

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E" MUMBAI**

**BEFORE SHRI D.T. GARASIA (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 4112/MUM/2015
Assessment Year: 2010-11**

M/s Salvi Chemical Ind. Ltd. C/o H.N. Motiwalla & Co., 508 Sharda Chambers, 33 New Marine Lines, Mumbai-400020. PAN No. AAKCS0142E	Vs.	DCIT-9(3) Aayakar Bhavan Mumbai.
Appellant		Respondent

Assessee by	:	Mr. H.N. Motiwalla, AR
Revenue by	:	Mr. T.A. Khan, DR

Date of Hearing	:	11/10/2017
Date of pronouncement	:	31/10/2017

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the assessee. The relevant assessment year is 2010-11. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-21, Mumbai and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the assessee read as under:

1. On the facts and in the circumstances of the case, the learned Commissioner of Income tax (Appeals) 21, Mumbai, erred in confirming the addition of Rs.1,77,33,014/- in respect of purchases made from M/s. International Trade Agency as bogus purchases only on the basis of information received from M-VAT Authorities, Mumbai.
2. On the facts and circumstances of the case, the said learned Commissioner of Income tax has also erred in confirming the addition of Rs.1,77,33,014/- as bogus purchases from M/s. International Trade Agency having different address and PAN, than the recorded by M-VAT Authorities.
3. On the facts and in the circumstances of the case, the said learned Commissioner of Income tax has also erred in confirming the addition of Rs.1,77,33,014/- in respect of purchases made from M/s. International Trade Agency as bogus purchases particularly when, the appellant had proved the receipts of goods, consumption and production of finished goods from the said raw material.
4. On the facts and in the circumstances of the case, the said learned Commissioner of Income tax has also erred in confirming the addition of Rs.1,77,33,014/- in respect of purchases from M/s. International Trade Agency as bogus purchases, particularly when, in subsequent year, the purchases of Rs.1,63,71,801/- has been accepted by the Assessing Officer.
5. On the facts and in the circumstances of the case, the said learned Commissioner of Income tax has also erred in confirming the addition of Rs.72,968/- in respect of Subham Enterprises as bogus purchases as recorded by M-VAT authorities, particularly when, the tiles purchased had been capitalized in the books of account and on which depreciation has been allowed by the Assessing Officer.
6. On the facts and in the circumstances of the case, the said learned Commissioner of Income tax has also erred in not following the decisions of the Jurisdictional High Court as well as the Tribunals.

7. On the facts and in the circumstances of the case, the said learned Commissioner of Income tax has also erred in confirming the order of the Assessing Officer for not giving credit for self-assessment tax paid amounting to Rs.20,43,960/-, though specifically reflected in 26AS.

3. We begin with the 1st, 2nd, 3rd, 4th, 5th and 6th ground of appeal and discuss them together as they address a common issue. Briefly stated, the facts of the case are that the assessee filed its return of income for the AY 2010-11 on 11.10.2010 declaring total income of Rs.1,92,74,974/-. The assessee is engaged in the business of manufacturing, importing and exporting of bulk drugs and fine chemicals. The return of income was processed u/s 143(1). The Assessing Officer (AO) received information from the Director General of Income Tax (Inv.), Mumbai that the assessee had obtained bogus entries from the hawala operators detected by the Sales Tax Department, Government of Maharashtra. During the course of assessment proceedings, the AO issued notice u/s 133(6) to the said parties i.e. M/s International Trade Agency and Shubham Enterprises. In the case of M/s International Trade Agency, the notice issued u/s 133(6) was returned back by the postal authorities with the remarks 'not known'. In respect of Shubham Enterprises, the notice u/s 133(6) was served but there was no response. The AO then requested the assessee to produce the above parties for examination along with supporting evidence. The assessee failed to produce the above parties before the AO for examination. The AO also found from the ledger account that the date of payment as per the ledger account deferred from the date of

payment reflected in the bank account in the case of M/s International Trade Agency.

The same pattern he found in the transaction with Shubham Enterprises.

In view of the above, the AO made an addition of Rs.1,78,05,982/- on account of bogus purchases.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that the Ld. CIT(A) agreed with the reasons given by the AO and dismissed the appeal filed by the assessee.

5. Before us, the Ld. counsel of the assessee files copy of statement recorded u/s 14 of the Maharashtra Value Added Tax Act, 2002 in the case of M/s International Trade Agency and Shubham Enterprises. He also files a copy of their ledger account. The Ld. counsel submits that the assessee had proved before the AO the receipt of goods, consumption and production of finished goods from the said raw material. Therefore, the addition of Rs.1,78,05,982/- should not have been made by the AO.

6. On the other hand, the Ld. DR supports the order passed by the Ld. CIT(A).

7. We have heard the rival submissions and perused the relevant materials on record. We find that the notice issued by the AO u/s 133(6) to M/s International Trade Agency was returned back by the postal authorities with the remarks 'not known'. In respect of Shubham Enterprises, the notice issued by the AO u/s 133(6) was served but there was no response. The AO then requested the assessee to produce

the said parties along with supporting documents before him for verification. The assessee failed to do so.

We are of the considered view that the contentious issues in the instant case could be resolved by examining the above parties. It is the duty of the AO to enforce attendance of a witness if his evidence is material. At the same time the assessee must furnish the complete address of such person.

A proper hearing must always include a fair opportunity to those who are parties in the controversy for correcting or contradicting anything prejudicial to their view. Cross-examination is allowed by procedural rules and evidently also by the rules of natural justice. Any witness who has been sworn on behalf of any party is liable to be cross-examined on behalf of the other party to the proceedings.

The Hon'ble Supreme Court in *State of Kerala vs. K.T. Shaduli Grocery Dealer* AIR 1977 SC 1627, recognised the importance of oral evidence by holding that the opportunity to prove the correctness or completeness of the return necessarily carry with it the right to examine witnesses and that includes equally the right to cross-examine witnesses.

In *ITO vs. M. Pirai Choodi* (2012) 20 taxmann.com 733 (SC), the Hon'ble Supreme Court has held that "Order of assessment passed without granting an opportunity to assessee to cross-examine, should not have been set aside by High Court; at most, High Court should have

directed Assessing Officer to grant an opportunity to assessee to cross-examine concerned witness.”

The importance of cross-examination has been emphasized by the Hon'ble Bombay High Court in the case of *Om Vinyls P. Ltd. vs. ITO* [WP(L) No. 3114 of 2014].

In view of the above, we set aside the order of the Ld. CIT(A) and restore the matter to the file of the AO to make a fresh assessment in the light of our observation hereinbefore after giving opportunity to the assessee to cross-examine the concerned parties. We also direct the assessee to file the relevant documents/evidence before the AO. Needless to say the AO would give reasonable opportunity of being heard to the assessee before finalizing the assessment order.

Thus the 1st, 2nd, 3rd, 4th, 5th and 6th grounds of appeal are allowed for statistical purposes.

8. We now turn to the 7th ground of appeal. We direct the AO to give credit for self-assessment tax paid by the assessee after due verification of Form 26AS and other relevant documents. Needless to say, the AO would give an opportunity to the assessee to file the details and explain its case.

9. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open Court on 31/10/2017.

Sd/-
(D.T. GARASIA)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;
Dated: 31/10/2017
Rahul Sharma, Sr. P.S.

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.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai