

आयकर अपीलीय अधिकरण, मुंबई “ ई ” खंडपीठ

Income-tax Appellate Tribunal -“ E ”Bench Mumbai

सर्वश्री राजेन्द्र,लेखा सदस्य एवं रामलाल नेगी ,न्यायिक सदस्य

Before S/Shri Rajendra,Accountant Member and RamLal Negi,Judicial Member

आयकर अपील सं./I.T.A./1045/Mum/2016,निर्धारण वर्ष /Assessment Year: 2011-12

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| Shantivijay Jewels Ltd. G 37,Gems and Jewellery Complex- III SPEEZ,Andheri(East),Mumbai-400096 PAN:AAFCS8914F | Vs. | DCIT Rg 8(3) Room No.204, Aayakar Bhavan, M K Road, Mumbai – 400 020 |
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(अपीलार्थी /Appellant)

(प्रत्यर्थी /

Respondent)

Revenue by: Shri V Justin-DR

Assessee by: Shri R Murlidhar

सुनवाई की तारीख / Date of Hearing: 12/03/2018

घोषणा की तारीख / Date of Pronouncement: 13/04/2018

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदे

Order u/s.254(1)of the Income-tax Act,1961(Act)

लेखा सदस्य ,राजेन्द्र के अनुसार -PER RAJENDRA, AM-

Vide its order dated 27/10/2017, the Tribunal recalled its order,dtd.11/01/2017,with regard to ground number one which deals with bogus purchases.

2.Assessee-company,engaged in the business of manufacturing of jewellery,filed its return of income declaring the total income of Rs.60.56 lakhs.During the assessment proceedings,the AO called for details /evidences of purchases from three parties namely (i) M/s. Aadi Impex; (ii) M/s. Kalash Enterprises and (iii) M/s. Maniprabha Impex Pvt Ltd,which all essentially were controlled and managed by Rajesh Jain Group. He observed that Dharmichand Jain (DJ)had admitted,during the search and seizure proceedings carried out u/s 132 of the Act,that the group was merely providing accommodation entries.He invoked the provisions of section 133(6) of the Act.All the three suppliers relied on the book entries, bills, bank statements in support of their claim of genuine sales made to the assessee.However, the AO rejected the said explanation and proceeded to make addition of Rs. 14.99 Crores to the income of the assessee.

3. During the appellate proceedings, the assessee filed copies of the affidavits of the suppliers and relied on various decisions against the said additions on account

of bogus purchases. On hearing the same and after obtaining the remand report of the AO on the said affidavits, he partly allowed the appeal of the assessee. In his order, CIT (A) held that the addition of entire purchases is not sustainable and relied on the jurisdictional High Court judgment in the case of Nikunj Eximp Enterprises (372 ITR 619). He further held that restricting the addition to 12.5% of the said purchases was reasonable. He relied on the Gujarat High Court judgment in the case of Simit P Sheth (356 ITR 451) in this regard. Thus, he confirmed the addition of Rs. 1,75,04, 222/- being 12.5% of Rs. 14,00,33,775/- and deleted the balance of Rs. 12,25,29,553/-.

4. Aggrieved with the said decision of CIT (A), the assessee filed appeal before the Tribunal with regard to bogus purchases. While deciding the appeal the Tribunal restored back the issue of bogus purchase to the file of the AO for fresh adjudication. As stated earlier, the issue of bogus purchases has been recalled by the Tribunal.

5. During the course of hearing before us, the Authorised Representative (AR) stated that the assessee was exporting jewellery, that it had no local sales during the year under consideration, that all the necessary documents to prove the genuineness of the transactions were produced during the assessment proceedings, that the payments were made through banking channels, that the supplier had confirmed the transactions during the remand proceedings, that they were assessed to income tax. He referred to pages 9, 24, 64 and 109 of the paper book. He relied upon the case of Smt. Romila M. Nagpal (ITA/6388/Mumbai/2016-AY.2009-10, dated 17/03/17). The Departmental Representative (DR) stated that one party did not appear.

