

IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH MUMBAI
BEFORE SHRI R.C.SHARMA, AM
&
SHRI RAVISH SOOD, JM

ITA No.4439/Mum/2016
(Assessment Year :2011-12)

Asst. CIT 5(3)(2) R.No.519, Aayakar Bhavan M.K. Road, Mumbai -400020	Vs.	M/s. Samdani Steels Pvt.Ltd., 65/73, Habib Building R.No.16, 1 st Floor C.P. Tank Road Mumbai – 400 004
PAN/GIR No.		AAKCS1663A
Appellant)	..	Respondent)

ITA No.3500/Mum/2016
(Assessment Year :2011-12)

M/s. Maruti Inox (India) Pvt. Ltd., (Formerly kniwn as Samdani Steel Pvt. Ltd.) 65/73, Habib Building R.No.16, 1 st Floor C.P. Tank Road Mumbai – 400 004	Vs.	DCIT 5(3) Aayakar Bhavan Mumbai
PAN/GIR No.AAKCS1663A		
Appellant)	..	Respondent)

Revenue by	Shri Rajat Mittal
Assessee by	Shri Rushabh Mehta
Date of Hearing	13/09/2017
Date of Pronouncement	23/11/2017

आदेश / O R D E R

PER R.C.SHARMA (A.M):

These appeals are filed by revenue and assessee against the order of CIT(A)-10, Mumbai dated 29/03/2016 for A.Y.2011-12 in the matter of order passed u/s.143(3) of the IT Act.

2. The following grounds have been taken by the revenue:-

1(a) *On the facts and in the circumstances of the case, the Ld. CIT(A) erred in directing that 12.5% of the bogus purchases be disallowed as the profits suppressed instead of disallowing the bogus purchases u/s. 69C of the Income-tax Act, 1961.*

1(b) *On the facts and in the circumstances of the case, Ld. CIT(A) ought to have confirmed the addition of Rs. 2,14,49,808/- made u/s 69C of the Income Tax Act, 1961 being the bogus purchases made from the fiver Hawala dealers.*

2. *The appellant prays that the order of the Ld. CIT(A) be set aside and the order of the AO be restored.*

3. *The appellant craves leave to amend or alter any ground or add any other ground which may be necessary.*

3. The grounds taken by assessee are as under:-

1) (a) *The learned CIT(A) erred in facts and law in upholding the action of the learned Assessing Officer in reopening the assessment u/s. 147 of the Act.*

(b) *On facts & circumstances of the case, the learned CIT(A) ought to have quashed the assessment order passed u/s. 143(3) r.w.s. 147 of the Income Tax Act, 1961.*

2) *The learned CIT(A) erred in facts and law in disallowing Rs.26,81,226/- being 12.5% of the alleged bogus purchases of Rs.214,49,808/- merely based on his own surmises and conjectures without bringing on record any material to justify such estimated disallowance.*

3) *Without prejudice to above, the learned CIT(A) erred in facts and law in disallowing 12.5% of the alleged bogus purchases without appreciating that the disallowance, if any called for, was to be restricted based on the adoption of average gross profit worked out over the last 5 years and that offered by the assessee in the return of income for the year under consideration.*

4) *Without prejudice to above, the learned CIT(A) erred in facts and law in directing the learned Assessing Officer to disallow 12.5% of the VAT element of Rs.8,24,993/- embedded in alleged purchases ignoring the fact that VAT account is separately maintained in accordance with the Accounting Standard - 2 on "Valuation of Inventories" due to which it is not debited in Profit & Loss A/c.*

5. *All the above grounds are independent and without prejudice to each other.*

6. *Your appellant craves leave to add, alter, amend, delete or modify any or all the above grounds of appeal.*

4. Rival contentions have been heard and record perused.
5. The facts of the case, in brief, are that the assessee is a company engaged in the business of Trading & Manufacturing in Ferrous & Non Ferrous Metal. It furnished its return of income for A.Y. 2011-12 on 30/09/2011 declaring total income of Rs. 14,51,200/-. The case was reopened by issuing notice u/s 148 dated 11/03/2013 which was duly served upon the assessee. The AO completed reassessment u/s 143(3) r.w.s.147 of Act determining total income at Rs. 2,30,01,010/- on 10/03/2014 by making the adjustments. Aggrieved, the assessee has filed the appeal before CIT(A).
6. By the impugned order, CIT(A) restricted the addition to the extent of 12.5%. However, he has confirmed the reopening of assessment.
7. Against the above order of CIT(A), the assessee and Revenue are in further appeal before us.
8. It was argued by learned AR that On perusal of the reasons recorded for re-opening on Page No. 38 of the Paper Book, at Para 1, the Id. Assessing Officer has stated that the name of the parties is appearing in the list of Suspicious Dealers, which is reproduced as under:

As per information the purchase bills of few suppliers of the assessee company who appeared in the "List of Suspicious Dealers who has issued false bills without delivery of goods". These suppliers are as under who supplied only bills to the assessee company for the period relevant to assessment years 2011-12 .

9. In this regard, reliance is placed on the decision of the Hon'ble Delhi High Court in the case of Pr. CIT v. Meenakshi Overseas Pvt. Ltd. (ITA No. 692 of 2016) (Del.) wherein it has been held that there should be a live link between the tangible material and the formation of the reason to believe that income has escaped assessment.

10. With regard to merit of the addition, the contention of learned AR was that various documents were called for during the course of assessment proceedings and same were submitted vide various submissions made before the Id. Assessing Officer, the details of which are as under:

a. Purchase Bills - Submission dated 21.01.2014 (Pg. No. 47 to 96 of PB)

b. Quantitative details of each commodity in the opening stock, purchases, corresponding sales and closing stock - Submission dated 21.01.2014 (Pg, No. 97 to 101 of PB)

c. Records maintained for receipt and dispatch of goods - In tally software - Submission dated 21.01.2014 (Pg. No. 97 to 101 of PB)

d. Consumption and production of goods - Not applicable as these are traded goods; e. TIN and PAN of each party from whom purchases have been made - TIN provided in submission dated 10.03.2014 (Pg. No, 221 to 222 of PB)

f. Copies of accounts- Submission dated 21.01.2014 (Pg. Nos, 47, 66, 82, 89 and 94 of PB); g. Documents relating to transportation and receipt of goods - Submission dated 21.01.2014 include copies of delivery challan (Pg. No, 47 to 96 of PB);

h. Copy of bank statements - Submission dated 20.02.2014 (Pg. No. 182 to 220 of PB);

i. Address of the broker through whom purchases are made - Not applicable as there is no broker involved in the trade of the said goods.

11. However, despite these evidences, without even pointing out any defects or discrepancies in the evidences filed in support of alleged purchases and even while accepting the corresponding sales effected by the assessee; the Id. Assessing Officer made the addition of alleged bogus purchases.

12. However, the Id. CIT(A) considered assessee's submission partly and sustained disallowance to the tune of 12.5% of these alleged purchases. Whatever details were called for by the Id. Assessing Officer in the alleged purchases were furnished by the assessee and nothing adverse was found therein by the Id. Assessing Officer.

13. Further, no statements / affidavits are also provided by the Id. Assessing Officer which goes against the assessee, though referred by the Id. Assessing Officer at Para 5.2, Page No. 2 of the assessment order, which is also in violation of provisions of section 142(3) of the Act. Even, no cross examination has been provided to the assessee. Reliance in this regard is placed on the decision in the case of CIT v. M/s. Ashish International (ITA no. 4299 of 2009) (Bom.) and H.R. Mehta v. ACIT [2016] 387ITR 561 (Bom.).

14. Moreover, only because notices u/s. 133(6) could not be served on the last known addresses cannot go against the assessee. Reliance in this regard is placed on the decision in the case of CIT v. Nikunj Eximp Enterprises (P.) Ltd. [2015] 372 ITR 619 (Bom.) and

15. Even, the Id, Assessing Officer and CIT(A) has failed to prove that the assessee has shown lesser profits by virtue of these alleged purchases to avoid tax consequences. In this regard, it may please be noted that the average Gross Profit for the last 5 years is 3.65% and average Gross Profit of subsequent 3 years from A.Y, 2012-13 to 2014-15 (all assessed u/s. 143(3) of the Act) is 5.87%, whereas the current Gross Profit offered by the assessee in the year under consideration is 8.15%.

16. Without prejudice to the above, addition if any should be restricted to 2% of the alleged bogus purchases. In this regard, reliance is placed on the following judicial pronouncements:

- a. M/s. Geolife Organics v. ACIT (ITA No. 3699/Mum-2016) (Mum.) and
- b. ACIT v. M/s. Steel Line (India) (ITA No. 1321/Mum-2016) (Mum.)

17. On the other hand learned DR relied on the order of the AO and contended that entire bogus purchases should be added in the assessee's income.

18. We have considered rival contentions carefully and gone through the orders of the authorities below. We had also deliberated on the judicial pronouncements referred by lower authorities in their respective orders as well as cited by learned AR and DR during the course of hearing before us, in the context of factual matrix of the case.

19. From the record we found that on the basis of information from Sales Tax Department, AO concluded that purchases made from suspicious

dealers were not genuine, accordingly he added the entire amount of purchases by invoking provisions of Section 69C.

20. By the impugned order CIT(A) after relying on the decision of the Gujarat High Court in the case of Simit P Shah 356 ITR 451 restricted addition to the extent of 12.5% of the disputed bogus purchases.

21. We found that during assessment proceedings the assessee has submitted all evidences in support of the alleged bogus purchases alongwith corresponding sales which the Assessing Officer has not found any deficiency or defects. Quantitative details of each commodity in the opening stock, purchases, corresponding sales and closing stock were submitted. Under these circumstances, the CIT(A) concluded that only profit element attributable to such bogus purchases is required to be added. Reliance was placed by CIT(A) on the decision of Gujarat High Court, wherein 10% was proposed to be added on account of VAT and 2.5% on account of profit. It was contention of learned AR that rate of VAT in Gujarat was 10% whereas in Maharashtra it is only 4%, which also has been recovered by the department from the assessee. With regard to the estimation of profit at 2.5%, it was contention of learned AR that profit rate offered by the assessee during the year under consideration at 8.15% is much better than the profit rate declared in the earlier five years as well as in the subsequent three years wherein assessment has been under scrutiny assessment u/s.143(3), thus there is no justification for making any further addition on account of gross profit.

22. From the record we found that the average Gross Profit for the last 5 years is 3.65% and average Gross Profit of subsequent 3 years from A.Y, 2012-13 to 2014-15 (all assessed u/s. 143(3) of the Act) is 5.87%, whereas the current Gross rate Profit offered by the assessee in the year under consideration is 8.15%.

23. We found that GP rate in the A.Y.2012-13 was 5.39% and the assessment was framed u/s.143(3). In the A.Y.2013-14 it is 6.10% and in 2014-15 6.11% when the assessment was framed u/s.143(3). Thus, the average GP rate works out to 5.87% against which during the year under consideration assessee has declared GP rate of 8.15% which is much better than the GP rate declared in other years and for which assessment was framed under scrutiny assessment u/s.143(3). Keeping in view totality of facts and circumstances of the case, we restrict the addition to the extent of 2% of the GP in respect of the alleged bogus purchases. We direct accordingly.

24. With regard to reopening of assessment, we found that as per the reasons recorded by AO for reopening, there was sufficient reason to believe that income has escaped assessment, accordingly, we do not find any justification in the AR's contention for quashing the reopening of assessment.

24. In the result, appeal of the Revenue is dismissed whereas appeal of assessee is allowed in part.

Order pronounced in the open court on this 23/11/2017

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 23/11/2017

Karuna Sr.PS

Copy of the Order forwarded to :

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

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai