

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH ‘E’, MUMBAI**

**BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA No.964/M/2015
Assessment Year: 2011-12**

M/s. Shoreline Hotel Pvt. Ltd., Prop M/s. Marine Plaza, 29, Marine Drive, Churchgate, Mumbai – 400 020 PAN: AABCS 1380B	Vs.	Commissioner of Income Tax- Central-1, Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Bhupendra Shah, A.R.
Revenue by : Shri Manjunatha Swamy, D.R.

Date of Hearing : 25.03.2015
Date of Pronouncement : 19.06.2015

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 27.01.2015 of the Commissioner of Income Tax (hereinafter referred to as CIT) passed u/s 263 of the Income Tax Act relevant to assessment year 2011-12.

2. The assessee has taken the following grounds of appeal:

- “1. In the facts of the case and in Law, the learned CIT erred in invoking Section 263 to the case of the Appellant only by way of change of opinion, without pointing out any error in the order of the A.O. and also by wrongly rejecting the detailed submissions made to her from time to time.
2. In the facts of the case and in Law the Show Cause Notice & or order u/s 263 alleging errors and prejudice, itself is erroneous on many counts as follows.

- a) In the facts of the case and in Law, the learned CIT has erred in invoking the provision of sec. 263 merely because she wants to take a view different from the one taken by the Assessing Officer and thereby changing the opinion of the Assessing Officer by her opinion.
- b) In the facts of the case and in Law, the learned CIT has erred in holding that Assessing Officer failed to verify the claim of the Appellant in respect of purchases of Rs. 2,98,13,059/- from the suppliers mentioned on the MVAT site, even though all the details were furnished to the Assessing Officer.
- c) In the facts of the case and in Law, the learned CIT has erred in disregarding the fact that similar deduction was already allowed in several scrutiny assessments in earlier years as well.
- d) In the facts of the case and in Law, the learned CIT has erred in overlooking various judgments pronounced by the different Courts and jurisdictional tribunals.
- e) In the facts of the case and in Law, the learned CIT has erred in invoking the provision of sec. 263 even though the Assessing Officer took a considered decision to add 15% in respect of alleged purchases from the said suppliers.

GENERAL

This appeal is filed in time. The appellant reserves the rights to add alter or delete any portion of this appeal before its conclusion.”

3. The brief facts of the case are that the assessee, during the year under consideration, had made certain purchases from some of the entities which had been notified and thereby blacklisted being accommodation bill/entry providers by the Sales Tax Department of Maharashtra. The assessee was asked to explain as to why the purchases made by the assessee from those parties be not treated as bogus. In this respect, a statement on oath u/s.131 of the I.T. Act of assessee company's director Mr. Rahim Maredia was recorded whereby he was asked to clarify and explain these purchases pertaining to non genuine bills of Rs.3,60,24,582/-. It was also brought to his notice that the above named parties had been declared as bogus dealers as they were not doing genuine business and were indulged only in issuing false bills. The non

genuine bill providers had also declined the transactions of any kind with the assessee stating it to be a non genuine sale transaction. The director Shri Rahim Maredia did not accept the Department's contention. He stated that the assessee had been conducting genuine business transactions with those parties. However, since the matter was old and the assessee was unable to produce those parties and in order to have peace of mind and avoid protracted litigation, he had agreed with the Gross Profit on such transactions relating to those parties as offered to tax. Mr. Rahim had further stated that the above declaration made by him was to avoid litigation and to buy peace of mind. As the declaration was made voluntarily, he had requested no penal action may be taken on this voluntary offer of Gross Profit to tax. The AO observed that the assessee had accepted the department's contention that the purchases to the extent of Rs.3,60,24,582/- made during the year were non genuine as the assessee company's director Shri Rahim Maredia had categorically accepted and offered to tax the Gross Profit on the quantum of above purchases. In view of the above facts, he rejected the books of the assessee u/s.145(3) of the I.T. Act. He further observed that the Gross Profit of the assessee in the year under consideration was 10.20% whereas in the immediately two preceding years i.e. for A.Y.2009-10 was 13.31% and for A.Y.2010-11 was 12.93% and the average of the above had come to 12.12 %. Taking the base of this percentage, he estimated the Gross Profit on the above transactions at 15% observing that the assessee would not have to bear any administrative expenditure on the quantum. Accordingly, he added an amount of Rs.3,60,24,582/- being 15% of the non genuine purchases of Rs.54,03,687/- to the total, income of the assessee.

4. The Ld. CIT, however, observed that information received from the office of the DGIT(Inv) revealed that the assessee had obtained accommodation bills for purchases in various assessment years from 2007-08

to 2012-13. Such purchases were to the tune of Rs.3,60,24,582/- for the relevant previous year. The Ld. CIT also observed that while completing assessment u/s. 143(3), the AO had made an addition of Rs.54,03,687/- worked out on the basis of average GP of last 3 years. The bills were of cutlery, routine repairs etc. The assessee was engaged in running a hotel and thus there were no corresponding sales against these purchases. The entire alleged bogus purchase should have been disallowed by the AO. He therefore was of the view that the order of the assessing officer was erroneous and prejudicial to the interests of the revenue. He therefore invoking his revision jurisdiction under section 263 of the Act asked the assessee to explain in this respect.

5. The Ld. CIT, further, observed that it was not disputed that the name of the parties from whom purchases were claimed to have been made appeared on the Website of Sales Tax Department as accommodation entry providers. He also observed that though, certain details were called for and filed before the AO, however, the AO being an investigator had to ascertain the truth of the facts by due enquiry. He held that there was a failure on the part of the AO to make such enquiry and thus the order of the AO was erroneous and prejudicial to the interest of Revenue. The Ld. CIT dealt with judicial pronouncement cited at bar by Ld. A.R. wherein addition was sustained as a percentage of purchases in respect of assessee engaged in the business of trading where stock register/inventory established one to one diary for purchases and sales. However, in this case assessee has made purchases which has been claimed as expenditure, no corresponding sales of such purchases had been shown by the assessee. The Ld. CIT, therefore, found that AO should have conducted the necessary enquiry regarding the existence of suppliers, whether purchases were actually made, pursued the cash trials etc. Thereafter, relying on the decision of the co-ordinate bench of the Tribunal in the case of “Western Extrusion Industries” in ITA No.6579/M/2010 dated 13.11.2013, where disallowance of

purchases was confirmed as there was no evidence of movement of goods and cash was immediately withdrawn by supplier, order passed by AO was set aside as erroneous and prejudicial to interest of Revenue. Further reliance was placed by Ld. CIT(A) on the decision of Hon'ble Rajasthan High Court in the case of "Woolen Carpet Factory" 125 Taxman 763, wherein purchases were found to be ingenuine and addition was made under section 69 of the IT Act. He accordingly set aside the assessment and restored the matter to the AO for doing the assessment afresh after making necessary enquiry with regard to such purchases and affording assessee adequate opportunity of being heard. Aggrieved by the order of the Ld. CIT, assessee has come in appeal before us.

6. It was contended on behalf of the assessee before the CIT that the goods so purchased were duly recorded in the books of accounts, quantity wise and value wise. The goods had been consumed in the business or / were shown in the closing stock. It was further submitted that the assessee vide letter dated 18.03.2014 had furnished to the AO the following details:

- (i) Names of suppliers with amount of purchases
- (ii) Bank statements showing payments to these parties
- (iii) Copies of ledger accounts
- (iv) Copies of bills/delivery challans and confirmation wherever available
- (v) Judicial pronouncements relied upon.

It had been further explained that during the course of assessment proceedings, the Director of the company Shri. Rahim Maredia appeared before the AO and stated that the assessee had been undertaking genuine transactions with the above parties. It had not been established that any part of funds given to these parties had come back to the assessee in any form. The non availability of sellers could not be the reason for terming such purchases as accommodation in nature or as net genuine. The identity of the vendors was established and the payments were made by Account Payee Cheque. The evidence relied to show that the purchases were bogus was information from

Sales Tax Department. The copies of statements of suppliers recorded by the Sales Tax Authorities had not been furnished. Assessee was not in a position to produce the parties. However, since the matter was very old and in order to have peace of mind and avoid protracted litigation agreed for gross profit addition on such transactions. The AO estimated 15% addition on the gross profit and accordingly added Rs.54,03,687/-. It was argued that revision proceedings were not called for since the AO had completed the assessment after enquiry and after verification of details and due application of mind and thereafter he had arrived at a conclusion to tax the gross profit margin on the disputed purchases. It had been further submitted that proceedings u/s. 263 were not warranted as the order of the AO was neither erroneous nor prejudicial to the interests of Revenue.

7. The Ld. A.R. of the assessee invited our attention to page 59 of the paper book to show that the AO vide his letter dated 20.02.2014 had made inquiries from the assessee in relation to the purchases made from different parties. He has further invited our attention to page 63 of the paper book to show that the assessee had given reply in respect of the inquiries. He has further invited our attention to the assessment order to show that the AO had discussed this issue. He has relied upon various judicial decisions to contend that if details were called for by AO and the same were considered by him then, revision cannot be resorted to; That if two views were possible and AO had taken one view it would not render the order erroneous. He has further relied upon the judicial decisions in the cases of Malabar Industrial Co. Ltd. (243 ITR 83) (SC), Gabriel India Ltd. 203 ITR 108 (93) (Bom), Venkata Krishna Rice Co. 163 ITR 129 (Mad). The Ld AR has further relied upon the decisions of the ITAT in cases of (i) Rajeev M. Kalathil 6727/M112 ii) Ganpatraj A. Sanghvi ITA 2826/M/2013 and (iii) Ramesh Kumar & Co. ITA No. 2959/Mum/14 to contend that where purchases were made from parties black listed by Sales Tax

Department and the additions were made treating the said purchases as bogus, but the said additions made by the Department were deleted by the Tribunal on the ground that additions cannot be made on conjectures and surmises.

8. On the other hand, The Ld. D.R. contended that before making addition of 15% of bogus purchases, the AO has neither made any inquiry with regard to the actual purchases so made nor made any inquiry with regard to the genuineness of the expenditure so claimed. As per the Ld. D.R., since the assessee has not sold the goods so purchased or expenses so incurred, there is no reason to apply GP rate on such purchases. As per the Ld. D.R., the assessee has claimed bogus expenses to reduce the profits. However, AO has neither made any inquiry with regard to the genuineness of huge expenditure of Rs.2,98,13,059/- shown by the assessee nor has made any inquiry with regard to the payments made to the supplier and the amount withdrawn by them from their bank account and how the payments so made by the assessee.

9. We have heard the rival contentions of the Ld. Representatives of both the parties and have also gone through the records. We have also deliberated on the judicial pronouncements cited at bar as well as referred by CIT in his order. In the instant case, assessee is in hotel business and running hotel in the name of Hotel Marine Plaza. Return of income was filed declaring income at Rs.2,65,76,741/-. During the course of scrutiny assessment, AO found that assessee has made purchases from black listed parties and obtained accommodation bill. Such parties were entry provider as identified by the Sales Tax Department of Maharashtra. To find out genuineness of the purchases so made/expenses so incurred and paid to these parties, the AO asked for documentary evidence as listed at page 3 of his order. The AO further observed that since the assessee has failed to furnish the relevant information and also failed to disclose true and fair affairs of its business, he

called the director of the assessee company by issuing notice under section 131, while recording statement, the director of the company categorically accepted and offered to tax the gross profit on the quantum of above purchases/expenses. Thereafter, AO rejected books of account under section 145(3) of the IT Act and after taking average GP rate of 15%, made an addition of Rs.54,03,687/- computed on such bogus purchases/expenses. As per our considered view, since the purchases so made were not sold by the assessee, the AO was not justified in estimating 15% profit on such bogus purchases. However, such bogus purchases/expenses were going to reduce the assessee's profits by the equal amount of such expenses and not only by 15% as taken by the AO. It was not a case where purchases so made were actually sold by the assessee. Where assessee is found to have sold the goods out of the bogus purchases, under those circumstances it is reasonable to estimate profit out of such sales so as to make appropriate addition. However, in the instant case, before us, the assessee was engaged in the business of hotel wherein the expenditure alleged to be incurred on plumbing, electrical items, furniture, printing and stationary etc. amounting to Rs.2,98,13,059/-, appears to have reduced directly the profit earned by assessee. Even in respect of alleged bogus payment made for purchase of furniture items no inquiry was made by the AO to find out whether furniture was actually acquired and installed. Genuineness of the various expenditure so incurred or purchases so made whose suppliers were not traceable, were also not inquired by the AO. Thus, we find that AO has not made any inquiry with regard to the expenses claimed in respect of accommodation bill obtained by assessee which reduced profit of assessee by 100% instead of 15% considered by AO. In the absence of making any inquiry as well as applying wrong proposition of treating the assessee as dealer and applying the GP rate on such accommodation bill which is actually in the nature of expenses, the Ld. CIT was justified in setting aside the order

perused by AO and restoring the matter back to the file of the AO for deciding afresh after making necessary inquiry with regard to such purchases/expenses and affording assessee adequate opportunity of hearing.

10. In the result, the appeal of the assessee is hereby dismissed.

Order pronounced in the open court on 19.06.2015.

**Sd/-
(R.C. Sharma)
ACCOUNTANT MEMBER**

**Sd/-
(Sanjay Garg)
JUDICIAL MEMBER**

Mumbai, Dated: 19.06.2015.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.