

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'डी' मुंबई।

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

सर्वश्री विजय पाल राव, न्यायिक सदस्य एवं नरेन्द्र कुमार बिल्लैय्या, लेखा सदस्य के समक्ष

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER AND

SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No.2959/Mum/2014

(निर्धारण वर्ष / Assessment Year : 2010-11

Ramesh Kumar & Co., Office No. 50, IInd Floor,Swastik Plaza VL Mehta Road, Vile Parle (W), Mumbai-400 049	बनाम/ Vs.	The ACIT 21(1), C-10, Income Tax Office, Bandra Kurla Complex, Bandra (E), Mumbai-400 051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAFR 1612D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
अपीलार्थी ओर से/ Appellant by:		Shri K.R. Lakshminarayanan
प्रत्यर्थी की ओर से/Respondent by:		Shri Jeetendra Kumar

सुनवाई की तारीख / Date of Hearing :24.11.2014

घोषणा की तारीख /Date of Pronouncement :28.11.2014

आदेश / O R D E R

PER N.K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the Ld. CIT(A)-32, Mumbai dt.3.3.2014 pertaining to A.Y.2010-11.

2. The assessee has raised 8 substantive grounds of appeal. The sum and substance of the grievance of the assessee is that the Ld. CIT(A) erred in law as well as on facts in upholding the addition of Rs.

4,98,80,892/- made by the AO u/s. 69C of the Act by treating the purchases as not genuine.

3. The assessee is a partnership firm carrying out the business of civil contracts, civil infrastructure, such as drainage and road repairs & maintenance mainly with Municipal Corporation of Greater Mumbai. The return for the year was filed on 28.9.2010 declaring total income of Rs. 2,99,79,680/-. The return was selected for scrutiny assessment and statutory notices were accordingly issued and served on the assessee.

3.1. During the course of the assessment proceedings, the Assessing Officer observed that the assessee has shown contract receipts at Rs. 32.05 crores against which total purchases and direct expenses were shown at Rs. 27.5 crores. The details of purchases were filed with full address of the parties and the amount of purchase made from them during the year under consideration. While going through the list of purchases, the AO observed that many of the parties were blacklisted by Sales tax department of Maharashtra Govt. and the Maharashtra Sales tax department had cancelled their TIN numbers.

3.2. On receiving the list of beneficiaries to these Hawala parties, the assessee was asked to produce these parties with relevant documentary proof to prove the genuineness of the transaction. The assessee failed to produce the parties but filed the copies of bills. It was further explained that payments to these parties were made through account payee cheques. It was further claimed that the transactions are genuine and the assessee has purchased material from these parties. The parties shortlisted by the AO are as under:

Sr. No.	Name of party	TIN	Amount in Rs.
1.	Shubhlaxmi Sales Corp.	27490615192V	3678176
2.	Riddhi Siddhi Enterprises	27750610781V	3970355
3.	Deep Enterprises	27750595164V	3126703
4.	Toral Enterprises	27600666493V	2501019
5.	CNS Trade Links Pvt. Ltd	27750532987V	274685
6.	Siddhi Enterprises	27860154093V	4001487
7.	Shantinath Corporation	27520680408V	3809804
8.	Tulsiani Rading Pvt. Ltd.	27440688212V	10610755
9.	Rohit Enterprises	27020680974V	4645143
10.	Samarth Enterprises	27560694451V	2027551
11.	Niddhish Impex Pvt. Ltd.	27600648257V	11235194
	TOTAL		49880892/-

3.3. The assessee was asked to showcause why the transactions with these parties should not be considered as non genuine and the whole amount claimed as purchase from these parties should not be disallowed. On receiving no plausible reply to the showcause notice, the AO proceeded by treating the purchases of Rs. 4,98,80,892/- as bogus purchases and added the same to the total income of the assessee.

4. Aggrieved by this, the assessee carried the matter before the Ld. CIT(A). It was strongly contended by the assessee that the execution of the work is executed by the assessee under the directions of the Sub-Engineers of Municipal Corporation of Greater Mumbai. The progress and quantity of work is verified by the authorities. The running account bill prepared and submitted by the contractor (assessee) is checked and

verified by the sub-engineer and further have checks in the department and in the process of working, completion of work, measurement, quantity etc. and that there was never any complaint and no dispute or litigation has arisen in respect of any of the purchases made by the assessee. It was further explained that the purchases were reflected in the books of account and the utilization of goods is supported by the records of the certification of Municipal Corporation of Greater Mumbai. It was further submitted that if the assessee had not purchased the goods, the assessee would not have been able to complete the work assigned and in turn would not have received the payment from the Government agencies i.e. Municipal Corporation of Greater Mumbai. On financials, the assessee stated that the gross profit rate offered by the assessee is approximately 14.2.% which is very much legitimate and reasonable.

4.1. After giving a thoughtful consideration to the facts and submissions of the assessee, the Ld. CIT(A) was not convinced as according to him, the assessee had failed to substantiate the claim of purchases of goods at site without submitting the delivery challans. The ratio analysis of the financials given by the assessee were also rejected by the Ld. CIT(A). The Ld. CIT(A) dismissed the appeal and confirmed the addition made by the AO by observing that the assessee has failed to correlate the material purchased with their use in the projects.

5. Aggrieved by this, the assessee is before us.

6. The Ld. Counsel for the assessee reiterated what has been submitted before the lower authorities. It is the say of the Ld. Counsel that all the purchase invoices were submitted before the AO and the AO has not pointed out any defect in the purchase invoice. The Ld. Counsel further stated that the purchases were duly paid by account payee cheque

and the payment is reflected in their respective copies of ledger account. The payments are also reflected in the bank statements of the assessee therefore it cannot be said that purchases are bogus.

7. Per contra, the Ld. Departmental Representative strongly supported the findings of the authorities below.

8. We have carefully perused the orders of the lower authorities and the relevant documentary evidences brought before us. We find that the AO has made the addition as some of the suppliers of the assessee were declared Hawala dealer by the Sales tax Department. This may be a good reason for making further investigation but the AO did not make any further investigation and merely completed the assessment on suspicion. Once the assessee has brought on record the details of payments by account payee cheque, it was incumbent on the AO to have verified the payment details from the bank of the assessee and also from the bank of the suppliers to verify whether there was any immediate cash withdrawal from their account. No such exercise has been done. The Ld. CIT(A) has also confirmed the addition made by the AO by going on the suspicion and the belief that the suppliers of the assessee are Hawala traders. We also find that no effort has been made to verify the work done by the assessee from the Municipal Corporation of Greater Mumbai. We agree with the submissions of the Ld. Counsel that if there were no purchases, the assessee would not have been in a position to complete the civil work.

8.1. On civil contract receipts of Rs. 32.05 crores, the assessee has shown gross profit at 14.2% and net profit at 9.72%.

8.2. Even if for the sake of argument, the books of accounts are rejected, the profit has to be computed on the sales made by the assessee

U/s. 44AD of the Act, the presumptive profit in case of civil contractors is 8% and in case of a partnership firm, a further deduction is allowed in respect of salary and interest paid to the partners. The ratio analysis of the profitability is also in favour of the assessee. In our considered opinion, the purchases are supported by proper invoices duly reflected in the books of account. The payments have been made by account payee cheque which are duly reflected in the bank statement of the assessee. There is no evidence to show that the assessee has received cash book from the suppliers. The additions have been made merely on the report of the Sales tax Department but at the same time it cannot be said that purchases are bogus. We, therefore, set aside the findings of the Ld. CIT(A) and direct the AO to delete the addition of Rs. 4,98,80,892/-.

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

Order pronounced in the open court on 28th November, 2014

Sd/-

(VIJAY PAL RAO)

न्यायिक सदस्य / JUDICIAL MEMBER लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 28th November, 2014

व.नि.स./ RJ , Sr. PS

Sd/-

(N.K. BILLAIYA)

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई
/ DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार

(Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai