

IN THE INCOME TAX APPELLATE TRIBUNAL
“G” Bench, Mumbai
Before S/Shri B.R. Baskaran (AM) & Amarjit Singh (JM)
I.T.A. No. 1986/Mum/2015 (Assessment Year 2009-10)

Galaxy Surfactants Ltd. C-49, TTC Industrial Area Pawne, Navi Mumbai 400 703. PAN : AAACG1539F (Appellant)	Vs.	DCIT Circle 10(3) Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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Assessee by	Dr. C.P. Ramaswami
Department by	Shri V. Vidhayadhar
Date of Hearing	11.10.2017
Date of Pronouncement	11.10.2017

O R D E R

Per B.R. Baskaran (AM) :-

The appeal filed by the assessee is directed against the order dated 02.01.2015 passed by the learned CIT(A)-24, Mumbai and it relates to A.Y. 2009-10. The assessee is aggrieved by the decision of the learned CIT(A) in confirming the addition of ₹ 7.37 lakhs relating to alleged bogus purchases.

2. We heard the parties and perused the record. The assessee is engaged in the business of manufacture and sale of fertilizers, chemicals and paints. The original assessment for the year under consideration was completed u/s. 143(3) of the Act determining total income of ₹ 2246.02 lakhs as against the returned income of ₹ 1300.56 lakhs. Subsequently, the Revenue received information from the Sales Tax Department that certain dealers are engaged in the activity of providing accommodation bills without actually supplying the materials. It was noticed that the assessee has purchased goods to the tune of ₹ 7,37,081/- from one of such dealers named M/s. Sagar Enterprises. Hence the Assessing Officer reopened the assessment by issuing notice u/s. 148 of the Act. It was noticed that the assessee has purchased DEPB licence for a sum of ₹ 7,37,081/-. The Assessing Officer issued notice u/s. 133(6) of the Act

to the Custom House, but it he did not receive any reply. Since the Custom authorities have not confirmed the transaction, the Assessing Officer treated the purchase value of DEPB licence as bogus in nature and added the same to the total income of the assessee. The learned CIT(A) also confirmed the same and hence the assessee has filed this appeal before us.

3. Learned AR submitted that DEPB is an export incentive scheme framed by the Government of India in order to promote exports. Credit earned by the exporter of the goods under DEPB scheme is given by the Director General of Foreign Trade in the form of DEPB licence. This license allows import of any items except those specifically specified. Exporters who wish not to import, may sale licence to other importers. He submitted that the DEPB licence may be sold at a premium or at a discount depending upon the market conditions. The Learned AR submitted that the assessee has purchased licence at discount. He submitted that the DEPB licence was originally granted to a concern named M/s. Kogta Import Export Pvt. Ltd. by Government of India and the assessee has purchased the same through the dealer named M/s. Sagar Enterprises, who was found to be suspicious dealer. The Learned AR submitted that DEPB licence was not granted to M/s Sagar Enterprises as presumed by the AO and it has acted as a middle man only in this matter. Further, the assessee has used said DEPB licence for importing materials and the Assessing Officer has not doubted the transactions of import. The Learned AR, accordingly, submitted that the purchase of licence, which was granted by the Government of India, cannot be doubted with. Further, there is no material on record to show that the said licence was bogus in nature. Accordingly, he submitted that, merely because M/s. Sagar Enterprises was found to be a suspicious dealer, authenticity of DEPB licence cannot be doubted with. He also submitted that the assessee has purchased DEPB licence at less than the par value. Accordingly he submitted that the impugned addition made by the Assessing Officer and confirmed by the learned CIT(A) was not justified.

4. On the contrary, learned Departmental Representative strongly placed reliance on the order passed by the learned CIT(A).

5. Having heard the rival submissions, we are of the view that there is merit in the contentions of Ld A.R. We notice that M/s Sagar Enterprises has acted as a middle man in the transaction of sale of DEPB licence to the assessee. The documents relating to the license would show that the DEPB license was granted to M/s Kogta Import and Export P Ltd by Directorate General of Foreign Trade. Hence the existence of DEPB licence cannot be doubted with. The assessee has used the said licence to import the materials and the said fact also further validates the genuineness of the DEPB licence. We notice that the AO has made the impugned addition mainly on the reasoning that M/s Sagar Enterprises was a suspicious dealer and further the Custom authorities did not confirm the transaction. The Ld CIT(A) has confirmed the addition on the reasoning that this transaction was an isolated transaction and further the assessee did not furnish confirmation letter obtained from M/s Sagar enterprises. However, in our view, the facts and evidences available on record establish the genuineness of the purchases and hence the reasoning cited by both the tax authorities is not justified. When the 'goods' under consideration is "DEPB licence", which is issued by the Government of India and when there is no material to suggest that the impugned "DEPB licence" is a bogus one, in our view, there is no reason to suspect its genuineness. Further the assessee has used the same for making imports and the very fact that the Government of India has allowed the assessee to use the said licence also establishes the genuineness of the DEPB licence. The assessee has stated that the DEPB license was purchased at a discount and hence the question of inflating its purchase value also does not arise. In view of the above, we are of the view that there is no reason to suspect the genuineness of purchase of impugned DEPB licence. Accordingly we set aside the order passed by Ld CIT(A) and direct the AO to delete the addition relating thereto.

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

Order has been pronounced in the Court on 11.10.2017.

Sd/-
(AMRAJIT SINGH)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 11/10/2017

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

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BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai