

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH ‘SMC’

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 1087/Ahd/2016

निर्धारण वर्ष/Assessment Year: 2008-2009

Shri Anil Gaherilal Duggad B/2, Harivadan Flat Nr. Boringwali Chawl Maninagar Ahmedabad 380 008. PAN : AELPD 5832 J	Vs	ACIT, Cir.12 (Presently DCIT, Cir.6) Nehru bridge Corner Ashram Road Ahmedabad.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
Assessee by :	Shri G.C. Pipara, AR
Revenue by :	Shri Umashankar Prasad

सुनवाई की तारीख/Date of Hearing : 09/04/2018

घोषणा की तारीख /Date of Pronouncement : 10/04/2018

ORDER

Assessee is in appeal before the Tribunal against order of Id.CIT(A)-6, Ahmedabad dated 9.3.2016 passed for the Asstt.Year 2008-09.

2. In the first ground of appeal, the assessee has pleaded that the Id.CIT(A) has erred in upholding reopening of the assessment. However, at the time of hearing, the Id.counsel for the assessee did not advance any arguments in this regard, hence, it is dismissed.

3. In ground no.2, the assessee has pleaded that the Id.CIT(A) has erred in confirming addition of Rs.77,68,002/- by making an enhancement from Rs.19,97,584/-.

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4. Brief facts of the case are that the assessee has filed his return of income on 29.9.2008 declaring total income at Rs.8,42,500/-. Assessment was framed under section 143(3) on 26.11.2010. The assessment was thereafter reopened and notice under section 148 was issued and served upon the assessee. On scrutiny of accounts it revealed to the AO that the assessee is engaged in manufacturing and trading in copper, brass. He made purchases from various persons. The ld.AO has made reference to nine parties to whom summons under section 131 were issued for verifying purchases made by the assessee. According to the AO, suppliers did not respond to notices issued by him. Hence, he treated the purchases as bogus. The ld.AO thereafter observed that out of nine parties only five are having closing balances with the assessee. In other words, there are outstanding trade credits against names of five persons out of the alleged nine suppliers to whom notices were issued. The ld.AO has made addition of closing balance appearing against these five parties. He worked out addition of Rs.19,94,584/-.

5. On appeal, the ld.CIT(A) has issued notices for enhancement of the income. The ld.CIT(A) disallowed credit purchases made by the assessee from these parties. Basis for making such disallowance is the order of the AO passed in the Asstt.Year 2009-10. According to the ld.CIT(A) in the Asstt.Year 2009-10, purchases to the tune of Rs.38 lakhs were treated as bogus and this order of the AO was confirmed by the ld.CIT(A). Hence, the ld.CIT(A) confirmed addition of Rs.77,68,002/- by treating the purchases made from these parties as bogus.

6. Before me, the ld.counsel for the assessee contended that the issue in dispute is squarely covered by the Division Bench of the ITAT in the

case of the assessee for the Asstt.Year 2009-10. The Tribunal in principle concurred with the Revenue Authorities that purchases made by the assessee were not genuine. However, after analyzing details i.e. quantification of purchases and sales, the Tribunal held that only profit element involved in these purchases would be treated as income of the assessee. The Tribunal has confirmed addition to the extent of 15% of the gross purchases. In other words, the ld.counsel for the assessee suggests that 15% of the Rs.77,68,002/- is to be confirmed. The ld.DR, on the other hand, relied upon the order of the ld.CIT(A), but unable to controvert contention of the ld.counsel for the assessee.

7. I have duly considered rival contentions and gone through the record carefully. The ld.CIT(A) has relied upon order of his predecessor in the Asstt.Year 2009-10, which has been considered by the Tribunal in ITA No.822/Ahd/2014. The Tribunal has upheld the addition to the extent of 15% of the alleged purchases. The finding recorded by the Tribunal reads as under:

“5. We have heard both the parties. Learned counsel representing assessee refers to its paper book indicating copy of audited accounts, taxed audit report of the above trading concern, copy of accounts of the two payee enterprises for financial years 2008-09 to 2012-13 in former payee's case and from financial years 2007-08 to 2012-13 in latter party's case along with bank statement evidence to buttress the first substantive argument seeking to prove genuineness of the purchases in question. Shri Pipara however fails to dispute the fact that the said two payees are not traceable till date. We therefore find no merit in this genuineness aspect of assessee's argument as it was all the more reason for him to have at least filed the said two parties' confirmations and more so in view of the fact that he had been having business relations for above long period of time. We thus affirm CIT(A)'s conclusion in principle that the assessee has not been able to prove genuineness of the above purchases.

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6. Learned counsel then raises an equally significant plea that both the lower authorities ought to have disallowed / added only the profit element embedded in the above purchases in question. The Revenue fails to dispute the fact that the lower authorities have disallowed those purchases whose sales have been accepted as genuine standing assessed as such without rejection of books. We are therefore of the opinion that the learned Assessing Officer ought to have disallowed only the profit element instead of the entire purchases. We notice from the case file that the assessee had quoted umpteen number of judicial precedents in this regard. Hon'ble jurisdictional high court's decision in Sanjay Oil Cake Industries (2009) 316 ITR 274 (Guj) supports this latter plea. We are therefore of the view that larger interest of justice would be served in case only the profit element @15% in the above bogus purchases is disallowed/added rather than the entire amount. Whilst concluding so, it is made clear that we have duly taken into account the fact that the assessee is a trader than manufacturer so as to arrive at the above disallowance percentage. We accordingly direct the Assessing Officer to restrict the impugned disallowance @15%. It is made clear that our instant adjudication shall not be treated as a precedent in any preceding or succeeding assessment year. Learned Assessing Officer shall frame consequential assessment accordingly. ITA No.882/Ahd/2014 is partly allowed.

6. We come to latter assessee's appeal ITA No.883/Ahd/2014 involving similar issue of purchases disallowance of Rs.65,05,101/- in respect of copper purchases in trading business. Both the learned representatives agree that our above discussion in former assessee's case applies in toto herein as well. We thus direct the Assessing Officer to restrict the impugned disallowance @15% in the instant appeal as well with all our stipulations in the preceding paragraph. ITA No.883/Ahd/2014 is also partly accepted."

8. Respectfully following order of the Division Bench and after going through the details, I am of the view that there is no dispute on facts, and therefore, following order of the Division Bench, I allow the appeal of the assessee partly and direct the AO to add 15% (fifteen percent) of Rs.77,68,002/- in the total income of the assessee.

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9. Ground No.3 is general ground of appeal, which is merely supportive to arguments of ground no.2, hence, it is rejected.

10. In the result, appeal of the assessee is partly allowed.

Pronounced in the Open Court on 10th April, 2018.

**Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER**