

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Date of Decision: 4th September, 2015

(1) ITA No. 205 of 2014

Joneja Bright Steel Pvt. Ltd. ..Appellant

Versus

Commissioner of Income Tax, Faridabad ..Respondent

(2) ITA No. 423 of 2014

Joneja Bright Steel Pvt. Ltd. ..Appellant

Versus

Commissioner of Income Tax, Faridabad ..Respondent

CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE G.S.SANDHAWALIA.

Present : Mr. Sanjay Bansal, Senior Advocate with
Mr. Rajiv Sharma, Advocate, for the appellant.

Mr. Tejinder Joshi, Advocate, for the respondent.

S.J.VAZIFDAR, ACTING CHIEF JUSTICE

Both the appeals are filed by the assessee against the common order and judgment of the Income Tax Appellate Tribunal in respect of the assessment year 2008-09.

2. We are constrained to remand the matters to the Tribunal as some facts and questions of law have not been considered. Moreover, further evidence was called for by the order of the earlier Division Bench dated 26.11.2014. We may have considered the matters ourselves. However, as the

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issues of fact and appreciation of evidence are involved, it would be appropriate that the same are decided by the authorities under the Income Tax Act, 1961 (hereafter referred to as 'the Act').

We are informed that the Tribunal itself had remanded a similar matter to the Assessing Officer.

3. In ITA No. 205 of 2014, the appellant contends that the following questions of law arise for consideration:-

- A. Whether the order passed by the Hon'ble Tribunal is perverse in nature as the Tribunal has passed the impugned order without appreciating the evidences/pleadings and factual findings of CIT(A) and in contravention of the provisions of law?
- B. Whether Hon'ble Tribunal has erred in dismissing the assessee's appeal and in upholding the action of the learned CIT(A) in confirming the rejection of books of account of the assessee and in sustaining the disallowance of Rs. 10,000,00/-?

4. In ITA No. 423 of 2014, the appellant contends that the following question of law arise for consideration:-

- A. Whether the order passed by the Hon'ble Tribunal is perverse in nature as the Tribunal has passed the impugned order without appreciating the evidences/pleadings and factual findings of CIT(A) and in contravention of the provisions of law?
- B. Whether Hon'ble Tribunal has erred in reversing the well reasoned order of learned CIT(A) and has erred in law in disallowing purchases of Rs. 1,14,82,688/-?

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5. The Assessing Officer rejected the books of account and disallowed the expenses with regard to the purchase of the material by the appellant to the extent of Rs.1,14,82,688/-. The assessee contended that the goods of the value of Rs.90,43,204/-, Rs. 6,90,253/- and Rs. 17,49,231/- respectively, were purchased by it from M/s Rama Enterprises, M/s AGS Enterprises and M/s Royal Industries Corporation. After rejecting the books of account under Section 145(3) of the Act, the Assessing Officer added the said amounts to the assessee's income. The assessment was also made under Section 68 of the Act.

6. The Commissioner of Income Tax (Appeals) upheld the order of the Assessing Officer rejecting the books of account but sustained the addition of Rs.10,00,000/- on account of the rejection of books. The CIT (Appeals) held that the provisions of Section 68 were not applicable to sundry creditors. The CIT (Appeals) also held that the purchases from the three parties were genuine. The orders of the Assessing Officer in this regard were set-aside. The Assessee and the Revenue, therefore, filed appeals before the Income Tax Appellate Tribunal. The Tribunal dismissed the assessee's appeal and allowed the appeal filed by the Revenue.

7. The main issues before the authorities were whether the books had been rightly rejected and whether the addition has been correctly made even assuming that the books are rightly rejected. Section 68 of the Act has not been considered by the Tribunal.

8. As we mentioned earlier, the assessee claimed having purchased the material from three entities i.e. M/s Rama Enterprises, M/s

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AGS Enterprises and M/s Royal Industries Corporation (we will for convenience hereafter referred to them collectively as 'the vendors'). The Assessing Officer made the enquiries from the Excise & Taxation Officer-cum-Assessing Authority on the basis of the TIN's Numbers shown in the purchase invoices. It was found that the purchases had been made by the vendors and thereafter in turn sold to the appellant. The appellant paid the amounts which were credited in the bank accounts of the vendors. It appears that thereafter these amounts were withdrawn/paid over/credited to another entity, namely, M/s Maa Durga Trading Company who in turn withdrew the same almost immediately.

The summons were issued under Section 131(1) of the Act which admittedly could not be served by the Inspector who reported that the names of the vendors appeared at the addresses given but they had left the premises. The Excise & Taxation Authorities confirmed that the purchases had been made by the vendors from M/s Maa Durga Trading Company. However, the enquiries made by the Assessing Officer revealed that M/s Maa Durga Trading Company did not exist at any of the given addresses and that the Excise & Taxation Authorities reported that the purchases of M/s Maa Durga Trading Company were not found to be genuine. It is important to note that what was found not to be genuine were the purchases made by M/s Maa Durga Trading Company. It is difficult to ascertain which purchases were found not to be genuine. In other words, it is difficult to ascertain that all or only some of the purchases of M/s Maa Durga Trading Company were fake. It is also not clear whether the only stock lying with the vendors was purchased from M/s Maa Durga Trading Company or whether

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the vendors had also acquired stock from other sources as well. Even assuming that their purchases from M/s Maa Durga Trading Company were fake, it would not necessarily reflect adversely upon the sales by the vendors to the assessee. This evidence would be relevant while considering whether the purchases by the assessee were genuine or not.

9. By an order dated 26.11.2014, a Division Bench of this Court noted that a notice under Section 131 of the Act had been served upon M/s Rama Enterprises. We are informed that PAN numbers were called for and have now been produced. The vendors appear to have paid tax. The effect thereof would have to be considered. It would now be possible to ascertain in a more satisfactory manner the genuineness of the entries in the assessee's books of account as well as the genuineness of the transactions.

10. While setting-aside the disallowance of the deductions on account of the purchases, the CIT (Appeals) undertook a detailed analysis of the production figures for the previous assessment years and for the assessment year in question. Having done so, it arrived at the GP ratio and inferred that the appellant had received the material corresponding to the purchases made from the vendors. It was found for instance that the existence of the vendors stood confirmed by the Excise & Taxation Officer. The assessee would rely upon the PAN numbers which were now produced during the course of these appeals. The excise record was also analysed by the CIT(Appeals). The CIT(Appeals) undertook a detailed analysis in coming to this conclusion. However, some of the crucial aspects have not been considered by the Tribunal. The Tribunal for instance held that the detailed enquiry made by the Assessing Officer by issuing summons under

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Section 131 of the Act to the vendors and also the enquiry made from the bank authorities establishes that the purchases were not genuine. The order does not indicate any reasons in support of this finding and in any event various aspects which have been dealt with by the CIT(Appeals) have not been taken into consideration while arriving at this finding. Further, the effect of the finding that the payments by the assessee to its vendors and of M/s Maa Durga Trading Company having withdrawn the same is not dealt with satisfactorily. Merely because M/s Maa Durga Trading Company withdrew the amount which was paid by the assessee to its vendors would not lead to the conclusion that the transactions between the assessee and the vendors were fictitious. Similarly, the Tribunal noted that the confirmation receipts of the said supplies were signed by different persons while the bank accounts were operated by other persons. This fact has been held against the assessee. This finding would be perverse. There is nothing unusual in different persons operating the bank accounts of a company and signing the confirmation receipts of the supply of goods.

11. As we mentioned earlier, Section 68 of the Act has not been considered at all. Had the only question in this appeal involved the interpretation of section 68, we would have dealt with the issue ourselves. However, that is not the only question in these proceedings.

12. In the circumstances, the impugned order is set-aside and the matter is remanded to the Income Tax Appellate Tribunal for fresh decision after affording the parties an opportunity of being heard. It will be open to the parties to produce the PAN Numbers before the Tribunal. It is clarified that it would be open to the Tribunal to either decide the matter itself or

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remand the same to the Assessing Officer or to the Commissioner of Income Tax (Appeals).

**(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE**

04.09.2015
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**(G.S.SANDHAWALIA)
JUDGE**