

**THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Yogesh Kumar US, Judicial Member

ITA No. 8017/Del/2019 : Asstt. Year: 2015-16

ACIT, Circle-57(1), New Delhi	Vs.	Subhash Chand Jain, 121/A, Old Tejab Mill, Bhola Nath Nagar, Shahdara, New Delhi-110032
(APPELLANT)		(RESPONDENT)
PAN No. AALPJ0540P		

**Assessee by : Sh. Sourbh Jindal, CA
Sh. Chirag Nagpal, Adv.**

Revenue by : Sh. Ram Dhan Meena, Sr. DR

Date of Hearing: 23.02.2023

Date of Pronouncement: 23.05.2023

ORDER

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

The present appeal has been filed by the Revenue against the order of the Id CIT(A)-19, New Delhi dated 03.07.2019.

2. The Revenue has raised the following grounds of appeal:

"1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.9,49,682/- made by the AO u/s 40A(3) where the assessee during the assessment proceedings had failed to furnish the documentary evidence like bills or mode of payment. The assessee did not furnish the bank account details relating to the direct expenses made on the purchase of construction material. Further, it is not clear from the order of the Ld. CIT(A), whether all the bills/vouchers of expenses claimed were seen and verified.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has failed to note the total impact on the revenue as the assessee was having two separate books of accounts for two separate businesses. The Ld. CIT(A) without giving justified reasons deleted the addition of Rs. 18,12,451/-.

3. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in not considering the Inspector's report which found out that others who purchased flat in the same year in cash (which cannot be proven) paid around Rs. 18,00,000/- whereas assessee had shown payment of Rs.15,50,000/-.

4. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in ignoring the facts of the case as produced by AO while disallowing the amount of Rs.1,68,78,821/- as bogus purchases. The six parties accounts as mentioned therein were not confirmed by such parties and Ld. CIT(A) has not mentioned in his order that such verified accounts were furnished before him and entries in Parties accounts were of regular in nature along with supporting documentary evidences to prove genuineness of transactions."

Disallowance u/s 40A(3):

3. The AO held that,

"the assessee has claimed direct expenses (Purchase of construction material) of Rs. 31,65,607/-. The assessee could not produce bills of the said expenditure nor the bank account details proving payment by cheque/RTGs. 30% of such expenditure is being disallowed u/s 40A(3)."

[Addition of Rs. 9,49,682/-]

4. The Id. CIT(A) deleted the addition on the grounds holding that the books of accounts have been produced before the AO, the payments of amounts in cash over the specified limit has

not been established and there was no basis for ad-hoc disallowance of 30%. Since, the order of the Id. CIT(A) is on sound rationale, we decline to interfere with the order of the Id. CIT(A).

Addition of Rs.18,12,451/-:

5. The AO held that,

*"6. In JCS construction's balance sheet proprietor opening capital 1st April 2014 was (-19,57,702/-) again the proprietor withdrew Rs. 1,70,369/-. On 31st march 2015 proprietor capital was Rs. (-18,88,255.35). In A.Y. 2015-16 Sh. Subhash Jain also bought 1 property worth Rs. 1.40 crore despite claiming loss in construction business. Interest expenses of Rs. 16,94,906/- and bank charge Rs. 117545 therefore, is being disallowed as under this circumstances business nexus of interest expenses can never exist.
[Addition - Rs. 18,12,451/-]"*

6. The Id. CIT(A) deleted the addition holding that,

the order of the AO is cryptic, the assessee has not purchased any property as alleged by the AO, there is no justifiable ground to disallow the interest expenses as the assessee has earned taxable income of Rs.18,87,970/- and doing regular business. There were no evidence brought on record by the AO to prove that the amount has been utilized for personal purpose and other than business purpose. Hence, we decline to interfere with the order of the Id. CIT(A).

Addition of Rs.2,50,000/-:

7. The AO held that,

"9. You received the whole amount in cash from the buyer of your property in 11/47 Teliwara what you claim to be Rs.15,50,000/-. But from inspector report it has been found that others who purchased flat in the same year paid around Rs. 18,00,000/- measuring same area in the same complex. "

[Addition of Rs. 2,50,000/-]

8. We have gone through the grounds raised by the revenue on this issue

"3. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in not considering the Inspector's report which found out that others who purchased flat in the same year in cash (**which cannot be proven**) paid around Rs. 18,00,000/- whereas assessee had shown payment of Rs.15,50,000/-."

9. Apparently, the revenue itself is not very sure of the receipt of the cash nor there was any evidence. The Id. CIT(A) deleted the addition holding that there was no basis for such allegation. Hence, we decline to interfere with the order of the Id. CIT(A).

Boqus Purchases, Sundry Creditor:

10. The AO held as under:

"Jain Chappal Store [Observed with Balance sheet, P&L Account of Jain Chappal Store alone).

From the assessment proceedings it has been found that in assessee's balance sheet assessee has shown sundry creditors worth Rs. 3.21 Crore. During the proceeding assessee was asked to

produce confirmation from the parties along with their PAN and address. He complied to the same and produced confirmation from the sundry creditors.

In the given addresses notice u/s 133(6) was sent. To the surprise of this office no response from the sundry creditors was received apart from Welcome Footware. Letters to Columbus International, Revel footwear, Technomech India Rubber, Jain Associates, VB Minerals Resin Pvt. Ltd. have been received back by this office due to non delivery.

To Check the genuineness of the confirmation assessee submitted, those were scrutinized thoroughly by this office. It was noticed that confirmation from Columbus international Pvt. Ltd. Galaxy footwear, Hallelu CLM footwear LLP, Manocha Polymer, Oswal Industries, VB minerals contain the same signature. There are the three entities under the Initials Galaxy. Assessee has provided confirmation from these three parties. However, outstanding amount for three parties of galaxy as per confirmation does not match with the amount shown in assessee submission. Footwear (Klick) India Pvt. Ltd. is one of assessee's sundry creditors. On 24.02.2015 he purchased product worth Rs 35,54,589/- against voucher no.V3- 420,421,422 as stated in his confirmation from Klick India. Assessee did not produce these vouchers yet. As per assessee submission VB Minerals & Resin is his sundry creditor's with credit outstanding Rs. 89,760/-. As per the Confirmation form V.B. Minerals it has shown credit balance outstanding against assessee name of Rs 4,78,240/- i.e. he is a creditors for him. Based on these circumstantial evidences assessee is requested to show cause why all the purchases made from these parties will not be disallowed as they seems to be bogus-prima facie. The assessee could not produce any proof to prove purchases from below mention sundry creditors genuine.

11. So purchase being disallowed in A.Y. 2015-16:-

<i>Party Name</i>	<i>Name</i>
<i>Klick India</i>	<i>Rs. 35,54,589/-</i>
<i>VB Resin</i>	<i>Rs. 30,28,715/-</i>
<i>Galaxy Footwear</i>	<i>Rs. 21,38,790/-</i>
<i>Manocha Polymer</i>	<i>Rs. 71,05,440/-</i>
<i>Oswal Industries</i>	<i>Rs. 5,77,440/-</i>
<i>Hallelu CLM footwear LLP</i>	<i><u>Rs. 4,73,847/-</u></i>
<i>Total amount</i>	<i><u>Rs. 1,68,78,821/-</u></i>

12. These Purchases of Rs. 1,68,78,821/- is being held as bogus and being added to the total income of the assessee."

[Addition of Rs. 1,68,78,821/-]

11. The Id. CIT(A) deleted the additions holding that All payments that have been made by cheque or by RTGS. The payments to these very parties have been made even in the subsequent year against purchases made. The transactions with these parties have been running well into subsequent year(s). The quantitative tally of the appellant has not been disturbed. The VAT payments as have been made ignored by the A.O. The appellant has regular transactions with these parties not only in the earlier year but also in the subsequent year. The A.O has not disturbed the transactions with these parties. Infact, the carrying on business of the appellant has been duly accepted as per the assessment order dated 20.12.2018 for A.Y. 2016-17. These very parties (trade creditors) have transactions in the subsequent which have not been doubted.

12. The books of accounts of the appellant which are audited have been duly accepted. I find that the A.O has no basis to

disallow purchases made from this parties totaling to Rs. 1,68,78,821/- as bogus in this year, when the existence of the seller has not been denied and continuing transactions from this year have been accepted as genuine in the subsequent year.

13. We find that the assessee has failed to discharge the primary onus of proving the purchases as genuine against the discrepancies found out by the Assessing Officer viz., the signature and mismatch of the credit balances.

14. Hence, we remand the matter to the file of the AO to provide an opportunity to the assessee to submit the relevant documents with complete details. The appeal of the assessee on this ground is allowed for statistical purpose.

15. In the result,

Ground Nos. 1, 2 & 3 of the appeal is dismissed and Ground No. 4 is allowed for statistical purpose.

Order Pronounced in the Open Court on 23/05/2023.

Sd/-

(Yogesh Kumar US)
Judicial Member

Sd/-

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

Dated: 23/05/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR