

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.256/Del/2015
(Assessment Year: 2010-11)**

**ITA No.257/Del/2015
(Assessment Year: 2011-12)**

**ITA No.258/Del/2015
(Assessment Year: 2012-13)**

ACIT, Central Circle 30,
New Delhi.

vs.

M/s. Jindal Poly Films Ltd.,
Plot No.2, Local Shopping Complex,
Vasant Kunj,
New Delhi – 110 070.

(PAN : AAACJ7650E)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Rohit Jain, Advocate
Ms. Deepashree Rao, CA
Shri Samarth Dhumal, Advocate
REVENUE BY : Ms. Sapna Bhatia, CIT DR

Date of Hearing : 09.01.2024
Date of Order : 06.02.2024

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

These are appeals by the Revenue against the common order of the Id.
CIT (Appeals)-XXXIII, New Delhi dated 18.09.2014 for the assessment
years 2010-11, 2011-12 & 2012-13.

2. Since the issues are common and connected and the appeals were heard together, these are being disposed off by this common order.

3. Grounds are common in all the appeals. We may refer to the grounds of appeal of AY 2010-11 as under :-

“1. On the facts and in the circumstances of the case and in law, the CIT (A) has erred in deleting the addition by holding that no disallowance is required to be made for the payments to contractors for loading, unloading and packaging.

2. On the facts and in the circumstances of the case and in law, the CIT (A) has erred in allowing the appeal of the assessee without going into the merits of the case.

3. The order of the CIT (A) is erroneous and is not tenable on facts and in law.”

3. Brief facts of the case are that the assessee company is engaged in the business of manufacturing of Polyester Chips of all grade. Biaxially Oriented Polyester Film (Boket Film), Biaxially Oriented Polyfim (BOPP), Metalised Film and PYDC Fim. These products are sold in domestic as well as in export market. During the course of search proceedings at the office of the group of Plot no. 12, Sector B-1, Local Shopping Complex, Vasant Kunj, New Delhi and during course of survey proceedings at Nasik, Plant print out of bills were extracted from computers inventorised as annexure A-I. These bills were related to packing, loading and unloading charges paid by the assessee company to six parties with following address:-

Name	Address
M/s. Om Sai Associates	C/o Sirohi House, Ram Nagar, Gulaothi, Saidpur Road, P.O. Gulaothi, Disst. Bulandsahar, U.P.
M/s. Jai Bhawani Enterprises	C/o Savitri Bhavan, Swrag Ashram Road, J.K. Colony, Gali No.3, Hapur, Distt. Ghaziabad.
M/s. Singhal & Sons	Near Market Committee, Ghoti, Distt. Nasik/ Vijay Raj Complex, 2 nd Floor, Near Merchant Bank, Ghoti, Distt. Nasik.
M/s. Kumar Kirana Stores	Village Ghoti, Talukalgatpuri, District Nasik.
M/s. Sharma & Co.	6, Gavaseth Building, Rtinlak Pool, Igatpuri, District Nasik.
M/s. Satyabir Brothers	Sardar Complex, Cinema Gali, Igatpuri, District Nasik.

During the post search proceedings, enquiries were conducted at these addresses, the addresses were either not traceable or these concerns were not found operating from these addresses. Accordingly, AO has made disallowance for the amounts paid to these persons and disallowance of such expenses is as under :-

Sr.No.	AY	Disallowance of Expenses
1.	2010-11	Rs. 7,46,44,339/-
2.	2011-12	Rs.10,03,81,463/-
3.	2012-13	Rs.10,17,94,744/-

4. Against this order, assessee appealed before the Id. CIT (A). Ld. CIT (A) elaborately considered the issue and thereafter, he obtained written submissions from the assessee and obtained remand report from the AO also. Finally, he deleted the addition by holding as under :-

“ First main basis of the addition is revolving around the non existence of the alleged contractor at the address mentioned in the contractors bills enquired during search and post search proceedings. Subsequently, during the post search proceedings, when it was informed to the appellant for the first time why contractor expense should not be disallowed. The appellant

submitted that the summons have been served on the contractors and they will comply with the requirements. These facts have been reproduced in the assessment order. Thereafter, during the assessment proceedings, when the appellant was asked to substantiate the expense paid to these contractors, the appellant filed documentary evidences in form of the PAN card/ Adhar Card, service tax registration, copy of service tax return, copy of bank statement of the appellant company and e- TDS details about such contract payment etc. Subsequently, the Ld. Assessing officer asked to produce these sub contractors. During the assessment proceedings, the appellant produced five out of six contractors and statements of these contractors were recorded by the assessing officer. All of them confirmed that they have provided labour to the appellant company for packing and loading of finished product. During the appellate proceeding, the appellant has produced even sixth contractors Sh. Satravir Singh before the assessing officer whose statement was recorded by the Assessing Officer. In his statement, he confirmed to have supplied labour for packing, loading and unloading. The assessing officer has stated these fact in the assessment order.

During the remand, proceedings, when sixth labour contractor Sh. Satyabir Singh was produced before the assessing officer, he also explained that he has left the address where enquiry was done during search and post search proceedings, and shifted to the native place. He also stated that he was earlier residing at Sardar complex in Nasik and there is a rental agreement for the same. The relevant portion of statement is reproduced as under:-

"Q14. You could not be found during the search and survey operations and moreover during post search investigation and even during assessment proceedings. Please explain?"

Ans. I had left the work with the company at that time. I went to my village in May 2010 itself. The investigation and enquiries were made at my previous addresses. Now company approached me for statement and I appeared

Q16. Where did you reside at Nashik?

Ans. I used to reside at Sardar Complex. Cinema Gali, Igatpuri, Nashik.

Q17. Please furnish the proof of residing at Nashik?

Ans. I used to reside in bachelor quarter from 2000 to 2004 and then took a residence on rent agreement of which was executed at that time. J will produce it if it is traced.”

In his statement, he has confirmed that he has provided labour to the appellant company. In view of the above facts, in my view, non traceability of contractor during search and post search proceeding has non weithage as these contractors were produced before the assessing officer and explained the reason of their non presence at the address on the bills.

Second evidence relied by the assessing officer is that the employee of the company used to withdraw cash from the contractor's bank accounts. I have perused the bank accounts. Entries of withdrawal is 'self. Therefore, the cash has been withdrawal by the contractors. The contractors during the statement, however, accepted that the employee of the appellant company used to accompany him at the time of withdrawal of cash from the bank and cash used to be carried in companies vehicle. This arrangement was used to ensure for the payment distributed to labourers hired for the work of the company.

Third evidence relied by the Ld. Assessing Officer is that these contractors are Ex-employee of the company. There is no denial to the fact that these contractors were ex-employee or town persons. The contractors have also accepted these facts. Ld. AR argued that for continuous supply of labour, only reliable and known person can be deployed. Fourth basis relied by AO is that in the computer of the appellant bills of these contractors were found. All the contractors have stated that the bills were prepared at the premise of the appellant as these contractors were only supplying labour and does not have separate infrastructure. The only issue remains whether being known person as contractor, there is excess payment towards services rendered by the contractors. In this regard, Ld AR vehemently argued that before the assessing officer, the appellant has submitted that number of contract labour provided by these contractors are maintained by the appellant company and

average monthly salary of each such employee is ranging from Rs. 6,000 to 7500/- which is minimum for semi-skilled labour. Further, the appellant has provided figures of salary and wages for per kg. production in similar industries. In appellant's case, the salary and wages per kg. production is in the range of 10% to 25% of other industries. There is no adverse findings in the assessment order on this submission. In view of the above facts and circumstances, I do not consider that there is excess payment on account payment for packing, loading and unloading charges made to contractors.

Considering the entire facts and circumstances of the case, in my view, no disallowance are required to made for the payment to contractors for loading, unloading and packing. Accordingly, the disallowance made to the contractors for each assessment year is hereby deleted. These grounds of appeal are allowed.”

5. Against this order, Revenue is in appeal before us. We have heard both the parties and perused the records.

6. We find that the main plank of AO's action was that these labour suppliers are either bogus or ex-employees of the assessee; that these persons were not found at their respective addresses. However, Id. CIT (A) in his order has given a finding that during the remand proceedings, 5 out of 6 contractors were produced before the AO and statements of these contractors were recorded by the AO. All of them confirmed that they have provided labour to the assessee company for packing and loading of finished product. Furthermore, before the Id. CIT (A), assessee produced the sixth contractor whose statement was also recorded. In his statement, he confirmed to have supplied labor for packing, loading and unloading.

6.1 Furthermore, another plank of AO is that the employee of the assessee company used to withdraw cash from the contractor's bank account. Ld. CIT (A) has noted that he has perused the banks accounts and the entries of withdrawal were self. Therefore, he held that cash withdrawn by the contractors and the contractors during the statement accepted that the employee of the assessee company used to accompany him at the time of withdrawal of cash from the bank and cash used to be carried in company's vehicle and this arrangement was used to ensure for the payment distributed to labourers hired for the work of the company.

6.2 Another plank of the AO is that these contractors are ex-employees of the assessee company. It has been submitted that this fact has been accepted. For this explanation, the assessee submitted that for continuous supply of labour, only reliable and known person can be deployed.

6.3 Another plank of AO is that in the computer of the assessee, bills of these contractors were found. It has been submitted that all the contractors have prepared the bills at the premise of the assessee as these contractors were only supplying labour and did not have separate infrastructure. Furthermore, ld. CIT (A) has also found that the salary and wages per kg. production is in the range of 10% to 25% of other industries and there was no adverse findings in this regard in the assessment order. Furthermore, books have not been rejected.

7. Accordingly, in the background of aforesaid discussion, we do not find any infirmity in the well-reasoned order of Id. CIT (A), hence we confirm the same.

8. Our above order applies mutatis mutandis to all the assessment years.

9. In the result, all the appeals filed by the Revenue are dismissed.

Order pronounced in the open court on this 06th day of February, 2024.

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 06th day of February, 2024
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-XXXIII, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**