

IN THE INCOME TAX APPELLATE TRIBUNAL

"F" BENCH, MUMBAI

BEFORE Ms. PADMAVATHY S., ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No. 3724/MUM/2024

(Assessment Year : 2012-13)

Jindal Drugs Pvt. Ltd.

12A, 12th Floor, Bakhtawar,
229, Nariman Point, Mumbai
Maharashtra - 400021
PAN: AAACJ1000A

..... Appellant

v/s

ACIT, Circle – 3(2)(1)

Mumbai- 400020

..... Respondent

Assessee by : Shri Rahul Hakkani

Revenue by : Shri Surendra Meena, Sr.DR

Date of Hearing – 29/08/2024

Date of Order - 25/11/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the present appeal challenging the impugned order dated 04/06/2024, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment year 2012-13.

2. In this appeal, the assessee has raised the following grounds: –

"The Appellant appeals against the impugned order dated 4 June 2024 passed by the Commissioner of Income Tax (Appeal), National Faceless Appeal Centre,

Delhi ("Learned CIT(A)/NFAC") under section ("u/s") 250 of the Income-tax Act, 1961 ("The Act"), on the following amongst the other grounds each of which are independent of and without prejudice to, one another:

Ground No. 1: Re-opening/ reassessment proceedings u/s 147 of the Act is bad in law

1.1 The Learned CIT(A)/NFAC erred in confirming reopening of the assessment under Section 147 of the Act and as such, the reassessment order passed is bad in law and ought to be quashed.

1.2 The Learned CIT(A)/NFAC erred in confirming reopening of assessment without appreciating that reopening was done on the basis of wrong fact i.e. the transaction between Appellant and Mint Agro Tech Pvt Ltd. was not recorded in the books of accounts by the Appellant whereas the fact was that the said transaction was duly recorded by the Appellant in its books and thus the reason to believe of the AO as well as the sanction u/s 151 was granted on wrong facts and hence reopening is bad in law.

1.3 On the facts and in the circumstances of the case and in law, the Learned CIT(A)/NFAC has erred in not considering that the additions of INR 5,30,00,000/- was made by the Learned Assessing Officer ("Learned AO") merely on the basis of information received from the DDIT (Inv.), Unit-S(1), New Delhi i.e. without any independent application of mind, and hence reopening is bad in law.

1.4 The Learned CIT(A)/NFAC has failed to appreciate that re-assessment was beyond four years and there was no failure of the Appellant to disclose truly and fully all material facts and reopening was not based on new tangible material and reopening tantamounts to "change of opinion" and hence, reopening is bad in law.

1.5 The Learned CIT(A)/NFAC erred in confirming reopening of assessment without appreciating that sanction u/s 151 was obtained before recording of reasons and hence reopening is bad in law.

Ground No. 2: Erred in confirming additions of INR 5,30,00,000 u/s 69C of the Act

2.1 The Learned CIT(A)/NFAC has erred in dismissing the appeal filed by the Appellant u/s 250 of the Act, and in affirming the additions of INR 5,30,00,000/- made by the Learned AO u/s 69C of the Act without appreciating the facts and circumstances of the case.

2.2 The Learned CIT(A)/NFAC has erred in confirming addition of Rs. 5,30,00,000/- u/s 69C being purchase of crude oil from Mint Agro Tech Pvt Ltd without appreciating that Section 69C is not applicable as the payment for purchases is made through banking channels and thus the source of such expenditure is from the balance in bank account and thus the source of such expenditure is duly explained and hence the addition u/s. 69C of Rs. 5,30,00,000/- may be deleted. 2.3 The Learned CIT(A)/NFAC has erred in confirming addition of Rs 5,30,00,000/- u/s 69C being purchase of crude oil from Mint Agro Tech Pvt Ltd without appreciating that Section 69C is not applicable as the purchases are genuine and duly supported by purchase invoices, lorry receipts, toll receipts and waybills issued by the VAT department,

signed ledger confirmation by Mint Agro Tech Pvt. Ltd. and confirmation received from the transporter i.e. OTS Ltd. Moreover, the sales are accepted and books of accounts are not rejected and there is no evidence of cash being received back by Appellant as alleged, and hence the addition of Rs. 5,30,00,000/- may be deleted.

Ground No. 3: Violation of principle of Natural Justice and non-grant of opportunity of being heard

3.1 On the given facts, circumstances and legal propositions, the Learned CIT(A)/NFAC and Learned AO erred in passing the order in absence of reasonable opportunity to the Appellant of making the submissions, which is in violation of principles of natural justice and liable to be quashed.

3.2 On the given facts, circumstances and legal propositions, the Learned CIT(A)/NFAC and Learned AO erred in not providing any documentation/ statement recorded against the Appellant and, also in not granting any opportunity to cross examine any statement recorded by the alleged party against the Appellant, which is in violation of principles of natural justice and liable to be quashed.

Ground No. 4

4.1 Without prejudice to the above, the Learned CIT(A)/NFAC has failed to appreciate the fact that the amount of transactions highlighted in the assessment order aggregated to only INR 3,50,00,000/- however the Learned AO has made addition of INR 5,30,00,000/- which seems arbitrary and without any basis.

4.2 Without prejudice to the above, the Learned CIT(A) has failed to appreciate the fact that the amount of transaction highlighted in the 'reason to believe' aggregated to only INR 5.05,00,000/- however Learned AO has made addition of INR 5,30,00,000/- which seems arbitrary and without any basis.

Ground No 5: General

5. The Appellant craves leave to amend or alter any of the above grounds or add a new ground, if and when necessary."

3. The brief facts of the case are that for the year under consideration, the assessee filed its return of income on 30/09/2012 declaring a total income of INR 59,45,61,890. The return filed by the assessee was selected for scrutiny and vide order dated 27/03/2015 passed under section 143(3) of the Act the total income of the assessee was assessed at INR 62,29,56,794. Subsequently, information was received from DDIT(Inv.)-5(1), Delhi regarding certain transactions as appearing in the bank account of M/s Mint

Agro Tech Pvt. Ltd. with the assessee to the tune of INR 5,05,00,000. As per the information/enquiries conducted, it was reported that M/s Mint Agro Tech Pvt. Ltd. is in the business of procuring the agricultural produce from farmers and then selling them to various parties on a consignment basis. The funds transferred by such parties in the bank account of M/s Mint Agro Tech Pvt. Ltd. were withdrawn as cash which was then given to the farmers towards payment for the goods procured. Since no reply was filed by M/s Mint Agro Tech Pvt. Ltd. regarding the transactions with the assessee the same remains unexplained. Accordingly, in view of the specific information received, notice under section 148 of the Act was issued to the assessee on 30/03/2019 and proceedings under section 147 of the Act were initiated. In response to the notice issued under section 148 of the Act, the assessee filed his return of income on 12/04/2019 declaring a total income of INR 59,45,61,890. After receipt of the reasons recorded for reopening the assessment, the assessee filed its objections, which were disposed of vide order dated 10/10/2019. During the reassessment proceedings, the assessee was asked to provide the complete details of the transactions with M/s Mint Agro Tech Pvt. Ltd. made during the year under consideration. Since the assessee could not respond to the notice issued under section 142(1) of the Act, a show cause notice was issued on 29/11/2019. After perusing the bills and vouchers submitted by the assessee in regard to the claim of purchase of goods, the Assessing Officer ("AO") vide order dated 04/12/2019 held that the bills look non-genuine as most of the bills are same and no specific address details are mentioned herein. The AO further held that the quantity supplied mentioned on the bills is the same in most of the cases which again shows that the paper trail has

been created just to camouflage the actual transactions. Accordingly, the AO concluded that the amount deposited by the assessee in the bank account of the company, M/s Mint Agro Tech Pvt. Ltd., for claiming purchase expenses is nothing but a coloured transaction which has been entered into by the assessee with the intention to inflate the expenses. As a result, the AO held that the amount of INR 5,30,00,000 as an unexplained expenditure in the books of the assessee in terms of the provisions of section 69C of the Act.

4. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee and upheld the addition of INR 5,30,00,000 made under section 69C of the Act. The relevant findings of the learned CIT(A), vide impugned order, are reproduced as follows: –

"Analysis and Findings:

The reassessment was based on specific information from the DDIT (Inv.)-5(1), Delhi, indicating non-genuine transactions with Mint Agro Tech Pvt. Ltd. The appellant's contention that these transactions were recorded in their books of accounts does not suffice to nullify the reopening. The information received from the DDIT provided a reasonable basis for reopening the assessment, and the AO followed due procedure by recording reasons and obtaining necessary approvals before issuing the notice under section 148.

While it is essential to provide the assessee with an opportunity to rebut the evidence used against them, the AO's actions must also be seen in the context of the appellant's responses. The appellant was given multiple opportunities to submit evidence and explanations, The AO's conclusion that the evidence provided by the appellant was insufficient and non-genuine was based on a thorough examination of the documents submitted, which appeared to have repetitive and non-specific details. Furthermore, the appellant failed to produce Mint Agro Tech Pvt. Ltd. for cross-examination, despite being aware of the necessity.

The claim that the appellant was not provided adequate opportunity is not substantiated by the records. Multiple notices were issued, and the appellant responded to these notices. The AO provided a detailed response to the appellant's objections to the reopening, and the assessment order reflects a consideration of the appellant's submissions. The timeline of notices and responses indicates that the appellant had sufficient opportunity to present their case but failed to provide convincing evidence to counter the AO's findings.

The documentation provided by the appellant, including purchase invoices, transport receipts, and waybills, was scrutinized by the AO. The AO found that the bills appeared non-genuine, with repetitive details and lack of specific address information. This led to the conclusion that these were paper transactions created to camouflage the actual nature of the transactions. The appellant's inability to provide corroborative evidence from Mint Agro Tech Pvt. Ltd. further weakened their case.

