

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI

Before Shri P K Bansal, Vice President &
Shri Amarjit Singh, Judicial Member

ITA No.1536/Mum/2016
Assessment Year : 2010-11

Rishabh Metal & Chemicals P Ltd., 4 th floor, Eros Theatre Bldg., J T Road, Churchgate, Mumbai 400 020	Vs.	DCIT 1(3) Mumbai
PAN AAACR2214E (Appellant)		(Respondent)

Appellant By : Ms. Neha Paranjpe
Respondent By : Shri Purushottam Kumar

Date of Hearing :13.11.2017	Date of Pronouncement : 27.11.2017
-----------------------------	------------------------------------

ORDER

Per P K Bansal, Vice-President:

This appeal has been filed by the assessee against the order of the CIT(A)-3, Mumbai, dated 08.01.2016, for A.Y. 2010-11, by taking the following effective grounds of appeal:

"I. Legal; Reopening under section 147 is bad in law

1. The Ld, Commissioner of Income Tax (Appeals) - 3, Mumbai, [hereinafter referred to as the Ld. CIT (A)] erred in confirming the action of the Ld. A.O. in reopening the assessment by issuance of the notice dated 18.03.2013 under section 148 of the act without appreciating the fact that the Appellant was not provided with the reasons recorded prior to the issuance of notice under section 148. Hence, the notice under section 148 and the subsequent re-assessment order passed under section 143(3) r.w.s 147 is against

the principle of natural justice and thus the same may be quashed and set aside.

2. The Ld. CIT(A) failed to appreciate that the Appellant's assessment has reopened on the basis of statement recorded by the Sales Tax Department without application of mind and showing that any income chargeable tax has escaped assessment. Thus, the re-opening is merely on the basis of suspicion which is unjustified. Hence, the re-assessment order passed under section 143(3) r.w.s 147 is bad in law and the same may be quashed and set aside.

II. Merits

3. The Ld. CIT(A) erred in confirming the addition of Rs.57,378/- being 12.5% on the total purchases made from M/s. Dev Enterprises amounting to Rs.4,59,030/- treating the same as unexplained expenditure without appreciating the fact that the expenditure incurred on purchases are duly recorded in the books of the Appellant and the same are supported with the proper documentary evidences. Hence, the addition of Rs.57,378/- under section 69C is unjustified and the same may be deleted.

4. The Ld. CIT(A) erred in confirming the action of the Ld. A.O. in making addition of Rs.4,387/- being purchases made from M/s. Atlantic Traders treating the same as unexplained expenditure under section 69C of the Act without appreciating the fact that expenditure incurred on purchases are duly recorded in the books of the Appellant and the same are supported with proper documentary evidences. Hence, the addition of Rs.4,387/- under section 69C is unjustified and the same may be deleted.

5. The Ld. CIT(A) erred in confirming the action of the Ld. A.O. in levying interest under section 234A, 234B and 234C of the act without appreciating that the Appellant denies his liability to the same."

2. Ground nos. 1 & 2 were not pressed at the time of hearing hence, the same are dismissed as not pressed.

3. Ground no.3 relates to the sustenance of addition made by CIT(A) amounting to ₹ 57,378/- being of the total purchases made by the assessee

from M/s. Dev Enterprises amounting to ₹ 4,59,030/-. The facts relating to this ground are the Assessing Officer noted that the assessee had made purchases from M/s. Dev Enterprises amounting to ₹ 4,59,030/-, which has been declared as a hawala dealer by the Sales Tax Department. He, therefore, initiated proceedings u/s. 147 and after affording opportunity to the assessee to prove the genuineness of the purchases, with which the Assessing Officer was not satisfied, made addition @25% of the ₹ 4,59,030/- to the income of the assessee. Similarly, he also noted that the assessee has shown the purchase of stores and spares amounting to ₹ 4,387, which was also treated to be bogus and added in the income of the assessee. Thus, the total addition made was ₹ 1,19,144/- The assessee went in appeal before the CIT(A). The CIT(A) after considering the submissions of the assessee and following the decisions of Hon'ble Gujarat High Court in the case of CIT vs. Simit Sheth (2013) 38 taxmann.com 385 (Guj), Bholanath Polyfab Pvt. Ltd. 355 ITR 290 (Guj) and further the order of the Ahmedabad Benches of Tribunal, dated 20.05.2011, in the case of Sanket Steel Traders vs. ITO (ITA No. 2801 & 2937/Ahd/2005 restricted the addition to 12.5% of the purchases from Dev Enterprises.

4. Before us, the learned AR vehemently contended and relied on her submissions made before the CIT(A). But we noted that she could not convince us that the name of M/s. Dev Enterprises is not included in the list

of parties declared as bogus by the Sales Tax Department. We do agree that the assessee cannot make sales without making purchases. It is a case where the assessee would have made purchases not from genuine dealer but from grey market so as to save VAT, which was chargeable in the case of the assessee @12.5%. Therefore, we do not find any illegality or infirmity in the order of the CIT(A) sustaining the addition @12% on the purchases made from Dev Enterprises. Thus, ground no.3 stands dismissed.

5. Ground no.4 relates to the sustenance of addition amounting to ₹ 4,387/- in respect of purchases made from Atlantic Traders. After hearing the rival submissions and going through the orders of the tax authorities below, we noted that the assessee has also made purchases from Atlantic Traders in respect of stores and spares. We further noted that Atlantic Traders was listed amongst bogus dealers by the Sales Tax Department. The Assessing Officer made the 100% addition in this respect. On appeal, the CIT(A) confirmed the order of the Assessing Officer. The purchases made by the assessee from Dev Enterprises and Atlantic Traders, in our opinion, are on the same footing and since we have restricted the addition to 12.5% on the purchases made from Dev Enterprises, on the same analogy the Assessing Officer is directed to restrict the addition to 12.5% of ₹ 4,387/-. This ground is partly allowed.

6. Ground no.5 pertains to levy of interest u/s. 234A, 234B & 234C of the Income tax Act. This being consequential in nature, the Assessing Officer is directed to calculate the same after giving effect to this order.
7. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 27th day of November, 2017.

Sd/-

(Amarjit Singh)

JUDICIAL MEMBER

Mumbai; Dated: 27th November, 2017

SA

Sd/-

(P K Bansal)

VICE-PRESIDENT

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai
4. The CIT
5. DR, 'D' Bench, ITAT, Mumbai

BY ORDER,

#True Copy #

Assistant Registrar
Income Tax Appellate Tribunal, Mumbai