

**THE INCOME TAX APPELLATE TRIBUNAL
DELHIBENCH 'B', NEW DELHI**

**Before Smt Diva Singh, Judicial Member
Dr. B. R. R. Kumar, Accountant Member**

ITA No. 769/Del/2018: Asstt. Year: 2010-11

ITA No. 771/Del/2018: Asstt. Year: 2011-12

ITA No. 770/Del/2018: Asstt. Year: 2012-13

ACIT, Central Circle-13, New Delhi	Vs.	Electrical & Electronics India Ltd, Business Communication Centre, 21, Parsi Church Street, Kolkata, West Bengal-700001
(APPELLANT)		(RESPONDENT)
PAN No. AAACE5419J		

Assessee by : Sh. Salil Aggarwal, Adv.

Sh. Shailesh Gupta, CA

Sh. Madhur Aggarwal, Adv.

Revenue by : Sh. T. James Singson, CIT DR

Date of Hearing: 10.04.2023

Date of Pronouncement: 18.04.2023
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

These appeals have been filed by the revenue against the order of the Id CIT(A)-XXVI, New Delhi dated 13.11.2017 for Assessment Years 2010-11 to 2012-13.

2. The revenue has raised the following grounds of appeal:-

"I. Whether Ld. CIT(A) has erred on facts and in law in deleting the addition made u/s. 69 of the I.T. Act, 1961 on account of unexplained investment in JP Minda Group Companies aggregating to Rs. 4,05,00,000/- by the assessee company.

II. Whether Ld. CIT(A) has erred in deleting the addition despite the fact that the assessee failed to discharge its primary onus to satisfactorily explain source of investments made by the assessee company. Whether Ld. CIT(A) has erred in on facts and in law in observing that requisite details and

evidences were filed by the assessee to prove the genuineness of the claim despite the fact that based on the enquires conducted it was held that the assessee company is a paper/shell company and not doing any real business."

3. The AO made an addition on protective basis in the hands of the assessee company and the addition has been made on substantive basis in JP Minda Group Companies (AO para 11.2).
4. The protective addition has been deleted by the Id CIT(A).
5. Aggrieved the revenue filed appeal before us.
6. Before us the Id DR argued that once the additions made on substantive basis are deleted, the addition made on protective basis comes alive. For the sake of ready reference the arguments of the Id. DR in writing are reproduced as under:-

"BEFORE THE HON'BLE MEMBERS INCOME TAX APPELLATE TRIBUNAL B-BENCH, NEW DELHI

In the case of : Electrical & Electronics India Pvt. Ltd.

Appeal No. : 769, 770 & 771/DEL/2018

Asstt. Year : 2010-11, 2011-12 & 2012-13

Date of hearing :10/04/2023

MAY IT PLEASE YOUR HONOURS

Sub: Brief written Submission in the above case for 3 A.YS. - reg.

It is to submit that, as requested the case has been briefly adjourned from 05/04/23 to 10/04/2023 for the above mentioned three A.Ys,

Brief written submission is hereby made on the following issues as under. 1) Deletion of the protective basis addition by Ld CIT(A) simply following appeal order in other JP Minda group companies.

2) As directed by Hon'ble Bench, Comments on application made by assessee under rule 27 of the ITAT Rules submitted on

02/03/2023 3) Comments given by AO with regard to assesses application under rule 27 of ITAT rules may be taken into consideration.

With regard to Para-1 above. (Protective assessment deleted by CIT(A) for 3 A.Ys.)

In this regard is to submit that, the Ld CIT(A) in his order has not appreciated nor considered any of the facts and reasonings recorded by the AO in the Assessment order. The Ld CIT(A) simply accepted the explanations given by the assessee. The protective assessment is deleted without giving any finding of his own but by simply following an order of other group company of JP Minda which is reproduced in page.21-24 of Ld CIT(A) order (same for each of the for 3 A.Ys.) It is to submit that, the order of the Ld CIT(A) is against the finding of AO as written after proper investigation and reasoning in the Assessment Order Page. 35 to 39 (para 9,10,10.1,11, 11.1 and 11.2- for each of the 3 A.Ys)

Further, The Ld CIT(A) has not even mentioned about the status of substantive assessment while deleting the protective assessment because protective assessment becomes alive if in case the substantive basis addition is deleted. Hence, due to the reasons explained, the order of the Ld CIT(A) is wrong and not accepted by the revenue and accordingly it is requested to be quashed. The Revenue fully relies on the Order passed by the AO and the same may kindly be restored.

For the sake of repetition it is also submitted that, if in case the substantive basis addition is deleted the protective basis assessment comes alive.”

7. The Id. AR submitted that the Id CIT(A) has deleted the addition based on the adjudication by the Id CIT(A) in the case of Jay FE Cylinders Ltd vide Appeal No. 59/2016-17 dated 16.08.2017 wherein, the substantive addition was deleted. Further, the deletion of the substantive addition by the Id CIT(A) has been confirmed by the co-ordinate bench of ITAT and the Hon'ble Jurisdictional High Court.

8. The Id. DR did not dispute the fact of the fate of substantive addition.

9. Since, the substantive additions have been deleted on merits and no observation has been given that the substantive additions were deleted owing to the fact that the addition made on protective basis in the hands of the assessee company and since the assessee company has not been held to be the right assessee wherein, the substantive additions were supposed to be made by any of the authorities viz. Id. CIT(A), co-ordinate bench ITAT, Hon'ble High Court, we hereby affirm the order of the Id CIT(A)

10. Since, the appeal of the Revenue is dismissed on the core issue of taxability of the amount on the protective basis, any adjudication of the technical issues raised by the assessee under Rule 27 of ITAT Rules, 1963 becomes academic in nature and hence not resorted to.

11. In the result, the appeals filed by the Revenue are dismissed.

Order Pronounced in the Open Court on 18/04/2023.

Sd/-

(Diva Singh)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 18/04/2023

Ajay Kumar Keot, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR