

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

**ITA NO. 1866/MUM/2018 & : (A.Y : 2010-11)
SA NO. 267/MUM/2018**

Shree Vighanahar Chemicals Pvt. Ltd., Vs. ITO, Ward-1(4),
W-225, MIDC Phase III, Mumbai (Respondent)
MIDC Industrial Area, Dombivali (E),
Mumbai, Maharashtra 421 203.
PAN : AAICS2158N (Appellant/Applicant)

Appellant by : Shri Madhav M. Khisti

Respondents by : Shri Rajat Mittal

Date of Hearing : 13/04/2018

Date of Pronouncement : 13/04/2018

ORDER

PER G.S. PANNU, AM :

The captioned appeal by the assessee is directed against the order passed by the CIT(A)-1, Aurangabad dated 02.01.2017 pertaining to Assessment Year 2010-11, which in turn has arisen from the order passed by the Assessing Officer, Mumbai dated 16.03.2015 u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short 'the Act') and the captioned stay application is also filed by assessee seeking stay on the recovery of outstanding demand.

2. In brief, the relevant facts are that the appellant is a company incorporated under the provisions of the Companies Act, 1956 and is, *inter-alia*, engaged in the business of manufacture of chemicals. For the assessment year under consideration, it filed a return of income on 29.09.2010 declaring NIL income, which was processed as such u/s 143(1) of the Act. Subsequently, on the basis of information from Sales Tax Department, Maharashtra, assessment was reopened on the ground that assessee had effected purchases of Rs.21,85,248/- from one, M/s. Dev Enterprises whose name was found by the Sales Tax Department to be in the list of *hawala* dealers who were providing accommodation entries, i.e. that the said dealers were merely raising bills and not actually transacting. In the ensuing assessment, the Assessing Officer held the purchases made by the assessee from M/s. Dev Enterprises of Rs.21,85,248/- as unproved based on the information from the Sales Tax Department and the same was added to the returned income. The CIT(A) has also sustained the stand of the Assessing Officer, against which assessee is in appeal before us.

3. At the time of hearing, it was noticed that the appeal of the assessee is filed belatedly inasmuch there is a delay of 300 days in filing of the appeal. In this context, the learned representative for the assessee has furnished an Affidavit of the Director of the assessee-company averring therein that the delay was caused on account of ignorance and lack of technical knowledge regarding submission of appeal, etc. in the income-tax proceedings. The learned representative emphasised that although assessee is an existing assessee, but in the past there have not been much disputes and, therefore,

the assessee and its Directors were not fully conversant with the appellate procedures which has led to the delay, which was unintentional.

4. The Id. DR appearing for the Revenue has not seriously opposed the plea of the assessee and, in fact, so far as the *bona fides* of the reasons are concerned, they have not been assailed.

5. Considering the averments made in the Affidavit and the explanation furnished, we deem it fit and proper to condone the delay in filing the appeal keeping in mind the ratio of the judgment of the Hon'ble Supreme Court in the case of *Collector, Land Acquisition vs Mst. Katiji & Ors.*, 167 ITR 471 (SC). The aforesaid was announced at the time of hearing and accordingly, the rival counsels were heard on the merits of the dispute.

6. At the time of hearing, the learned representative pointed out that following the ratio of the judgment of the Hon'ble Gujarat High Court in the case of *Simit P. Sheth*, 356 ITR 451 (Gujarat), the entire purchases may not be considered for addition and only a percentage thereof be added to the returned income. It was emphasised that assessee has indeed used the material purchased in its consumption inasmuch as the sale of its products have not been doubted. Therefore, the entire amount of purchases could not be treated as unexplained.

7. On the other hand, the Id. DR pointed out that the addition was justifiably made because assessee had failed to substantiate the purchases.

8. We have carefully considered the rival submissions. It is quite clear that the assessee could not conclusively prove the genuineness of the impugned purchases made from the stated dealer, M/s. Deva Enterprises. So, however, it is also emerging from the record that so far as the corresponding sales of the manufactured products is concerned, the same have not been doubted. Therefore, under these circumstances, it would be in the fitness of things that the ratio of the judgment of the Hon'ble Gujarat High Court in the case of *Simit P. Sheth (supra)* is applied. The entire conspectus of facts show that assessee had indeed purchased the goods, but in the absence of substantiation of the purchases from the stated party, it can only be inferred that the same have been purchased from some other concern outside the books of account. In such a scenario, what would escape the assessment is the savings that may have been effected by the assessee by making the purchases in the grey market. In similar like situations, our co-ordinate Benches have been adopting a rate of 12.5% and which we are also inclined to apply herein. The aforesaid was made known in the course of hearing and the learned representative for the assessee agreed to the same. Accordingly, we set-aside the order of CIT(A) and direct the Assessing Officer to restrict the addition to 12.5% of the disputed purchases and delete the balance.

9. In the result, appeal of the assessee is partly allowed, as above.

10. Insofar as the stay application filed by the assessee is concerned, the same is rendered infructuous and is dismissed as such.

11. Resultantly, appeal of the assessee is partly allowed and the stay application is dismissed.

The above decision was pronounced in the open court in the presence of both the parties at the conclusion of the hearing on 13th April, 2018.

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Date : 13th April, 2018

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "SMC" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai