

IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI
BEFORE SHRI B.R. BASKARAN (AM) & SHRI PAWAN SINGH (JM)

I.T.A. NO. 3823/MUM/2014
(Assessment Year 2009-2010)

M/s. Maruti Impex EC-3050, Bharat Diamond Bourse, G Block, Bandra Kurla Complex, Bandra (E), Mumbai 400 051.	Vs.	JCIT (OSD), Central Circle – 39, Mumbai
(Appellant)	..	(Respondent)

PAN No.AAGFM5389J

Assessee by :	Shri Sashi Tulsiyan
Department by :	Shri Sachchidanand Dube
Date of Hearing :	03.02.2016
Date of Pronouncement :	09.03.2016

ORDER

PER B.R. BASKARAN, AM :-

The appeal filed by the assessee is directed against the order dated 28.02.2014 passed by Ld CIT(A)-41, Mumbai and it relates to the assessment year 2009-10.

2. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the disallowance of purchase of Rs.7.56 crores. At the time of hearing, the Ld Counsel appearing for the assessee did not press the ground relating to the disallowance made u/s 36(1)(iii) of the Act because of the smallness of the amount involved. Other grounds are consequential in nature.

3. The facts relating to the disallowance of purchases are set out in brief. The assessee is a partnership firm and is engaged in the business of trading and export of diamond and allied items. During the course of assessment proceedings, the AO made enquiries with regard to the purchases made by the assessee by issuing notices u/s 133(6) of the Act to certain parties. The AO also conducted enquiries by deputing his inspector. The Inspector reported that the two parties named M/s Royal Exports and M/s Trichipuram Trading Pvt Ltd (TTPL) were not available at the given addresses. Since the assessee also did not furnish proper explanations, the AO disallowed the entire amount of purchases made from the above said two parties.

4. In the appellate proceedings, the assessee submitted various details and hence the Ld CIT(A) called for a remand report from the AO. The assessing officer was satisfied with the documents filed/enquires made in respect of Royal Exports and accordingly the Ld CIT(A) deleted the addition relating to purchases made from M/s Royal Exports. With regard to the purchases made from TTPL, the assessing officer stood by the assessment order and hence the Ld CIT(A) also confirmed the addition.

5. The submissions made by the assessee before Ld CIT(A) with regard to the purchases made from TTPL have been summarised as under by Ld CIT(A):-

“4.2.2 With regard to the addition on account of bogus purchases from TTPL, it is submitted that the purchase made from the said party are recorded in the stock register on the basis of delivery received. It is pointed out that the goods purchased have also been sold and there cannot be sale of

goods without corresponding purchases. It is contended that the appellant has purchased goods from this party through broker Mr. Dungrani Shailshbhai Kanjibhai. It is claimed that the items purchased above remained in the closing stock as on 31.3.2009 and later the same had been exported to M/s Alsur Jewellery Trading LLC, Dubai in April and May, 2009. It is claimed that M/s Alsur Jewellery Trading LLC, Dubai on receipt of material informed the appellant vide letter dated 10-05-2009 that the material supplied was not in accordance with the order placed by it and, therefore, they were not ready to pay as per invoice raised. In response to this, the appellant vide letter dated 25-05-2009 claims to have requested them to remit the money against the invoices raised, as non-payment will face problem at RBI end and also requested them to hold the payment against the subsequent supplies and on subsequent visit by the partner of appellant, the matter will be discussed in person. In the mean time, the appellant claims to have also informed the Broker Mr. Dungrani Shailshbhai Kanjibhai about this fact vide letter dated 12-05-2009. It is argued that since the matter was in dispute and export party was not ready to accept the material, the appellant has not paid to the supplier, i.e., TTPL. It is claimed that finally the entire goods exported against these purchases were returned by the export party and the appellant in turn returned the said goods to TTPL through broker, Mr. Dungrani Shaishbhai Kanjibhai. From the above events, according to the appellant, it is proved that the appellant has genuinely purchased material from TTPL which was subsequently exported as mentioned above and on non-approval, the material was received back in India and returned

to the supplier. It is pointed out that the appellant had to suffer additional burden of Custom Duty of Rs.17,86,611/- due to re-import of exported items.”