6. We have heard the rival submissions and perused the material before us. We find that the assessee is engaged in the business of manufacturing of studded gold jewellery and plain gold jewellery, that during the year under consideration it had exported its manufactured goods, that it did not sell goods locally, that the AO had not doubted the sales, that the suppliers had appeared before the AO and admitted that they had sold the goods to the assessee, that they had filed affidavits in that regard. We find that DJ had admitted of issuing bogus bills. But, nowhere he had admitted that he had issued accommodation bills to the assessee. In our

opinion,there is subtle but very important difference in issuing bogus bills and issuing accommodation bills to a particular party.The difference becomes very important when a supplier in his affidavit admits supply of goods.In this matter, the assessee had made no local sales and goods were exported,as stated earlier.So,as far as sales are concerned there is no doubt about the genuineness of such sales.It is also a fact that suppliers were paying VAT and were filing their returns of income.In response to the notices issued by the AO,under section 133(6) of the Act, the supplier had admitted the genuineness of the transaction.Here,we would like to refer to order of the Tribunal in the case of Romila M. Nagpal (supra),wherein in the similar circumstances,addition confirmed by the FAA were deleted. In that order,the tribunal had referred to the case of M/s. Imperial Imp & Exp.(ITA No.5427/Mum/2015 A.Y.2009-10).In Imperial Imp & Exp. matter,the assessee was exporting goods. The relevant portion of the order of reads as under:

“2.Effective Ground of appeal is about addition made to her income with regard to purchases. The AO received an information from the investigation wing that the sales tax department, Govt.of Maharashtra had made enquiries about bogus purchases/hawala transactions.The sales tax authorities had forwarded the list of beneficiaries who had taken bills from the hawala dealers.The AO observed that assessee had purchased goods worth Rs.1.35crores from three parties namely Shri Garnesh Trading (Rs.27.73 lakhs); Kishna Chemical Works (Rs.27.85 lakhs) and Shreyas Marketing Agency (Rs.80.40 lakhs). The AO issued a notice u/s.148 of the Act .In response to the notice the assessee stated that return filed on 24/9/2009 should be treated as return filed in response to re-assessment notice.After considering the submission of the assessee and the various details filed by her the AO issued notices u/s. 133 (6) of the Act to above mentioned three parties.As per the AO,notices were returned back by postal authorities as same could not be served.He held that in absence of authentic confirmation from the parties the genuineness of the transaction was not verifiable. He directed the assessee to produce the parties.The assessee ,vide her letter dt.12.11. 2014,stated that parties were not available as on date.The AO held that purchases made by her were not verifiable in absence of proper and legitimate confirmations,that the assessee had not produced the suppliers ,that the onus was on the assessee to prove the genuineness of the purchases, that the profit element embedded in the purchases had to be brought to tax.Estimating the gross profit @ 12.5% of the unproved purchases of Rs.1.35crores, he made an addition of Rs.16.99 lakhs to the income of the assessee.

3.Aggrieved by the order of AO,the assessee preferred an appeal before the First Appellate Authority(FAA).Before him,the assessee made elaborate submissions and relied upon several case laws.Before him,it was argued that the assessee had filed ledger copies of the parties, sales details, that the purchases were fully backed by authenticated invoices, that she had made payment through banking channels,that the stock register and the consumption chart showed the nexus between the purchases and the sales made by the assessee,that details of closing stock were available on record,that there was no evidence to prove that assessee had received back the money in cash,that the AO had not rejected the books of account of the assessee,that

the assessee was maintaining quantitative details of purchase and sales, that the AO had not pointed out any specific defects in the books maintained by her.

After considering available material, the FAA held that the AO had made efforts beyond getting information from the investigation wing, that he had directed the AO to produce the parties, that the supplier were not found at the given addresses, that it was a case of purchases made from bogus parties rather than a case of bogus purchases, that without making purchases it was not possible for assessee to complete the sales, that the AO had rightly invoked the provisions of section 147, that he was justified in making the disallowance of Rs.16.99 lakhs. Finally, he dismissed the appeal filed by the assessee.

4. During the course of hearing before us the Authorised Representative (AR) submitted that the assessee had filed all necessary details before the AO, that stock register and quantitative details were made available to the AO, that payments were made through banking channels. He referred to the cases of Shri Mahesh Shah (ITA No.5194/Mum/2014 A.Y.2010-11); M/s. Imperial Imp & Exp. (ITA No.5427/Mum/2015 A.Y.2009-10); Shri Ramila Pravin Shah (ITA No.5246/M/2013 A.Y.10-11); Shri Deepak Popatlal Gala (ITA No.5920/Mum/2013 A.Y.2010-11, dated 27/3/2015); Ramesh Kumar and Co.(ITA No.2959/Mum/2014 A.Y.2010-11 dated 28/11/2014); Shri Rajeev G. Kalathil (ITA No. 6727/Mum/2012 A.Y.2009-10 dated 20/08/2014); Shri Ganpatraj A. Sanghavi (ITA No.2826/ Mum/ 2013 A.Y. 2009-10 dt.5/11/2014 and Shri Hiralal Chunilal Jain (ITA No.4547/Mum/2014 dated 01/01/2016. The DR supported the order of the FAA.

5. We have heard the rival submissions and perused the material before us. We find that in the case of Imperial Imp. & Exp. (supra) identical issue has been deliberated upon and has been decided by the Tribunal. We are reproducing the relevant portion consisting the facts of the case, order of the FAA, arguments advanced by AR and DR before the Tribunal and the operative part of the order of the Tribunal which reads as under :-

2. In this appeal, although the assessee has raised multiple Grounds of appeal, but the substantive grievance is against the action of the CIT (Appeals) in confirming an addition of Rs.4,19,356/- being estimated profit on unexplained purchases.

3. In brief, the relevant facts are that the appellant is a partnership firm, which is engaged in the business of export of consumer clothing. The return of income for assessment year 2009-10 was filed by the assessee declaring a total income of Rs.3,49,320/-, which was subject to a scrutiny assessment under section 143(3) of the Act, whereby the total income was assessed at Rs.3,66,344/-. Subsequently, the Assessing Officer issued notice under section 148 of the Act on 06/03/2014 reopening the assessment on the ground that certain income chargeable to tax had escaped assessment, in as much as, assessee had taken accommodation purchase bills from four parties, totalling to Rs.77,51,496/-. In the ensuing assessment, the Assessing Officer has held that purchases declared by the assessee of Rs.77,51,496/- from four parties, detailed in para-1 of the assessment order are bogus purchases. According to the Assessing Officer, assessee did not make actual purchases from such four parties because as per the information received from the Investment Wing, the four parties in question were found to have been VAT dodgers by the Maharashtra VAT Department. The Assessing Officer noted that since sales have been effected by the assessee, which showed that assessee was actually in possession of goods, the material would have been procured from grey market without bills in order to cover up the purchases, and thus assessee would have taken accommodation bills for purchases from the said four parties amounting to Rs.77,51,496/-. Accordingly, the Assessing Officer brought to tax the profit margin in relation to such non-genuine purchases, which he computed

by applying the rate of 12.5% on the total amount of Rs.77,51,496/-, which came to Rs.9,68,937/-.

3.1 The plea of the assessee before the Assessing Officer as well as before the CIT(Appeals) was that the purchases in question were duly supported by the bills of purchase. Moreover, the assessee pointed out that all its sales were by way of exports and that there was no evidence to say that the purchases in question were bogus. The assessee also referred to his bank statement to prove payments to such parties. The details of goods sold by the assessee was also furnished, which corresponded to the purchases effected from such four parties. The CIT(Appeals) has primarily affirmed the stand of the Assessing Officer based on the information stated to have been received from the Investigation Wing of the Department relating to the finding of the Maharashtra VAT Department. Additionally, the CIT(Appeals) also noticed that assessee could not prove the existence of the suppliers and, therefore, the circumstantial evidence also suggested that the entire purchases from the four parties was unverifiable. However, he restricted the addition to 5.41% of the amount of such unexplained purchases, instead of 12.5% adopted by the Assessing Officer. The CIT(Appeals) has applied the rate of 5.41% being the gross profit rate of the assessee for the year under consideration. Accordingly, out of an addition of Rs.9,68,937/- made by the Assessing Officer, the CIT(Appeals) retained an addition of Rs.4,19,356/- and deleted the balance.

4. Before us, the Ld. Representative for the assessee has vehemently pointed out that the entire sales of the assessee are by way of exports and, therefore, there was no liability towards sales tax on the purchases effected by it. It was also contended that though the Assessing Officer has referred to the four parties having been listed as 'hawala operators' by the Sales Tax Department of the Government of Maharashtra, but there is no clear evidence to suggest that the transaction with the assessee were bogus. It is pointed out that in the cases of some other assessees, under identical circumstances, the Coordinate Benches of the Tribunal have deleted the additions. In this connection, reliance have been placed on the following decisions:-

- (1) ITO vs. Shri Deepak Popatlal Gala in ITA No.5920/Mum/2013 (A.Y. 2010-11) dated 27/03/2015;
- (2) Ramesh Kumar and Co. V/s. ACIT in ITA No.2959/Mum/2014 (A.Y. 2010-11) dated 28/11/2014;
- (3) DCIT v/s. Shri Rajeev G. Kalathil in ITA No.6727/Mum/2012 (A.Y.2009-10) dated 20/08/2014;
- (4) Shri Ganpatraj A. Sanghavi v/s. ACIT in iTA No.2826/Mum/2013 (A.Y.2009-10) dated 5/11/2014; and
- (5) Shri Hiralal chunilal Jain vs. Income Tax Officer in No.4547/Mum/2014 dated 01/01/2016.

On this basis, the plea of the assessee is that the entire addition is liable to be deleted. 5. On the other hand, the Ld. Departmental Representative supported the orders of the authorities below by pointing out that the addition has been made on account of the enquiries conducted by the Sales Tax Department of the Government of Maharashtra and no effort has been made by the assessee to controvert such information.

6. We have carefully considered the rival submissions. The entire discussion in the assessment order reveals that purchases from four parties namely Dhruv sales Corporation - Rs.13,67,640/-; Subhlaxmi Sales Corp. - Rs.20,20,800/-; Dharshan Sales Corporation -Rs.9,64,656/-; and Paras (India)- Rs.33,98,400, totalling to Rs.77,51,496/- have been treated to be bogus based on the purported enquiries conducted by the Sales Tax Department of the Government of Maharashtra. Ostensibly, the Assessing Officer ought to have brought on record material which

is relevant to the transactions of the assessee with the aforesaid four parties instead of making a general observation about the information received from the Sales Tax Department of the Government of Maharashtra. Quite clearly, the Assessing Officer as well as CIT(Appeals) have taken note of the fact that no sales could have been effected by the assessee without purchases. In the present case, assessee has explained that all its sales are by way of exports. The books of account maintained by the assessee show payment for effecting such purchases by account payee cheques and also the vouchers for sale and purchase of goods, etc. Notably, no independent enquiries have been conducted by the Assessing Officer. Under identical circumstances, our Co-ordinate Benches in the cases of Deepak Papatwala Gal (supra), Shri Rajeev G. Kalathil(supra)and Ramesh Kumar and Co.(supra) have held that the Assessing Officer was not justified in making additions merely on the basis of information obtained from the Sales Tax Department of the Government of Maharashtra without conducting any independent enquiries. Before the CIT(Appeals), one of the points raised by the assessee was with respect to an opportunity to cross examine the four (Assessment Year : 2009-10) parties, but we find that no such opportunity have been allowed. Considering the entirety of facts and circumstances of the case and the aforesaid precedents, which have been rendered under identical circumstances, in our view, the CIT(Appeals) erred in sustaining the addition to the extent of Rs.4,19,356/- instead of deleting the entire addition of Rs.9,68,937/- made by the Assessing Officer. We direct accordingly.”

Respectfully, following the above order and the other orders relied upon by the AR during the course of hearing before us, we decide the effective Ground of appeal in favour of the assessee.

Considering the above, we are of the opinion that the FAA was not justified in partially confirming the addition. The assessee has proved the genuineness of the transactions and the parties suppliers had not only appeared before the AO but they had also filed affidavits confirming the sale of goods. Therefore, reversing his order, we decide first effective ground of appeal (GOA) in favour of the assessee.

As a result, appeal filed by the assessee stands allowed.

फलतः निर्धारित द्वारा दाखिल की गई अपील मंजूर की जाती है.

Order pronounced in the open court on 13th April, 2018.

आदेश की घोषणा खुले न्यायालय में दिनांक 13 अप्रैल, 2018 को की गई।

Sd/-

(रामलाल नेगी/Ramlal Negi)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक/Dated : 13.04.2018.

Jv. Sr. PS.

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

1. Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3. The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4. The concerned CIT /संबद्ध आयकर आयुक्त

5. DR “ E ” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ, आ.अ.न्याया.मुंबई

6. Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.