

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI

श्री बी.आर.बास्करन, लेखा सदस्य
एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

**BEFORE SHRI B.R.BASKARAN, ACCOUNTANT MEMBER
AND SHRI VIKAS AWASTHY, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.517/Mds/2011
निर्धारण वर्ष /Assessment Year : 2007-08

M/s. Mydeen Packagings,
No.C-12, Industrial Estate,
Thattanchavady,
Pondicherry – 605 009.

v. The Income Tax Officer,
Ward I(1),
Pondicherry – 605 009.

PAN: AAGFM 9123 N
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर /Appellant by : Shri S. Sridhar, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri P.Radhakrishnan, JCIT

सुनवाई की तारीख/Date of Hearing : 22.01.2015
घोषणा की तारीख/Date of Pronouncement: 22.01.2015

आदेश /O R D E R

PER VIKAS AWASTHY, JUDICIAL MEMBER

The appeal has been filed by the assessee impugning the order of the Commissioner of Income-tax(Appeals)-XII, Chennai, dated 11.01.2011 for the assessment year 2007-08. The assessee has filed appeal with elaborate 16 grounds. However,

the crux of the issues raised by the assessee in appeal are as under:-

- (i) Gross Profit addition of ₹12,35,816/- on unaccounted purchases;
- (ii) Disallowance of ₹14,08,973/- under Section 40A(3) of the Income-tax Act, 1961 (in short 'the Act'); and
- (iii) Unexplained credit of ₹22,08,042/- under Section 68 of the Act.

2. The brief facts of the case as emanating from the record are:

The assessee is a partnership firm and is engaged in manufacturing of printed polythene pouches. The assessee filed its return of income for assessment year 2007-08 on 26.03.2009 declaring income of ₹8,310/-. The case of the assessee was selected for scrutiny and notice under Section 143(2) was issued to the assessee on 12.08.2009. During the course of scrutiny assessment, a sworn statement of Shri T.E.A. Haleed, Managing Partner of the assessee –firm was recorded under Section 131 of the Act on 21.12.2009. On the basis of the statement, following additions were made by the A.O.:-

Gross profit addition on unaccounted purchases	₹12,35,816/-
Disallowance under Section 40A(3)	₹14,08,973/-
Unexplained credits under Section 68	₹22,08,042/-

Aggrieved by the assessment order dated 31.12.2009, the assessee preferred an appeal before the CIT(Appeals). The CIT(Appeals) vide impugned order upheld the findings of the Assessing Officer and dismissed the appeal of the assessee .

Against the order of the first Appellate Authority, the assessee has come in second appeal before the Tribunal.

3. Shri S. Sridhar, Advocate, appearing on behalf of the assessee, submitted that there are discrepancies and contradictions in the assessment proceedings. The revenue authorities visited the factory premises on 15.12.2009. The statement of the Managing Partners of the assessee-firm was recorded on 21.12.2009. In the statement, one of the questions, which was put to the assessee was with regard to purchase register. The said purchase register is the sole document for making additions. However, the said register was impounded by the Assessing Officer on 29.12.2009. It is highly improbable that before impounding of the register, it was put to the assessee at the time of recording his statement under Section 131 of the Act on 21.12.2009. The Ld. counsel for the assessee further submitted that the purchase register was never in possession of

the assessee. The accounts were maintained by the Accountant who had later estranged relations with the Managing Partners of the assessee-firm. It was at his instance that the purchase register was planted. The said register was not impounded from the business premises of the assessee. The Ld.counsel for the assessee contended that the addition has been made merely on the basis of the statement of the Managing Partner of the assessee-firm. There is no corroborative evidence in support of the additions made. The statement was recorded under undue influence, therefore, it has got no evidentiary value. In order to support his submissions, the Ld. counsel placed reliance on the decision of Hon'ble Madras High Court in the case of CIT v. S. Khader Khan Son reported in 300 ITR 157 and CBDT Instruction dated 10.03.2013.

4. On the other hand, Shri P. Radhakrishnan, JCIT, representing the Department, strongly supported the findings of the CIT(Appeals). The Ld. D.R. contended that the assessee in his sworn statement recorded under Section 131 of the Act had admitted the contents of the ledger containing details of purchases.

5. We have heard the submissions made by the representatives of both the sides and have perused the orders of authorities below. We have also examined the documents placed on record in the form of paper-book by the Revenue which contains the statement of the assessee dated 21.12.2009, Memo dated 29.12.2009 vide which the register containing details of purchase from April 2006 to March 2007 was impounded, etc. A perusal of the impugned order shows that the basis of all the three additions is primarily a purchase register. In the statement recorded on 21.12.2009, the assessee has admitted the contents of the register. However, it is surprising that the register which was impounded on 29.12.2009 was used by the Revenue for questioning the assessee on 21.12.2009. The Revenue has failed to answer this question. This casts a serious shadow of doubt over the proceedings and the manner in which the assessment has been framed. The basis for all the additions is the purchase register. If the purchase register is fabricated/planted, then the entire assessment is vitiated. In the peculiar facts of the case, we are of the considered view that the case file needs a revisit to the Assessing Officer. The impugned order is set aside and the file is remitted back to the Assessing

Officer to examine the true facts of the case, especially, the veracity of the purchase register which is the basis for all the additions.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court at the time of hearing, on Thursday, the 22nd of January, 2015 at Chennai.

Sd/-
(बी.आर.बास्करन)
(B.R.Baskaran)

लेखा सदस्य/Accountant Member

sd/-
(विकास अवस्थी)
(Vikas Awasthy)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 22nd January, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-XII, Chennai-34
4. आयकर आयुक्त/CIT, Pondicherry
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.