6. The assessee also contended before the Ld CIT(A) that the assessing officer has made the impugned addition without rejecting the books of accounts. It was further submitted that the assessee has furnished stock reconciliation statement before the AO. The assessee placed reliance on the following case law in support of its contentions:-

- (a) Diagnostics Vs. CIT (334 ITR 111)(Cal)
- (b) ITO Vs. Kachwala Gems (122 TTJ (Jp) 854)
- (c) Rajesh Soni Vs. ACIT (100 TTJ (Ahd.) 892)
- (d) Shubh Laxmi Exports Vs. ITO (10 DTR 281 (Jp))

It may be noted here that the AO had observed that the purchase amount may also be disallowable u/s 40A(3) of the Act. The assessee contended that the disallowances cannot be made on presumption basis u/s 40A(3) of the Act and in this regard, it placed reliance on the decision rendered by the Tribunal in the case of *Fee India Assurance Services Ltd* (no citation available). Even though the Ld CIT(A) has not rendered his decision on this alternative view of the AO, yet we find merit in the submissions of the assessee that there cannot be any disallowance u/s 40A(3) of the Act on presumption basis, as section 40A(3) is a legal fiction and it should be interpreted strictly.

7. It was further submitted that the entire purchases made from TTPL was available as Closing stock as at the year end and they were exported only in the succeeding year. Accordingly it was contended that the purchases, if considered to be bogus, then the corresponding

amount should be reduced from the closing stock, the effect of which will be NIL on profit. The assessee also placed reliance on the decision rendered by Hon'ble Bombay High Court in the case of *Nikunj Exim Enterprises Pvt Ltd (ITA No.5604 of 2010)*, wherein it was held that mere non-production of supplier before the A.O cannot be a ground for disallowance of purchases from the concerned party.

8. With regard to the purchases made from TTPL, the assessing officer has made critical comments in the remand report, which are summarised below:-

- (a) The AO suspected that the assessee should have fabricated the various documents furnished before him and accordingly he sent them for examination to the Central Forensic Science Laboratory (CFSL), Hyderabad. However, the report from CFSL was not received till the time of passing of the appellate order.
- (b) During the course of remand proceedings, the AO also examined the broker Shri Shaileshbhai K Dungrani, through whom the assessee has claimed to have purchased the goods. He has stated that he is not having any office in Mumbai and he is carrying on his business activities from Surat. He further stated that he has purchased goods through another broker named Shri Raju Patel, who is doing business in Mumbai and the said Raju Patel was acting on behalf of TTPL. However, he could not provide telephone number of Raju patel.
- (c) When the remand proceedings were going on, the AO received information from DGIT (Inv), Mumbai that the

Sales tax department of Mumbai has provided list of persons who are providing hawala bills and the said list contained the name of TTPL. It was also noticed that the PAN number given by the TTPL was found to be invalid and further the said company has failed to file accounts with Registrar of Companies.

Accordingly, the AO has doubted about the claim of purchases made from TTPL and accordingly held that the purchases were bogus. In this regard, the AO also placed reliance on the decision of Hon'ble Supreme Court rendered in the case of *Sumati Dayal Vs.CIT (214 ITR 801)*.

9. The Ld CIT(A) was in agreement with the assessing officer and accordingly observed as under:-

"...It is well established that in order to see whether the apparent is the real state of affairs, the taxing authorities are entitled to look into the surrounding circumstances to find out the reality and the matter has to be considered by applying the test of human probabilities. It is common knowledge that transactions of accommodation entries take place in secret and direct evidence about such transactions would be rarely available. In view of this position, the filing of mere confirmation, ledger account, invoices etc. of TTPL will be of no help to the appellant in the face of substantial circumstantial evidence led by the A.O in the course of assessment as well as remand proceedings clearly showing that these purchases from TTPL were non-genuine. I am in agreement with the findings arrived at by the A.O in his remand report. Indeed, it defies all logic and common sense that cut and polished diamonds worth Rs.7.56 crores were given by TTPL to the appellant/Shri Shaileshbhai K Dungrani on credit and approval basis when the latter does not even know the former. The A.O is right in arriving at the conclusion that the existence of Shri Raju Patel (broker) and of TTPL as a genuine commercial concern has not

been established at all. In other words, the source of the goods has not been satisfactorily established.”

The Ld CIT(A) has also rejected the claim of re-import of goods and returning of the same by the assessee to TTPL. With regard to the stock register, the Ld CIT(A) has observed that the purchase invoices do not contain the details of the diamonds, whereas the export invoices contain details of diamonds. Accordingly the Ld CIT(A) took the view that it was not established that goods purchased from TTPL have remained in stock and exported. Accordingly he rejected the stock register also, even though the same was furnished to the AO during the course of remand proceedings. Accordingly, the Ld CIT(A) confirmed the addition made by the AO.

10. The Ld A.R contended that the tax authorities have made this addition purely on surmises and conjectures by totally disregarding the materials placed before them and also without considering the fact that, in the ordinary course of business, such type of transactions do occur. He submitted that the assessee has placed following documents before the AO, in the remand proceedings, to support the purchases:-

- a. Copy of invoices from M/s TTPL
- b. Ledger account of M/s TTPL in the books of the appellant duly confirmed by M/s TTPL.
- c. Ledger account of the appellant in the books of M/s TTPL.
- d. Copy of affidavit of the Broker Mr. Shaileshbhai K Dungrani confirming the purchases.
- e. Documents of export to M/s AJT.
- f. Stock register from 01.04.08 to 31.03.2010
- g. Copy of correspondence with M/s AJT
- h. Copy of correspondence with the broker, Mr. Shaileshbhai K Dungrani
- i. Copy of import documents of the items exported to M/s AJT.

- j. Copy of letter from the broker, Mr. Shaileshbhai K Dungrani, confirming receipt of material on behalf of M/s TTPL.

The Ld A.R submitted that the assessing officer has doubted the genuineness of the correspondences exchanged between the assessee and the importer of diamonds and hence sent them for examination to CFSL, Hyderabad. He submitted that even though the report of CFSL was not received by the time the order of Ld CIT(A) was passed, yet the same has since been received by the AO thereafter and CFSL has not given any adverse view on the documents. Accordingly, the Ld A.R submitted that this fact vindicates the claim of the assessee that the tax authorities have examined this issue with suspicion and accordingly they have drawn adverse inferences on surmises and conjectures, by disregarding various evidences filed by the assessee. He further submitted that the deficiencies pointed out by the assessing officer in respect of TTPL should not be used against the assessee, since the assessee could not be held to be responsible for the same. The relevant submissions made in this regard are extracted below:-

- a. The mention of incorrect PAN on the invoices does not convert the genuine transactions into a non genuine one. It is to be appreciated that M/s TTPL was not known to the appellant and the transaction was effected through a broker, who has in the statement given during the remand proceedings accepted the transaction.
- b. On the observation of the A.O as regards non availability of M/s TTPL at the given address we would like to state that M/s TTPL had a valid sales tax registration at the time of the transaction.

The Sales Tax registration to M/s TTPL must have been granted after duly verifying the credentials of the Company. The purchase transaction with M/s TTPL happened in September 2008. No adverse view can be taken against the appellant if the party is not available after a lapse of more than two years at the time of assessment.

- c. The non-filing of annual returns before the ROC, Mumbai by M/s TTPL exposes it to legal proceedings under the Company Law. It however does not turn the transactions entered into by M/s TTPL into a non genuine transaction. It may however be noted that the appellant had placed it on record during appellate proceedings that as per ROC website the status of the Company was still being shown as active. We may once again reiterate that the transactions were done through broker and as a prudent trader and exporter of diamonds the appellant had ensured that the supplier was holding a valid sales tax registration number and the payment for the said goods should be made by cheque. M/s TTPL was holding a valid registration at the time the transaction took place and there was no information available in public domain that M/s TTPL was a suspicious party.
- d. As regards admission of Mr. Nitin Padwalkar, Director of M/s TTPL that the Company was a hawala dealer. We would like to state that this statement made before the Sales Tax authorities has no evidentiary value in the proceedings before the Income Tax Department. The position of law on the subject is fairly established. As far as Income Tax proceedings are concerned the A.O is not fettered by technical considerations. He is however

obliged to make independent enquiry and if he wants to use any materials acquired or received from a sister department he has to confront it to the assessee. Any deposition made before any other departmental authority cannot be utilized against the appellant unless an opportunity to the appellant to cross examine has been given. Since such an opportunity was not given to the appellant no addition can be made relying on the said statement.

In support of the above said contentions, the Ld A.R placed reliance on the following case law:-

- (a) Kishinchand Chellaram Vs. CIT (4 Taxman 0029)(SC)
- (b) R.W Promotions P Ltd Vs. ACIT (ITA No.1489 of 2013)
- (c) Heirs and Legal Representatives of Late Laxmanbhai S Patel Vs. CIT (327 ITR 290)(Guj)
- (d) ITO Vs. Permanand (107 TTJ 395)

Accordingly the Ld A.R submitted that the various evidences furnished by the assessee should not have been disregarded. With regard to the observations of the tax authorities that the TTPL could not have waited for three years, the Ld A.R submitted that, in the normal course, a business man will not wait for three years to receive the sale consideration, but when a dispute arises, it is equally prevalent practice that a prudent businessman who purchased goods will not prefer to pay the money and bear the losses when the goods were not according to his requirements. The Ld A.R submitted that the Ld CIT(A) has discussed about the surrounding circumstances without considering the peculiar facts and further taken an adverse view by examining the transactions with TTPL only, i.e., the Ld CIT(A) did not

examine the evidences furnished by the assessee about the export of those goods and reimport of them.

11. On the contrary, the Ld D.R submitted that the burden to prove an expenditure claimed by the assessee always lies upon the assessee. He submitted that the assessee did not co-operate with the AO during the course of assessment proceedings, but furnished relevant details only before Ld CIT(A). He further submitted that the bills given by TTPL do not contain the description and quality of diamonds supplied by them and hence the Ld CIT(A) was justified in holding that the assessee could not prove that the said purchases were available as stock at the year end and then exported. He submitted that the tax authorities have rightly relied upon the decision of Hon'ble Supreme Court rendered in the case of Sumati Dayal (supra), where in it was held that the tax authorities are entitled to go beyond the evidences and examine the issue from the angle of human probabilities and human conduct. He submitted that it is well established legal proposition that 'substance shall prevail over form' and hence various evidences furnished by the assessee to support the claim of purchases were found by the tax authorities to be against human probabilities. He submitted that the broker Shri Shailesh K dungrani has given an affidavit, wherein he has stated the address of TTPL as the place which was found to be the residence of a conductor working in BEST. The Ld D.R placed reliance on the following case law in support of his contentions:-

- (a) CIT Vs. Panipat Wollen and General Mills Ltd (103 ITR 66)
- (b) Indalco Industries (94 ITD 242)
- (c) Harsh U Chedda (135 TTJ 513)

12. In the rejoinder, the Ld A.R submitted that the claim of the assessee that the purchases made from TTPL were available in stock is supported by the stock register maintained by the assessee. He submitted that the Ld CIT(A) has rejected the stock register without examining the same. The description of goods is available in the export invoices and import documents. He submitted that, when the assessee is able to link the closing stock with the relevant purchase invoices and when the tax authorities could not contradict the same with any credible material, it was not justified on the part of tax authorities to disbelieve the stock register and consequently disbelieve the export invoices & import documents. He submitted that the export and import of goods are monitored by the RBI and Customs authorities and their certification is not expected to be questioned by the Income tax authorities. He submitted that the suspicion, howsoever strong, cannot replace the fact and hence the assessing officer is not entitled to make a pure guess and make assessment without reference to any evidence or any material at all as held by the Hon'ble Supreme Court in the case of *Dhakeshwari Cotton Mills Ltd Vs. CIT (26 ITR 775)*. He further submitted that the Hon'ble jurisdictional High Court has held in the case of *CIT Vs. Omprakash K Jain and others (322 ITR 362)* that the documentary evidence, if genuine must prevail over the oral statement. He further submitted that the assessing officer was not justified in placing reliance on the statement given by the director of TTPL in the Sales tax proceedings, without examining the director independently under Income tax proceedings and further without providing an opportunity of cross examination. In this regard, the Ld A.R drew support from the decision rendered by Hon'ble Supreme Court in the case of *Andaman Timber Industries Vs. CCE (Appeal No.4226 of 2006 dated 02-09-2015)*.

13. We have heard rival contentions and perused the material available on record. A careful perusal of the orders passed by the tax authorities show that they have not accepted the claim of purchases of diamonds from TTPL on the reasoning that the said transaction defies the human probabilities. The tax authorities have, accordingly, rejected the various evidences furnished by the assessee in support of claim of purchases. We also notice that the tax authorities have arrived at such a conclusion only by considering the purchase transaction and did not prefer to examine the claim of export of same goods in the succeeding year and re-import of the same goods thereafter. In our view, the surrounding circumstances and human probabilities attached to a transaction should be examined by considering the transactions as a whole. Examination of part of transactions alone in the context of human probabilities/surrounding circumstances, some times, would give misleading results.

14. The reasons given by the assessing officer, in his remand report, to disregard the claim of purchases are discussed by us in paragraph 8 supra. The contentions of Ld A.R with regard to the above said reasons are summarised below:-

- (a) With regard to the first point relating to the genuineness of documents, the Ld A.R submitted that the report from CFSL has since been received by the assessing officer and the assessee has also inspected the same. He submitted that the documents have not been found to be fabricated. It is pertinent to note that the said submissions of Ld A.R have not been controverted by Ld D.R.

- (b) With regard to the second point relating to non-production of another broker, the Ld A.R submitted that the relationship between both the brokers, referred above, got strained due to the returning of goods and hence Shri Dungrani discontinued the relationship with Raju Patel and hence could not furnish the phone number.
- (c) With regard to the third point relating to the statement given by the director of TTPL under Sales tax proceedings, the Ld A.R submit that the assessee has purchased goods through a broker and hence it was not aware of antecedents of the supplier company. He further submitted that the goods have been exported, which could not have been done without receiving goods in physical condition. He further submitted that the assessee has, thereafter, re-imported the same goods and returned back the same to the very same supplier. Accordingly, the Ld A.R submitted that the assessee should not be penalised for the default, if any, committed by the supplier under any other Act.

We find merit in the said submissions of the assessee for the reasons discussed in the succeeding paragraphs.

15. We notice that the assessee has furnished various documents before the assessing officer during the course of remand proceedings to support the claim of purchases. The assessee has also proved that the said purchases were available in stock by linking the closing stock available as at the year end with the relevant invoices. When the assessee is able to so link the closing stock with the purchase bills, the said claim should not have been rejected by Ld CIT(A) without

examining the stock register and further without disproving the said claim by bringing any other credible material. If closing stock available with the assessee was not accepted as the materials purchased from TTPL, then the tax authorities should have pointed out that the closing stock represented some other purchases. The assessee has also shown that the said goods were exported subsequently. It is pertinent to note that the tax authorities have ignored the claim of export, since they have doubted the claim of purchases from TTPL. There should not be any doubt that a person cannot sell any goods without purchasing the same. In the instant case, the claim of sales in the succeeding year has not been doubted with or disproved. As a matter of fact, the sales cannot be disproved, since the assessee has exported the goods by obtaining clearances from RBI and Customs authorities. We have noticed that the assessing officer has suspected the correspondences exchanged between the assessee and the client, who imported the goods from the assessee, under the impression that those papers should have been fabricated and accordingly sent them for examination to CFSL, Hyderabad. According to Ld A.R, the assessing officer has since received report from CFSL and it has not given any adverse report against those documents, which fact has not been controverted by the revenue. Thus, one of the basis for suspecting the transactions has been proved wrong. When the evidences are available with the assessee and when the tax authorities have not brought any material to contradict the same, we are of the view that the tax authorities are not justified in rejecting the evidences furnished by the assessee to support the transactions of purchases.

16. We notice that the Hon'ble Jurisdictional Bombay High Court has considered an identical issue of allegation of bogus purchases in the

case of *CIT Vs. Nikunj Eximp Enterprises Pvt Ltd (372 ITR 619)* and the relevant observations made by the High Court are extracted below, for the sake of convenience:-

"7. We have considered the submissions on behalf of the revenue. However, from the order of the Tribunal dated 30-04-2010, we find that the Tribunal has deleted the additions on account of bogus purchases not only on the basis of stock statement, i.e., reconciliation statement, but also in view of the facts. The Tribunal records that the Books of accounts of the respondent appellant have not been rejected. Similarly, the sales have not been doubted and it is an admitted position that substantial amount of sales have been made to the Government Department, i.e., Defence Research and Development Laboratory, Hyderabad. Further, there were confirmation letters filed by the suppliers, copies of invoices for purchases as well as copies of bank statement all of which would indicate that the purchases were in fact made. In our view, merely because the suppliers have not appeared before the assessing officer or the CIT(A), one cannot conclude that the purchases were not made by the respondent appellant. The Assessing officer as well as CIT(A) have disallowed the deduction of Rs.1.33 crores on account of purchases merely on the basis of suspicion because the sellers and the canvassing agents have not been produced before them. We find that the order of Tribunal is well a reasoned order taking into account all the facts before concluding that the purchases of Rs.1.33 crores was not bogus. No fault can be found with the order dated 30-04-2010 of the Tribunal."

In the instant case also, the claim of the assessee is that the purchases made from TTPL was available as closing stock as at the year end and they were exported in the succeeding years. The fact that the assessee has exported the goods was not controverted. It is a known fact that the claim of export cannot be considered to be not-genuine, since the export cannot take place without clearance from Customs Authorities, another arm of Government of India. Hence, the claim of export has to be necessarily accepted on the basis of relevant

documents. In the instant case also, the assessee has furnished the copies of purchase invoices, confirmation letters, copies of ledger accounts, copies of export bills, the details of re-import of the same and details of payment of customs duty on re-import, the details of purchase return. All these chronological events have not been disproved by the tax authorities.

17. The concept of agency and sales/purchases through agents are commonly prevailing trade practices. The assessee has claimed to have made purchases through an agent named Shri Shaileshbhai K Dungrani, who has claimed to have purchased goods through another broker, who was the agent of supplier company. It is quite prevalent practice that the principal would place reliance on his agent while extending credit to an unknown party. Hence, in our view, the tax authorities may not be correct in observing that the TTPL would not have extended credit to the assessee, as it was not a known party to TTPL. In our view, the credit should have been extended to the assessee by TTPL by placing reliance on the agent. It is in the knowledge of everyone that a commercial deal shall be concluded smoothly, if the terms and conditions relating to quality of goods, payments were strictly adhered to. However, if any of the parties fail to adhere to the agreed terms, then the transaction shall lead to disputes, which may also result in stopping of payment and return of goods. This is quite prevalent practice in trade circles. In the instant case, the assessee has claimed that it has returned goods to TTPL after re-importing the same and the said fact has also been confirmed by the broker, through whom the purchases have been made. The very fact that the assessee had to re-import the goods shows the genuineness of the claim, since a prudent business man would not

normally bear the cost of re-import, payment of import duty etc., unless there is substance in the claim of his client. Hence, we are of the view that there is no reason to suspect the claim the assessee in this regard. When the evidences available with the assessee support the claim of the assessee, the assessing officer was not right in suspecting the same on the basis of mere surmises and conjectures. This proposition gets support from the decision rendered by the Hon'ble Supreme court in the case of *Dhakeswari cotton Mills Ltd (26 ITR 775)* and the decision of jurisdictional High Court in the case of *Omprakash K Jain and others (322 ITR 362)*.

18. Further, the principles of natural justice demand that the assessee should be provided with an opportunity to examine and counter the documents relied upon by the AO to decide an issue against the assessee. In the instant case, the assessing officer has also supported his view by placing reliance on the report given by the DGIT. It is a matter of fact that the AO has not carried out any independent examination of the director of TTPL who is claimed to have given statement before the Sales tax authorities. It is also not shown that the said director has implicated the transactions entered with the assessee before the Sales tax authorities. Hence, it cannot be said that the statement so given before the sales tax authorities has any relevance to the issue under consideration. Even, if it is considered for a moment that the said statement has relevance, then also the assessing officer should have carried out independent enquiry and should have provided opportunity to cross examine, if his enquiry goes against the assessee.

19. We have earlier noticed that the assessee was able to link the closing stock with the relevant purchase bills. When the entire

purchases made from TTPL was available as stock as at the year end, then the disallowance of purchases should result in corresponding reduction of the closing stock, the result of which would have NIL effect on profit and hence there was no requirement of making any addition. However, this proposition should be applied only if the purchases were held to be non-genuine.

20. In view of the foregoing discussions, we are of the view that there is no reason to suspect the claim of purchases of goods from TTPL, particularly when the assessee is able to support the said claim with documentary evidences, stock register, confirmations etc and more particularly in view of the fact that the assessee has exported the very same goods. In our view, the theory of human probability has been applied to only part of transactions and not to the whole round of transactions. In any case, it cannot be said that the claim of the assessee defies the human probabilities, when one examines the documents furnished by the assessee. Accordingly, we are of the view that the Ld CIT(A) was not justified in confirming the addition made by the AO. Accordingly, we set aside the order of Ld CIT(A) on this issue and direct the AO to delete the impugned addition.

21. In the result, the appeal filed by the assessee is allowed.

Order has been pronounced in the Open Court on 09.03.2016.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 09.03.2016

SSL

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai