

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

श्री आर. एस. स्याल, उपाध्यक्ष के समक्ष

आयकर अपील सं. / ITA Nos. 1382 & 1383/PUN/2018
निर्धारण वर्ष / Assessment Years : 2010-11 & 2011-12

M/s. Johnson Cables Pvt. Ltd., Vs. ITO, Ward-14(1),
538, A-1, Shaniwar Peth, Pune
Pune – 411 030
PAN : AABCJ1793P

(Appellant)

(Respondent)

Appellant by
Respondent by

Shri Rishabh Gujrathi
Shri Shashank Deogadkar

Date of hearing 16-08-2019
Date of pronouncement 16-08-2019

आदेश / ORDER

PER R.S.SYAL, VP :

These two appeals by the assessee relating to the assessment years 2010-11 & 2011-12 arise out of the common order passed by the Commissioner of Income-tax (Appeals) - 2, Pune on 22-06-2018.

2. Briefly stated, the facts for A.Y. 2010-11 are that the Assessing Officer (AO) got information from the Sales Tax Department that the assessee received fake purchase bills from Hawala dealers, listed on page 2 of the assessment order, to the

tune of Rs.1,28,26,897/-. Notice was issued u/s 148. After entertaining objections from the assessee, the AO made addition @12.5% of bogus purchases amounting to Rs.16,03,362/-.

3. Similar is the position for the A.Y. 2011-12. For this year also, the assessee was found to have received accommodation bills to the tune of Rs.1,11,79,133/-. Applying the same percentage of 12.5%, the AO made addition of Rs.13,97,391/-. The Id. CIT(A) upheld the assessment orders.

4. I have heard both the sides and gone through the relevant material on record. In so far as the initiation of reassessment is concerned, it is clear that the AO got specific information from the Sales tax Department about the assessee being a beneficiary of fake accommodation entries from hawala dealers. The contention of the assessee that reassessment on such basis is wrong, in my considered opinion, completely unfounded.

5. The Hon'ble Supreme Court in *Raymond Woolen Mills vs. ITO (1999) 236 ITR 34 (SC)* has held that there should be reason to believe about the escapement of income at the stage of initiation of reassessment proceedings. Sufficiency or correctness of such material cannot be considered at that stage.

The Hon'ble Apex Court has held in *ACIT vs. Rajesh Jhaveri Stock Broker (P) Ltd. (2007) 291 ITR 500 (SC)* that : `The word "reason" in the phrase "reason to believe" would mean cause or justification. If the AO has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the AO should have finally ascertained the fact by legal evidence or conclusion'. Explaining the position further, it laid down that: `at the initiation stage, what is required is "reason to believe", but not the established fact of escapement of income. *At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage.* This is so because the formation of belief by the AO is within the realm of subjective satisfaction.'

6. At this stage, it is relevant to take note of the judgment of the Hon'ble Supreme Court in *Phoolchand Bajrang Lal and Anr vs. ITO and Anr (1993) 203 ITR 456 (SC)*, in which the AO's

jurisdiction to initiate reassessment was challenged. Repelling the assessee's arguments, the Hon'ble Supreme Court held that an ITO acquires jurisdiction to reopen assessment under s. 147(a) r/w s. 148 only if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons which he must record, to believe that by reason of omission or failure on the part of the assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profit or gains chargeable to income-tax has escaped assessment. He may start reassessment proceedings either because some fresh facts come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tend to expose the untruthfulness of those facts. In that case, the ITO was held to have rightly initiated the reassessment proceedings on the basis of subsequent information, which was specific, relevant and reliable.

7. In *Bright Star Syntex Pvt. Ltd. VS. ITO (2016) 387 ITR 231 (Bom)*, the AO initiated the reassessment on the basis of some

information indicating the assessee as a beneficiary to accommodation entry. The assessee challenged the initiation of reassessment by way of a writ. Dismissing the petition, the Hon'ble jurisdictional High Court held that at the stage of initiation of reassessment, the AO is not required to have conclusive evidence that income chargeable to tax has escaped assessment. As the reasons recorded for reopening established a link between the material available and the conclusion reached by the AO for reopening the assessment, the Hon'ble High Court refused to interfere by observing that the expression 'reason to believe' cannot be read to mean that the AO should have finally established beyond doubt that income chargeable to tax has escaped assessment. Similar view has been taken by the Hon'ble Gujarat High Court in *Pr. CIT VS. Laxmiraj Distributors Pvt. Ltd. (2019) 410 ITR 495 (Guj)* and the SLP filed by the assessee against such judgment has since been dismissed in *(2018) 405 ITR (St) 27*.

8. Reverting to the facts of the instant case, it is seen that the AO received information from the Sales Tax Department about the beneficiaries of accommodation entries, which included the

name of the assessee. There was a close nexus between report of the Sales tax Department and the formation of belief by the Assessing Officer about the escapement of income of the assessee for the year under consideration. Such information was specific, not general or vague. Thus, it is abundantly clear that such a material was sufficient enough for the Assessing Officer to initiate the reassessment. In my considered opinion, no exception can be taken to the view canvassed by the Assessing Officer in initiating the reassessment on this score. The ground taken by the assessee is thus dismissed.

9. Now I turn to the merits of the case in which challenge has been laid to the making of addition on the basis of bogus purchase bills received by the assessee as accommodation entries from hawala dealers. It is seen that the issue of bogus purchases has recently come up for consideration before the Hon'ble Bombay High Court in Pr.CIT Vs. Mohommad Haji Adam & Co. Vide its judgment dated 11-02-2019 in ITA No.1004 of 2016 and others, the Hon'ble jurisdictional High Court has held that no *ad hoc* addition at the rate of 10% of bogus purchases is warranted. Rather the addition should be made to the extent of

difference between the gross profit rate on genuine purchases and gross profit rate on hawala purchases. Such details are not readily available with the Id. AR as well to facilitate the calculation of gross profit rates of genuine and hawala purchases. Under these circumstances, I set-aside the impugned order and remit the matter to the file of the AO for applying the *ratio* laid down by the Hon'ble jurisdictional High Court in the above noted case and recompute the amount of additions, if any, after allowing a reasonable opportunity of hearing to the assessee.

10. In the result, both the appeals are partly allowed for statistical purposes.

Order pronounced in the Open Court on 16th August, 2019.

Sd/-
(R.S.SYAL)
उपाध्यक्ष/ VICE PRESIDENT

पुणे Pune; दिनांक Dated : 16th August, 2019
सतीश

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) /
The CIT (Appeals)-2, Pune
4. The Pr.CIT- 6, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "SMC" /
DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,**// True Copy //**Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	16-08-2019	Sr.PS
2.	Draft placed before author	16-08-2019	Sr.PS
3.	Draft proposed & placed before the second member	--	JM
4.	Draft discussed/approved by Second Member.	--	JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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