

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'H' NEW DELHI**

**BEFORE DR. B. R. R. KUMAR, ACCOUNTANT MEMBER
AND**

SH. YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No. 1025/DEL/2020 (A.Y 2010-11)

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| <p>M/s. TSH Gems & Jewellery Pvt. Ltd., No. 27-A, 2nd Floor, Opp. Sarvodaya Kanya School, Near Chandra Nagar, Krishna Nagar, New Delhi-110051 PAN No. AADCT1672M (APPELLANT)</p> | Vs. | <p>ACIT, Circle : 25 (2) New Delhi. (RESPONDENT)</p> |
|---|-----|--|

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|----------------------|---|
| Appellant by | Shri Amit Sharma, Advocate; |
| Respondent by | Shri Vivek Vardhan, Sr. D. R.; |

| | |
|------------------------------|-------------------|
| Date of Hearing | 13.10.2022 |
| Date of Pronouncement | 17.11.2022 |

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the assessee for assessment year 2010-11 against the order of the Id. Commissioner of Income Tax (Appeals)-9, New Delhi [hereinafter referred to as CIT (Appeals)] dated 13.12.2019.

2. The assessee has raised the following revised substantive grounds of appeal:-

1. ***On the facts and in the circumstances of the case as well as in law the learned Commissioner of Income Tax (Appeals) erred in treating the genuine sales to the parties as unexplained cash credit under section 68 of the act which is bad in law and liable to be set aside.***
2. ***On the fact and circumstances of the case the case as well as in law the learned Commissioner of Income Tax (Appeals) grossly erred in upholding the action of learned Assessing Officer of treating a genuine sales as unexplained cash credit without providing the proper opportunity of being heard and passed the order u/s 250(4) of the act without providing the proper opportunity which is grave miscarriage of justice for the appellant and against the principle of Audi alteram partem.***
3. ***On the facts and in the circumstances of the case as well as in law the learned Commissioner of Income Tax (Appeals) grossly erred in upholding the action of learned Assessing Officer of treating a genuine sales as unexplained cash credit under section 68 of the Act without appreciating the fact that appellant had furnished the enough material to prove the identity, veracity and genuineness of the transaction at the Assessment proceedings which has been confirmed by the Learned Commissioner of Income Tax (Appeal) in her order.***

4. ***On the facts and in the circumstances of the case as well as in law the learned Commissioner of Income Tax (Appeals) grossly erred in upholding the exterior consideration of the LD AO and not considered the evidences which was filed before the assessing authorities.***
5. ***The appellant craves leave to add / modify / alter / delete any or all Grounds of Appeal.”***

3. The brief facts of the case are that the assessee Company did not file return for the year under consideration i.e. Assessment Year 2010-11, a notice u/s 148 of the Act was issued after recording the satisfaction and reasons to the effect that the income chargeable to the tax has 'escaped assessment' within the meaning of Section 147 of the Act which has been served upon the Assessee. The assessment order came to be passed on 22/12/2017 by making an addition of Rs. 50,67,66,785/- on the ground that the credit entries made in the books of account of the assessee during the year under consideration are unexplained.

4. As against the assessment order dated 22/12/2017, the assessee has preferred an appeal before the CIT(A). The Ld. CIT(A) vide order dated 13/12/2019 held that credit entries/sale consideration pertaining to the two entities i.e. M/s Jain Enterprises and M/s Philco Exim Pvt. Ltd. cannot be held to be genuine, therefore, directed the A.O to make additions corresponding to the transaction with those two parties. Thus confirmed the addition of Rs. 6,35,90,752/- only and deleted the remaining additions made by the A.O.

5. Aggrieved by the order of the Ld. CIT(A) the assessee has preferred the present appeal on the grounds mentioned above.

6. The Ld. Counsel for the assessee submitted that the Ld. CIT(A) has erred in treating the sale of Rs. 6,35,90,752/- made to two parties are not genuine which is bad in law, though the assessee has produced enough material to prove the identity, veracity and genuineness before the Authorities. The Ld. CIT(A) has committed an error in confirming the addition which are already included in the sales shown by the assessee which amounts to double taxation. Without prejudice to the same, the Ld. Counsel for the assessee further submitted that the Ld. CIT(A) has grossly erred in confirming the addition of Rs. 6,35,90,752/- without appreciating the fact that once the declared sale is treated to be genuine, within the same is required to be deducted from the sales. The Assessee further submitted that even if the above addition is set off against the business loss by computing the income u/s. 68 of the Act, the effect of the addition would not impact the return income of the assessee.

7. Per contra, the Ld. DR has relied on the order of the CIT(A) and submitted that the impugned order requires no interference.

8. We have heard the parties, perused the material on record and gave our thoughtful consideration.

9. The Ld.CIT(A) while sustaining the addition found that *'the transaction of the assessee with M/s Jain Enterprises and M/s Philco Exim Pvt. Ltd. have been clearly doubted by the A.O. himself'*. Further noted that, M/s Jain Enterprises is concerned, the assessee did not submit the confirmation and other documents as required by the A.O. whereas in so far as M/s Philco Exim Pvt. Ltd., the Ld.CIT(A) observed that the assessee has filed confirmations but did not file the bank statement. Thus, the Ld.CIT(A) was of the opinion that credit entries/sale consideration pertaining to the two

entities M/s Jain Enterprises and M/s Philco Exim Pvt. Ltd. cannot be held to be genuine and sustained those additions.

10. The Ld. Counsel for the assessee drawn our attention to the purchase register and sale register at Page No. 48 (purchase register) and Page No. 49 to 52 (Sale register), which reflects the transactions made with the two entities M/s Jain Enterprises and M/s Philco Exim Pvt. Ltd. The relevant portion of the purchase register and sale register are hereunder:-

| TSH Gems & Jewellery Private Limited D 223/60, Laxmi Chamber, Ground Floor, Laxmi Nagar, Delhi - 110092 | | | | | |
|---|--|----------|---------|-----------------|---------------------------|
| Purchase Register 1-Apr-2009 to 31-Mar-2010 | | | | | |
| Date | Particulars | Vch Type | Vch No. | Debit Amount | Page : Credi Amount |
| 24-7-2009 | Euro Eagle General Trading FZC BIN No.: EEDW609/018 | Purchase | 1 | | 6,51,97,892.01 |
| 24-7-2009 | Global Trade Commodities Dmcc BIN No.: GTC 09-10002 | Purchase | 2 | | 7,51,10,507.01 |
| 24-7-2009 | Global Trade Commodities Dmcc BIN No.: GTC 09-10004 | Purchase | 3 | | 7,52,55,378.61 |
| 31-7-2009 | RKM General Trading F.Z.E. BIN No.: RKMSE012/03 | Purchase | 4 | | 7,21,22,112.61 |
| 29-8-2009 | Global Trade Commodities Dmcc BIN No.: GTC09-10005 | Purchase | 5 | | 7,92,03,696.21 |
| 9-9-2009 | SUPERIOR GENERAL TRADING F.Z.E. BIN No.: SGT/Exp/029/09 | Purchase | 6 | | 7,09,21,665.01 |
| 21-11-2009 | SUPERIOR GENERAL TRADING F.Z.E. BIN No.: SGT/Exp/039/09 | Purchase | 7 | | 7,07,81,690.01 |
| 7-12-2009 | TSVP TRADING PVT LTD BIN No.: 005/09-10 | Purchase | 8 | | 1,33,16,559.01 |
| 10-12-2009 | TSVP TRADING PVT LTD BIN No.: 012/09-10 | Purchase | 9 | | 1,23,17,011.01 |
| 10-12-2009 | Zeeba Gems L.L.C BIN No.: EZB/2009/014 | Purchase | 10 | | 5,73,95,437.01 |
| 15-2-2010 | SRI RAJGURU IMPEX PVT LTD BIN No.: RGA/08/09-10 | Purchase | 11 | | 1,73,17,475.01 |
| 15-2-2010 | THIRU EXIM PVT LTD BIN No.: 163/09-10 | Purchase | 12 | | 6,39,70,251.01 |
| 24-2-2010 | Osiyan Bullion Pvt. Ltd. BIN No.: 044 | Purchase | 13 | | 5,42,52,644.01 |
| 25-2-2010 | SANKESWAR TRADECOM PVT LTD BIN No.: STPL/TSH/08 | Purchase | 14 | | 1,43,29,133.01 |
| 25-2-2010 | Osiyan Bullion Pvt. Ltd. BIN No.: 046 | Purchase | 15 | | 2,96,02,895.01 |
| 25-2-2010 | Osiyan Bullion Pvt. Ltd. BIN No.: 045 | Purchase | 16 | | 2,40,65,892.01 |
| 25-2-2010 | THIRU EXIM PVT LTD BIN No.: 164/09-10 | Purchase | 17 | | 3,50,62,581.01 |
| Total: | | | | 85,84,71,968.21 | |

Rajendra Gupta

TSH Gems & Jewellery Private Limited
B 223/60, Laxmi Chamber, Ground Floor,
Laxmi Nagar, Delhi - 110092

Sales Register
1-Apr-2009 to 31-Mar-2010

(49)

| Date | Particulars | Vch Type | Vch No. | Debit Amount | Page 1 Credit Amount |
|-----------|--|----------|---------|----------------|-------------------------|
| 27-7-2009 | KBM Gems & Jewellery (P) Ltd. Bill no. TMS001 | Sales | 1 | 1,04,21,517.00 | |
| 29-7-2009 | KBM Gems & Jewellery (P) Ltd. Bill no. TMS008 | Sales | 2 | 32,05,549.00 | |
| 29-7-2009 | World Wide International Bill no. TMS002 | Sales | 3 | 2,56,35,634.00 | |
| 29-7-2009 | World Wide International Bill no. TMS003 | Sales | 4 | 2,19,20,387.00 | |
| 4-8-2009 | Shri Durga Enterprises Bill no. TMS005 | Sales | 5 | 1,20,17,464.00 | |
| 4-8-2009 | Jain Enterprises (M) Bill no. TMS006 | Sales | 6 | 2,31,06,752.00 | |
| 5-8-2009 | Agnum Intertrade (M) Bill no. TMS007 | Sales | 7 | 2,01,07,501.00 | |
| 5-8-2009 | J K Enterprises Bill no. TMS008 | Sales | 8 | 1,90,26,420.00 | |
| 5-8-2009 | J K Enterprises Bill no. TMS009 | Sales | 9 | 22,47,018.00 | |
| 6-8-2009 | Agnum Intertrade (M) Bill no. TMS010 | Sales | 10 | 2,66,28,889.00 | |
| 6-8-2009 | Philco Exim Pvt. Ltd. Bill no. TMS011 | Sales | 11 | 3,05,10,967.00 | |
| 6-8-2009 | Philco Exim Pvt. Ltd. Bill no. TMS012 | Sales | 12 | 99,73,026.00 | |
| 6-8-2009 | V K Trading Co. Bill no. TMS013 | Sales | 13 | 19,86,714.00 | |

11. The Ld. Counsel for the Assessee has also drawn our attention to Paper book Page No. 111 which is the ledger account showing the sales, which is reproduced hereunder:-

TSH Gems & Jewellery Private Limited
B 223/60, Laxmi Chamber, Ground Floor,
Laxmi Nagar, Delhi - 110092

Philco Exim Pvt. Ltd.
Ledger Account

1-Apr-2009 to 31-Mar-2010

(111)

| Date | Particulars | Vch Type | Vch No. | Debit | Cr |
|----------|--|----------|---------|----------------|----------------|
| 5-8-2009 | By Standard Chartered Bank Ch. No. RTGS | Receipt | 20 | | 4,05,00,000.00 |
| 6-8-2009 | To Sales Bill no. TMS011 | Sales | 11 | 3,05,10,967.00 | |
| | To Sales Bill no. TMS012 | Sales | 12 | 99,73,026.00 | |
| | To Cash Ch. No. AMOUNT PAID | Payment | 30 | 16,007.00 | |
| | | | | 4,05,00,000.00 | 4,05,00,000.00 |

Rajendra Gupta

12. Further it is observed that at no point of time, the Lower authorities have doubted the existence of M/s Jain Enterprises and M/s Philco Exim Pvt. Ltd.

and the notice issued to those parties have been duly served. It is not the case of the A.O. that those parties are not in existent. Considering the above facts and circumstances, we are of the opinion that the assessee had furnished the enough material to prove the identity, veracity and genuineness of the transaction during assessment proceedings to prove the transaction made with M/s Jain Enterprises and M/s Philco Exim Pvt. Ltd.

13. It is not in dispute that the assessee has shown the said amount of Rs. 6,35,90,752/- as sales in the profit and loss account, which has been accepted by the Revenue as genuine without pointing out any fault. Similarly the amount of sale was realized through banking channel and the same was accepted by the Department. Thus Ld. CIT(A) has committed an error by upholding the addition which amounts to double taxation.

14. The Ld. Counsel has also submitted that without prejudice to the above even if the addition is treated to be added as income of the assessee on the principal of double addition, firstly, the amount of Rs. 6,35,90,752/- should be deducted from the sales declared by the assessee in the financial statement and thereby its declared loss would be at Rs. 1,69,43,413 will further increased by equivalent amount of Rs. 6,35,90,752/- and the affected loss would be at Rs. 8,05,34,165/-. Secondly, as the same was treated as cash credit then the same should be added to the income u/s 68 of the Act. However, while computing the total income the above mentioned loss of Rs. 8,05,34,165/- would be available with which the income of Rs. 6,35,90,752/- is liable to get set off, as for the concerned Assessment Year 2010-11, there is no bar as applicable from Assessment Year 2017-18 (where income determined u/s 68 would not be entitled to get set off with other available loss), under the provision of law to get the set off of income computed u/s 68 with business losses. Hence, the outcome of the above exercise also remains the same and the loss of the assessee remain the same at Rs. 1,69,43,413/-.

15. We are completely agree with the above proposition canvassed by the Ld. Counsel for the Assessee. Even if we assume that the sale is bogus receipts to be treated as cash credit u/s 68 of the Act, in such event after deducting alleged bogus sale from the books, same will result in decrease of the profit to the assessee. Even to tax the receipts u/s 68 of the Act read with Section 115BBE, the provision of Section 115BBE of the Act has been substituted w.e.f 01/04/2017 hence the said exercise would be revenue in neutral and starkly academic. Therefore, for the above discussions, in our considered opinion the addition which was sustained by the Ld.CIT (A) deserves to be deleted by allowing the assessee grounds of appeal.

16. In the result, appeal filed by the assessee is allowed. The addition sustained by the Ld.CIT (A) is hereby deleted, ordered accordingly.

Order pronounced in the Open Court on 17th November, 2022.

Sd/-
(B. R. R. KUMAR)
ACCOUNTANT MEMBER
Dated : 17/11/2022

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

R.N, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI