

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA. Nos. 2826, 2827 and 2828/Del/2016
(Assessment Years: 2007-08, 2008-09 & 2009-10)

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| DCIT, Central Circle : 28, New Delhi. | Vs. | M/s. Alchem International Ltd., 301 – Avalon Apartments, Mehrauli Gurgaon Road, Manglapuri, New Delhi – 110 030. PAN: AAACA2251L |
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AND

C. O. Nos. 226, 227 & 228/Del/2016
[in ITA. Nos. 2826, 2827 and 2828/Del/2016]
(Assessment Years: 2007-08, 2008-09 & 2009-10)

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| M/s. Alchem International Ltd., 301 – Avalon Apartments, Mehrauli Gurgaon Road, Manglapuri, New Delhi – 110 030. PAN: AAACA2251L | Vs. | DCIT, Central Circle : 28, New Delhi. |
| (Appellants) | | (Respondents) |

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|-------------------------|----------------------------------|
| Assessee by : | Shri [Dr.] Rakesh Gupta, Adv., |
| Department by: | Ms. Shivani Singh [CIT] - D. R.; |
| Date of Hearing : | 16/09/2021 |
| Date of pronouncement : | 07/12/2021 |

ORDER

PER AMIT SHUKLA, J. M.

1. These Departmental appeals & Assessee's Cross objections are filed against the order passed by Commissioner of Income Tax (Appeal)-29, New Delhi's order dated 29.2.2016 (hereinafter

as 'CIT(A)'). Departmental grounds of appeal and assessee's cross objections are reproduced as under:

“ITA 2826/Del/2016 & CO 226/Del/2016 – A Y 2007-08 :

1. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 3,12,19,208/-, made by the AO on the ground that M/s Alchem International (HK) Ltd., which is a 100% subsidiary of the assessee Company, without appreciating the fact that a legal façade was created by the assessee by forming the above Company at Hongkong, which is a tax heaven, with the purpose of diversion of its profit to its 100% subsidiary at Hongkong.

2. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 3,12,19,208/ without appreciating the detailed evidences and reasoning discussed in the assessment order for holding that the effective management and control of M/s Alchem International (HK) Ltd., which is a 100% subsidiary of the assessee Company, was in India.

3. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in holding that signing of documents by the official of the assessee company on behalf of M/s Alchem international (HK) Ltd. for the purpose of export does not lead to the conclusion that control and management of M/s Alchem International (HK) Ltd. is situated in India without appreciating the fact that no independent entity would allow signing on important papers (required for exports) by an official of another company unless both the companies are managed together.

4. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in holding that no adverse inference was made by the TPO thus the transactions of the assessee with its 100% subsidiary are at

arm's length and permissible without appreciating the fact that the above matter did not pertain to the jurisdiction of the TPO who can only examine whether the transactions have been made at arm's length or not and only AO can conduct inquiry whether the transactions are sham or not.

5. That on the facts and in the circumstances of the case, the Ld CIT(A) has erred in law and on facts in holding that the AO failed to conclusively prove that the transactions of the assessee with its 100% subsidiary were sham without appreciating the detailed evidences discussed in the assessment order.

6. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in holding that the income of M/s Alchem International (HK) Ltd. cannot be clubbed with the income of the assessee u/s 6(3)(ii) without appreciating the detailed evidences discussed in the assessment order conclusively establishing that the management and control of affairs of M/s Alchem International (HK) Ltd. was situated in India.

7. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs 6,24,03,061/-, made by the AO on account of unexplained purchases u/s 69C on the basis of the documents seized from Sh. R.P. Yadav, consultant of the assessee company, on the ground that no corroborative evidence was found without appreciating the fact that Sh. Ram Pratap Yadav was not only a consultant who used to procure orders for the assessee company but was also a Director in M/s Lepro Herbals Pvt. Ltd., a sister concern of the assessee company, and thus the onus was on the assessee company to explain the seized documents found from his possession.

8. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs 6,24,03,061/-, made by the AO on account of

unexplained purchases u/s 69C on the basis of the documents seized from Sh. R.P. Yadav, consultant of the assessee company, on the ground that no corroborative evidence was found without appreciating the fact that few documents pertaining to the assessee company were seized from the residence of Sh. R.P. Yadav, which establishes that he used to keep documents of assessee at his residence, and from the bare perusal of the seized documents it is evident that these pertained to the undisclosed cash purchases made by the assessee company through Sh. R.P. Yadav.

9. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.2,54,246/- made on account of prior period expenses, without appreciating the fact that the assessee has added back prior period expenses of only Rs. 6,31,420/- out of Rs. 8,85,666/- by netting of the prior period expenses with prior period income of Rs. 2,54,246/- without any basis.

10. That the order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law.

11. That the grounds of appeal are without prejudice to each other.

12. That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal.

Cross objection :

1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in assuming jurisdiction u/s 153A and has erred in passing the impugned assessment order.

2. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in assuming jurisdiction u/s 153A and has erred in passing the

impugned assessment order is bad in law and against the facts and circumstances of the case.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in observing that that Sh. R.P. Yadav is not a third party and hence it is not found necessary to record any satisfaction or invocation of provisions of section 153C of the Act.

4. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in observing that the action of Ld. AO is in accordance with law to proceed the assessment proceedings u/s 153A/143(3) on the basis of such documents found and seized during the search action, belonging to the appellant from the premises of employee of the appellant, who was duly covered in this search.

5. That the cross objector craves the leave to add, amend, modify, delete any of the ground(s) of cross objection before or at the time of hearing.

ITA 2827/Del/2016 & CO 227/Del/2016 – A Y 2008-09 :

1. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 7,46,62,194/-, made by the AO on the ground that M/s Alchem International (HK) Ltd., which is a 100% subsidiary of the assessee Company, without appreciating the fact that a legal façade was created by the assessee by forming the above Company at Hongkong, which is a tax heaven, with the purpose of diversion of its profit to its 100% subsidiary at Hongkong.

2. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.7,46,62,194/- without appreciating the detailed evidences and reasoning discussed in the assessment order for holding that the effective management and control of M/s Alchem International (HK) Ltd., which is a 100% subsidiary of the assessee Company, was in India.

3. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in holding that signing of documents by the official of the assessee company on behalf of M/s Alchem International (HK) Ltd. for the purpose of export does not lead to the conclusion that control and management of M/s Alchem International (HK) Ltd. is situated in India without appreciating the fact that no independent entity would allow signing on important papers (required for exports) by an official of another company unless both the companies are managed together.

4. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in holding that no adverse inference was made by the TPO thus the transactions of the assessee with its 100% subsidiary are at arm's length and permissible without appreciating the fact that the above matter did not pertain to the jurisdiction of the TPO who can only examine whether the transactions have been made at arm's length or not and only AO can conduct inquiry whether the transactions are sham or not.

5. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in holding that the AO failed to conclusively prove that the transactions of the assessee with its 100% subsidiary were sham without appreciating the detailed evidences discussed in the assessment order.

6. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in holding that the income of M/s Alchem International (HK) Ltd. cannot be clubbed with the income of the assessee u/s 6(3)(ii) without appreciating the detailed evidences discussed in the assessment order conclusively establishing that the management and control of affairs of M/s Alchem International (HK) Ltd. was situated in India.

7. That on the facts and in the circumstances of the case. the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 57,67,79,751/-, made by the AO on account of unexplained purchases u/s 69C on the basis of the documents seized from Sh. R.P. Yadav, consultant of the assessee company,

on the ground that no corroborative evidence was found without appreciating the fact that Sh. Ram Pratap Yadav was not only a consultant who used to procure orders for the assessee company but was also a Director in M/s Lepro Herbals Pvt. Ltd., a sister concern of the assessee company and thus the onus was on the assessee company to explain the seized documents found from his possession.

8. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 57,67,79,751/-, made by the AO on account of unexplained purchases u/s 69C on the basis of the documents seized from Sh. R.P. Yadav, consultant of the assessee company, on the ground that no corroborative evidence was found without appreciating the fact that few documents pertaining to the assessee company were seized from the residence of Sh. R.P. Yadav, which establishes that he used to keep documents of assessee at his residence, and from the bare perusal of the seized documents it is evident that these pertained to the undisclosed cash purchases made by the assessee company through Sh. R.P. Yadav.

9. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 3,43,677/- made on account of prior period expenses, without appreciating the fact that the assessee has added back prior period expenses of only Rs. 6,60,950/- out of Rs. 10,04,627/- by netting of the prior period expenses with prior period income of Rs. 3,43,677/- without any basis.

10. That the order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law.

11. That the grounds of appeal are without prejudice to each other.

12. That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal.

Cross Objection :

1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in assuming jurisdiction u/s 153A and has erred in passing the impugned assessment order.
2. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in assuming jurisdiction u/s 153A and has erred in passing the impugned assessment order is bad in law and against the facts and circumstances of the case.
3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in observing that Sh. R.P. Yadav is not a third party and hence it is not found necessary to record any satisfaction or invocation of provisions of section 153C of the Act.
4. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in observing that the action of Ld. AO is in accordance with law to proceed the assessment proceedings u/s 153A/143(3) on the basis of such documents found and seized during the search action, belonging to the appellant from the premises of employee of the appellant, who was duly covered in this search.
5. That the cross objector craves the leave to add, amend, modify, delete any of the ground(s) of cross objection before or at the time of hearing.

