

आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH, KOLKATA

BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT  
AND SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 2557/Kol/2019  
Assessment Year: 2007-08

I.T.O., Ward - 6 (2), Kolkata	Vs	M/s. Jackson Investment Pvt. Ltd. 4, Netaji Subhas Road 1 <sup>st</sup> Floor Kolkata - 700001 PAN : AAACJ7612E
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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I.T.A. No. 2558/Kol/2019  
Assessment Year: 2008-09

I.T.O., Ward - 6 (2), Kolkata	Vs	M/s. Jackson Investment Pvt. Ltd. 4, Netaji Subhas Road 1 <sup>st</sup> Floor Kolkata - 700001 PAN : AAACJ7612E
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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I.T.A. No. 2559/Kol/2019  
Assessment Year: 2009-10

I.T.O., Ward - 6 (2), Kolkata	Vs	M/s. Jackson Investment Pvt. Ltd. 4, Netaji Subhas Road 1 <sup>st</sup> Floor Kolkata - 700001 PAN : AAACJ7612E
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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I.T.A. No. 2560/Kol/2019  
Assessment Year: 2011-12

I.T.O., Ward - 6 (2), Kolkata	Vs	M/s. Jackson Investment Pvt. Ltd. 4, Netaji Subhas Road 1 <sup>st</sup> Floor Kolkata - 700001 PAN : AAACJ7612E
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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**I.T.A. No. 2561/Kol/2019**  
**Assessment Year: 2012-13**

<b>I.T.O., Ward - 6 (2), Kolkata</b>	Vs	<b>M/s. Jackson Investment Pvt. Ltd.</b> 4, Netaji Subhas Road 1 <sup>st</sup> Floor Kolkata - 700001 <b>PAN : AAACJ7612E</b>
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>

Assessee by :	None
Revenue by :	Shri Ranu Biswas, Addl. CIT D/R

सुनवाई की तारीख/Date of Hearing : 08/09/2022  
घोषणा की तारीख /Date of Pronouncement: 14/12/2022

**आदेश/ORDER**

**PER SHRI RAJPAL YADAV, VICE PRESIDENT:**

The present five appeals are directed at the instance of the revenue against the separate orders of the Learned Commissioner of Income Tax (Appeals), Kolkata - 09, (hereinafter the "ld. CIT(A)") dt. 29/03/2019, passed u/s 250 of the Income Tax Act, 1961 ("the Act"), for Assessment Years 2007-08, 2008-09, 2009-10, 2011-12 & 2012-13. In other words, except for Assessment Year 2010-11, the appeals are from Assessment Year 2007-08 to 2012-13.

2. In response to the notice of hearing no one has come present on behalf of the assessee and, therefore, we have heard the appeals *ex-parte* and proceed to decide them on merit. Before adverting to the specific grounds of appeal taken by the revenue, it is revealed that all these appeals are time barred by 171 days. In order to explain the delay, the revenue has filed application for condonation of delay along with affidavit of Shri Ashish Kumar, ITO, Ward -6(2), Kolkata. In his affidavit, he has explained the movement of file and as to how the delay has happened. After going through the detailed affidavit of Shri Ashish Kumar, we are satisfied that the revenue was prevented by sufficient cause for not filing the appeals in time. Therefore, we condone the delay in filing of these appeals.

3. The Grounds of appeal taken by the revenue are verbatim same except variation in the quantum. Therefore, for the facility of reference we take note of the grounds of appeal in Assessment Year 2007-08, which reads as under:-

*"1. Whether on the facts and in the circumstances of the case, the ld. CIT(A) law in deciding that the assessee had genuine business done during the year even though the assessee company could neither produce any proper trade license of any trading nor it was registered with west Bengal Value Added Tax Act, 2003.*

*2. Whether on the facts and in the circumstances of the case. the Ld.CIT(A) has erred in law in not appreciating the efforts of the assessing office that all so called "Sellers" and "purchasers" of the assessee company were shell entities having only technical identity with no business conducted by them.*

*3. Whether on the facts and in the circumstances of the case. the Ld. CIT(A) has erred law in not appreciating the fact that the assessee company itself was identified as a s shell company indulging in sale and purchase of shares with active participation of the promoters and the transactions shown as business turnover, were nothing but accommodation entries of 'debit' as well as 'credit through layering to benefit ultimate unidentified beneficiaries.*

*4. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition made by the A0 as unexplained cash credit.*

*5. That the appellant craves for leave to add, delete and modify any of the grounds of appeal before or at the time of hearing."*

4. In brief the grievance of the revenue is that the ld. CIT(A) has erred in deleting the addition of Rs.4,60,15,512/-, Rs.4,27,47,762/-, Rs.4,97,16,500/-, Rs.1,61,54,218/- and Rs.1,52,09,681/- in Assessment Year 2007-08 to 2012-13 excluding 2010-11 respectively. The case of the Assessing Officer is that the assessee has made deposits of all these amounts in cash in bank account. The assessee claimed that these are the cash sales made by it in textile business. The Assessing Officer disbelieved this business on the ground that the assessee failed to produce bill exhibiting transportation of goods, loading / unloading details and place. He also observed that the assessee failed to produce cash book, ledger and complete purchase bills of these activities. Therefore, he disbelieved the very conduct of business in this line. Accordingly, he treated the cash deposits in the bank account as unexplained cash credit u/s 68 of the Act and made addition in respect of these years.

5. Dissatisfied with the assessment orders, the assessee carried the matter in appeal. The Id. First Appellate Authority has upheld the reopening of assessment u/s 147 of the Act but deleted the additions on merit by following the order of the ITAT for Assessment Year 2010-11 in the assessee's own case. The discussion made by the Id. CIT(A), reads as under:-

**4 निर्णय/Decision:**

I have gone through the assessment order, grounds of appeal, submissions and arguments made on behalf of the appellant.

**Ground 1 & 4:** relates to initiation of proceedings u/s 148 of the Act.

The appellant has made only general observations and has made no specific reasons as to why the reassessment proceedings are not as per law. The AO has duly recorded the reasons before initiating the reassessment proceedings. These grounds of appeal are dismissed.

**Ground 2 & 3:** No specific submissions made. Dismissed.

**Ground 5** relates to addition made u/s 68 of Rs. 4,60,15,512.

The assessee has shown trading business of Textiles along with the business of trading of shares. It has claimed sales of textiles items which include Petty/Cash sales. The Assessing Officer observed that the assessee has made huge cash deposits in its bank account. The assessing officer held that the assessee has not done any textile business and he treated the cash deposits as unexplained and made the addition of Rs. 4,60,15,512 u/s 68 of the Income Tax Act, 1961. As per Page 4 of Assessment Order, the AO has given a figure of Rs. 1,12,52,800, whereas he has made an addition of Rs. 4,60,15,512 without giving any basis for the same.

M/s. Jackson Investment Pvt. Ltd.  
PAN: AAACJ7612E  
A.Y.: 2007-08


14.3.14

During the course of assessment proceedings in the case of M/s. Jackson Investment Pvt. Ltd., for assessment year 2007-08 it has come to the notice of the undersigned that an amount of Rs. ~~1,32,52,801/-~~ in cash was deposited in the bank account of the assessee bearing current account no. 001502000076870 maintained with Indian Overseas Bank, at P-35, India Exchange Place Kolkata-700001. The A/R of the assessee was asked to explain the source of the cash deposits. But, he was unable to explain the source. The entire cash credit for the concern period were treated as unexplained cash credit and added back to the total income of the assessee company. While going through the bank account of the assessee it was also found that during the financial year-2006-07, relevant to the assessment year 2007-08, an amount of Rs. ~~1,32,52,801/-~~ cash was deposited in the same account of the assessee company.

In view of the above, I have reason to believe that income chargeable to tax has escaped assessment during the financial 2010-11 relevant to assessment year 2007-08 in the case of M/s Jackson Investment Private Limited (PAN: AAACJ7612E).

Put up before the ITO Range - 6/Kol for his kind approval.

Dated 14/03/2014

  
[SUBRATA AICH]  
ITO, Ward-6(2), Kolkata.

Background of the case:-

During the course of assessment proceedings for A.Y. 2010-11, the assessing officer made an addition of Rs. 2,58,45,868 by observing as under:-

*"11. The assessee has shown no respect and regards to the notices / letters issued during the course of hearing. The assessee has failed to submit any evidence as regards to the claim of trading in textile business. No Books of Accounts, purchase and sales register Bills and Vouchers in respect of trading business of textiles (sarees) were produced although ample opportunities were provided. For the sake of natural justice, the assessee was once again allowed an opportunity to submit the details in respect of your trading business of textiles on 25.03.2013 at any time of it's choice during the office hour. It was mentioned that if the said details are not produced before the undersigned within the time allowed, it will be assumed that the assessee has no such trading business of textile. Considering the above I am of the opinion that the assessee has no explanation to offer regarding the so called trading business of sarees. In fact no such saree business was done by the assessee. In view of the above facts, the source of entire cash deposited Rs. 2,58,45,868/- in the books of the assessee remain un explained. Since the source of these cash deposited in the Books of the assessee is not established, the entire amount of Rs. 2,58,45,868/- is considered as unexplained cash credit as per provision of section 68 of the I.T. Act, 1961 and added back to the total income of the assessee."*

The assessee preferred an appeal and the Ld. CIT(Appeals)-2, Kolkata vide Appeal No. 917/CIT(A)-2/6(20)/913-14)/14-15 dated 24/06/2015 decided the appeal of the assessee as under:-

*"Decision: I have gone through the submissions of the appellant and the observations of the AO and the details placed on record. The issue involved in the present appeal in narrow in compass. The appellant is engaged in the business of trading in shares and sarees. From the Profit & Loss Account of the appellant it is clearly discernible that the appellant had purchased sarees worth Rs. 6,57,91,048 and sales of Rs. 6,62,70,218 and had reported a net gross profit of Rs. 4,79,910. In the assessment proceedings the appellant had filed break-up of total sales which inter alia included cash sales of Rs. 2,58,45,868. According to AO the cash sales was ingenuine and treated it to be unexplained cash credit u/s 68 of the Act.*

*Section 68 of the Act provides that if any credit in the books remains unexplained, then the same may be added as the income of the assessee. Courts have time and again held that Section 68 is applicable to financial transactions and not trading transactions. In the facts of the appellant's case, the appellant had furnished the explanation regarding cash deposit of Rs. 2,58,45,868. It was explained that the appellant is engaged in the business of trading in sarees. The sarees were sold over the counter and were supported by cash sales memos. The sales so realized was deposited in the bank account and credited to the Profit and*

*Loss Account. I therefore note that the appellant had credited the cash deposit of Rs. 2,58,45,868 as cash sales in the Profit and Loss Account and accordingly offered the same to tax. I am therefore unable to understand as to how section 68 could have been invoked in this case. Cash sales are common in the business of trading of sarees. The appellant has explained that the cash deposit of Rs. 2,58,45,868 were on account of cash sales and therefore the deposit stood explained. Furthermore the said cash deposit had been credited in the books and offered as income. The appellant has not disbelieved the purchases of Rs. 6,57,91,048 nor has he made out a case for bogus purchases. I therefore do not see as to how receipt which has been offered to tax by the appellant can be assessed to tax again u/s 68 of the Act.*

*I further note that the appellant has been engaged in the business of shares and trading of sarees for many years. The appellant has placed on record financials of the earlier years which shows that the appellant has all along been engaged in the business of sarees and the saree trading operations has all along been accepted and assessed by the Department. In all the earlier years the appellant had made cash sales and similar gross profit has been earned in the earlier years. It is also not a case where any loss has been reported which may raise question on the transaction. Instead the gross profit reported in the trading of sarees is comparatively higher than the earlier year. In the circumstances I find force in the appellant's submission that the AO could not have arbitrarily disbelieved the business and the cash sales made by it during the relevant year. It is observed that AO has accepted the purchases of Rs. 6,57,91,048. The AO has also accepted the sales to the extent of Rs. 4,04,24,350. The AO has also not disputed the fact that the closing stock of the sarees were NIL. It is only with regard to the cash sales of the Act. I am however unable to agree with the observations of the AO. If the AO's observation is held to be correct then the sales were Rs. 4,04,24,350 and purchases were Rs. 6,57,91,048 resulting in an operating loss of (-) 49%. Such a presumption is beyond logic and absurd.*

*As regards applicability of Rule 46A, the appellant has furnished submissions along with copy of sales ledger, bank statement and financials of earlier years. The sales ledger and bank statement were to substantiate and correlate the cash sales with the cash deposits. Considering the issue involved in the appeal, the said details were very much pertinent and decisive for the appeal. The appellant has pleaded that due to unavoidable circumstances and paucity of time it could not furnish it before the AO. I also note that sufficient opportunity was not allowed to the appellant to furnish the details. Considering the facts of the case the additional evidence is therefore admitted.*

*From the facts on record, I find that the cash sales correlate with the cash deposits and therefore the amount of Rs. 2,58,45,868 stands explained. Furthermore once the business of the appellant was not in dispute and the entire purchases were accepted by the AO and even the position of stock was not in*

*dispute, then I find no reason for disbelieving the cash sales of Rs. 2,58,45,868 which were subsequently deposited in the bank account.*

*In view of the above discussions and findings, I have no hesitation in holding that the addition made u/s 68 was legally and factually untenable. The AO is directed to delete the addition of Rs. 2,58,45,868. Ground Nos. 1 to 3 are therefore allowed."*

The department filed an appeal before the Hon'ble ITAT Kolkata against the appellate order of Ld. CIT(Appeals)-2, Kolkata. The Hon'ble ITAT, Bench-'A', Kolkata vide ITA No. 1210/Kol/2015 dated 01/06/2018 upheld the appellate order of Ld. CIT(Appeals)-2, Kolkata by observing as under:-

*"This is an appeal by the Revenue directed against the order of the Ld. Commissioner of Income Tax-2, Kolkata passed u/s 250 of the Income Tax Act, 1961 (The Act) relating to A.Y. 2010-11 on the following grounds"-*

- "1. That on the facts and in circumstances of the case, Ld. CIT(A) erred in deleting the addition made u/s 68 though, the genuine of transaction as claimed by the assessee could not be explained.*
- 2. The appellant craves to add, alter or amend any ground before or at the time of hearing."*

*2. The assessee is a company and is engaged in trading of shares. It also had income from textile business. The AO for the various reasons gave in his order, disbelieved the cash sales recorded by the assessee made in its textile business and made an addition u/s 68 of the Act as unexplained cash credit. On appeal the First Appellant Authority granted relief. Aggrieved the revenue is in appeal before us.*

*3. After hearing the rival contentions we find that the AO committed a mistake by making addition u/s 68 of the Act. When the assessee has disclosed the cash in question as its income, the question of adding the very same amount again u/s 68 does not arise. This amount to double addition.*

*4. This is what the Ld. CIT(A) has held in his order at page 12. Further more the Ld. CIT(A), on facts has held that the cash sales are co-related with the cash deposits in question and hence the amount of cash deposited in Bank is explained. He also gives a factual finding that the entire purchases were accepted by the AO and even the position of stock was not in dispute and hence there is no reason to disbelieve the cash sales, which was subsequently deposited in the bank account. We find no infirmity in the order of CIT(A). Hence we uphold the same and dismiss the appeal of the revenue.*

5. *In the result the appeal of the revenue is dismissed."*

The Assessing Officer was asked to inform as to whether further appeal has been filed by the Department against the order of Hon'ble ITAT. The Assessing Officer vide letter No. Wd-6(2)/Kol/Appeal/2018-19/2043 dated 15/03/2019 informed as under:-

*"As per office record, it is seen that the Department had not filed Appeal u/s 260 against the Order of Hon'ble ITAT for A.Yr. 2010-11 [ITA No-12110/Kol/2015 dated 01/06/2018]."*

It is seen that the facts and circumstances of the case in this Assessment Year are similar to the assessee's own case in A.Y. 2010-11, wherein, Hon'ble ITAT has held as under:

*"2. The assessee is a company and is engaged in trading of shares. It also had income from textile business. The AO for the various reasons gave in his order, disbelieved the cash sales recorded by the assessee made in its textile business and made an addition u/s 68 of the Act as unexplained cash credit. On appeal the First Appellant Authority granted relief. Aggrieved the revenue is in appeal before us.*

*3. After hearing the rival contentions we find that the AO committed a mistake by making addition u/s 68 of the Act. When the assessee has disclosed the cash in question as its income, the question of adding the very same amount again u/s 68 does not arise. This amount to double addition.*

*4. This is what the Ld. CIT(A) has held in his order at page 12. Further more the Ld. CIT(A), on facts has held that the cash sales are correlated with the cash deposits in question and hence the amount of cash deposited in Bank is explained. He also gives a factual finding that the entire purchases were accepted by the AO and even the position of stock was not in dispute and hence there is no reason to disbelieve the cash sales, which was subsequently deposited in the bank account. We find no infirmity in the order of CIT(A). Hence we uphold the same and dismiss the appeal of the revenue.*

5. *In the result the appeal of the revenue is dismissed."*

The Assessing Officer has not disbelieved the purchases, has not rejected books of accounts of the assessee, has not disbelieved credit sales but only disbelieved cash sales. The position of stock has not been disputed. When the assessee has disclosed the cash in question as its income, the question of adding the very same amount again u/s 68 does not arise. This amount to double addition.

Respectfully following the decisions of Ld. CIT(Appeals)-2, Kolkata and Hon'ble ITAT, Kolkata for A.Y. 2010-11 in assessee's own case, I have no hesitation in holding that the addition made u/s 68 was legally and factually untenable and therefore the addition made by the Assessing Officer under Section 68 of the Income Tax Act, 1961 is directed to be deleted.

**Ground 6:** No submissions made. Dismissed

**Ground 7:** relates to charging of interest, which is consequential in nature and hence no separate adjudication is required.

**Ground 8:** relates to initiation of penalty u/s 271(1)(c) of Act and is premature and hence dismissed

**Ground 9:** General in nature.

6. With the assistance of the Id. D/R, we have gone through the record carefully. We find that there is no disparity on facts. In these orders *vis-à-vis* 2010-11, the identical findings were recorded by the Id. First Appellate Authority which have been upheld by the Tribunal. Therefore, we do not find any merit in these appeals. Accordingly, all these appeals of the revenue are dismissed.

7. Before we part with this order, we would like to mention that as per Rule 34 of Income Tax Appellate Tribunal Rules, an order is required to be pronounced preferably within ninety days from the date of hearing. We are conscious of the fact, but it is pertinent to observe that after the hearing, one of us (i.e., Vice-President) remained on tour to Mumbai, Hyderabad & Tirupati (Camp) Benches, thereafter on medical leave and, therefore, not available in Kolkata for more than one month. Due to this reason, the order could not be pronounced within 90 days and it is pronounced roughly in 98 days.

**Order pronounced in the Court on 14<sup>th</sup> December, 2022 at Kolkata.**

*Sd/-*

**(RAJESH KUMAR)  
ACCOUNTANT MEMBER**

Kolkata, Dated 14/12/2022

*\*SC S/P*

*Sd/-*

**(RAJPAL YADAV)  
VICE-PRESIDENT**

**11**

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर , कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Kolkata