

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI

BEFORE SHRI. ANIKESH BANERJEE, JUDICIAL MEMBER AND
SMT. RENU JAUHRI, ACCOUNTANT MEMBER

I.T.A No.1367/Mum/2024
(Assessment Year:2012-13)

DCIT, Central Circle-7(1), Mumbai Room No.676, 6 th Floor, Aayakar Bhavan, M.K.Road, Mumbai-400 020	vs	M/s Pushpak Bullions Private Limited, Room No.6, Thakker Niwas 93, 6, Thakkar Niwas, Bhuleshwar Road, Mumbai-400 002 PAN : AABCP9537H
APPELLANT		RESPONDENT

Assessee by : Shri Satyaprakash Singh
Respondent by : Shri Satya Pal Kumar – CIT (DR)

Date of hearing : 12/11/2024
Date of pronouncement : 13/11/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the revenue was filed against the order of the Learned Commissioner of Income-tax (Appeals)-49, Mumbai, [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2012-13, date of order 30/01/2024. The impugned order is emanated from the order of the Learned Assistant Commissioner of Income-tax,

Central Circle 7(1), Mumbai (in brevity, 'the Ld.AO') passed under section 148 read with section 143(3) of the Act, date of order 30/09/2021.

2. The revenue has taken the following grounds: -

"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing the appeal of the assessee despite the fact that assessee could not prove the cash deposits of Rs. 74,95,00,000/- made into assessee's bank account by M/s Jorss Bullion. Therefore, the addition of Rs. 74,95,00,000 as unexplained cash credit under Section 68 received from Jorss Bullion P. Ltd should be added to total income of the assessee.

2. "On the facts and circumstances of the case and in law, whether the Ld. CIT(A) erred in allowing the appeal of the assessee despite that fact that assessee could not prove the cash deposits of Rs. 1,90,00,000/- made into assessee's bank account by M/s Shubh Bullion. Therefore, the addition of Rs. 1,90,00,000/- unexplained cash credit under Section 68 of Income Tax Act, 1961 received from M/S. Shubh Bullion should be added to total income of the assessee.

3 On the facts and in the circumstance of the case and in law, the Ld. CIT(A) erred in allowing the appeal of the assessee despite the fact that no actual business activity was being carried on by M/s. Jorss Bullion Pvt. Ltd. and the company was M/s. Jorss Bullion Pvt. Ltd. actively involved in routing unaccounted money through banking channel.

4 On the facts and circumstances of the case and in law, whether the Ld. CIT(A) erred in allowing the appeal of the assessee without verifying the genuineness of the transaction. However, the party M/s. Shubh Bullion did not respond to the notice of AO. issued u/s 133(6) of the Act. Hence, the AD held that the cash deposits of Rs. 1.90 Cr. made by Shubh Bullion into the account of the assessee company during the year was not genuine.

5. The appellant craves leave to amend or alter any ground and/or add new grounds which may be necessary."

3. The brief facts of the case are that the assessee company is engaged in business of bullion trading. The assessment was framed under section 147 /

143(3) of the Act. While assessing the total income the Id. AO made additions of Rs.74,95,00,000/- and Rs.1,90,00,000/- as unexplained cash credits u/s.68 of the Act, on account of cash deposits made into the bank account of the assessee company by M/s. Jorss Bullion Pvt. Ltd. and M/s. Shubh Bullion, respectively. The assessee being aggrieved on the assessment order filed an appeal before the Ld. CIT(A). The Ld.CIT(A) considering the submission of the assessee allowed the assessee's appeal and deleted the impugned additions. Being aggrieved on the appeal order, the revenue filed an appeal before us.

4. The Ld.DR argued and relied on the impugned assessment order. The Ld.DR stated that the addition was made by the Ld.AO on the basis of the information from the Investigation Wing, Mumbai. The Investigation Wing made the survey to the parties, but the office was closed. The Id. DR stated that identity of the parties is in question. The Ld.AO added back the amount on the ground that the parties have deposited cash in their bank account. So, on that basis, the transaction seems to be non-genuine, and addition was confirmed in assessee's hand.

5. The Ld.AR argued and invited our attention in appeal order paragraph No.10. The relevant paragraphs are reproduced below: -

"10. DECISION:

10.1 The learned AO therefore has made wrong addition of Rs. 74.95 Crore for the reasons stated above, therefore the entire addition of Rs. 74.95 Crore is liable to be deleted. In this case, the assessment was reopened on the basis of information received from Investigation Wing regarding transactions carried out by the appellant with M/s. Jorss Bullion Pvt. Ltd. and M/s. Shubh Bullions. On

verification of appellant company's Profit & Loss Account and Balance Sheet for the year under consideration, the AO noticed that the company had made transactions with M/s. Jorss Bullion Pvt. Ltd. and it had claimed meagre employee expenses and other office expenses, as compared to the turnover reported, which raised doubts about the genuineness of the business transactions of the appellant company. Further, on verification of the bank statement of M/s. Jorss Bullion Pvt. Ltd. with Axis Bank, which was provided by the Investigation Wing, it was found that there were frequent transactions with the appellant company and the debit transactions to the appellant were preceded by cash deposit in the bank account of Jorss Bullion Pvt. Ltd., which, according to the AO, indicated that the transactions between the two companies were not genuine. The AO found that the total amount of cash deposited in the bank account of M/s. Jorss Bullion Pvt. Ltd. was Rs.70.95 Cr. It was observed by the AO that a survey action u/s. 133A of the Act had been conducted in the case of M/s. Jorss Bullion Pvt. Ltd. by the Investigation Wing in Mumbai and when the survey team visited the office premises of the company at 4, Shreenathji Building, 97, Bhuleshwar Road, Mumbai, the premises was found locked. On enquiry by the survey team with the neighbor, it was gathered that the office always remained closed and it was last seen open three months back and no business activity was being carried on from the said premises. A statement of the neighbour, Shri Deepak Agrawal, was also recorded to this effect. The AO also observed that a notice u/s.133(6) of the Act was issued to M/s. Jorss Bullion Pvt. Ltd. on 23/09/2021, requiring to furnish the explanation in respect of the cash deposits made in the bank account along with supporting documentary evidences, but no reply was received. Under the circumstances, the AO held the view that no business activity was being carried on by M/s. Jorss Bullion Pvt. Ltd. and the company was actively involved in routing unaccounted money through banking channel. He, accordingly, held that the cash deposits of Rs.74.95 Cr. made by M/s. Jorss Bullion Pvt. Ltd. in the bank

account of the assessee during the year under consideration is not genuine. The said amount was, therefore, added u/s. 68 of the Act.

10.2 It is seen that in the impugned assessment order, the AO has made contradictory observations about the transactions between the appellant company and M/s. Jorss Bullion Pvt. Ltd. Initially, the AO has stated that from the bank statement for A/c. No.911020025941695 of M/s. Jorss Bullion Pvt. Ltd. with Axis Bank it was found that there were frequent transactions with the appellant company and the debit transactions to the appellant were preceded by cash deposit in the bank account of M/s. Jorss Bullion Pvt. Ltd. (para 4, 12.1 & 12.2). However, later, he has stated that cash deposits of Rs.74.95 Cr. had been made by M/s. Jorss Bullion Pvt. Ltd. in the account of the appellant company during the year (para 12.2, 12.4 & 12.5). Further, in para 12.2 of the assessment order, the AO has mentioned that the total amount of the cash deposits was found to be Rs.70.95 Cr. However, in para 12.5 of his order, the AO has mentioned the figure at Rs.74.95 Cr. and while computing the income, this amount has been added.

10.3 In view of the contradictory observations of the AO regarding the cash deposits, the assessment records were requisitioned and verified. It was found that in the impugned assessment order, the AO has referred to the cash deposits made in the bank account of M/s. Jorss Bullion Pvt. Ltd. (A/c. No.911020025941695) with Axis Bank. The finding given by the AO in the impugned order that M/s. Jorss Bullion Pvt. Ltd. had made the cash deposits in question in the bank account of the appellant company is found to be factually incorrect.

10.4 As stated above, the cash deposits were found to have been made in the bank account of M/s. Jorss Bullion Pvt. Ltd. and from the said account, amounts were transferred to the bank account of the appellant company by RTGS or other

modes. It is the source of the cash deposits in the bank account of M/s. Jorss Bullion Pvt. Ltd. which should have been verified by the AO.

10.5 It is also not understood as to how the AO had arrived at the figure of Rs.70.95 Cr. / Rs.74.95 Cr. as the amount of unexplained cash credit in the case of the appellant company. It is seen from the bank statement for the A/c. No. 911020025941695 of M/s. Jorss Bullion Pvt. Ltd. with Axis Bank that the total cash deposits in the said bank account during the period 01/04/2011 to 31/03/2012 amounts to Rs.59.73 Cr. Further, the total amount transferred to the appellant company from the said bank account on various dates during the aforesaid period comes to Rs.41.53 Cr.

10.6 The AO has stated in the assessment order that no actual business activity was being carried on by M/s. Jorss Bullion Pvt. Ltd. and the said company was actively involved in routing unaccounted money through banking channel. The appellant has submitted before me that it is engaged in the business of trading of bullions and it had made sale and purchase transactions with M/s. Jorss Bullion Pvt. Ltd. The appellant also filed a copy of the Ledger Account of M/s. Jorss Bullion Pvt. Ltd. in its books of accounts, before me. It is seen from the same that during the year under consideration, the appellant company had made total sales(including opening balance) of Rs 1762.96 Cr to M/s. Jorss Bullion Pvt. Ltd. and the entire payment against such sales had been received through banking channels. As per the Sales Register filed by the appellant, the total sales of the company for the year are Rs.4822.75 Cr. The appellant has also filed Purchase Register, from which it is seen that the total purchases during the year are Rs.4782.31 Cr. Further, it is seen that the appellant company had purchased bullions mainly from Nova Scotia Bank and Shirpur Gold Refinery Ltd. and the payments for the entire purchases had been made through banking channels. The AO has not doubted the purchases of the appellant company. Further, the AO has also not doubted the entire sales of the appellant to M/s. Jorss Bullion Pvt. Ltd.

The addition is made only to the extent of cash deposits made by the Jorss Bullion Pvt Ltd in its bank account.

10.7 The facts are summerised as under:

i. Cash of Rs.59.73 Cr. is found deposited in the bank A/c. No. 911020025941695 of M/s Jorss Bullions Pvt Ltd in the relevant A.Y under consideration.

ii. The total amount transferred to the appellant company from this bank account on various dates during the aforesaid period is of Rs.41.53 Cr.

iii. No cash is deposited as alleged in the bank account of the appellant.

iv. The appellant has shown purchase and sale transaction with M/S Jorss Bullion Pvt Ltd.

v. The transfers from Bank account of M/s Jorss Bullion Pvt Ltd. against the cash deposits are on account of sales made by the appellant.

vi. The A.O has not doubted the entire sales made by the appellant to M/s.Jorss Bullion Pvt Ltd.

vii. The appellant's purchases are mainly from the Bank and Gold refinery. These purchase have not been doubted by the A.O.

viii. The Stock book has not been doubted.

From the above, it can be seen that the A.O. has not verified even the basic facts forwarded by the Investigation Wing. Information regarding cash deposits of Rs.70.95 Cr by M/s. Jorss Bullion Pvt. Ltd. in its bank account was received. Actually, the cash deposits in this bank account are of Rs 59.73 Cr., whereas the A.O made addition of Rs Rs.74.95 Cr., by observing that this cash is deposited in the bank account of the appellant by M/s. Jorss Bullion Pvt Id. Further, the A.O has alleged that M/s Jorss Bullion has not furnished the details called for,

however, it is a fact that this company is also centralised with the same A.O and these details were accessible to the A.O.

10.8 Under the circumstances, in the impugned addition cannot be sustained. The addition of Rs.74,95,00,000/- made by the AO as unexplained cash credit u/s. 68 of the Act is, accordingly directed to be deleted and Ground No.1 is ALLOWED.

11. The AO is, however, directed to verify whether proceedings u/s. 147 of the Act have already been initiated in the case of M/s. Jorss Bullion Pvt. Ltd. for A.Y. 2012-13 on the issue of cash deposits in its aforesaid bank account with Axis Bank. If not, the AO is directed to take appropriate action in the said case.”

6. The Ld.AR further argued that the Ld.AO had not made any separate verification. Only on the basis of information from Investigation Wing, the addition was made on the ground that the said parties have made the cash deposit in their bank account. But the assessee received the payment through banking channel. The addition was made on wrong fact. The assessee sold the goods and received the payment through banking channel, the identity of the party is not in question and there is no dispute about the purchase of goods. During impugned assessment year the total sales of the assessee-company are Rs.4822.75 Cr. and the total purchases during the year are Rs.4782.31 Cr. Further, the assessee-company had purchased bullions mainly from Nova Scotia Bank and Shirpur Gold Refinery Ltd. and the payments for the entire purchases had been made through banking channels. The Id. AO has not doubted the purchases of the assessee. Even the books of accounts are not rejected.

7. We heard the rival submission and considered the documents available in the record. The Ld.AO wrongly presumed that the assessee deposited cash in

bank account through the Jorss Bullion and ShubhBullion. We note that The assessee had furnished bank accounts, ledger accounts of debtors and creditors including Jorss Bullion and Shubh Bullion. The quantity details are also given. The assessee has purchased through bank the gold bullion in bulk and sold to Jorss Bullion and Shubh Bullion. The cash deposit in the bank of the Jorss Bullion was found Rs59.73cr but the addition was made 74.95cr. The Ld.CIT(A) observed that the cash was deposited in parties' account not in assessee's account. Related to genuineness of transaction, the assessee received the entire amount through banking channel. The bills and other documents are produced, and the purchase is also compensated with the sales of the assessee. The Id. AO did not have any adverse observation about the books of accounts of the assessee and the purchase of goods. The addition was made on assumption of wrong fact. We find no infirmity in the impugned appeal order. In our considered view, the appeal of the revenue is dismissed.

7. In the result, the appeal of the revenue bearing **ITA No.1367/Mum/2024** is dismissed.

Order pronounced in the open court on 13th day of November 2024.

Sd/-

(RENU JAUHRI)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 13/11/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), ITAT, Mumbai