ITA 2828/Del/2016 & CO 228/Del/2016 – A Y 2009-10 :

1. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 15,51,59,114/-, made by the AO on the ground that M/s Alchem International (HK) Ltd., which is a 100% subsidiary of the assessee Company, without appreciating the fact that a legal façade was created by the assessee by forming the above Company at Hongkong, which is a tax heaven, with the purpose of diversion of its profit to its 100% subsidiary at Hongkong.

2. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 15,51,59,114/- without appreciating the detailed evidences and reasoning discussed in the assessment order for holding that the effective management and control of M/s Alchem International (HK) Ltd., which is a 100% subsidiary of the assessee Company, was in India.

3. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in holding that signing of documents by the official of the assessee company on behalf of M/s Alchem International (HK) Ltd. for the purpose of export does not lead to the conclusion that control and management of M/s Alchem International (HK) Ltd. is situated in India without appreciating the fact that no independent entity would allow signing on important papers (required for exports) by an official of another company unless both the companies are managed together.

4. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in holding that no adverse inference was made by the TPO thus the transactions of the assessee with its 100% subsidiary are at arm's length and permissible without appreciating the fact that the above matter did not pertain to the jurisdiction of the TPO who can only examine whether the transactions have been made at arm's length or not and only AO can conduct inquiry whether the transactions are sham or not.

5. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in holding that the AO failed to conclusively prove that the transactions of the assessee with its 100% subsidiary were sham without appreciating the detailed evidences discussed in the assessment order.

6. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in holding that the income of M/s Alchem International (HK) Ltd. cannot be clubbed with the income of the assessee u/s 6(3)(ii) without appreciating the detailed evidences discussed in the assessment order conclusively establishing that the management and control of

affairs of M/s Alchem International (HK) Ltd. was situated in India.

7. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 10,37,23,658/-, made by the AO on account of unexplained purchases u/s 69C on the basis of the documents seized from Sh. R.P. Yadav, consultant of the assessee company, on the ground that no corroborative evidence was found without appreciating the fact that Sh. Ram Pratap Yadav was not only a consultant who used to procure orders for the assessee company but was also a Director in M/s Lepro Herbals Pvt. Ltd., a sister concern of the assessee company and thus the onus was on the assessee company to explain the seized documents found from his possession.

8. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 10,37,23,658/-, made by the AO on account of unexplained purchases u/s 69C on the basis of the documents seized from Sh. R.P. Yadav, consultant of the assessee company, on the ground that no corroborative evidence was found without appreciating the fact that few documents pertaining to the assessee company were seized from the residence of Sh. R.P. Yadav, which establishes that he used to keep documents of assessee at his residence, and from the bare perusal of the seized documents it is evident that these pertained to the undisclosed cash purchases made by the assessee company through Sh. R.P. Yadav.

9. That the order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law.

10. That the grounds of appeal are without prejudice to each other.

11. That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal.

Cross objection :

1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in assuming jurisdiction u/s 153A and has erred in passing the impugned assessment order.
 2. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in assuming jurisdiction u/s 153A and has erred in passing the impugned assessment order is bad in law and against the facts and circumstances of the case.
 3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in observing that that Sh. R.P. Yadav is not a third party and hence it is not found necessary to record any satisfaction or invocation of provisions of section 153C of the Act.
 4. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in observing that the action of Ld. AO is in accordance with law to proceed the assessment proceedings u/s 153A/143(3) on the basis of such documents found and seized during the search action, belonging to the appellant from the premises of employee of the appellant, who was duly covered in this search.
 5. That the cross objector craves the leave to add, amend, modify, delete any of the ground(s) of cross objection before or at the time of hearing. “
2. As is evident from the grounds of appeals and cross objections involved in these years and the orders passed by the lower authorities, issues involved are identical and for the reasons given in our consolidated order of even date for Assessment Year 2006-07, wherein we have dismiss all the appeals of the Revenue and partly allow all the three cross objections filed by the assessee vide our order of even date in ITA No. 2825/Del/2016 and C.O. No. 225/Del/2016. Accordingly,

following the same order we dismiss the appeals of the revenue and cross objections are partly allowed.

Order pronounced in the open court on : **07/12/2021.**

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Dated : 07/12/2021.

MEHTA

Copy forwarded to

1. Appellants;
2. Respondents;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi.

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| Date of dictation | 7.12.2021 |
| Date on which the typed draft is placed before the dictating member | 7.12.2021 |
| Date on which the typed draft is placed before the other member | 7.12.2021 |
| Date on which the approved draft comes to the Sr. PS/ PS | 7.12.2021 |
| Date on which the fair order is placed before the dictating member for pronouncement | 7.12.2021 |
| Date on which the fair order comes back to the Sr. PS/ PS | 7.12.2021 |
| Date on which the final order is uploaded on the website of ITAT | 7.12.2021 |
| date on which the file goes to the Bench Clerk | 7.12.2021 |
| Date on which the file goes to the Head Clerk | |
| The date on which the file goes to the Assistant Registrar for signature on the order | |
| Date of dispatch of the order | |