



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"J" BENCH, MUMBAI**  
**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI ASHWANI TANEJA, ACCOUNTANT MEMBER**

ITA no.5163/Mum./2013  
(Assessment Year : 2010-11)

Asstt. Commissioner of Income Tax  
Circle-6(1), Aayakar Bhawan  
101, M.K. Road, Mumbai 400 020

..... Appellant

v/s

M/s. Jaybharat Textiles & Real Estate Ltd.  
11/12, Raghuvanshi Mills Compound  
Senapati Bapat Marg, Lower Parel (W)  
Mumbai 400 013 - PAN - AAACJ5959L

..... Respondent

Revenue by : Shri T. Sasi Kumar  
Assessee by : Shri Salil Kapoor

Date of Hearing - 27.01.2016

Date of Order - 24.02.2016

**ORDER**

**PER SAKTIJIT DEY, J.M.**

Instant appeal by the Department is directed against the order dated 29<sup>th</sup> April 2013, passed by the learned Commissioner (Appeals)-14, Mumbai, for the assessment years 2010-11.

2. Though, the Department has raised nine grounds but the core issue arising for consideration is deletion of addition of ₹ 118.64

crore made by the Assessing Officer under section 68 of the Income Tax Act, 1961 (for short "*the Act*").

3. Briefly stated the facts are, assessee a company filed its return of income on 8<sup>th</sup> October 2010, declaring total income at ₹ 18,68,88,280. In the course of assessment proceedings, Assessing Officer, verifying the balance sheet of the assessee, found that the assessee has shown receipt of share application money of ₹ 100 crore from the following persons.

Sl. No.	Particulars	Pan	Amount (₹)
1.	Avazy Realcon Pvt. Ltd. 2 <sup>nd</sup> Floor, 'Damodar Building Shamaldas Gandhi Marg Kalbadevi Road, Mumbai 400 020	AAGCA2557F	85,932
2.	Cyra Capital Pvt. Ltd. (Formerly known as Gintel Capital Pvt. Ltd.) Raghuvanshi Mills Compound S.B. Marg, Lower Parel, Mumbai 13	AADCG2298J	28,53,543
3.	Gopala Holding Pvt. Ltd. 2 <sup>nd</sup> Floor, Damodar Building Shamaldas Gandhi Marg Kalbadevi Road, Mumbai 400 020	AACCG7515R	38,05,792
4.	Single Point Securities Solution P. Ltd. Raghuvanshi Mills Compound S.B. Marg, Lower Parel, Mumbai 13	AAGCS3081C	28,46,095
5.	Elpro Properties Pvt. Ltd. 396, Kamat Industrial Estate Veer Savarkar Marg, Prabhadevi Dadar, Mumbai 400 025	AABCE7462N	8,67,726

4. To verify the authenticity of the share application money, Assessing Officer conducted enquiry by issuing notices under section

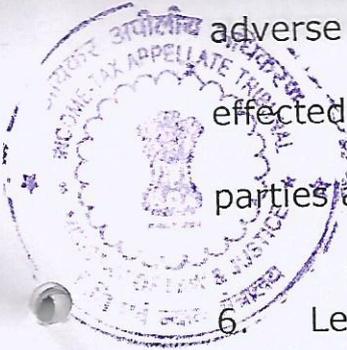
133(6) to the concerned parties. As observed by the Assessing Officer, notices issued to Gopala Holding Pvt. Ltd., Avazy Realcon Pvt. Ltd., returned back un-served by the postal subsequently. However, these two parties specifically filed their submissions before the Assessing Officer mentioning the new address at Silvasa. The other three parties also submitted their reply in response to the notices issued under section 133(6), accepting the transaction with the assessee. The Assessing Officer from the information on record, found as far as Elpro Properties is concerned, it claimed to have sold cotton to the assessee from 2<sup>nd</sup> April 2009 to 31<sup>st</sup> March 2010, for ₹ 10,13,00,265, out of which till 31<sup>st</sup> March 2010, assessee has paid an amount of ₹ 13,265, and balance amount of ₹ 10 crore was converted to share application through journal entries. Similarly, Cyra Capital Pvt. Ltd., though, claimed to have sold goods worth ₹ 30,13,00,237, till March 2011, but assessee had paid only ₹ 13,237 and the balance ₹ 30 crore was converted to share application money. Further, Assessing Officer found, the concerned parties though have effected sales of ₹ 36.51 crore and ₹ 55.87 crore respectively, but they have not made any payment towards purchases effected by them. Being of the opinion that detail enquiries was required to be made, the Assessing Officer conducted survey under section 133A of the Act in the business premise of the



assessee. In the course of survey, statements were recorded from the Chairman and non-executive Chairman of the assessee company. On the basis of statement recorded from the concerned persons, the Assessing Officer came to the conclusion that purchases claimed to have been made by the assessee from five parties are actually bogus purchases and these five parties were used by the assessee for providing accommodation bill so as to reduce the profitability of the company. Alleged that the assessee failed to prove through proper documentary evidence the genuineness of purchases made the Assessing Officer disallowed the entire purchases of goods worth ₹ 118,64,12,141 and added back to the income of the assessee. Being aggrieved of such disallowance, assessee preferred appeal before the learned Commissioner (Appeals).

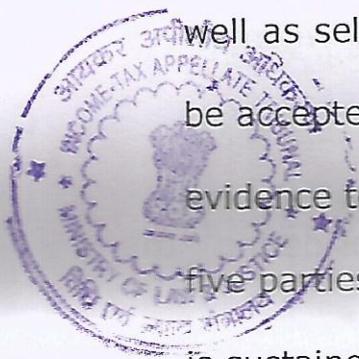
5. Before the first appellate authority, assessee providing quantitative reconciliation of purchase and sales submitted, when the Assessing Officer has not doubted the sales effected by the assessee, he cannot treat purchases made to be bogus as in the absence of such purchases, assessee could not have effected sales of such goods. Further, it was submitted, purchase and sale transactions have not only been reflected in the books of account of

the assessee but also in the books of account of the concerned parties. It was submitted, the sales turnover of the concerned parties during the relevant year would suggest that assessee is not the only person to whom they effected sales. Therefore, the doubt entertained by the Assessing Officer that concerned parties, were only providing accommodation bills is not correct. It was further submitted, all these parties who effected sales to the assessee are income tax assessee and maintaining regular books of account and there books of account are audited and the entire transactions have been disclosed in their return of income. It was submitted no adverse inference has been drawn against the sales transactions effected by them by the concerned Assessing Officers where these parties are assessed.



6. Learned Commissioner (Appeals), after considering the submissions of the assessee vis-a-vis the facts and material on record, found that assessee during the relevant previous year has recorded sales of 537 crore and declared net profit of 26.24 crore. The gross profit rate shown by the assessee is 14.54% which is comparable to gross profit rate shown in the preceding assessment year. He also found that though the Assessing Officer has treated the purchases made by the assessee as bogus but he has not

doubted the sales turnover of the assessee. He also noticed that the five parties from whom the assessee purchased goods worth ₹ 118.64 crore are maintaining regular books of account. The entire purchase and sale transactions of goods were also supported by purchase and sale bills. He also observed that the concerned parties have confirmed before the Assessing Officer that they have effected sales to the assessee. Thus, on examination of the aforesaid facts, the learned Commissioner (Appeals) concluded that as all the parties have confirmed the sale transaction before the Assessing Officer and such transaction are not only supported by proper purchase and sale bills but also reflected in the books of account of the purchaser as well as sellers which were subjected to statutory audit they have to be accepted as genuine, more so, when the Assessing Officer had no evidence to establish the fact that purchases made by the concerned five parties are bogus. He observed, if the addition of ₹ 118.64 crore is sustained, then assessee's gross profit rate would go up to 35.7% which is impossible to achieve. The learned Commissioner (Appeals) further observed that out of disallowance of ₹ 118.64 crore an amount of ₹ 100 crore represent share application money, hence, would amount to addition under section 68. He held that as the identity of the share applicants are established no addition at the hands of the assessee even under section 68 is possible in view of

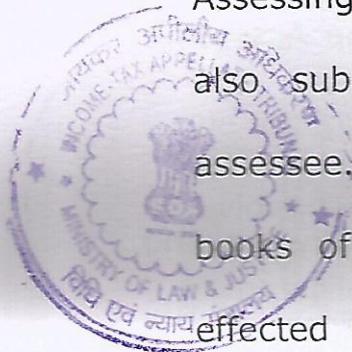


the decision of the Hon'ble Supreme Court in Lovely Exports Pvt. Ltd. The learned Commissioner (Appeals) observed, the Assessing Officer even after thorough scrutiny has not pointed out any defect or discrepancies in the books of account. Moreover, the books of account are duly audited as per statutory provisions. Therefore, not accepting the books of account of the assessee amounts to rejection of book results, even though there is no specific defect or deficiency pointed out by the Assessing Officer. Thus, the learned Commissioner (Appeals) relying upon certain judicial precedent, held that only because the Assessing Officer was of the opinion that purchases made remains to be fully verified, no additions can be made. Accordingly, he deleted the addition made by the Assessing Officer.

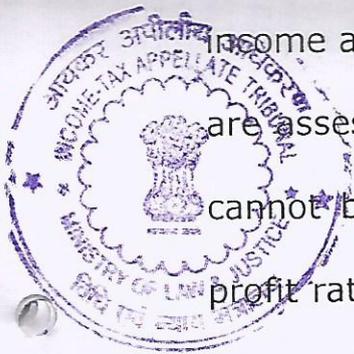
The learned Departmental Representative, primarily, relying upon the observations made by the Assessing Officer in the assessment order, submitted, the assessee has not proved the genuineness of the purchase transactions by producing supporting evidence. Learned Departmental Representative submitted, initially the concerned parties were not found in the addresses mentioned by the assessee, though, he admitted that all the parties have appeared before the Assessing Officer and responded to the notices

issued by him. Referring to the statements recorded from the Chairman of the assessee company as well as representative of the selling companies, learned Departmental Representative submitted, reading of the statement would show that the purchases are not genuine. He, therefore, pleaded for restoring the addition made by the Assessing Officer.

8. Learned Counsel for the assessee vehemently opposing the contention of the learned Departmental Representative submitted, in the course of assessment proceedings itself all the five parties from whom assessee had made purchases not only appeared before the Assessing Officer in response to the notices / summons issued but also submitted confirmations accepting sale of goods to the assessee. He submitted, all the parties produced copies of their books of account, balance sheet, etc., to show that the sales effected by them by the assessee are not bogus. He submitted, despite the fact that the Assessing Officer had verified all these documentary evidences produced before him, only on presumption / surmises, he has treated the purchases made by the assessee as bogus. Learned Counsel submitted, material on record would show that sales turnover declared by the concerned parties during the relevant previous year was much more than the sales affected to the



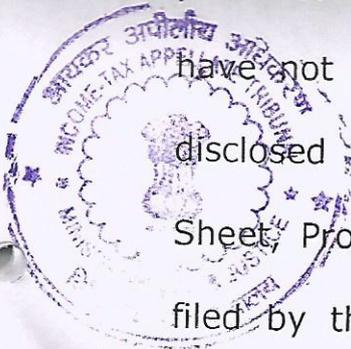
assessee. In these circumstances, it cannot be said that the sales are bogus as the concerned parties had effected sales to other persons apart from the assessee. Learned counsel submitted, the concerned parties have maintained regular books of account which were audited as per statutory provisions. It was submitted, all these parties are assessed to income tax and the entire transaction has been reflected not only in their books of account but also the financial statements forming part of statutory audit report. He, therefore, submitted, when the entire sales transaction have been reflected in their books of account and declared in their return of income and accepted by the concerned Assessing Officer where they are assessed, a part of share transaction entered with the assessee cannot be treated to be bogus. Learned counsel submitted, gross profit rate shown by the assessee in the impugned assessment year at 14.54% is comparable to gross profit rate shown by the assessee in the preceding assessment years. Learned counsel submitted, when the Assessing Officer has not doubted the sales and the assessee has furnished quantitative reconciliation of purchases and sales, he cannot treat the purchases made as not genuine. That being the case, there is no reason to suspect the purchases made by the assessee.



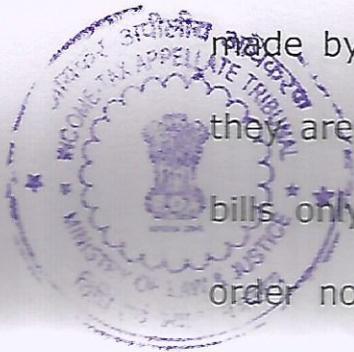
9. We have considered the submissions of the parties and perused the orders of the Departmental Authorities. It is apparent from the observation of the Assessing Officer that he has considered the purchases made from five parties referred to in the earlier part of the order alleging non-furnishing of certain details stated to have been called for by the Assessing Officer. However, on a reading of the assessment order itself, it becomes clear that in course of assessment proceedings, in response to notices issued under section 133(6), all the suppliers appeared before the Assessing Officer and confirmed of having effected sales of goods to the assessee. In fact, during the assessment proceedings, the Assessing Officer not only had conducted a survey in the business premises of the assessee but also recorded statements from the directors of the company. Further, the Assessing Officer also has examined the directors / representatives of the five suppliers. On a perusal of the statement recorded from directors of the assessee company and from the representatives of the suppliers, there is nothing to suggest that the sale / purchase transactions between the suppliers and assessee are non-genuine. On the contrary, it is a fact on record that all the suppliers in response to the notices issued by the Assessing Officer have not only confirmed of having effected sales to the assessee but in course of examination by the Assessing Officer, have admitted of



having effected sales to the assessee. As could be seen from the assessment order itself before the Assessing Officer the suppliers have submitted copies of their books of account and audited statement of accounts where from it was noticed by the Assessing Officer that during the relevant previous year, they have disclosed sales at a substantially high figure which proves that they effected sales to other parties apart from the assessee. Moreover, all the suppliers are identifiable persons as their PAN and permanent addresses are available before the Assessing Officer. It is also evident that before the Departmental Authorities, they have produced documentary evidence to show that these transactions have not only been reflected in their books of account but also disclosed in the audited statement of accounts such as Balance Sheet, Profit & Loss account forming part of the return of income filed by them for the impugned assessment. It is also evident, before the Assessing Officer assessee has produced purchase and sale bills and other documentary evidence in support of purchases effected by it from the concerned five parties. It is also a fact that payments made to the suppliers were through proper banking channels.



10. It is a fact on record that during the year assessee has disclosed sales turnover of ₹ 537 crore and before the first appellate authority assessee has furnished quantitative reconciliation of the purchase and sales. It is also observed that gross profit rate shown by the assessee for the impugned assessment year @ 14.54% is comparable to gross profit rate shown in the preceding as well as subsequent assessment year. Another crucial fact which commands consideration is, all the suppliers are income tax assesseees and as per the evidence produced on record they have disclosed these sale transactions in the books of account as well as return filed by them. However, no adverse inference has been drawn in respect of sales made by them by concerned Assessing Officers to the effect that they are not genuine parties or they are providing accommodation bills only. At least, no such fact is forthcoming from assessment order nor the department has filed any paper book before us to demonstrate that there is any adverse material in the possession of the Department to establish that concerned suppliers are non-genuine and are providing accommodation bills. In contrast, enough documentary evidences by way of purchase bills, sales bills, ledger copies of suppliers, etc., along with the fact that payments were made through cheque has been brought on record by assessee to demonstrate that purchases made from the concerned suppliers are



genuine. In addition, it is a fact on record that not only the entire purchase transaction has been reflected in assessee's books of account but the sales effected by concerned suppliers are also recorded in their books of account which were submitted before the Assessing Officer as well as first appellate authority. Moreover, all the suppliers are identifiable persons with PAN and are assessed to income tax regularly. There is no material before us to show that sales effected by these persons have been held to be non-genuine at their hands in any income tax assessment proceedings. Thus, when the sales effected by the suppliers are accepted in their hands, the purchases made from them by the assessee cannot be held to be non-genuine. In these circumstances, as the Department has failed to bring any substantive evidence / material to controvert the findings of the learned Commissioner (Appeals), we are not in a position to disturb the order of the learned Commissioner (Appeals). In the aforesaid view of the matter, we uphold the order of the learned Commissioner (Appeals) by dismissing the grounds raised by the Department.

11. In view the aforesaid findings, there is no need to deliberate upon the issue whether the findings of the learned Commissioner

M/s. Jaybharat Textiles  
& Real Estate Ltd.

(Appeals) in respect of unexplained cash credit under section 68 is correct or not.

12. In the result, Department's appeal is dismissed.

Order pronounced in the open Court on 24.02.2016

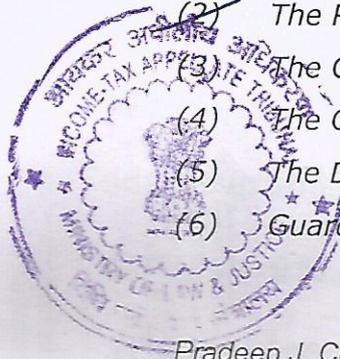
Sd/-  
ASHWANI TANEJA  
ACCOUNTANT MEMBER

Sd/-  
SAKTIJIT DEY  
JUDICIAL MEMBER

MUMBAI, DATED: 24.02.2016

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A); -12
- (4) The CIT, Mumbai City concerned; -VI
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.



Pradeep J. Chowdhury  
Sr. Private Secretary

True Copy  
By Order

*Alom*

(Dy./Asstt. Registrar)  
ITAT, Mumbai