

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA Nos.858 & 859/PUN/2015
निर्धारण वर्ष / Assessment Years : 2010-11 & 2011-12

Gole Precision Tools Pvt. Ltd.,
5, Amarja Apartment,
28, Mrutunjay Colony,
Pune - 411029

PAN : AAACG6701H

.....अपीलार्थी / Appellant

बनाम / V/s.

Dy. Commissioner of Income Tax,
Circle - 1(2), Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri M.K. Kulkarni
Revenue by : Shri Mukesh Jha

सुनवाई की तारीख / Date of Hearing : 21-02-2018
घोषणा की तारीख / Date of Pronouncement : 28-02-2018

आदेश / ORDER

PER VIKAS AWASTHY, JM :

These two appeals have been filed by the assessee. In ITA No. 858/PUN/2015 the assessee has assailed the order of Commissioner of Income Tax (Appeals)-1, Pune dated 31-12-2014 for assessment year 2010-11. ITA No. 859/PUN/2015 is directed against the order of

Commissioner of Income Tax (Appeals) of even date for assessment year 2011-12.

Since, the issues involved in both the appeals are arising from same set of facts, these appeals are taken up together for adjudication and are disposed of vide this common order.

2. The brief facts of the case as emanating from records are : The assessee is engaged in the business of manufacturing and sale of Tungsten carbide cutting tools and power generation through windmill. The return of income filed by the assessee for the impugned assessment years was processed u/s. 143(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). On the basis of information received from the office of Director General (Inv.) Pune that the assessee company is one of the beneficiary from Hawala transactions, assessments for assessment years 2010-11 and 2011-12 were reopened. Notice u/s. 148 of the Act was issued to the assessee on 22-03-2013 for both the assessment years i.e. assessment years 2010-11 and 2011-12. During the course of reassessment proceedings, the assessee failed to produce any documentary evidence indicating purchases made from Rup International, UB Traders, Bhavik Enterprise and CN Corporation. The said firms are stated to be indulging in Hawala transaction. The Assessing Officer made addition of Rs.19,16,545/- in assessment year 2010-11 and Rs.39,86,944/- in assessment year 2011-12 on account of unexplained expenditure.

Aggrieved by the assessment order dated 10-02-2014 passed u/s. 143(3) r.w.s. 147 of the Act for assessment year 2010-11 and assessment order of even date passed u/s. 143(3) r.w.s. 147 of the Act for assessment

year 2011-12, the assessee filed appeals before the Commissioner of Income Tax (Appeals) assailing reopening of assessment, as well as, additions made on merits. The Commissioner of Income Tax (Appeals) upheld reopening of assessment as valid and also dismissed the appeals of assessee on merits. Now, the assessee is in second appeal before the Tribunal.

3. The assessee in grounds of appeal challenged the additions made on account of Hawala purchases on the basis of information received from Sales Tax Department. The assessee also filed additional ground of appeal assailing reopening of assessment on the ground that the assessment has been framed without deciding objections filed by assessee against reasons for reopening.

4. Shri M.K. Kulkarni appearing on behalf of the assessee submitted that the assessee in response to notice u/s. 148 vide separate letters dated 24-02-2014 for the impugned assessment years intimated the Assessing Officer that the original return filed may be treated as return in response to notice u/s. 148 and vide same letters the assessee requested the Assessing Officer to furnish copy of reasons recorded for reopening the assessments. The reasons for reopening were provided to the assessee in both the assessment years on 24-02-2014. The assessee thereafter on 28-02-2014 filed objections against reopening of assessments. However, the Assessing Officer by that time had passed assessment orders u/s. 143(3) r.w.s. 147 on 10-02-2014 for assessment years 2010-11 and 2011-12. The assessment orders were received by assessee on 28-02-2014. The

Assessing Officer in violation of the law laid down by the Hon'ble Apex Court in the case of GKN Drive Shaft (India) Ltd. Vs. Income Tax Officer reported as 259 ITR 19 has completed the assessment without disposing of the objections raised by assessee against reopening of assessment.

4.1 In respect of additions on merit the ld. AR submitted that the assessee had made purchases from Rup International, UB Traders, Bhavik Enterprise and CN Corporation alleged to be Hawala dealers against tax invoice. The assessee has complete details of purchases with supporting documents including delivery challans to show that the assessee had in fact made purchases from so called Hawala dealers. The authorities below have failed to consider the documents furnished by assessee.

4.2 The ld. AR of assessee made an alternate submission that if at all the purchases from suspicious dealers are to be considered as bogus then the addition may be made by following the decision of Pune Bench of Tribunal in the case of M/s. Chhabi Electricals Pvt. Ltd. Vs. Deputy Commissioner of Income Tax in ITA No. 795/PUN/2014 for assessment year 2010-11 decided on 28-04-2017.

5. On the other hand Shri Mukesh Jha representing the Department vehemently supported the findings of Commissioner of Income Tax (Appeals) in upholding reassessment proceedings as well as confirming additions on merits. The ld. DR submitted that notice u/s. 148 was issued to the assessee on 22-03-2013. After service of notice the assessee did not file return of income within the time prescribed in the notice issued u/s.

148 of the Act. The ld. AR of assessee attended the assessment proceedings on 05-02-2014 and on the same day reasons for reopening were handed over to him on his request. The assessment order was passed u/s. 143(3) r.w.s. 147 on 10-02-2014 by the Assessing Officer after considering the submissions and documents submitted by ld. AR of assessee. The ld. DR submitted that the assessee had made purchases from suspicious dealers viz. Rup International, UB Traders, Bhavik Enterprise and CN Corporation. The information collected from Sales Tax Department regarding aforesaid dealers indicate that they were issuing fake invoice and the beneficiaries were claiming tax deduction on such bogus purchases. During the course of assessment proceedings the Assessing Officer could not produce any documentary evidence to show purchases made. The Commissioner of Income Tax (Appeals) has rightly upheld entire addition of bogus purchases. To support his contentions the ld. DR placed reliance on the decision of Hon'ble Supreme Court of India in the case of N.K. Proteins Ltd. Vs. Deputy Commissioner of Income Tax reported as 84 taxmann.com 195 and the decision of Hon'ble Gujarat High Court in the case of N.K. Industries Ltd. Vs. Deputy Commissioner of Income Tax reported as 72 taxmann.com 289.

6. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. We have also considered the decisions on which rival sides have placed reliance. The issue raised by assessee by way of additional grounds of appeal is against reopening of assessment. It has been contended that the procedure laid down by the Hon'ble Supreme Court of India in the case of GKN Drive

Shaft (India) Ltd. Vs. Income Tax Officer (supra) in deciding the objections for reopening has not been followed by Assessing Officer. In the instant case, we find that separate notices u/s. 148 was issued to the assessee on 22-03-2013 for both the impugned assessment years. The assessee admittedly filed letters dated 24-02-2014 requesting Assessing Officer to treat the returns filed u/s. 139 as returns in response to notice u/s. 148 of the Act. These letters have been filed by assessee after 11 months from the date of issuance of notice u/s. 148 of the Act. Vide same letters the assessee requested the Assessing Officer to provide reasons recorded for reopening. As is apparent from record the assessment order was passed u/s. 143(3) r.w.s. 147 prior to the assessee's letter dated 24-02-2014 requesting the Assessing Officer to treat the return of income filed as return in response to notice u/s. 148 of the Act.

7. The Hon'ble Supreme Court of India in the case of GKN Drive Shaft (India) Ltd. Vs. Income Tax Officer (supra) has held that the assessee is required to file return of income before seeking reasons for issuing notice u/s. 148. In the instant case, the assessee has neither filed return of income nor has requested Assessing Officer to treat original return of income as return in response to notice u/s. 148 within the time prescribed in the notice issued u/s. 148 of the Act. Since, the assessee has failed to comply with the requirement of notice u/s. 148 within the time limit, the assessee cannot cry foul in passing of the assessment order before deciding the objections. It is apparent from record that the assessee had requested to Assessing Officer for providing reasons for reopening almost two weeks after passing of assessment order. The assessee cannot allege Assessing

Officer of violating the law laid down in GKN Drive Shaft (India) Ltd. Vs. Income Tax Officer (supra) without performing his part of filing return of income. Therefore, the additional grounds raised by assessee assailing reassessment proceedings to be bad on ground of not deciding the objections against reopening of assessment are devoid of any merit and hence the same are dismissed in both the assessment years.

8. Now, we proceed on to decide the appeals of assessee on merits of the addition. The Assessing Officer has made addition of Rs.19,16,545/- in assessment year 2010-11 and Rs.39,86,944/- in assessment year 2011-12. The assessee has made purchases from Hawala dealers notified by Sales Tax Department, Government of Maharashtra. The Assessing Officer has made addition of the entire purchases made by assessee in respective assessment years. The details of purchases made by in assessment years under appeal are as under :

Sr. No.	Name of the party supplying bogus bills	Amount (A.Y. 2010-11)	Amount (A.Y. 2011-12)
1	Rup International	Rs.5,99,938/-	Rs.29,13,264/-
2	U B Traders	Rs.5,16,026/-	Rs.6,24,062/-
3	Bhavik Enterprise	Rs.6,12,393/-	-
4	C N Corporation	Rs.1,88,188/-	Rs.4,49,618/-
	Total	Rs.19,16,545/-	Rs.39,86,944/-

9. In the impugned order, the Commissioner of Income Tax (Appeals) has categorically observed that the assessee has failed to produce purchase order, transportation bill, octroi receipt, waiving bill, goods receipt notes (GRN), subsequent sale/manufacturing details etc. to show

the trail of goods purchased. The ld. AR has drawn our attention to the tax invoice, delivery challans etc. at pages 22 to 100 of the paper book. In so far as sale of material is concerned, the ld. Counsel for assessee pointed that the items purchased by the assessee were self consumed for further manufacturing. After perusing the documents on record we are of view that prima facie it is not a case where the entire purchases can be stated to be bogus. The assessee must have made purchases from grey market. In the absence of complete details before the authorities below indicate that there are gaps in the trail of goods purchased. To meet the ends of justice it would be suffice if some part of alleged Hawala purchases are added back.

10. We find that in the case of M/s. Chhabi Electricals Pvt. Ltd. Vs. Deputy Commissioner of Income Tax (supra) the Pune Bench of Tribunal has estimated GP @ 10% of the alleged Hawala purchases over and above the GP declared by assessee. Taking into consideration totality of facts and the decision of Co-ordinate Bench of Tribunal, we direct the Assessing Officer to make addition of 10% of the alleged bogus purchases over and above the GP declared by assessee. Thus, ground Nos. 1 to 4 raised in appeal by assessee for assessment years 2010-11 and 2011-12 are partly allowed.

11. In ground No. 5 of appeals for assessment years 2010-11 and 2011-12, the assessee has assailed levy of interest u/s. 234A, 234B and 234C of the Act. The charging of interest under the aforesaid sections is

mandatory and consequential, hence, ground No. 5 raised in both the appeals are dismissed.

12. In the result, the appeals filed by assessee are partly allowed in the terms aforesaid.

Order pronounced on Wednesday, the 28th day of February, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 28th February, 2018
RK

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-1, Pune
4. आयकर आयुक्त / The CIT-I, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune