

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH MUMBAI
BEFORE SHRI R.C.SHARMA, AM
ITA No.4745/Mum/2017 & 4746/Mum/2017
(Assessment Year : 2010-11 & 2011-12)

M/s. Ravi Steel Industries 223, Sant Tukaram Road Iron Market, Mumbai – 400 009	Vs.	ITO – 17 (3)(1) Mumbai
PAN/GIR No. AAAGR1646P		
Appellant)	..	Respondent)

Assessee by	Shri Tarun Ghia
Revenue by	Ms. N. Hemalatha
Date of Hearing	25/10/2017
Date of Pronouncement	08/12/2017

आदेश / O R D E R

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

These are the appeals filed by assessee against the order of CIT(A)-28, Mumbai dated 24/05/2017 for A.Y. 2010-11 and 2011-12 in the matter of order passed u/s.143(3) r.w.s. 147 of the IT Act.

2. Common grievance of assessee in both the years pertains to estimation of 5% profit on the alleged unverifiable purchases.
3. Rival contentions have been heard and record perused.
4. Facts in brief are that AO got information from the Sales Tax Department regarding suspicious parties who are allegedly providing accommodation entries without doing any actual business. On going through the some claimed list, it was found that some of these parties are supplying the goods to the assessee. The AO asked the assessee to

furnish all relevant evidence to have actually been delivered/supplied along with details of purchases claimed to have been made by the assessee including Name, Address, Contact Number etc. to prove the genuineness of the transaction. Further, the assessee was asked to show cause as to why the expenditure claimed in respect of purchases shown to have made from the aforesaid dealer should not be disallowed.

5. The assessee vide letter submitted on 01.02.16 furnished copies of:

- a) ledger a/c's of the purchase party
- b) purchase bills
- c) payment details to purchase parties through account payee cheques;
- d) Copy of Stock register
- e) Transportation Bills and
- f) copies of delivery challans.

6. The assessee also furnished quantitative details of corresponding sale of materials alleged to have been purchased from hawala parties income thereon was offered for taxation. The assessee has contended that there can be no sale without purchase, therefore assessee requested Ld. AO to treat the purchases as genuine. Assessee also objected to the re-opening of the case and raised objections vide dated 24.07.2015.

7. Assessee has also made a request to the AO to give the details on the basis of which AO has treated purchases from these parties as bogus. It was also contention of assessee that merely the fact that some of the suppliers have not paid VAT for the reasons best known to them or there is mismatch in VAT shown by purchaser and necessary action have been

taken against them by the Sales Tax Department or display of information by VAT authorities does not mean that sales made by these parties are bogus. However, AO did not accept the assessee's contention. He accepted the purchases but estimated further profit of 5% and made addition thereof in the assessee's income amounting to Rs.21,21,366/- in the A.Y.2010-11. Similar addition was also made in the A.Y.2011-12 by estimating profit at 5% of such alleged purchases.

8. By the impugned order, CIT(A) confirmed the action of the AO against which assessee is in further appeal before us.

9. It was argued by learned AR, Mr. Tarun Ghia that the accounts of the assessee are audited u/s.44AB of the Income Tax Act, 1961. No adverse findings, observations have been reported by the auditor in connection with the purchases debited to profit and loss account. In fact the entire of the audit report is without any qualification or adverse comments implying that the genuineness of the entries in the books of account is fully established. The assessee has also furnished stock ledge/ for the entire relevant previous year furnishing full details of the inflow of goods and outflow of goods with specific references like date, description, quantity received, quantity issued, applicable VAT, bill number and balance at the end of each transaction. The underlying purpose of making available the consolidated stock ledgers is to present the complete quantitative details of all items traded. Also, all the purchases including purchases from the alleged hawala dealers are duly accounted in books of accounts and entered in the stock register. There is no discrepancy in the quantitative

details of the concern. It is established that each and every purchase is matched with corresponding sales and each and every sale is backed by corresponding purchases.

10. My attention was also invited by learned AR to the letter written by the assessee asking the AO to provide information and evidence including third party statement by which the said suppliers have been treated as suspicious. As per learned AR, such information is required to be provided to the assessee for his examination and rebuttal before use thereof against the assessee. As per learned AR, such information was specifically sought by the assessee from the AO, however same was not supplied to assessee. He further emphasized that no cross examination was provided by the AO to rebut the allegation of these parties. Under these circumstances, it was contended that no addition on account of such supplies nor any estimation of profit on such purchases are required to be made. Reliance was placed on the following judicial pronouncements in support of the proposition that no addition was warranted.

(1) ITO vs. Shri Deepak Popatlal Gala in ITA No.5920/Mum/2013 (A.Y. 2010-11) dated 27/03/2015;

(2) Ramesh Kumar and Co. V/s. ACIT in ITA No.2959/Mum/2014 (A.Y. 2010-11) dated 28/11/2014;

(3) DCIT v/s. Shri Rajeev G. Kalathil in ITA No.6727/Mum/2012 (A.Y.2009-10) dated 20/08/2014;

(4) Shri Ganpatraj A. Sanghavi v/s. ACIT in ITA No.2826/Mum/2013 (A.Y.2009-10) dated 5/11/2014; and

(5) Shri Hiralal chunilal Jain vs. Income Tax Officer in No.4547/Mum/2014 dated 01/01/2016.

11. Reliance was also placed on the decision of Jurisdictional High Court in case of Ashish International in ITA No.4299 of 2009 dated 22/02/2011 in support of the proposition that where assessee has disputed the correctness of the statement and assessee is not given any opportunity to cross examine the person who has made the statement, no addition is warranted.

12. Learned AR vehemently argued that departmental authorities had not doubted sales made by the assessee and had produced all the necessary documents desired by the AO / CIT(A), the suppliers had filed the sales tax and income tax returns, confirmation of the supplies so made. As per learned AR, there was a clear violation of principle of natural justice in so far as material received by the AO from the Sales Tax department was never revealed to the assessee inspite of the fact that request was made in that regard. As per learned AR all the payments were made through bank cheques. Provision of Section 69C was not attracted to the facts of the case that investment were never in doubt. Further, reliance was placed on the decision of Hon'ble Supreme Court in case of Andaman Timber Industries dated 02/09/2015, Nikunj Eximp Enterprises (P) Ltd., (Bombay High Court).

13. On the other hand, learned DR relied on the order of the lower authorities and contended that AO has very reasonably estimated the

profit at 5% on the suspicion purchase, accordingly the same should be upheld.

14. I have considered rival contentions and carefully gone through the orders of the authorities below. I have 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 me in the context of factual matrix of the case. In the instant case, I found that on the basis of information from Sales Tax department, AO has initiated reassessment proceedings and called for various details about the purchases made by the assessee. In response to the same, assessee has furnished purchase bills, delivery challans, bank statement showing payment made to the parties, confirmation of the respective parties, ledger account of the purchase party, copy of stock register, copy of transportation bills and copy of delivery challans. Assessee has also furnished details of corresponding sales affected by it during both the years under consideration. It is not in dispute that assessee has asked for the copy of statement on the basis of which purchases from these parties were alleged as bogus by the AO however, the same was not supplied to the assessee nor an opportunity of cross examination was provided to the assessee. Under these circumstances, I found that principle of natural justice was grossly vitiated. There is no doubt that reopening was based on the valid reason, where AO was having necessary *prima facie* material justifying the issue of notice u/s.148. I found that material with regard to

supply of goods by the suspicious dealer was available to the AO only and it was not shared with the assessee. AO was relying on the findings made by the Sales Tax department. If AO was relying upon the statements of these parties, it was his duty to provide the copies of their statement to the assessee and to afford cross examination of the suppliers. There is no bar of utilising the material collected by other Government agencies and making addition on the basis of such material, but when the AO was identifying to make such addition how can he deprive the assessee to access to the material that was being used against assessee. There is no proverbial whisper in the assessment orders regarding request made by the assessee for supply of materials and cross-examination of the suppliers, the basic principle of natural justice mandate that assessee should be given due opportunity to defend itself i.e., they should be supplied the material that is proposed to be used against them. In respect of violation of principles of natural justice, the Hon'ble Supreme Court in the case of Andaman Timber (supra) observed as under:-

"...According to us,not allowing the assessee to cross examine the witness by the Adjudicating Authority though the statements of those witnesses were made the basis of impugned order is a serious flaw which makes the order nullity in as much as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the 1596-97/M/16-Fancywear statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However no such option was granted and the aforesaid plea is not even dealt by the Adjudicating Authority....."

15. We also found that both the years under consideration, AO & CIT(A) has accepted the corresponding sales and even purchases were accepted. AO only made the addition by estimating further profit of 5% on such purchases. However, with regard to the payment so made by the cheques no evidence has been brought on record proving that suppliers have withdrawn cash immediately after depositing the cheques of the assessee. Under these facts and circumstances, we do not find any merit in treating the purchases as bogus and estimating further profit of 5% on the alleged suspicion purchases. Accordingly, AO is directed to delete the same.

16. In the result, both the appeals are allowed.

Order pronounced in the open court on this 08/12/2017

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

Mumbai; Dated 08/12/2017

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