

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

<u>ITA No. 5071 /DEL/2017</u>	<u>A.Y. 2008-09</u>
<u>ITA No. 5072 /DEL/2017</u>	<u>A.Y. 2009-10</u>
<u>ITA No. 5073 /DEL/2017</u>	<u>A.Y. 2010-11</u>
<u>ITA No. 5074 /DEL/2017</u>	<u>A.Y. 2011-12</u>
<u>ITA No. 5075 /DEL/2017</u>	<u>A.Y. 2012-13</u>
<u>ITA No. 5041 /DEL/2017</u>	<u>A.Y. 2013-14</u>

ACIT, Central Circle-19, New Delhi.	<u>Vs</u>	Shiva Mint Industries, 99-B, Mirpur Industrial Estate, Bari Brahmana, Jammu, (J&K), PAN-ABBFS4825M
APPELLANT		RESPONDENT

AND

<u>ITA No. 5066 /DEL/2012</u>	<u>A.Y. 2008-09</u>
<u>ITA No. 5036 /DEL/2017</u>	<u>A.Y. 2009-10</u>
<u>ITA No. 5037 /DEL/2017</u>	<u>A.Y. 2010-11</u>
<u>ITA No. 5038 /DEL/2017</u>	<u>A.Y. 2011-12</u>
<u>ITA No. 5039 /DEL/2017</u>	<u>A.Y. 2012-13</u>
<u>ITA No. 5040 /DEL/2017</u>	<u>A.Y. 2013-14</u>

ACIT, Central Circle-19, New Delhi.	<u>Vs</u>	M/s Ambika International, Plot no. 4, Small Scale Co-op. Industrial Estate, G.T. Road, Delhi-110033. PAN-AALPA2091A
APPELLANT		RESPONDENT

ITA No. 5035 /DEL/2017**A.Y. 2013-14**

ACIT, Central Circle-19, New Delhi.	<u>Vs</u>	M/s Jay Ambey Aromatics, SIDCO Industrial Complex, Near ESI Hospital, Bari Brahmana, Jammu, (J&K), PAN-AAEFJ6381K
APPELLANT		RESPONDENT

Assessees represented by	Shri V.K. Bindal, CA & Mrs. Rinki Sharma, ITP
Department represented by	Shri H.K. Choudhry, CIT(DR)
Date of hearing	31.08.2023
Date of pronouncement	13.09.2023

ORDER**PER ANUBHAV SHARMA, JM:**

The appellants are entities part of M/s Sharp Group upon which search and seizure operation u/s 132 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) was conducted by the Investigation Wing on 20.01.2014. The assessee/appellants’ premises were also covered u/s 132(1) of the Act. As the cases were centralized, notice u/s 153A of the Act was issued and the matter was examined by the learned AO.

2. The main allegation against the Sharp Group of companies was that as per the Central Excise Rules, manufacturing units get refund of excise duty paid, if the manufacturing unit is installed in the State of Jammu & Kashmir. The practice is that the manufacturer sells the finished products to other manufacturers for whom the finished product is the raw-materials. The latter manufacturer carries out some process and pays over the difference between the excise duty payable on its finished goods and the excise duty charged from it by the former manufacturer. Manufacturer also enjoys deduction u/s 80-IB of the Act. Mentha oil was allegedly purchased from petty dealers/agents and delivered to Sharp Group's units in Delhi and Bhiwari. However, to avail benefit under the Act and requisite excise refund allegedly the billing was made as if mentha oil was purchased by the Jammu Units.

2.1 Allegation against Sharp Group was that suppliers of oil were shown to be cultivators with fake identity and addresses. There were transactions wherein manufacturing unit having its factory at Jammu claimed to have sold its finished goods to second manufactures having its factory in Delhi and in this manner allegedly the group availed credit of excise duty and also enjoyed 100% deduction of profits earned u/s 80-IB of the Act. It is alleged that the profits shown in the unit at Jammu are nothing but accommodation entries. The group has routed its own

unaccounted money in the books through bogus profits shown in the unit at Jammu and claimed 100% deduction on such profits u/s 80-IB of the Act.

3. Learned AO held that purchases made by these entities were all bogus and the statement of Manoj Jain, proprietor of M/s Paras Trading Company was relied who admitted to have given the bogus entries. Learned AO examined the trail of transactions involving Company of Manoj Jain and the appellants who were group entities of Sharp Group and concluded that they had shown purchases which were bogus and incorrect credit passed. The books of account were rejected and the learned AO concluded that as the assessee unit is being shown as 100% captive unit of the flagship company i.e. M/s Sharp Global with 100% so called supplies to M/s Sharp Global only. Accordingly, the appellant company entities were considered to be pass through entity and the ultimate beneficiary was Sharp Global Ltd. only. Accordingly, learned AO made protective additions in the hands of the assessee companies on account of bogus purchases. Further, learned AO concluded that as no manufacturing activity was done by the assessee company and the assessee is not entitled to 80-IB deduction, therefore, manufacturing expenses were disallowed.

4. Learned CIT(A) had allowed the appeal of the assessee by holding that learned AO had fallen in error in rejecting the books of account and the statement of Manoj Jain was retracted while there was sufficient evidence to establish that the purchases were genuine.

5. The Revenue is in appeal raising respective grounds and the grounds for A.Y. 2008-09 in ITA No. 5071/Del/2017 M/s Shiva Mint Industries are taken for reference and reproduced below:

“1) The CIT (A) has erred on facts and in law in law and on facts in allowing the appeal of the assessee without truly appreciating the factual matrix of the case.

2) The Ld. CIT(A) has erred in law in relying on Kabul Chawla 61 taxman.com 412(Delhi) and in holding that completed assessment could not have been interfered by the AO by making the assessment u/s 153A of the Act does not stipulates any such conditionality. In the relied case of CIT Vs Kabul Chawla, ITA No. 707/2014 and others dated 28.08.2015 (2015) 61 taxman.com 412(Delhi) departments SLP is pending in Supreme Court and decision is still awaited.

3) The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in deleting the addition of Rs. 112,19,31,290/- made by AO on account of bogus purchase.

4) The Ld. CIT(A) has erred in accepting assessee contention that the Supplier of goods have submitted the reply/confirmation in respect to notice u/s 133(6) when the Assessing Officer specifically mentioned that no reply were filed in response to notice u/s 133(6), therefore, assumption of the contention that they have filed the reply without verifying from the assessment records or referring the matter to AO is clear violation of rule 46A of the I.T. Act being additional evidence accepted in appellate proceedings

- 5) *The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in deleting the addition of Rs.24,64,19,628/- made by AO on account of disallowance of deduction u/s 80IB(4) of the Act.*
- 6) *The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in deleting the addition of Rs.1,64,74,820/-on account of disallowance of manufacturing expenses.*
- 7) *The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts allowing assessee's plea for rejection of books of account u/s 145(3) of the IT act, 1961.*
- 8) (a) *The order of the CIT(Appeals) is erroneous and not tenable in law and on facts.*
- (b) *The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal."*

6. Heard and perused the record.

7. On behalf of the assessee, the sum and substance of the arguments of learned AR was that the Coordinate Bench in the case of Sharp Mint Ltd., which was also a group entity, in ITA nos. 5076 to 5082/Del/2017 for A.Y. 2008-09 to 2012-13 has taken into consideration the judgment of CESTAT and concluded that purchases made by the Jammu based entities are genuine and that they were engaged into manufacturing activities. He submitted that in another entity group case in **ACIT Vs. Fine Aromatics [ITA nos. 5042, 5043, 5032 & 5068/Del/2017**

for A.Y. 2008-09 to 2011-12], the Coordinate Bench vide order dated 21.07.2023 has given the substantive finding that there was no incriminating material found at the time of search and learned CIT(A) has rightly relied upon the judgment of Hon'ble Delhi High Court in the case of **Kabul Chawla 61 taxmann.com 412**. He also submitted that judgment of the Hon'ble Supreme Court in the case of **Abhisar Buildwell 454 ITR 212** be also relied. He thus submitted that as there was no incriminating evidence in the cases of present appellant also, therefore, order of learned CIT(A) requires no interference.

7.1 On the other hand, learned DR submitted that during the assessment proceedings learned AO had made enquires and examined the record independently and had concluded about the bogus purchases on the basis of statements recorded. He submitted that retracted statement of Manoj Jain was corroborated by the trail of transactions examined. His stress was on the argument that material found in enquiry after search should be considered to be incriminating material.

8. The Bench has taken into consideration the facts of all the cases and for convenience the disposal of all the grounds in the respective appeals findings are required to be given on two material aspects, which cover all the grounds and are connected to one other.

8.1 The first point for determination is whether during the search any incriminating material was seized and which has been relied at the time of assessment but which has been wrongly left out of consideration by the learned CIT(Appeals);

8.2 Secondly, whether the learned AO was able to establish that there was no manufacturing activity in the units of the assessee companies.

9. In regard to the first issue it comes up from the assessment order that learned AO has not relied any specific document or any material seized during the search. He primarily relied on retracted statement of Shri Manoj Jain. The assessment order does not disclose as to how the statement of Manoj Jain and Sanjiv Jain were corroborated in material particulars by any other evidence found during the search. It appears, certain inquiries were made from the bank of Shri Manoj Jain on basis of which learned AO concluded that after the money was put into his accounts the same was withdrawn by cheques which are signed on back by the staff of Sharp Group and from the independent bank inquiries it was found that even copies of the ID cards of the staff of the Sharp Group companies were annexed with the cheques. The statement may be reflective of any other transaction but on its own does not prove the fact that the purchases itself were bogus. Same cannot be said to be one to be called incriminating material found during search.

10. It comes up from the order of learned AO that primarily he relied on the Central Excise Department's Investigation and findings, which were made basis to conclude that assessee companies were involved in booking bogus purchases through various persons/parties which were found to be non-existing. However, what is material is that the order of learned AO is dated 31.03.2016 and on 5.12.2018 the CESTAT in its order has accepted the claim of the assessee companies that they were engaged into genuine purchases and manufacturing activities by holding that the allegations are based only on assumptions and presumptions and it cannot be held that appellants had not manufactured the goods during the impugned period. These findings have been relied by the Coordinate Bench in the case of **Sharp Mint Ltd. (supra)** and in paras 10 & 11 Co-ordinate Bench has made following observations for dismissing the appeal of the Revenue:

“10. Thus, once the CESTAT has held the purchases made by four Jammu bases entities to be genuine, the entire case of the Revenue based on the investigation carried out by Central Exc.' Department, Jammu would fall flat. It is further relevant : observe, while deciding the appeals filed by the Revenue in case of M/s. Jai Am bay Aromatics, one of the four Jammu based entities from whom the assessee had purchased raw materials, the Tribunal in ITA No.5031/Del/2017 and Ors., dated 15.07/2021 has upheld the decision of the first appellate authority in deleting the additions made by the Assessing Officer on account of bogus purchases. Thus, once, the CESTAT and the Tribunal have held the purchases made by the four Jammu based entities to be genuine, the corresponding sales effected by them to the assessee have to be accepted as genuine.

11. In that scenario, in our considered view, learned first appellate authority was justified in deleting the additions made on account of non-genuine

purchases. Once the purchases are held to be genuine, then there cannot be any doubt regarding manufacturing activity of the assessee. Therefore, the manufacturing expenses claimed by the assessee have to be allowed. In this view of the matter, we do not find any infirmity in the decision of learned Commissioner (Appeals). Accordingly, we uphold the same by dismissing the grounds raised by the Revenue. Our aforesaid decision will apply mutatis mutandis to rest of the appeals under consideration.”

11. Similarly, in the case of **Fine Aromatics (supra)**, the Coordinate Bench, in which one of us was in the quorum, has drawn the conclusion that no incriminating material was found at the time of search and thus relying on the judgment of the Hon’ble Supreme Court in the case of **Abhisar Buildwell (supra)**, sustained the order of learned CIT(A).

12. There is no force in the contention of learned DR that the subsequent inquiries made during assessment proceedings can be considered falling in category of seized or incriminating material found during search, so as to validate the assessment u/s 153A. The subsequent proceedings are only of corroborative nature and may be considered relevant to be one for the purpose of ascertaining the extent of evasion. However, the preliminary piece of evidence would be the one allegedly found during the search which in the case of the appellants was only the statement of Manoj Jain and Sanjiv Jain, which too stood retracted. The Bench is of the considered view that the subsequent finding of the CESTAT were fatal to the case made by Ld. AO. The order of ld. CIT(A) requires no interference.

13. The two issues framed above thus are decided against the Revenue. Consequently, all the grounds arising out of aforesaid issues are decided against the Revenue and **all the appeals of Revenue are dismissed.**

Order pronounced in open court on 13.09.2023.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI