

आयकर अपीलीय अधिकरण, C खंडपीठ मुंबई
INCOME TAX APPELLATE TRIBUNAL, MUMBAI - C BENCH

सर्वश्री आई पी बंसल , न्यायिक सदस्य एवं राजेन्द्र, लेखा सदस्य

Before S/Sh. I P Bansal, Judicial Member & Rajendra, Accountant Member
आयकर अपील सं./ITA No.5706/Mum/2013, निर्धारण वर्ष/Assessment Year-2010-11

Income tax Officer-25 (2)(2) C-11 Bldg. Room No.106, Pratyakshakar Bhavan\Bandra kurla Complex, bandra (E) Mumbai-51.	Vs	Shri Paresh Arvind Gandhi 305, Neeldhara CHS, Behind Vashudevta Temple, Borivali (W) Mumbai-400 092. PAN :AEBPG 2903 H
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

निर्धारित ओर से/Assessee by :Shri Bhupendra Shah

राजस्व की ओर से/ Revenue by :Shri J. Premanand-DR

सुनवाई की तारीख/ Date of Hearing :05-05-2015

घोषणा की तारीख / Date of Pronouncement : 13-05-2015

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

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

लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-

Challenging the order dt.18/7/2013 of the CIT(A)-35,Mumbai,the Assessing Officer(AO) has raised following Grounds of Appeal:

1. On the facts and in the circumstances of the case and in law, the id.CIT(A) erred in deleting the addition of Rs. 1,37,65,667/- made u/s 69C of the I.T. Act, by treating the purchase as genuine.
2. On the facts and in the circumstances of the case and in law, the Id.CIT(A) erred in relying upon judgement in the case of CIT v/s Nikunj eximp Enterprises Pvt. Ltd. without appreciating that the facts involved in the appellant's case are different from the facts of the above case law.
3. On the facts and in the circumstances of the case and in law, the Id.CIT(A) grossly erred in not appreciating the fact that notices under 133(6) issued to parties from whom alleged bills were received, were returned undelivered by the postal authorities.
4. On the facts and in the circumstances of the case and in law, the Id. CIT(A) grossly erred in not appreciating the fact that the assessee failed to produce the parties from whom the alleged bills were received despite many opportunities accorded him.
5. On the facts and in the circumstances of the case and in law, the Id. CIT(A) failed to appreciate that the assessee failed to rebut the findings of sales tax department vis-à-vis bogus purchases, despite reasonable opportunities afforded to him.

Assessee, an individual, proprietor of M/s. Hydro Pure System, is engaged in the business of installation, erection and servicing of water purifying systems. He is deriving income from business and other sources. He filed his return of income on 28.9.10, declaring total income of Rs.18.40 lacs. The AO completed the assessment u/s.143(3) of the Act on 1/3/2013, determining the income of the assessee at Rs.1,56,05,880/-.

The effective GOA is about deleting the addition of 1.37 crores made by the AO,u/s. 69C of the Act.During the assessment proceedings the AO directed assessee to furnish a list of persons from whom he had made purchases. He found that following parties from whom the assessee had shown purchases were appearing in the list of “suspicious dealers” who were indulged in issuing only bills without delivery of any goods/material for a commission as per the official website of sales tax department-

Sl.No.	Name of Alleged Supplier	Amount of Alleged Purchases Rs.
1.	Bhagwati Trading Company	23,78,818/-
2.	Manav Impex	39,910/-
3.	Prayan Trading Company	23,72,916/-
4.	Sampark Steels	10,78,220/-
5.	Savita International	19,597/-
6.	Vardhman Trading Company	46,73,578/-
7.	Vitarag Trading Company	32,02,628/-
	Total	1,37,65,667/-

In view of the above information, vide his show cause notice dt.6.2.13, the assessee was asked as to why the alleged purchase from the above mentioned sever parties aggregating to 1.37 crores should not be treated as unexplained expenditure. The AO provided the assessee the copies of statement recorded by the sales tax department. In response to the above, the assessee filed a letter dt.12.2.2013 and argued that the purchases made by him were genuine, that purchase of material was duly recorded in the books of account, that the parties concerned had submitted relevant supporting documents, i.e. sales tax confirmation and copies sales tax return, that those documents were submitted during assessment proceedings, that there was no change in the GP ratio, that material purchased during the year was used in production of equipments. After considering the submission of the assessee, the AO that held that same was not acceptable, that the sales tax department had carried out investigation about the above mentioned seven parties, that the sales tax authorities had concluded that those parties had not indulged in genuine sales/ purchase of goods, that the assessee had not produced the parties, that the purchases made by the assessee, per se, was not the issue, that the alleged purchases where not to be treated as bogus, that the assessee had not purchased the goods from the alleged suppliers, that the goods had somehow entered into assessee's regular business, that the assessee was unable to give any convincing or cogent explanation as to how those goods happened to come in his possession, that the purchase was not being treated as bogus, that the expenditure incurred on such purchases was to be treated as unexplained, that the above referred seven parties were engaged in issuing bills only. Finally, he made an addition of Rs. 1.37 crores to the total income of the assessee under the head unexplained expenditure, as per the provisions of sec. 69C of the Act.

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the First Appellate Authority (FAA). Before him, it was contented that all material purchase and issuance made were duly recorded and accounted for in inward and outward movement register, that the assessee submitted material register before the AO showing the receipt of material from the parties mentioned in the show cause notice. He also furnished copies of invoice and L/R of receipt of inward material purchased, bank statement showing payment made by cross Account payee

cheques to the above mentioned parties, copies of VAT returns, IT returns and confirmation of the impugned parties along with their MVAT reports and acknowledgements. It was argued that the AO had not treated the purchases bogus, that he was merely relying on the list of the suspicious dealers published by the VAT department, the AO did not dispute the delivery of goods. The assessee relied upon the cases of Bajrang Oil(12ITD631), Milk Food(65 TTJ 848), M/s. Balaji Textile Ind.(49 ITD 117) and Nahar Spinning Mills Ltd.(8SOT6)

After considering the submissions of the assessee and the assessment order, the FAA held that the purchases had been made through A/c. payee cheques that were duly reflected in the bank statement of the assessee, that the assessee had produced register of material purchased, copies of VAT returns, IT returns and confirmation of parties from whom the alleged purchases were supposed to have been made along with their MVAT reports, that the assessee was engaged in the process of manufacturing equipment that required steel, that the AO had at no stage countered the evidences produced by the assessee, that he had not conducted any independent enquiry to establish that the purchases were not genuine, that absence of delivery challan was not sufficient to prove non-genuineness of transaction. The FAA referred to cases of Milk Food(65 TTJ848), M/s. Balaji Textile Ind.(49ITD117); M.K. Brothers(163 ITR 249); Premanand (25 SOT11). He further held that the assessee had produced the evidence of making payments from his bank account, that the source of the said money was not doubted by the AO, that the expenditure on purchases could not be treated as unexplained, that the assessee was not given any opportunity to cross examine above referred seven parties despite the fact that assessee had specifically asked the same. The FAA relied upon the case of Ponkunnam Traders (102 ITR 366) of the Hon'ble Kerla HC and finally deleted the addition made by the AO.

4. Before us, Departmental Representative (DR) relied upon the order of the AO. Authorised Representative (AR) supported the order of FAA and relied on the following cases Rajiv G Kalathil (ITA/6727/Mum/2012, dated 20.08.2014), Ramila Pravin Shah (ITA/5246/Mum/2013, dated 05.03.2015), Rameshkumar & Co. (ITA/2959/Mum/2014, dated 28.11.2014) Deepak Popatlal Gala (ITA/5920-6203/Mum/2013, dated 27.03.2015). He further argued that the payments were made through banking channels, that cross examination of the above referred seven parties was not allowed even though the assessee had requested for the same.

5. We have heard the rival submissions and perused the material before us. We find that the AO had not doubted the genuineness of the purchase but had made the disallowance of Rs. 1.37 crores invoking the provisions of 69C of the Act. We find that in similar circumstances the Tribunal had deleted the addition made by the AO in the cases relied upon by the AR of the assessee. In the case of Rajiv G Kalathil (supra), to which one of us was party identical issue has been decided as under :-

2.3. Before us, Departmental Representative argued that both the suppliers were not produced before the AO by the assessee, that one of them was declared hawala dealer by VAT department, that because of cheque payment made to the supplier transaction cannot be taken as genuine. He relied upon the order of the G Bench of Mumbai Tribunal delivered in the case of Western Extrusion Industries. (ITA/6579/Mum/2010-dated 13.11.2013). Authorised representative (AR) contended that payments made by the assessee were supported by the banker's statement, that goods received by the assessee from the supplier was part of closing stock, that the transporter had

admitted the transportation of goods to the site.He relied upon the case of Babula Borana (282 ITR251),Nikunj Eximp Enterprises (P) Ltd. (216Taxman171)delivered by the Hon'ble Bombay High Court.

2.4.We have heard the rival submissions and perused the material before us.We find that AO had made the addition as one of the supplier was declared a hawala dealer by the VAT Department. We agree that it was a good starting point for making further investigation and take it to logical end.But,he left the job at initial point itself.Suspicion of highest degree cannot take place of evidence.He could have called for the details of the bank accounts of the suppliers to find out as whether there was any immediate cash withdrawal from their account.We find that no such exercise was done.Transportation of good to the site is one of the deciding factor to be considered for resolving the issue.The FAA has given a finding of fact that part of the goods received by the assessee was forming part of closing stock.As far as the case of Western Extrusion Industries. (supra)is concerned,we find that in that matter cash was immediately withdrawn by the supplier and there was no evidence of movement of goods.But,in the case before us,there is nothing,in the order of the AO,about the cash trail.Secondly,proof of movement of goods is not in doubt. Therefore,considering the peculiar facts and circumstances of the case under appeal,we are of the opinion that the order of the FAA does not suffer from any legal infirmity and there are not sufficient evidence on file to endorse the view taken by the AO.So,confirming the order of the FAA,we decide ground no.1 against the AO.

Respectfully following the above and considering the facts and circumstances effective GOA is decided against the AO.

As a result,appeal filed by the AO stands dismissed.

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

Order pronounced in the open court on 13th,May,2015.

आदेश की घोषणा खुले न्यायालय में दिनांक 13th May,2015 को की गई ।

Sd/-

(आई पी बंसल/I P Bansal)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(राजेन्द्र / RAJENDRA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई/Mumbai,दिनांक/Date: 13.05.2015

Jv.Sr.PS.

आदेश की प्रतिलिपि अग्रहित/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 "A" Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, ए 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.**