

आयकर अपीलिय अधिकरण, कोलकाता

पीठ- 'A'

**IN THE INCOME TAX APPELLATE TRIBUNAL, KOLKATA
BENCH-A**

समक्ष : श्री संजय गर्ग, न्यायिक सदस्य एवं

श्री मनीष बोरड, लेखा सदस्य

**Before: SHRI SANJAY GARG, JUDICIAL MEMBER and
DR. MANISH BORAD, ACCOUNTANT MEMBER**

आयकर अपील सं.य/
ITA No. 15/Kol/2020
निर्धारण वर्ष:
Assessment Year:2014-15

I.T.O., War 1(2), Kolkata Aaykar Bhavan, 4 th Fl.,R.No.18,P-7 Chowringhee Square, Kolkata-700 069.	बनाम / V/s.	M/s. Mohan Jute Ltd 16A Palace Court, 1 KYD Street, Kolkata-700 016. PAN: AABCM7736K
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent
अपीलार्थी की ओर से/ By Appellant/Assessee	Shri Akkal Dudhwewala, FCA, Ld.AR	
प्रत्यर्थी की ओर से/By Respondent	Shri Vijay Kumar, , Addl. CIT, Ld.DR	
सुनवाई की तारीख/Date of Hearing	27-09-2022	
घोषणा की तारीख/ Date of Pronouncement	28-11-2022	

आदेश / O R D E R

PER MANISH BORAD, ACCOUNTANT MEMBER:

The instant appeal of the revenue is directed against the order dated 31-10-2019 passed by the Ld. Commissioner of Income-tax, Appeals [hereinafter referred to as 'CIT(A)'], 10, Kolkata for the AY 2014-15.

2. Brief facts of the case are that the assessee is a limited company, engaged in the business of manufacturing and sale of jute both domestic and exports. The e-return for the assessment year 2014-15 filed on 30-11-2014 declaring income at Rs. 10,36,986/-. Case of assessee selected for scrutiny followed by serving of valid notices u/s. 143(2) and 142(1) of the Act. Various details were called by the Id. AO and submissions were filed by the assessee. After considering the same and examining the Form 3CD part of audit reports found that the assessee made sales amounting to Rs.25,90,66,090/- with the following parties:

<u>S.No.</u>	<u>Name</u>	<u>PAN</u>	<u>Sale Amount</u>
01.	Mohan Jute Bags Mfg.Co.	AAFFM3412R	104748831
02.	Pacific Jute Ltd	AACCM2063J	67645271
03.	Global Exim P.Ltd	AADCG0037H	86671988

3. The above sales to related parties were treated as local sales by Id. AO. The Id.AO further found that the assessee had disclosed total sales at Rs.36,07,65,775/-. Out of which local sales is of Rs. 19,36,53,545/- and export sales of Rs. 16,71,12,230/- treating the sales to related parties as local sales. The AO found difference between Tax Audit Report & Audited Accounts in local sales at Rs. 6,54,12,545/-, and added it to the total income as undisclosed sales of the assessee.

4. Further on examination of the audited accounts the Id. AO further found that there was an increase in short term borrowings under the head '*advance received from parties*' at Rs. 1,29,29,108/- and under the head '*trade payables*' for goods to the extent of Rs.99,10,505/-. For lack of necessary details Id. The AO treated the said sum totaling to Rs. 2,28,39,613/- as unexplained cash credit and added it to the total income of assessee u/s. 68 of the Act.

5. Aggrieved, the assessee preferred appeal before the Id. CIT(A), but succeeded.

6. Aggrieved, the revenue is now in appeal before this Tribunal raising the following grounds of appeal:-

AY 2014-15

1. *That on the facts and circumstances of the case and on law, the Ld. CIT(A) has erred in granting relief on account, the addition made of Rs.6,54,12,545/- as undisclosed sales.*

2. *That on the facts and circumstances of the case and on law, the Ld. CIT(A) has erred in granting relief on account of addition made u/s 68 of Rs.2,28,39,613/-deemed income*

3. *The appellant craves the leave to make any addition, alternation, modification, etc. of the grounds either before the appellate proceedings, or in the course of appellate proceedings.*

7. The Ld. Departmental Representative vehemently argued supporting the order of the Id. AO.

8. Per contra, the Ld. Counsel for the assessee vehemently argued supporting the detailed findings of the Id. CIT(A) and also various details filed in the paper book.

9. We have heard the rival contentions and perused the material placed before us.

10. Apropos the first issue regarding deletion of addition at Rs. 6,54,12,545/-, which was made by the Id. AO towards undisclosed sales for alleged different in local sales. The Id. CITA) considered the submissions of the assessee including the tax audit report and other details/particulars and based on the same deleted the addition observing as follow:-

07. FINDINGS & DECISION:

1. *I have carefully considered the submissions of the Ld. AR of the appellant and perused the material placed on record. The facts pertaining to the issue involved in this ground is narrow in compass. The appellant company is engaged in the business of manufacture and sale of jute, both domestic and exports. In the Profit & Loss*

Account for the year ended 31st March 2014, the appellant had reported total sales of Rs.36,07,65,775/-, which comprised of domestic sales of Rs.19,36,53,545/- and export sales of Rs.16,71,12,230/-. On conjoint reading of these particulars available from the face of P&L A/c and the particulars reported by the tax auditor in the tax audit report, the Ld. AO however observed that the sales to domestic Indian entities was reported by the tax auditor at Rs.25,90,66,090/-, which comprised of the

Particulars	Amount (in INR)
Mohan Jute Mfg Co.	Rs.10,47,48,831
Pacific Jute Ltd	Rs.6,76,45,271
Global Exim Pvt Ltd	<u>Rs.8,66,71,988</u>
TOTAL	Rs.25,90,66,090

2. According to the Ld. AO therefore there was a apparent mismatch between the domestic sales reported in P&L A/c and the domestic sales reported in the tax audit report and therefore' assessed the difference of Rs.6,54,12,545/- [Rs.25,90,66,090 - Rs.19,36,53,545] by way of unrecorded sales of the appellant company.

3. In the appellate proceedings the Ld. AR of the appellant submitted that the AO wrongly understood the facts of the case. He pointed out that the sales made to M/s Pacific Jute Ltd aggregating to Rs.6,76,45,271/- was reported by way of export sales since M/s Pacific Jute Ltd located in a notified SEZ and hence the sales thereto constituted 'deemed exports. In support thereof he furnished the ledgers of the domestic sales & export sales along with sample export invoices. He thus explained that if the sales made to M/s Pacific Jute Ltd is excluded from the sales to Indian AEs reported in the tax audit report, it shall be noted that the local sales made to domestic AEs was Rs.19,14,20,819/- which compared favorably with the total local sales of Rs.19,36,53,545/- reported in the P&L A/c. He thus claimed that the impugned addition made by the AO on wrong assumption of facts be deleted.

4. After going through the submissions of the Ld. AR of the appellant and upon examination of the Profits & Loss Account and the Tax audit report, I find that the Ld. AO acted in an erroneous manner by comparing the particulars of sales to AEs reported u/s 40A(2)(b) with the sales figure reported in the Profit & Loss Account. Moreover I find merit in the appellant's case that the sales made to M/s Pacific Jute Ltd amounting to Rs.6,76,45,271/- was in the nature of deemed exports since the aforesaid body corporate is located in an SEZ and hence it was rightly reported by way of export sales. It is noted that

once the sales made to M/s Pacific Jute Ltd is excluded, the sales to related entities within the territory of India (excluding deemed exports) amounted to Rs.19,14,20,819/- which was lower than the overall local sales of Rs.19,36,53,545/-. In the circumstances I am of the considered view that the impugned addition of Rs. 6,54,12,545/- made by way of unrecorded local sales was untenable on the given facts of the case. The Ld. AO is accordingly directed to delete the same, Ground No. 1 is therefore allowed.”

11. The above finding remains uncontroverted by the Id. Departmental Representative and since the assessee has successfully explained the alleged difference, we fail to find any infirmity in the finding of Id. CIT(A). Thus, ground no. 1 raised by the revenue is dismissed.

12. Apropos the second issue regarding deletion of addition at Rs. 2,28,39,613/-, which was made by the Id. AO towards unexplained increase in short term borrowings under the head ‘*advance received from the parties*’ to the extent of Rs. 1,29,29,108/- and increase in liability under the had ‘*trade payables for goods*’ to the extent of Rs. 99,10,505/-, treated the same as income u/s. 68 of the Act. Ld. CITA) considered the submissions of the assessee including the tax audit report and other details/particulars, deleted the addition observing as follow:- (relevant extract)

“3. I also find .merit in the alternate claim of the appellant that, when the opening & closing balances and the transactions during the year had not been disputed, the Ld. AO could not singularly disbelieve the net increase in the overall current liabilities. This view finds support from the decision of the Hon'ble Delhi High Court in the case of CIT Vs Ritu Anurag Agarwal 2009 (7) TMI 1247 wherein the Hon'ble High Court held as under:

"This finding of AO remained undisturbed before the CIT(A) as well and has been accepted by the ITAT. Proceeding on this basis, the [TAT observed that the soles, purchases as well as gross profits as disclosed by the assessee have been accepted by the Assessing Officer. Once this is accepted, we are of the opinion that the approach of the ITAT was correct inasmuch as the Assessing

Officer did not consider aspect while making additions of sundry creditor under Section 68 of the Income Tax Act there was no case for disallowance for corresponding purchase, no addition could be made under Section 68 inasmuch as it is not in dispute that the creditors outstanding related to purchases and the trading results were accepted by the AO. We are, therefore, of the opinion that no substantial question of law arises for consideration in this case. The appeal is accordingly dismissed. "

4. For the reasons set out above therefore I am of the considered view that the Ld. AO was unjustified in adding the net increase in current liabilities of Rs.2,28,39,613/- by invoking Section 68 of the Act. The Ld. AO is accordingly directed to delete the impugned addition in full. Ground No. 2 is therefore allowed."

13. The above findings of the Id. CIT(A) remains uncontroverted by the Id. DR, therefore, we fail to find any infirmity in the findings of the Id. CIT(A). Thus, ground no. 2 raised by the revenue is dismissed. Ground no. 3 is general in nature, which requires no adjudication.

परिणामतः निर्धारिती की अपील खारिज की जाती है।

14. In the result, the appeal of revenue is dismissed.

आदेश खुले न्यायपीठ में दिनांक 28 -11-2022 को उद्घोषित।

Order pronounced in open court on 28-11-2022

Sd/-

(SANJAY GARG)
JUDICIAL MEMBER

Kolkata/ कोलकाता

दिनांक:- 28 /11 /2022

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

**PP/Sr.PS

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant/I.T.O., War 1(2),, Kolkata, Aaykar Bhavan, 4th Fl.,R.No.18,P-7 Chowringhee Square, Kolkata-700 069. .
2. प्रत्यर्थी/Respondent/ **M/s. Mohan Jute Ltd**, 16A Palace Court, 1 KYD Street, Kolkata-700 016.
- 3.. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT,Kolkata.
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से, सहायक पंजीकार

आयकर अपीलीय अधिकरण,कोलकाता ।