

आयकर अपीलीय अधिकरण, मुंबई “डी” खंडपीठ
Income-tax Appellate Tribunal -“D”Bench Mumbai
सर्वश्री राजेन्द्र,लेखा सदस्य एवं अमित शुक्ल, न्यायिक सदस्य
Before S/Sh.Rajendra,Accountant Member and Amit Shukla,Judicial Member
आयकर अपील सं./I.T.A./5621/Mum/2015,निर्धारण वर्ष /Assessment Year: 2007-08

Shivkrupa Distributors(I) Pvt. Ltd. A-102, Rohan Residency, Mandir Road, Babhai Naka Borivali (West) Mumbai-400 091. PAN: AAKCS 3782 L	vs.	Income tax Officer-13(2)(3) Aayakar Bhavan Maharshi Karve Marg Mumbai-400 020.
--	-----	---

(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by: Shri B.S. Bist-Sr.A.R.

Assessee by: Shri Satish Mody

सुनवाई की तारीख / **Date of Hearing: 28.03.2016**

घोषणा की तारीख / **Date of Pronouncement: 28.03.2016**

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 dated 20/10/2015 of the CIT (A) – 21,Mumbai the assessee has filed the present appeal.Assessee-company,engaged in the business of trading of plywood, filed its return of income on 4/10/2007,declaring total income of Rs. 53,325/-. Initially the return was processed u/s.143 (1) of the act.Later on assessment was completed u/s.143(3)r.w.s. 147 of the act on 26/02/2015,determining the income of the assessee at Rs. 14.71 lakhs.

2.Effective ground of appeal is about confirming the addition of Rs. 14, 17, 711/-. During the assessment proceedings the AO found that an action u/s.132 (1) was carried out in the case of one Praveen Kumar Jain(PKJ)on 1/10/2013,that PKJ admitted that he was in business of giving accommodation entries which were routed through the companies under his control, that the assessee had shown purchases to the tune of Rs. 1.13 crores from the group concern is of PKJ. The AO made enquiries in that regard. The assessee submitted the purchase bills and the corresponding sales bills of the goods. The AO wide his order sheet noting dated, 19/2/2015 informed the assessee that gross profit ratio of 12.5% of the purchase would be added to the total income as per existing legal position. The AO observed that the assessee could not prove that the goods were purchased from PKJ,that PKJ had admitted before the departmental authorities that it was engaged in issuing bogus bills, that the assessee could not submit the challan transport bills of the goods claimed to have been purchased by it during the assessment proceedings, that payment by check to PK group companies could not be treated as evidence of genuineness of the transactions. The AO, however, accepted the argument of the assessee that there could not be any

sales without purchases and held that assessee had made purchases which were not recorded in its books of accounts and could be purchased again in cash. Finally, he made an addition of Rs. 14.17 lakhs.

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the first appellate authority (FAA). Before him, it was argued that the assessee had submitted party wise details of the sales and purchase, that confirmation of purchase-parties were filed, that bank statement were made available to the AO. The FAA directed the assessee to produce the parties who had supplied it the goods and also to furnish the bank statements of those parties. He also called for the details of purchases from those parties made in the subsequent years. After considering the available material, he held that assessee had not produced the parties from whom he had purchased the goods, that the copy of bank statement of those parties were produced, that the onus was on the assessee to prove that the transactions were genuine, that it had not proved that the goods were actually purchased from the PKJ group concerns, that filing of ledger accounts and bank details did not establish that the suppliers of the goods existed. The FAA referred to the case of Simit P Seth (Tax appeal no. 5531 of 2012) of Hon'ble Gujarat High Court wherein it was held that when the total sale was accepted by the AO the entire purchases could not be added to the income of the assessee, that fair profit ratio would be needed to be added back to the income of the assessee. He further held that the assessee was showing VAT @ 12.5%, that it could be benefit availed by the assessee, that the AO was reasonable in making addition on account of profit of 12.5% of the impugned purchases.

4. Before us, the authorised representative (AR) contended that the assessee had furnished all the details before the AO during the assessment proceedings, that bank accounts of the suppliers of goods were also produced before the FAA, that there was no justification for estimating profit at the rate of 12.5%, that the rate of profit for subsequent years was 3%. The departmental representative (DR) supported the order of the FAA and stated that the purchases were not genuine, that the assessee had purchased goods in cash, that the possibility of purchasing goods at lower rates and without paying taxes could not be denied, that the estimated made by the AO was justifiable.

5. We have heard the rival submissions and perused the material before us. We find that during the search and seizure proceeding, PKJ had admitted to have issued bogus bills, that the assessee had shown purchases worth Rs. 1.13 crores from PKJ group, that it could be prove the transportation of goods from the PKJ group companies to its business premises, that except for the bank entries and ledger there was no evidence to delivery of goods, that the AO had accepted the genuineness of sales, that he had estimated the profit @ 12.5% but had not given any basis for adopting the said figure, that the FAA confirmed the addition referring to the VAT rates. Thus, it is a case of estimation. On a query by the Bench the AR stated that profit rate for the subsequent years was between 3 to 7%. We are of the opinion that considering the peculiar facts and

circumstances of the case, in the interest of justice, profit rate should be restricted at 5%. Effective ground of appeal is decided in favour of the assessee, in part.

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

फलतः निर्धारिती द्वारा दाखिल की गई अपील अंशतः मंजूर की जाती है।

Order pronounced in the open court on 28th, March, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक 28 मार्च, 2016 को की गई।

Sd/-

(अमित शुक्ल/ **Amit Shukla**)

न्यायिक सदस्य / **JUDICIAL MEMBER**

Sd/-

(राजेन्द्र / **Rajendra**)

लेखा सदस्य / **ACCOUNTANT MEMBER**

मुंबई Mumbai; दिनांक Dated : 28.03.2016.

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 "A" 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.