

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

श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA Nos.2619 to 2621/PUN/2016
निर्धारण वर्ष / Assessment Years: 2009-10 to 2011-12

Sanjay Shrawan Agrawal,
Prop. M/s. Shri Krishna Industries,
28, Sharda Nagar,
Near Savarkar Nagar,
Nashik - 422 013
PAN : ADDPA4712H अपीलार्थी/Appellant

Vs.

ITO, Ward-1(1),
Nashik प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.2618/PUN/2016
निर्धारण वर्ष / Assessment Year : 2011-12

Vivek Shrawan Agrawal,
Prop. M/s. Four Seasons/Vivek Industries,
28, Sharda Nagar,
Near Savarkar Nagar,
Nashik - 422 013
PAN : ADAPA0731D अपीलार्थी/Appellant

Vs.

ITO, Ward-1(1),
Nashik प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Pramod Shingte
प्रत्यर्थी की ओर से / Respondent by : Shri Ajay Modi, JCIT

सुनवाई की तारीख / Date of Hearing : 13.03.2018	घोषणा की तारीख / Date of Pronouncement: 28.03.2018
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

There are 4 appeals filed by 2 different assesseees under consideration. Out of which ITA Nos. 2619 to 2621/PUN/2016 are filed by Shri Sanjay Shrawan Agrawal against the common order of CIT(A)-1,

Nashik, dated 07-09-2016 for the A.Yrs. 2009-10 to 2011-12 and the appeal ITA No. 2618/PUN/2016 is filed by Shri Vivek Shrawan Agrawal for the A.Y. 2011-12. The grounds by the two assessee in these appeals are common, therefore, they are being taken up together for adjudication in this composite order.

I shall first take up the appeals pertaining to Shri Sanjay Shrawan Agrawal.

ITA No.2619 to 2621/PUN/2016-Shri Sanjay Shrawan Agrawal
A.Yrs. 2009-10 to 2011-12

2. Since the grounds raised by the assessee are identical for all the assessment years the grounds raised by the assessee for A.Y. 2009-10 are extracted as under :

*“1. On the basis of facts and in the circumstances of the case and as per law, the Commissioner of Income Tax, (Appeals)-I, Nashik, is not justified in **confirming validity of notice issued u/s.148** particularly when AO has issued the said notice on the basis of information received from third party and without application of mind.*

*2. On the basis of facts and in the circumstances of the case and as per law, the Commissioner of Income Tax, (Appeals)-I, Nashik, is not justified in **upholding the order passed by the AO u/s. 147 of the Act** as the AO has not summarily rejected the objections raised against reasons recorded for the notice issued u/s.148 of the Act, by way of speaking order.*

*3. On the basis of facts and in the circumstances of the case and as per law, the Commissioner of Income Tax, (Appeals)-I, Nashik, is not justified in confirming the disallowance of purchases to the extent of 25%, particularly **when the AO has not allowed the appellant the cross-examination of the witness** of the revenue i.e. parties from whom the purchases were made as well as the competent Sales Tax Authority on the basis of whose information the **notice u/s.148 of the Act** was issued by the AO.*

4. On the basis of facts and in the circumstances of the case and as per law, the Commissioner of Income Tax, (Appeals)-I, Nashik, is not justified in confirming the disallowance to the extent of 25% i.e. Rs.2,81,530/- of the purchases made from parties called as suspicious parties.

5. On the basis of facts and in the circumstances of the case and as per law, the Commissioner of Income Tax, (Appeals)-I, Nashik, is not justified in confirming the disallowance to the extent of 25% i.e. Rs.2,81,530/- of the purchases made from parties called as suspicious parties by holding that the said purchases are inflated particularly when the appellant has made the said purchases at prevailing market rate only.

6. The Appellant craves for addition to, deletion, alteration, modification, change any of the grounds.”

From the above, it is evident that whole Ground Nos. 1 to 3 deals with a legal issue qua the information source; summarily refusing the objection of the assessee and the failure to grant cross examination and the Ground Nos. 4 and 5 are on facts.

3. Briefly stated relevant facts are that assessee is an individual and is engaged in the business of manufacturing of electrical testers under the name and style of “M/s. Shri Krishna Industries”. Assessee filed the returns of income for the A.Yrs. 2009-10 to 2011-12 declaring total income of Rs.9,83,810/-, Rs.10,44,390/- and Rs.13,36,110/- respectively. On the basis of information received from the Sales Tax Department, AO issued notices u/s.148 of the Act to the assessee. For the A.Y. 2009-10, AO found that assessee made purchases from M/s. Mascot Enterprises, Mumbai amounting to Rs.11,26,125/-. For the year, 2010-11, assessee made purchases from 3 suppliers amounting to Rs.16,64,335/- and for the A.Y. 2011-12 the assessee made purchases from 4 suppliers amounting to Rs.16,20,958/-. Eventually, the AO came to the conclusion that the purchases made by the assessee are bogus purchases or the assessee might have inflated the purchases. and added 100% of the purchases for the years under consideration to the total income of the assessee.

4. In the First Appellate Proceedings, the assessee questioned the addition of entire bogus purchases made by the assessee for the assessment years under consideration. Assessee also raised the issue relating to validity of the reassessment u/s.147 of the Act qua the availability of tangible material for invoking the said provisions. CIT(A) dismissed the validity of the re-assessment proceedings linked

objections raised by the assessee and relied heavily on the judgment ACIT Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. reported in 291 ITR 500. Contents of Para No.4.5 to 4.12 of the order of CIT(A) contains the discussion of CIT(A) in holding the reassessment proceedings as valid. CIT(A) relied on the information gathered from the Sales Tax department in this regard. On merits, CIT(A) after considering series of decisions eventually restricted the addition to 25% of the purchases made by the assessee by observing as under :

“6.89 Thus, in my opinion the facts on record demonstrate that this is not a case of bogus purchases but a case of inflated purchases and at best from bogus parties. Considering the facts and circumstances of the case, to meet the ends of justice, the AO is directed to restrict the disallowance of purchases to 25% of purchases, i.e. Rs.2,81,530/-, Rs.4,16,080/- and Rs.4,05,239/- for A.Yrs. 2009-10, 2010-11 and 2011-12 respectively.”

Assessee requested for grant of cross examination of the witnesses of the Revenue and the same was not successfully given for the assessee.

5. Aggrieved with the part relief given by the CIT(A), the assessee filed the present appeals before the Tribunal with the grounds extracted above.

6. Before us, deviating from the grounds, Ld. Counsel for the assessee brought our attention to Ground No.3 in all the appeals and submitted that in this case **assessee asked to grant an opportunity of cross examination of the parties** and the same was denied. Further, he submitted that the addition made by AO in the re-assessment will not survive as the same are made at the back of the assessee. Relying on the decision of Supreme Court in the case of M/s. Andaman Timber Industries Vs. CIT, Civil Appeal No. 4228/2006, dated 02.09.2015 (Supreme Court), Ld. Counsel submitted that making addition at the

back of the assessee is not justified. On merit, Ld. Counsel submitted that in this case where the assessee has successfully established the trail of goods, therefore, invoking the provisions of 145 (3) of the Act are not sustainable. However, he submitted that the Tribunal is ceased up with the similar issue in many cases and on the applicability of the judgment of Supreme Court in the case of M/s. Andaman Timber Industries (Supra). The outcome of the said decisions as per the Tribunal may be adopted for adjudication of these appeals on the issue relating to making addition without granting the benefit of cross examination.

7. Ld. DR for the Revenue relied on the order of CIT(A) dutifully.

8. I heard both the sides on the legal aspect of the issue relating to correctness of making additions at the back of the assessee by the Assessing Officer without granting benefit of cross examination of the assessee. In my view, this issue is covered in favour of assessee by virtue of decision of Tribunal in the case of Anita Sanjay Agrawal Vs. ITO and others in ITA Nos.2622 to 2624/PUN/2016. For the sake of completeness, relevant para is extracted herein below:

*“25. The facts and issues arising before us are squarely covered by the facts and issues before the Hon'ble Supreme Court in M/s. Andaman Timber Industries Vs. Commissioner of Central Excise (supra) and applying the said principle / ratio to the facts of the present case, we hold that where the assessee had sought cross-examination of the witnesses at the earliest stage i.e. while objecting to the reasons recorded for reopening the assessment, which duly has been acknowledged by the Assessing Officer in his order disposing of objections raised by the assessee against reopening of assessment. But the Assessing Officer though asked the assessee to collect the statement but failed to allow cross-examination though he admitted that the same would be allowed in due course of time. On a later date, the Assessing Officer concludes that the letters sent under section 133(6) of the Act to the dealer were returned back. But the same cannot be reason for denying cross-examination. **In the absence of allowing cross-examination of witnesses used against the assessee, where the addition was made in the hands of assessee on the basis of aforesaid statements recorded by the Sales Tax Department, we hold that no addition on account of bogus purchases can be made in the hands of assessee.** The assessee had also established factum of trail of goods. Accordingly, we*

delete the addition made on account of bogus purchases. The grounds of appeal raised by the assessee are thus, allowed.”

Considering the above, I am of the opinion that the decision of the Tribunal is self explanatory and the addition made by AO without granting cross examination is unsustainable. Reliance is placed on the ratio of Hon'ble Apex Court in the case of M/s. Andaman Timber Industries Vs. CIT (supra). Accordingly, Ground No.3 raised by the assessee in all three appeals is allowed. Considering my decision above, the remaining grounds raised by the assessee on merits are dismissed as being academic.

9. In the result, all three appeals of the assessee are partly allowed.

Now I shall now take up the appeal of Shri Vivek Shrawan Agrawal.

ITA No.2618/PUN/2016 – Shri Vivek Shrawan Agrawal
Assessment Year : 2011-12

10. Grounds raised by the assessee read as under :

*“1. On the basis of facts and in the circumstances of the case and as per law, the Commissioner of Income Tax, (Appeals)-I, Nashik, is not justified in **confirming validity of notice issued u/s.148** particularly when AO has issued the said notice on the basis of information received from third party and without application of mind.*

*2. On the basis of facts and in the circumstances of the case and as per law, the Commissioner of Income Tax, (Appeals)-I, Nashik, is not justified in **upholding the order passed by the AO u/s. 147 of the Act** as the AO has not summarily rejected the objections raised against reasons recorded for the notice issued u/s.148 of the Act, by way of speaking order.*

*3. On the basis of facts and in the circumstances of the case and as per law, the Commissioner of Income Tax, (Appeals)-I, Nashik, is not justified in confirming the disallowance of purchases to the extent of 25%, particularly when the **AO has not allowed the appellant the cross-examination of the witness of the revenue** i.e. parties from whom the purchases were made as well as the competent Sales Tax Authority on the basis of whose information the notice u/s.148 of the Act was issued by the AO.*

4. *On the basis of facts and in the circumstances of the case and as per law, the Commissioner of Income Tax, (Appeals)-I, Nashik, is not justified in confirming the disallowance to the extent of 25% i.e. Rs.4,83,105/- of the purchases made from parties called as suspicious parties.*

5. *On the basis of facts and in the circumstances of the case and as per law, the Commissioner of Income Tax, (Appeals)-I, Nashik, is not justified in confirming the disallowance to the extent of 25% i.e. Rs.4,83,105/- of the purchases made from parties called as suspicious parties by holding that the said purchases are inflated particularly when the appellant has made the said purchases at prevailing market rate only.*

6. *The Appellant craves for addition to, deletion, alteration, modification, change any of the grounds.”*

11. From the above, I find the grounds raised by the assessee on both the issues, i.e. (1) validity of reassessment proceedings u/s.147 of the Act and (2) not allowing the cross examination of the witnesses by the AO, and (3) restricting the addition to 25% of the purchases, are identical to the grounds raised by for the A.Y. 2009-10. Both the parties also informed that their arguments on the issues shall remain same in this appeal also. Following the same parity of reasoning given by me in Para No.8 of this order while deciding the appeal of Shri Sanjay Shrawan Agrawal for A.Y. 2009-10, I allow the legal ground No.3 relating to allowing of cross examination in favour of the assessee. All the remaining grounds/issues raised by the assessee discussed above are thus dismissed as being academic. Accordingly, the grounds raised by the assessee are partly allowed.

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

13. To sum up, the appeals filed by both the assesseees are partly allowed.

Order pronounced on this 28th day of March, 2018.

Sd/-

(D.KARUNAKARA RAO)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 28th March, 2018.
Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-1, Nashik
4. आयकर आयुक्त / The CIT-1, Nashik
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे “**SMC**” /
DR ‘SMC’, ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune