

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

**BEFORE SHRI R. S. SYAL, VICE PRESIDENT
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A .No. 3761/DEL/2012
(ASSESSMENT YEAR-2008-09)**

Joneja Bright Steel Pvt. Ltd. Plot No. 244, Sector-24 Faridabad AABCJ0369B (APPELLANT)	Vs	Addl. CIT Range-II Faridabad (RESPONDENT)
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**I.T.A .No. 3884/DEL/2012
(ASSESSMENT YEAR-2008-09)**

ACIT Circle II, B-Block CGO Complex, NH-IV Faridabad (APPELLANT)	Vs	Joneja Bright Steels Pvt. Ltd. Plot No. 244, Sector 24, Faridabad AABCJ0369B (RESPONDENT)
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Appellant by	Sh. Rakesh Gupta, Adv
Respondent by	Sh. U. C. Dubey, Sr. DR

Date of Hearing	17.04.2017
Date of Pronouncement	18.04.2017

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee and the Revenue against the order dated 24/4/2012 passed by CIT(A)-Faridabad on the grounds mentioned

hereunder:-

- “1. On the facts & in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) erred in confirming the rejection of the Books of Accounts of the assessee u/s 145(3) of the Income Tax Act, 1961 and thereby confirming the disallowance of Rs.10,00,000/- and the reasons assigned for doing so are wrong and contrary to the facts and circumstances of the case, provisions of the Income Tax Act, 1961 and the Rules made thereunder.
2. On the facts & in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.10,00,000/- which is calculated on adhoc basis and are done on account of mere rejection of books of account and the reasons assigned for doing so are wrong and contrary to the facts and circumstances of the case, provisions of the Income Tax Act, 1961 and the Rules made thereunder.”

2. The Ld. AR submitted that these matters have been remanded back to the ITAT for fresh decision after affording the parties an opportunity of being heard by the Hon'ble Punjab & Haryana High Court in ITA No. 204/2014 & ITA No. 423/2014 which are filed by the assessee vide order dated 04.09.2015. Para 12 of the said order is extracted as under:-

“12. In the circumstances, the impugned order is set aside and the matter is remanded to the Income Tax Appellate Tribunal for fresh decision after affording the parties an opportunity of being heard. It will be open to the parties to produce the PAN Numbers before the Tribunal. It is clarified that it would be open to the Tribunal to either decide the matter itself or remand the same to the Assessing Officer or to the Commissioner of Income Tax (appeals).”

3. The return of income was filed on 29/09/2008 declaring income of Rs.1,71,65,900/-. The assessee company is engaged in the business of manufacturing of cold drawn bright bars, ground bars, pealed bars etc. The assessee had purchased iron and steel rods for the purpose of manufacturing of various items. The assessee claimed that it had purchased the material from three entities i.e. M/s Rama Enterprises, M/s AGS Enterprises & M/s Royal Industries Corporation. The Assessing Officer made the enquiries from the Excise and Taxation Officer cum Assessing Authority on the basis of TIL's

numbers shown in the purchase invoices it was found that the purchases had been made by the three entities mentioned herein above and thereafter in turn sold to the assessee. The assessee paid the amounts which were credited in the bank accounts of the vendors. Thereafter these amounts were withdrawn/paid over/credited to another entity namely M/s Trading Maa Durga Company who in turn withdrew the same immediately.

4. The summons were issued u/s 131(1) of the Act which admittedly could not be served by the Inspector who reported that the names of the vendors appeared at the addresses given but they had left the premises. The Excise & Taxation Authorities confirmed that the purchases had been made by the vendors from M/s Maa Durga Trading Company. However, the enquiries made by the Assessing Officer revealed that M/s Maa Durga Trading Company were not found to be genuine. It is important to note that what was found not to be genuine were the purchases made by M/s Maa Durga Trading Company. It is difficult to ascertain which purchases were found not to be genuine. In other words, it is difficult to ascertain that all or only some of the purchases of M/s Maa Durga Trading Company were fake. It was also not clear whether the only stock lying with the vendors was purchased from M/s Maa Durga Trading Company or whether the vendors had also acquired stock from other sources as well. Even assuming that their purchases from M/s Maa Durga Trading Company were fake, it would not necessarily reflect adversely upon the sales by the vendors to the assessee. This evidence would be relevant while considering whether the purchases by the assessee were genuine or not.

5. The Hon'ble High Court in para 9 and 10 of the order dated 04.09.2015 observed that:

"9. By an order dated 26/11/2014, a Division Bench of this Court noted that a notice u/s 131 of the Act had been served upon M/s Rama Enterprises. We are informed that PAN numbers were called for and have now been produced. The vendors appear to have paid tax. The effect

thereof would have to be considered. It would now be possible to ascertain in a more satisfactory manner the genuineness of the entries in the assessee's books of account as well as the genuineness of the transactions.

10. While setting aside the disallowance of the assessee deductions on account of the purchases, the CIT(A) undertook a detailed analysis of the production figures for the previous assessment years and for the assessment year in question. Having done so, it arrived at the GP ratio and inferred that the appellant had received the material corresponding to the purchases made from the vendors. It was found for instance that the existence of the vendors stood confirmed by the Excise & Taxation Officer. The assessee would rely upon the PAN numbers which were now produced during the course of these appeals. The excise record was also analyzed by the CIT(A). The CIT(A) undertook a detailed analysis in coming to this conclusion. However, some of the crucial aspects have not been considered by the Tribunal. The Tribunal for instance held that the detailed enquiry made by the Assessing Officer by issuing summons u/s 131 of the Act to the vendors and also the enquiry made from the bank authorities established that the purchases were not genuine. The order does not indicate any reasons in support of this finding and in any event various aspects which have been dealt with by the CIT(A) have not been taken into consideration while arriving at this finding. Further, the effect of the finding that the payments by the assessee to its vendors and of M/s Maa Durga Trading Company having withdrawn the same is not dealt with satisfactorily. Merely because M/s Maa Durga Trading Company withdrew the amount which was paid by the assessee to its vendors would not lead to the conclusion that the transactions between the assessee and the vendors were fictitious. Similarly, the Tribunal noted that the confirmation receipts of the said supplies were signed by different persons while the bank account were operated by other persons. This fact has been held against the assessee. This finding would be perverse. There is nothing unusual in different persons operating the bank account of a company and signing the confirmation receipts of the supply of goods.”

5. The Ld. AR submitted that there are certain documents which were presented before the CIT(A) as well as the Assessing Officer and the same were not taken into cognizance. The Ld. AR submitted that the Assessing Officer has not verified the same. Therefore, the same has to be verified and looked into by the Assessing Officer. The Ld. AR requested to remand back the matter before the Assessing Officer. The Ld. DR also supported his arguments.

6. We have heard both the parties and perused the order dated 4/9/2015 passed by the Hon'ble Punjab & Haryana High Court in assessee's case for Assessment Year 2008-09. The Ld. AR and Ld. DR both agreed to remand back the matter before the Assessing Officer. It is necessary to produce the PAN Numbers of the respective parties which are now available before the Assessing Officer. The entire issue needs to be look into afresh by the Assessing Officer. Therefore, we are directing the Assessing Officer to decide this issue afresh by giving opportunity of hearing to the assessee during the course of Assessment proceedings.

7. In result, appeals of the assessee and the Revenue are partly allowed for statistical purpose.

Order pronounced in the Open Court on 18th April, 2017.

Sd/-

(R. S. SYAL)
VICE PRESIDENT

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 18/04/2017
*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT

4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	17/04/2017	PS
2.	Draft placed before author	17/04/2017	PS
3.	Draft proposed & placed before the second member	.2017	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	18.04.2017	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	18 .04.2017	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		