

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.1024/M/2018
Assessment Year: 2010-11**

M/s. Rajkamal Metal Corporation, Shop No.1, Bharaja Bhuvan, 110-114, Kika Street, Gulal Wadi, Mumbai - 400 004 PAN: AAJFR 0648G	Vs.	ITO Ward 19(3)(1), Room No.20, 2 nd Floor, Matru Mandir, Tardeo, Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Vimal Punmiya, A.R.
Revenue by : Shri Ram Tiwari, D.R.

Date of Hearing : 16.04.2018

Date of Pronouncement : 27.04.2018

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 11.08.2017 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2010-11.

2. The assessee has raised the following grounds:

"1. On the facts and circumstances of the case and in law the Ld CIT(A) erred in confirming the initiation of the reassessment proceeding under section 147.

2. On the facts and circumstances of the case and in law the Ld CIT(A) failed to consider that reassessment proceeding cannot be initiated.

a) No reassessment can be made just to make an enquiry or verification.

b) Reassessment proceeding cannot be initiate merely on the information received from investigation wing.

c) Reassessment proceeding cannot be initiated when the LD. CIT(A) have reason to suspect and not reason to believe.

3. On the facts and circumstances of case and law the Ld CIT(A) erred in confirming the assessment order under section 143 sub section 3 r w s 147 of income tax Act which is passed against the principal of natural justice.
4. The Ld CIT(A) erred in confirming and rejecting the books of accounts under section 145(3) of the Income Tax Act.
5. The Ld CIT(A) erred in confirming and treating Rs.40,46,620/- being 12.5 percent of the total purchases of Rs.3,23,96,962 as bogus non-genuine expenditure and thereby erred in adding the same to the total income of the assessee.
6. The Ld. CIT(A) erred in confirming the charging of interest under section 234A, 234B 234C and 234D of the Income Tax Act 1961.
7. The Ld. CIT(A) erred in confirming the initiation of the penalty proceeding under section 271(1)(c) of the Income Tax Act 1961.
8. The Assessee craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.”

3. The ground Nos.1, 2, 3 & 4 are not pressed and therefore the same are dismissed being not pressed.

4. The issue raised in ground No.5 is against the confirmation of Rs.40,46,620/- by CIT(A) being 12.5% of the total purchases of Rs.3,23,96,962/- as made by the AO by treating the same as non genuine expenditure. At the outset, the Ld. Counsel for the assessee submitted before the Bench that the lower authorities have totally erred in treating the genuine purchases as bogus purchases despite the fact that the assessee has all the evidences to prove the genuineness of the purchases but the case was decided ex-parte. The Ld. A.R. contended that the case was decided ex-parte by Ld. CIT(A) without hearing the case on merit as the counsel could not appear due to unavoidable circumstances which were beyond the control of the counsel of the assessee. Now the Ld. A.R. prayed before the Bench that he is willing to produce all the materials before the authorities below so that the genuineness of the purchases could be proved.

5. The Ld. D.R., on the other hand, did not object to the argument put forward by the Ld. A.R.

6. Having heard both the parties and perusing the facts on record, we find that the case was decided ex-parte by the first appellate authority as the authorised representative could not appear on the various dates fixed for hearing. Now the assessee prayed before us that one more opportunity may be granted to prove the genuineness of the purchases as he was having all the necessary evidences in his possession. Taking the facts and circumstances in totality, we are of the view that the assessee should be given one more opportunity to prove the genuineness of the purchases in the interest of justice and fairplay. Accordingly, the issue is restored to the file of AO with a direction to decide the same afresh as per facts and law after giving reasonable opportunity of hearing to the assessee.

7. The ground no 6 is consequential and ground no 7 is against the initiation of penalty proceedings u/s 271(1)© which require no adjudication.

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

Order pronounced in the open court on 27.04.2018.

**Sd/-
(Saktijit Dey)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 27.04.2018.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.