Section 69C deals with unexplained expenditure. The AO's addition under this section was based on the finding that the transactions with Mint Agro Tech Pvt. Ltd. were non-genuine and that the appellant failed to explain the source of the expenditure satisfactorily. The bank statements and ledger accounts provided by the appellant did not conclusively establish the genuineness of the transactions. The repetitive and non-specific nature of the supporting documents further supported the AO's conclusion that the transactions were intended to inflate expenses artificially.

Conclusion:

After considering the submissions of the appellant and the findings of the Assessing Officer, it is evident that the reassessment was conducted following due process and based on reasonable grounds. The appellant's arguments regarding the violation of natural justice and inadequate opportunity are not substantiated by the records. The AO's findings of non-genuine transactions and the consequent addition under section 69C are supported by the evidence and the inconsistencies in the appellant's documentation. The addition of Rs. 5,30,00,000 made under section 69C is upheld. The appeal filed by assessee is dismissed."

5. We have considered the submissions of both sides and perused the material available on record. In the present case, on the basis of the information received from the DDIT(Inv.)-5(1), Delhi regarding certain transactions as appearing in the bank account of M/s Mint Agro Tech Pvt. Ltd. with the assessee, proceedings under section 147 of the Act were initiated and notice under section 148 of the Act was issued. It is evident from the record that during the assessment proceedings, the AO sought various details from the assessee regarding the purchase transaction with M/s Mint Agro Tech Pvt. Ltd., however, finding the bills to be non-genuine on the basis that most of the bills are same and no specific address details are mentioned herein, the

AO concluded that the bills are nothing but a mode to create a paper trail just to camouflage the actual transaction.

6. In order to justify the genuineness of the transaction with M/s Mint Agro Tech Pvt. Ltd., the learned Authorised Representative ("*learned AR*"), during the hearing referred to the submission dated 22/10/2019 filed by the assessee during the assessment proceedings. From the perusal of the aforesaid submission, which forms part of the paper book from pages 98-100, we find that the assessee provided the bill-wise details in respect of each transaction with M/s Mint Agro Tech Pvt. Ltd. and also provided the details such as date of the bill, quantity, amount, toll receipt no., lorry receipt, Way bill/Form VAT-58 no. and the truck no. We find that in support of the aforesaid submission, the assessee also filed the vouchers/bills, which form part of the paper book from pages 101-255. Apart from the aforesaid details, the learned AR also refer to the ledger account of M/s Mint Agro Tech Pvt. Ltd. in the books of the assessee for the year under consideration, which was filed before the AO along with the reply dated 28/11/2019. Further, we find that the assessee also furnished the ledger confirmation from M/s Mint Agro Tech Pvt. Ltd. before the AO vide its submission dated 09/02/2019, which forms part of the paper book from pages 586-594, wherein M/s Mint Agro Tech Pvt. Ltd. confirmed that 5,05,260 Kg of raw material (crude Mentha Oil) amounting to INR 64,42,53,319 was sold to the assessee during the financial year 2011-12, against which payments were received in the bank accounts through RTGS/NEFT fund transfers made by the assessee. Further, we find that the assessee also filed a confirmation from the transporter with respect to the transport of goods from M/s Mint Agro Tech Pvt. Ltd. to the assessee during

the year under consideration. From the perusal of the aforesaid confirmation, which forms part of the paper book from pages 595-596, we find that the transporter not only provided the consignment no. but also provided the bill no. as well as the quantity of the consignment. We find that apart from making a general allegation that the bills look non-genuine since most of them are the same, the lower authorities did not point out any infirmity in the detailed documents, as noted above, submitted by the assessee during the assessment proceedings. Having carefully perused all the details filed by the assessee during the assessment proceedings, which form part of the record, we are of the considered view that the assessee has duly explained the nature of transactions of purchase made from M/s Mint Agro Tech Pvt. Ltd. during the year under consideration. Accordingly, we are of the considered view that the addition made by the AO and upheld by the learned CIT(A) is unsustainable, and thus the same is directed to be deleted. As a result, the impugned order on this issue is set aside and ground no.2 raised by the assessee is allowed.

7. During the hearing, the learned AR submitted that if the relief is granted to the assessee on merits, then he may not wish to press the grounds challenging the reopening of the assessment at this stage. Since we have already deleted the addition made under section 69C of the Act in the present case, therefore ground no.1 raised by the assessee challenging the reopening of the assessment is left open.

8. In view of our aforesaid findings, grounds no.3 and 4 need no separate adjudication.

9. In the result, the appeal by the assessee is allowed.

Order pronounced in the open Court on 25/11/2024

Sd/-

**PADMAVATHY S.
ACCOUNTANT MEMBER**

Sd/-

**SANDEEP SINGH KARHAIL
JUDICIAL MEMBER**

MUMBAI, DATED: 25/11/2024

Prabhat

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai