

आयकर अपीलीय अधिकरण "D" न्यायपीठ मुंबई में

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस रिफाउर रहमान, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VP AND SHRI S. RIFAUR RAHMAN, AM

आयकर अपील सं./ ITA No. 7414/Mum/2018
(निर्धारण वर्ष / Assessment Year 2012-13)

आयकर अपील सं./ ITA No. 7415/Mum/2018
(निर्धारण वर्ष / Assessment Year 2014-15)

आयकर अपील सं./ ITA No. 7416/Mum/2018
(निर्धारण वर्ष / Assessment Year 2013-14)

Mirah Dekor Pvt. Ltd 208, Parvati Industrial Estate, Sunmill Compound, Lower Parel (W), Mumbai-13	बनाम/ Vs.	The Dy. Commissioner of Income Tax, Circle 2(1), Pratishtha Bhavan, 8 th Floor, Mumbai-2
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AABCM4262A		

अपीलार्थी की ओर से/ Appellant by	:	Shri K.P. Dewani, AR
प्रत्यर्थी की ओर से/ Respondent by	:	Ms. Leena Srivastava, CIT DR

सुनवाई की तारीख / Date of hearing:	12.07.2021
घोषणा की तारीख / Date of pronouncement:	13.08.2021

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष के द्वारा /

PER MAHAVIR SINGH, VP:

These appeals of the assessee are arising out of orders of the Commissioner of Income Tax (Appeals)-48, Mumbai [in short CIT(A)], in Appeal Nos. CIT(A)-48/I.T-116, 135 &136 &/DCCC-2(1)/2017-18 vide dated 15.10.2018 & 31.10.2018. The Assessments were framed by the Dy. Commissioner of Income Tax, CC 2(1),

Mumbai (in short DCIT/ AO) for the A.Ys. 2012-13 to 2014-15 vide order even date 28.12.2017 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The first issue in these three appeals of assessee is against the order of CIT(A) confirming the addition of commission made by Assessing Officer on notional basis by treating the purchase from M/s Sarvesh Mercantile Pvt. Ltd and sales made to M/s Ecoscapes International Pvt. Ltd. For this, assessee has raised identical worded grounds in all the three years but for the sake of brevity, we are reproducing the grounds from Assessment Year 2012-13 in ITA No.7414/Mum/2018 and will decide the issue. The learned CIT DR, Ms. Leena Srivastava also agreed that on the issue of commission on purchases added on notional basis by treating the purchases as bogus is common in all the three years, hence, ground Nos. 1 & 2 read as under:-

"1. The Hon'ble CIT(Appeals) erred in confirming the addition of commission made by Ld. D.C.I.T. of Rs.3,20,000/- on notional basis by treating genuine purchase from M/s Sarvesh Mercantile Pvt. Ltd. by Appellant as bogus and without any corroborating evidence to prove the receipt/ payment of commission in cash.

2. The Hon'ble CIT(Appeals) erred in confirming the addition of commission made by Ld. D.C.I.T. of Rs.15,32,728/- on notional basis by treating genuine sales made by Appellant to M/s Ecoscapes International Pvt. Ltd.

as bogus and without any corroborating evidence to prove the receipt/ payment of commission in cash.”

3. We have heard the rival contentions and gone through the facts and circumstances of the case. Briefly stated facts are that the assessee company is engaged in the business of trading in cloth/ textile/ fabrics/ furniture/ gift articles and allied items. The assessee is also engaged in the business of generating and distributing power through wind energy. A search under section 132 of the Act was carried out in the case of the assessee and its group companies on 15.03.2015. Consequently, notice under section 153A was issued and assessee filed its return of income. The Assessing Officer noted that the assessee in the course of business made net purchase of Rs.1,59,99,998/- from Sarvesh Mercantile Pvt. Ltd. and net sale of Rs. 7,66,36,383/- to Ecoscapes International Pvt. Ltd. The assessee has also made net sales of Rs.3,11,135/- i.e. gross sales of Rs.3,50,021/- less vat of Rs.38,892/- to M/s Rare Earth Div of Ecoscapes International Pvt. Ltd. The Assessing Officer during the course of assessment proceedings called for the details of purchases made from Ecoscapes International Pvt. Ltd. and Rare Earth-A Div of Ecoscapes International Pvt. Ltd. to prove the genuineness of the transactions and sales made to Sarvesh Mercantile Pvt. Ltd. and Ecoscapes International Pvt. Ltd. He asked why the same should not be treated as unproved purchases and brought to tax. The assessee vide reply dated 24.10.2017 submitted the copies of ledger account of Sarvesh Mercantile Pvt. Ltd and Ecoscapes International Pvt. Ltd. to the Assessing Officer. It was also stated that during the year under consideration there is no sales/ purchase transaction was entered in

to with M/s Symcom. It was also clarified that M/s Ecoscapes International Pvt. Ltd. is not controlled by Mr. Kiritkumar Tarachand Doshi. Further, the sales and purchase transactions entered into during the year under consideration by the assessee company with Ecoscapes International Pvt. Ltd. are independent genuine sales transactions and nothing to do with purchases transactions from Sarvesh Mercantile Pvt. Ltd. The Assessing Officer required the assessee to furnish copy of 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, furnish evidences of octroi charges paid with declaration of goods made to the Octroi department with their acknowledgement for the delivery of the goods received, furnish copy of service tax and VAT return alongwith all annexures and schedules, furnish copy of PF & ESIC returns, furnish complete details of payment made by M/s Ecoscape International Pvt. Ltd. The assessee in connection with the above submitted the following details:-

"1. Copy of Ledger A/c of company in the books of M/s Ecoscapes international Pvt. Ltd. and M/s Rare Earth – Adiv of M/s Ecoscapes International Pvt. Ltd. alongwith bank statement of M/s Ecoscapes international Pvt. Ltd. with duly highlighting the transaction with us is enclosed herewith as "Annexure-1".

2. *Copy of Audit report, audited balance sheet & Profit & Loss a/c along with all schedules of Ecoscapes International Pvt. Ltd. is enclosed herewith as "Annexure-2.*

3. *Copies of Purchase invoice, delivery challan in relation to purchase made from M/s Ecoscapes international Pvt. Ltd. during the year under consideration along with Courier receipts are enclosed herewith as "Annexure-3".*

4. *Copies of service Tax returns and VAT/CST Return of company (Mirah Dekor Pvt. Ltd.) along with VAT/CST paid challans and VAT audit report are enclosed herewith as "Annexure-4."*

5. *During the year, M/s Ecoscapes International Pvt. Ltd. has not made any payment to government authority on behalf of the company.?"*

4. The Assessing Officer has not believed in the submissions of the assessee and treated the sales and purchases as bogus and recorded in the books of account and added the commission at the rate of 2% on purchases made from Sarvesh Mercantile Pvt. Ltd amounting to Rs.3.20 lakhs and on sale transaction made to Ecoscapes International Pvt. Ltd. amounting to Rs.15,32,728/-, thereby making addition of Rs.18,52,728/-. The CIT(A) confirmed the action of the Assessing Officer by stating as under:-

"Onus on assessee:- In the light of above facts of the case, onus was wholly on assessee to produce some

corroborative evidences to substantiate its claim when show cause was given by AO regarding doubt on genuineness of transactions with their two parties.

Case laws relied are irrelevant in view of facts of the assessee The various case laws relied upon by assessee are irrelevant as they are on different facts. In view of facts of assessee's case that apart from self serving ledger account or bank transaction, no other documentary evidence to substantiate the genuineness movement and purchase/ sale of goods, reliance on these case laws is dismissed.

5.1.7 In view of the above facts of the case and total failure on part of the assessee to prove the genuineness of the purchase/ sales made, I is held that there is no anomaly in the order of the AO. In fact, order of AO is very reasonable and fair as commission of only 2% is added back regarding there two parties."

Aggrieved, now assessee is in appeal before Tribunal on both the grounds.

5. At the outset, the learned Counsel for the assessee stated that this issue is fully covered by Tribunal's order in assessee's own case in ITA Nos. 5318 & 5319/Mum/2018 for Assessment Years 2010-11 & 11-12 vide order dated 01.12.2020, wherein Tribunal exactly on these two parties has considered the issue and deleted the commission by observing as under:-

"14. Upon careful consideration we find that pursuant to search and seizure action, the authorities below upon noting that there were bogus sales entry given by the assesses, have made notional 2% addition for commission earned on the said bogus sales. However it is also noted that the said sales have been included in income and the income so derived has also been taken into account in the assessment. We find that the assessee is correct in this regard that when the sale is taken into income, there cannot be a further addition of 2% notional addition for bogus sales. The same sale cannot be genuine and bogus at the same time. In this view of the matter the notional addition of 2% as bogus sales commission is not a sustainable.

15. The learned counsel of the assessee has raised various other grounds that in the submission above that observation of A.O. that M/s. Ecoscapes International Pvt. Ltd. is company controlled by Shri Kirti Kumar Tarachand Doshi is factually incorrect, that no evidence has been brought on record to show that assessee has paid any commission at 2% on the sales made to M/s. Ecospace International Pvt. Ltd.

16. Furthermore assessee's counsel has challenged that pursuant to search and seizure addition under section 153A is not permissible dehorse any incriminating material found during search. In this connection he referred to several

case laws as above. In this regard learned departmental representative submitted that this limb of assessee's argument was never there before any of the authorities below. In rebuttal learned counsel of the assessee claimed that this is purely a legal ground and goes to the root of the matter and as such assessee is entitled to raise the same.

17. Upon careful consideration we find that we have already held that when the sales have been accepted and taken into account in determining the income of the assessee there cannot be at the same time a notional 2% disallowance for commission on bogus sales, resulting in a double prejudice unsustainable in law. As noted above the sales cannot be correct and bogus at the same time. This follows the common law maxim of approbate and reprobate. We further note that when the addition has already been deleted by us on merits, in our considered opinion the challenge to addition on other aspects are now only of academic interest. Hence we are not engaging in to the same.

6. As the facts and circumstances of the case are exactly identical in these years also, respectfully, following the Tribunal's order in assessee's own case, as nothing was controverted by learned Sr. DR, we are deleting the addition of commission made by Assessing Officer on notional basis by treating the genuineness of purchases from Sarvesh Mercantile Pvt. Ltd and assessee as bogus and subsequent sales made by assessee to Ecoscapes International Pvt. Ltd as bogus

without any corroborating evidence to prove the receipt/ payment of commission in cash. We delete the addition and allow these two grounds of assessee's appeal.

7. Similar is the ground in Assessment Year 2013-14 in ITA No.7516/Mum/2018, i.e. ground No.1 regarding sales made by assessee to Ecoscapes International Pvt. Ltd. i.e. ground No. 1 which read as under:-

"1. The Hon'ble CIT(A) erred in confirming the addition of commission made by Ld. D.C.I.T of ₹5,85,280/- on notional basis by treating genuine sales made by Appellant to M/s Ecoscapes International Pvt. Ltd. as bogus and without any corroborating evidence to prove receipt/ payment of commission in cash."

8. Similar, is the grounds in Assessment Year 2014-15 in ITA No.7415/Mum/2018, wherein purchases made from Sarvesh Mercantile Pvt. Ltd by assessee was added by Assessing Officer and confirmed by CIT(A) i.e. commission on the above purchases. Similarly, confirming the addition of commission on sales made by assessee to Ecoscapes International Pvt. Ltd on notional basis.

9. Since, the facts and circumstances are exactly identical in these years also, respectfully following our finding in Para 6 of this order, we delete the addition of commission in these years also.

10. The next common issue in all these three appeals of assessee is against the order of CIT(A) confirming the action of the Assessing Officer in disallowing expenses relatable to exempt income by

invoking the provisions of Section 14A of the Act, read with Rule 8D of the Rules at Rs.1,29,74,532/- in Assessment Year 2012-13 at Rs. 2,08,97,247 in Assessment Year 2013-14 and at Rs. 3,10,82,872/- in Assessment Year 2014-15. For these common issues, the assessee has raised identically worded grounds in all these years.

11. At the outset, we have noticed that assessee in Assessment Year 2012-13 has received exempt income to the tune of Rs.91,096/- in Assessment Year 2013-14 at Rs.18,250/- and in Assessment Year 2014-15 at Rs.19,697/-. In all these years, these are the quantum of dividend, which was received and claimed as exempt. On this, the learned Counsel for the assessee as well as learned CIT DR agreed that this issue is covered by the decision of Hon'ble Supreme court in the case of Maxopp Investment Ltd. vs. CIT [2018] 402 ITR 640 (SC), wherein it is held that disallowance of section 14A read with Rule 8D of the Rules cannot exceed the exempt income claimed by assessee. Hence, we direct the Assessing Officer to restrict the disallowance to the extent of exempt income only. Hence, this common ground of the assessee in all the three appeals is partly allowed.

12. The only issue remains in Assessment Year 2013-14 i.e. in ITA No.7416/Mum/2018 is as regards to the addition of unexplained expenditure under section 69 of the Act in respect of paper found from Vijay Mishra and deduction claimed as per reconciliation statement. For this, assessee has raised the following ground No.7:-

"The Hon'ble CIT(Appeals) erred in ignoring the Appellant's claim for reduction in addition on account of paper found with Vijay Misha as per reconciliation statement of ₹69,39,134/-"

(however the correct figure in dispute is ₹ 68,52,034/-)

13. At the outset, the learned Counsel for the assessee took us through the assessment order and it drew our attention to the computation made in regard to addition of Rs.6,20,19,554/- and the relevant Para read ad under:-

The submission of the assessee has been perused and the same is acceptable. In view of the same the total expenditure as per Annexure A-1 & Annexure A-2 seized from Shri Vijay Mishra is produced here below;

Particulars	AY 2013-14	AY 2015-16	Total (Rs)
Declaration as per para 3 (iii) of the assessee	6,06,16,554	2,12,21,550	8,18,38,204
Less:- deductions (A)	13710		137100
Add:- Additions (B)	15,40,000	88,000	16,28,000
Revised declaration	6,20,19,554	2,13,09,500	8,33,29,054

14. The learned counsel for the assessee stated that the Assessing Officer has allowed deduction in column A of Rs.1,37,100/- whereas, the actual deduction should have been on account of statement of reconciliation to explain certain overlapping and other items which effected the correct calculation of amount of declaration at Rs.69,89,134/-. He referred to page 89 of assessee's paper book and the relevant read as under:-



Particulars	Amt. ₹	FY 2012-13	FY 2014-15	Total (Rs)
4. Amount kept with Umesh Vartak for safety custody out of amount received on 26 th July 2012 as per page no.4 (item no. 66 of Annexure A-1 & page No.8)	20,00,000	20,00,000		20,00,000
5. Amount kept with jitendra vithiani for safe custody out of amount received on 11 th September 2012 as per page no. 10 item no. 69 of Annexure A-1 & page no.9)	15,00,000	15,00,000		15,00,000
--				
7. Return of speed money out of ₹35,00,000/- paid on 11 th September 2012 as per page no. 10 (page No. 60)	14,66,000	14,66,000		14,66,000
8. Return of speed money out of ₹58,00,000/- paid on 31 st Auust 2012 as per page No.28 (page No. 62)	6,05,634	6,05,634		6,05,634
-				
-				
11. Rough notings (page No. 30)	3,75,000	3,75,000		3,75,000
-	-	-		
-	-	-		
14. Amount not found in bundle Item No. 12 of Annexure A-1 ii. Item No. 33 of Annexure A-1	18,000 24,500	18,000 24,500		18,000 24,500
15. This is double entry of page no 40 wherein Anand and collected by Kancan as per page no. 39 entry transaction	10,00,000	10,00,000		10,00,000
		69,89,134		

15. These particulars were prepared on the basis of ceased documents which are enclosed at assessee's paper book pages 99-123 as explained by assessee. According to Assessing

Officer, the learned Counsel, the Assessing Officer has made addition of Rs.6,20,19,554/- on the basis of seized documents inventorised as annexure A-1 and A-2 found from the bag of one Mr. Vijay Mishra. The assessee has explained this during the course of assessment proceedings and during rectification application under section 154 of the Act that the assessee has already offered income of Rs.5,51,67,520/- in respect of seized documents found from bag of Mr. Vijay Mishra. The Assessing Officer in his rectification order deleted ₹ 6,20,19,544/- but sustained the addition of ₹ 68,52,034/- being difference between the income offered by assessee and addition made by Assessing Officer. It was explained that the addition made by Assessing Officer of Rs.68,52,034/- is over and above the income offered, which is nothing but certain overlapping of entries and other items which effected the correct amount of declaration and these documents of Rs.68,52,034/- (documents are enclosed at assessee's paper book at pages 99-123) which resulted in duplication and double addition. It was contended that these notings are clearly dumb notings and rough scribbling and the assessee also pointed out very clearly that out of mistake of Rs.15.40 lacs by which amount to be assessed got increased and accepted by the Assessing Officer. It clearly pointed out that original figure computed was not correctly computed. We have also gone through these nothings and as well as loose papers, which are indicative of incomings and

outgoings but these notings does not indicate which amount pertain to which document and these are dumb notings. Even Revenue now could not controvert the above arguments, hence, we are of the view that addition made by Assessing Officer under section 69C of the Act of Rs.68,52,034/- is without any basis and hence, we delete the same. This issue of assessee's appeal is allowed.

16. In the Result, all these three appeals are partly allowed as indicated above.

Order pronounced in the open court on 13.08.2021.

Sd/-

(एस रिफऔर रहमान/ S. RIFAUR RAHMAN)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 13. 08.2021

सुदीप सरकार ,व .निजी सचिव/ *Sudip Sarkar, Sr.PS*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / **Guard file.**

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai