

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCH 'A', JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
Before : Shri Vijay Pal Rao, JM & Shri Vikram Singh Yadav, AM

आयकर अपील सं./ITA No. 665/JP/2019  
निर्धारण वर्ष/Assessment Year : 2015-16

Shri Shankar Gupta 122, Vishvasshvariya Nagar Ext. Gopalpura Bypass, Jaipur	बनाम Vs.	The ITO Ward- 6(4) Jaipur
स्थायी लेखा सं./जीआईआर सं./	PAN/GIR No.: AEPPG 9058 K	
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri S.L. Poddar, Advocate  
राजस्व की ओर से/ Revenue by : Shri K.C. Gupta, JCIT-DR

सुनवाई की तारीख/ Date of Hearing : 03/03/2020  
घोषणा की तारीख/ Date of Pronouncement : 06 /03/2020

आदेश/ ORDER

PER VIJAY PAL RAO, JM

This appeal by the assessee is directed against the order of Id.  
CIT(A)-2, Jaipur dated 22-03-2019 for the Assessment Year 2015-16.

The assessee has raised the following grounds.

“1. Under the facts and circumstances of the case the Id. CIT(A) has erred in confirming the addition of Rs. 96,18,503/- on account of sale out of books on presumption basis made by AO.

2. Under the facts and circumstances of the case the Id. CIT(A) has erred in enhancing the addition of Rs. 41,22,215/- for credit allowed on account of expenditure @ 30% without serving notice u/s 251(2) of the I.T. Act, 1961

2.1 The assessee is an individual and engaged in the business of import of chemical adhesive and sales thereof. The assessee filed the return on 01-10-2015 declaring total income of Rs. 9,34,220/-. During the course of assessment proceeding, the AO noted that as per ITS details the assessee purchased material of Rs. 3,88,54,935/- which was valued by the Custom Authorities at Rs. 3,92,99,838/- for levying Custom Duty. The AO further noted that the assessee debited purchases of Rs. 2,11,77,135/- on account of import. The AO asked the assessee to reconcile the difference inter alia the difference between the value of imported goods and payments made for purchases. In response, the assessee produced the ledger of import/purchases as well as the evidence regarding the payments for import of goods. The AO noted from the ledger of import that the assessee has debited a sum of Rs. 3,92,62,287/- against which various debit notes amounting to Rs. 1,80,85,152/- was claimed and balance amount of Rs. 2,11,77,135/- was debited in the profit and loss account. The AO found that the assessee has shown debit notes of Rs. 56,13,075/-,

Rs. 56,40,345/- dated 11-11-2014 and Rs. 24,87,298/- dated 27-02-2015, total amounting to Rs. 1,37,40,718/- shown by the assessee on account of defective goods received from the supplier party from China. The assessee also produced the debit notes issued by him alongwith corresponding credit notes issued by the suppliers and claimed that the said amount of import/purchase is debited to the profit and loss account after adjusting the debit notes issued by the assessee in respect of the defective goods and corresponding credit notes issued by the supplier. The AO did not accept the explanation of the assessee and treated the said amount of Rs. 1,37,40,718/- as out of books sales. The AO accordingly made an addition of Rs. 96,18,503/- as net income after allowing 30% as expenditure on said sales. The assessee challenged the action of the AO before the Id. CIT(A) and reiterated his contentions that reduction of the purchases on account of defective goods cannot be held as sales out of books. The said chemical became outdated, useless and having nil value. Therefore, the assessee issued debit notes to the supplier and in response the supplier has issued the credit notes of the said amount. Thus the said amount was reduced from the purchases debited to the profit and loss account. The Id. CIT(A) was not impressed with the contention and

explanation of the assessee and the ld. CIT(A) not only confirmed the addition made by the AO but also enhanced the addition on this account by disallowing 30% expenditure allowed by the AO.

2.2 Before us, the ld.AR of the assessee has submitted that during the course of assessment proceedings the AO called for details and evidences regarding debit notes issued by the assessee on account of defective goods/ expiry date goods received through Import and this was the liability of the assessee from whom these goods were imported. The assessee explained before the AO that he is doing business of “Acrylic Adhesive” which is imported from China. This Chemical Adhesive has a limited shelf life and acrylic adhesive has to be stored under recommended condition i.e. upto the period of shelf life, so that there will be no change in properties of the chemical due to atmospheric condition. The ld.AR of the assessee has referred to the handbook of “Adhesive Technology” which explains the basic guidelines for handling and storage of Adhesive and submitted that Adhesive has its own shelf life which depends upon the adhesive system and storage condition in particular the temperature. Therefore, after the expiry of shelf life of the adhesive, its properties get changed and it becomes useless and the waste

has to be cleared. Therefore, the Id.AR of the assessee submitted that the Adhesive has a limited shelf life and thereafter it becomes useless on expiry of the date of shelf life and after that, the goods become non-saleable, unusable and useless. Therefore, the material imported by the assessee is found to be defective due to expiry of the shelf life. Accordingly, the assessee issued debit notes to the supplier who has accepted the supply of defective goods and issued the corresponding credit notes as well as confirmations of the issuance of credit notes regarding the goods received by the assessee, being expiry date. The Id.AR of the assessee has referred to the E-Mail correspondence between the assessee and the supplier of goods and submitted that documents produced by the assessee establishes the facts that some of the goods imported by the assessee were found to be defective due to expiry date and therefore, the said fact cannot be rejected without any contrary material. The Id.AR of the assessee has also referred to DHL Courier details and receipts regarding confirmation of credit notes sent by the supplier. Thus the Id.AR of the assessee submitted that when the assessee produced all the relevant documentary evidences to show that the goods to the tune of Rs. 1,37,40,718/- were received as defective and the same

were reduced from the purchases/import account. The assessee issued the debit notes of the said amount to the supplier of the goods which was accepted by the supplier who issued corresponding debit notes. Therefore, the purchases shown by the assessee in the profit and loss account is the correct figure and the AO has treated the said quantity of the Adhesive as out of books sales only on presumption and surmises without any contrary material or evidence. When the assessee has not made any payment towards the import of defective goods then the same cannot be treated as out of book sales. The ld.AR of the assessee further contended that ld. CIT(A) has enhanced the addition without issuing show cause notice and therefore, to the extent of enhancement, the order of the ld. CIT(A) is otherwise not sustainable in law and violation of provisions of Section 251(2) of the Act.

2.3 On the other hand, the ld. DR has submitted that the AO as well as the ld. CIT(A) has given the finding that except debit notes and credit notes the assessee has not produced any other documentary evidences to prove that goods of such a high value were actually found defective and without any verification and objection on the part of the supplier, the same were accepted. Even the assessee has not produced any approval of

the relevant authority for destroying the goods. Therefore, the claim of the assessee is not found to be genuine and the AO has rightly treated the said amount of Rs. 1,37,40,718/- as sales outside books. The Id. DR thus relied on the orders of lower authorities.

2.4 We have considered the rival submissions as well as the relevant materials available on record. The AO noted from the details and documents produced by the assessee as well as the from the ledger account of import/purchases that the assessee has reduced the purchases to the tune of Rs. 1,37,40,718/- on account of defective goods and issued the debit notes to the supplier. This fact was found to be recorded in the books of account of the assessee and the assessee has shown in the ledger account of goods imported reduced by three debit notes of the amounts as under:-

Rs. 56,13,075/-

Rs. 50,40,345/-

Rs. 24,87,298/-

The AO asked the assessee to explain the reduction of these amounts on account of debit notes. The assessee explained that certain quantity of goods imported from M/s. ZHE JIANG JIUERJIU CHEMICALS CO. LTD. was found to be defective. The assessee produced the invoice/bills

of these goods as well as the debit notes issued by the assessee to the supplier and corresponding credit notes issued by the supplier by accepting the fact that the goods as mentioned in the debit notes as well as in import bills were defective due to expiry of date. It is pertinent to note that the invoice regarding import of these goods and debit notes issued by the assessee give the details and description of the goods and particularly the Adhesive in question. We find that the invoice issued by the supplier gives the details of quantity of goods as well as the amount in USD whereas the assessee has given the details of the goods matching the same quantity and giving the reference of the invoice but the amount is converted into Rupees. The AO has not disputed the details as mentioned in the invoice and the debit notes issued by the assessee and corresponding credit notes issued by the supplier. The AO has questioned the correctness of the claim on the ground that no evidence was produced for transportation of the defective goods back to the supplier. It is pertinent to note that once the goods are imported from China and found to be defective and the said fact is accepted by the supplier then sending back to these goods to China may not be a wise decision for the assessee as well as the supplier due to heavy cost involved in the process. Once the



defective goods is found to be having Zero Value and useless for any purpose then there is not point of incurring expenditure for sending the goods back to the supplier in China. Therefore, this cannot be a reason for doubting the claim of the goods received by the assessee as defective when the said Adhesive after expiry of shelf life becomes useless. The assessee also produced the confirmation issued by the supplier giving all the details of the goods supplied, their value by giving Invoice Number as well as the details of debit notes/credit notes issued by the parties. The Id.AR of the assessee has referred to E-Mail correspondence between the parties whereby the supplier has intimated the assessee regarding the credit notes issued in respect of supply of defective goods. The said E-Mail was generated on 30-03-2015 which shows that the correspondence between the assessee and the supplier regarding the debit notes and credit notes took place at the relevant point of time. Once all these documentary evidences produced by the assessee in support of the claim are not found to be bogus then the treatment of out books sales by the AO is merely based on the presumption and suspicion and not based on any material or documentary evidences. It is pertinent to note that once the assessee has produce the relevant documentary evidences in support of the fact that

certain goods imported from Chinese supplier were found to be defective and this fact was accepted by the counterpart by giving the credit of said amount from the purchase bills then the assessee has discharged his onus by production of the documentary evidences. The AO has not doubted the fact that the assessee has not paid in respect of the goods found to be defective and therefore, to the extent of cost of the purchase of the goods found to be defective was reduced from the total cost of purchase as per import bill. Therefore, accepting the fact of non-payment of purchase price due to the reason as is manifest from the record being defective goods, the corresponding sale of the goods is not possible. The details of the goods imported by the assessee which were found to be defective are as under:-

Sl.	Date	Invoice No.	Quantity and nature of goods	Amount (USD)
(i)	30.08.2014	INSH-141830	18000 Kgs Adhesive Glue	90300
(ii)	30.09.2014	INSH-141913	18000 Kgs Adhesive Glue	90000
(iii)	29.11.2014	INSH-141029	7880 Kgs Adhesive	39400
			Total	219700

The AO has not disputed that the value of these goods as per the invoice is USD 219700 and the corresponding value is in Rs. 1,37,40,718/-.

These facts were confirmed by the supplier which is also recorded in the books of account of the assessee, ledger account, supporting invoice, Debit Notes and Credit Notes etc. The goods imported by the assessee are perishable in nature having limited shelf life. Therefore, the goods received by the assessee were found to be out dated or expiry date then it would certainly become useless having no value as chemical properties and compounds gets changed after the said period of shelf life. Accordingly, we find that the claim of defective goods reduced from purchase is established by supporting evidence and therefore, the addition made by the AO purely on presumption and assumption is liable to be deleted.

2.4.1 The Id. CIT(A) not only confirmed the addition made by the AO but also enhanced the addition by adding a deduction allowed by the AO at 30% towards expenses on alleged out of books sales at para 3.3.4 of her order as under

3.3.4.....It is further observed that Assessing Officer has allowed the cost of 30% towards the expenses etc. in connection with sales made out of books. When the sales were made out of books, it is presumed that all expenses pertaining to such transactions have already been recorded in the books of accounts. Therefore, I do not agree with the observations of Assessing Officer who wrongly allowed 30% towards expenses,. Accordingly, the addition of Rs. 96,18,503/- is enhanced to Rs.

1,37,40,718/-. Since the final addition after this appeal order is at Rs. 1,37,40,718/- which is higher than the addition sustained. Therefore, no separate notice under section 251(2) is required to be issued to the assessee. The addition of Rs. 1,37,40,718/- is directed to be added as income from undisclosed sales in hand of assessee.’’

Therefore, the Id. CIT(A) has stated that overall addition is not enhanced as the Id. CIT(A) has deleted the other additions made by the AO on a separate issue and hence the Id. CIT(A) was of the view that no separate notice u/s 251(2) is required to be issued. It is pertinent to note that requirement of issuing show cause notice is must prior to enhancement of the assessment as envisaged in Section 251(2) of the Act for each and every enhancement and it does not depend on overall outcome of the total income of the assessee in pursuant to the order of the Id. CIT(A). If the AO has made more than one addition to the total income of the assessee and some of the additions are found to be not sustainable by the Id. CIT(A) and accordingly deleted then the addition which is enhanced by the Id. CIT(A) shall satisfy the conditions of issuing show cause under sub-section 2 of Section 251 as the same is not obliterated due to reason that certain other additions made by the AO were deleted by the Id. CIT(A). Therefore, the enhancement of assessment has to be considered in the context of each issue raised in the appeal before the Id. CIT(A).

Without going into the controversy of the validity of the order, once we find that the assessee has established the facts of defective goods received from the Chinese suppliers then the addition itself would not survive and the same is deleted. Thus the appeal of the assessee is allowed.

3.0 In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 06 /03/2020.

Sd/-  
( विक्रम सिंह यादव )  
(Vikram Singh Yadav)  
लेखा सदस्य / Accountant Member

Sd/-  
(विजय पाल राव)  
(Vijay Pal Rao)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur  
दिनांक / Dated:- 06/03/ 2020

**\*Mishra**

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1.अपीलार्थी / The Appellant- Shri Shankar Gupta, Jaipur

2.प्रत्यर्थी / The Respondent- ITO, Ward- 6(4), Jaipur

3.आयकर आयुक्त(अपील ) / CIT(A),

4.आयकर आयुक्त / CIT,

5.विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur

6.गार्ड फाईल / Guard File (ITA No.665/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar