4) of the Act.

6) The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in deleting the addition of Rs.88,35,756/- on account of disallowance of manufacturing expenses.

7) The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts allowing assessee's plea for rejection of books of account u/s 145(3) of the IT act, 1961.

8) (a) The order of the CIT(Appeals) is erroneous and not tenable in law and on facts;

(b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal. “

**ITA. 5034/Del/2017 (Assessment year : 2012-13) :**

“1) The CIT (A) has erred on facts and in law in law and on facts in allowing the appeal of the assessee without truly appreciating the factual matrix of the case.

2) The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in deleting the addition of Rs.42,43,41,000/- made by AO on account of bogus purchase.

3) The Ld. CIT(A) has erred in accepting assessee contention that the Supplier of goods have submitted the reply/confirmation in respect to notice u/s 133(6) when the Assessing Officer specifically mentioned that no reply were filed in response to notice u/s 133(6), therefore, assumption of the contention that they have filed the reply without verifying from the assessment records or referring the matter to AO is clear violation of rule 46A of the I.T. Act being additional evidence accepted in appellate proceedings.

4) The Ld. Commissioner of Income Tax (Appeals) has erred in law

and on the facts in deleting the addition of Rs.5,52,505/- on account of disallowance of manufacturing expenses.

5) The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts allowing assessee's plea for rejection of books of account u/s 145(3) of the IT act, 1961.

6) (a) The order of the CIT(Appeals) is erroneous and not tenable in law and on facts;

(b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal. “

04 The first year in this case is assessment year 2008 – 09. Therefore facts for this year. A search and seizure operation u/s 132 of the income tax act was conducted by the investigation wing of the department on 20/01/2014 on M/s Sharp group of cases. The business premises of the assessee were also covered. The main allegation against the sharp group was that it shows bogus profit in its tax exempt entities which are claiming exemptions u/s 80 IB of the income tax act. It was also the allegation that the profit shown were on papers only on that very high-volume to claim deduction. The second allegation was the generation of unaccounted money where the market information with the Department shows that the most of the purchase and sales are out of books. Therefore notice u/s 153A of the income tax were act was issued to the assessee on 13/3/2000 4015 in response to the said notice the assessee filed return of income on 6/4/2015 declaring a total income of ₹ 480/-.

05 Based on the above information and after the detailed enquiry the learned assessing officer made an addition on account of disallowance of the bogus purchases on protective basis in the hands of the assessee of ₹ 795,701,894/- and addition on the substantive basis was made in the hands of the sharp global. The disallowance u/s 80 IB of the income tax act of the 15,76,20,249/- was made and further disallowance of Manufacturing expenses of Rs 110,76,317 was also made. Accordingly the income of the assessee was assessed at ₹ 964,398,940/- against the returned income of ₹ 480 after claiming deduction u/s 80 IB of the income tax act. The assessment order u/s 153A read with Section 143 (3) of the income tax act 1961 was passed on 31<sup>st</sup> of 2016.

06 Against this the assessee preferred an appeal before the learned CIT – A. The learned CIT – A also held that the entire assessment order has no reference whatsoever to any incriminating material unearthed by the income tax Department during the course of search and therefore in terms of the decision of the honourable jurisdictional High Court in case of CIT versus Kabul Chawla the complete assessment of the assessee could not have been interfered by the AO by making assessment u/s 153A and therefore making an addition without any incriminating material. He therefore held that the entire addition made to the income in the impugned assessment order requires to be deleted on this ground itself. On the merits, Firstly the learned CIT appeal The addition on account of bogus purchases with respect to A K Trading company of ₹ 498,496,874/- was deleted in view of the fact that entire purchases for the assessment year 2008 – 09 to 2011 – 12 were duly accepted as genuine purchases in the original assessment proceedings u/s 143 (3) of the act. Further the purchases made from this company directly by sharp into limited for assessment year 2009 – 10 to 2011 – 12 are been accepted as in mind in the hands of that party in the block assessment u/s 153A/143 (3) of the act. Moreover the assessee has submitted the permanent account number as well as the value-added tax numbers of the above party the confirmations were also furnished. Purchases from Jay Bharat traders of ₹ 297,205,020/- was also deleted as in case of assessment of sharp into limited u/s 153A of the same group the purchases from this party is were accepted as genuine. The learned CIT – A also rejected the order of the learned assessing officer rejecting the books of accounts for the reason that assessee has maintained complete month -wise in item is quantitative details of raw material purchased, finished goods produced on sales and proper books of accounts as per law duly recorded the entire purchase in the books of accounts, stock register is, VAT returns and excise returns et cetera. He also allowed the deduction u/s 80 IB of the income tax act to the assessee holding that unit of the assessee as an industrial undertaking which is purchased from a trillion carried manufacturing activities at its plants and further for the reason that deduction u/s 80 IB which was already allowed to the assessee in previous assessment years that is to thousand six – 07 to 2010 – 11 therefore the

present disallowance of deduction u/s 80 IB (4) of ₹ 157,62,249 was also allowed. The disallowance of various expenditure of Jammu unit was also allowed by the learned CIT – A as he has held that there are manufacturing activities carried on by the assessee. Accordingly appeal of the assessee was allowed.

- 07 The revenue is aggrieved with the order of the learned CIT – A and therefore in this appeal. Adverting to the facts of the case the learned CIT DR vehemently submitted that the learned CIT – A as incorrectly held that if there is no incriminating material found during the course of search, no addition can be made in the hands of the assessee. She submitted that the decision of the honourable Delhi High Court in case of Kabul Chawla is not accepted by the revenue is pending for final decision by the honourable Supreme Court.
- 08 Despite notice none appeared on behalf of the assessee. From the order sheet we find that on earlier occasions i.e. 21/12/2020, 24/2/21 and 14<sup>th</sup> July 21 these matters were called for hearing but none appeared on behalf of the assessee. In view of this we proceed to decide the issue is on the merits of the case in absence of the assessee as per facts available on record.
- 09 Identical additions are made in the hence of the assessee for assessment year 2009 – 10 to 2012 – 13.
- 10 We have carefully considered the rival contentions and perused the orders of the lower authorities. Briefly the facts of the case shows that there was a search u/s 132 of the income tax act on 20/1/2014 at the business premises of the assessee and therefore the proceedings were taken up u/s 153A of the income tax act. We tabulate the date chart for all these assessment years as Under:-

A Y	Date of Filing of returns	Date of Assessment u/s 143 (3) of the Act	Date of search	Status of assessment on the date of search
2008-09	26/09/2008	30/12/2010	21/01/2014	Concluded

2009-10	19/09/2009	28/12/2011	20/01/2014	Concluded
2010-11	8/10/2010	10/12/2012	20/01/2014	Concluded
2011-12	28/09/2011	29/11/2013	20/01/2014	Concluded
2012-13	17/09/2012	Pending	20/01/2014	Pending

- 11 It is categorically held by the learned CIT – A that for assessment year 2008 – 09 till assessment year 2011 – 12, no incriminating material was found during the course of search pertaining to these years , we also do not find any material referred in the assessment order, the learned CIT DR also could not show us any incriminating material for all these years, therefore as these are the concluded assessment years, which could have been disturbed only if there is any incriminating material found during the course of search, we also find that the issue is squarely covered by the decision of the honourable Delhi High Court in case of CIT V Kabul Chawla [2015] 61 taxmann.com 412 (Delhi)/[2015] 234 Taxman 300 (Delhi)/[2016] 380 ITR 573 (Delhi)/[2015] 281 CTR 45 (Delhi) . Therefore we uphold the order of the learned CIT – A deleting all the additions for all these years i.e. assessment year 2008 – 09 to assessment year 2011 – 12 and appeal of the revenue for all these years are dismissed.
- 12 Coming to the assessment year 2012 – 13 the learned assessing officer has made disallowance of bogus purchases amounting to ₹ 424,341,000/- on protective basis in the hands of the assessee and on substantive basis the addition is made in the hands of another assessee M/s sharp global Ltd for the reason that assessee unit is being shown as hundred percent captive unit of sharp global Ltd with hundred percent supplies made to that entity by the assessee. Therefore, the assessing officer has made substantive addition in the hands of the beneficiary, and protective addition in the hands of the assessee. The order was passed by the learned assessing officer under the provisions of Section 153A read with Section 143 (3) of the

income tax act on 31<sup>st</sup> of March 2016. Wherein he made the disallowance of bogus purchases of ₹ 424,341,000 as protective basis in the hence of the assessee. Further the disallowance of manufacturing expenses of ₹ 552,505 also made for the reason that AO was of the view that assessee is not carrying on any manufacturing activity and it was found to be not entitled for deduction u/s 80 IB of the income tax act and accordingly the manufacturing expenses of the above amount claimed by the assessee company were also disallowed.

- 13 On appeal before the learned CIT – A, he deleted the total disallowance of bogus purchases for the reason that assessee has furnished the income tax returns, audited balance sheets, trading and profit and loss account, tax audit report of the parties from womb the purchases have been made for preceding year as well as succeeding assessment years. Income tax assessment orders were also placed on record. Therefore the learned CIT – A held that the parties were genuine, supplies were recorded in the books of accounts, duly assessed to income tax and payments were also made through account paychecks. Further the proprietors of both the parties were held to be bogus by the learned assessing officer confirmed the sales to the assessee. The learned CIT – A also recorded a categorical finding that the material purchased from the suppliers by the assessee was subsequently sold to another entity (in whose hands the addition has been made on substantive basis). He also gave finding about the transportation of the material to the units of the assessee and storage of the material at the unit of the assessee as well as with the suppliers. He also gave his own findings with respect to the rent being paid by one of these entities who supplied the material to the assessee and held it to be genuine. With respect to the equal amount of cash withdrawal from the bank account of the suppliers to womb the payments have been made by the assessee stating that both these companies (suppliers) have to make payment to the farmers from womb the Roma Trail was purchased and therefore cash withdrawals were made on immediate basis. He further held that the learned assessing officer has accepted the purchase of Roma Trail made from these two entities is genuine in case of another entity of the group for assessment year 2014 – 15 in scrutiny assessment order passed u/s 143 (3) of the act after considering

all the facts of the case. He further relied upon the decision of the several high courts to support the deletion of the addition.

14 We find that addition has been made in the hands of the assessee on protective basis, substantive addition has been made in the hands of another entity to whom assessee has supplied material. The learned departmental representative could not show us any evidence that in the hands of the parties where substantive additions have been made what is the fate of the said addition is. Unless, it is brought over knowledge the fate of substantive addition in the hands of another entity, the addition in the case of the assessee cannot be sustained. In view of this we set-aside this ground of appeal back to the file of the learned assessing officer to 1<sup>st</sup> ascertain the fate of addition made on substantive basis in the hands of another entity. If the addition is sustained there on substantive basis, the addition on protective basis in the hands of this assessee deserves to be deleted. If the addition is not sustained in the hands of that assessee on its own merits, even then the protective addition cannot be sustained in the hands of this assessee. If, a finding is arrived in the case of the assessee in whose case substantive addition is made holding that bogus purchases booked by this assessee and not to that party and therefore no addition can be made in the hands of that party then, in that case the addition is required to be tested in the hands of this party is once again a fresh. In view of this we set-aside ground number 2 and 3 of the appeal of the learned assessing officer back to the learned assessing officer for deciding the issue afresh as per our above directions. Accordingly ground number 2 and 3 of the appeal of the learned AO are allowed for statistical purposes.

15 With respect to ground number 4 and 5 we hold that as assessee has been already allowed deduction u/s 80 IB of the income tax act in earlier years holding that it is engaged in the Manufacturing activities in this year it cannot be disturbed. Accordingly both these grounds of the appeal of the learned assessing officer are dismissed.

16 Accordingly appeal of the learned assessing officer for assessment year 2012 – 13 is partly allowed for statistical purposes and appeals of the learned assessing officer for assessment year 2008 – 09 to AY 2011-12 are dismissed.

Order pronounced in the open court on 15 /07/2021.

-Sd/-  
**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

-Sd/-  
**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

Dated: 15/07/2021.

\*MEHTA\*

Copy forwarded to

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi