

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI
BEFORE SHRI R.C.SHARMA, AM AND SHRI RAVISH SOOD, JM**

ITA No. 2624/Mum/2009
&
ITA No. 2958/Mum/2013

(निर्धारण वर्ष / Assessment Year:2005-06)

Milan S. Dani Prop. M/s. Palak Traders, B-807/808, Shankar Park, Shankar Lane, Kandivali (West) Mumbai 400067	बनाम/ Vs.	The ITO Range-25(3)(1) Bandra- Kurla Complex, Income Tax Office. Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN No.		AABPD3070C
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	None
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Suman Kumar, D.R

सुनवाई की तारीख / Date of Hearing	:	24.04.2018
घोषणा की तारीख / Date of Pronouncement	:	31.05.2018

आदेश / ORDER

PER RAVISH SOOD, JUDICIAL MEMBER:

The present set of appeals filed by the assessee are directed against the respective orders passed by the CIT(A)-26, Mumbai, dated 09.02.2009 and CIT(A)-35, Mumbai, dated 25.02.2013, which in itself arises from the orders passed by the A.O under Sec.143(3) of the Income Tax Act, 1961 (for

short 'Act'), dated 28.12.2007 and the order passed under Sec.271(1)(c) of the Act, dated 30.03.2010, respectively. As common issues are involved in the aforementioned appeals, hence the same are being taken up and disposed off together by way of a consolidate order. We shall first take up the appeal filed by the assessee against the order passed by the CIT(A)-26, Mumbai, which in itself arises from the quantum assessment framed by the AO, vide his order dated 28.12.2007. The assessee assailing the order of the CIT(A) had raised before us the following grounds of appeal:

- “1. *On the facts and circumstances of the case, the Learned Commissioner of Income Tax Appeals XXVI Mumbai, has erred in law in confirming the additions on account unexplained purchases from M/s. Millennium International, M/s. Intracraft Trading Pvt Ltd., M/s. Beauty Impex & M/s. K. Hetal Enterprises.*
2. *On the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) XXVI Mumbai, has erred in law by ignoring the fact that the difference in party balances were duly explained by reconciliation of account of each party with relevant supporting documents.*
3. *On the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) XXVI Mumbai, has erred in law in confirming the only addition made by Assessing Officer on account of part of purchases u/s. 145 (3) of the Income Tax Act, 1961 & accepted the entire audited accounts submitted along with return of income.*
4. *The Appellant reserves his right to add, alter, amend, and/or delete, any of the above grounds of appeal and craves leave for the same.*

2. Briefly stated, the facts of the case are that the assessee who is engaged in the business of trading in cosmetics, perfumes etc. on the concept of “shop-in-shop” basis with outlets in various departmental stores, had filed his return of income for A.Y 2005-06 on 24.10.2005, declaring total income of Rs.4,12,680/-. The case of the assessee was thereafter taken up for scrutiny assessment under Sec. 143(2) of the Act.

3. During the course of the assessment proceedings, it was observed by the A.O that on verification of the genuineness of purchases made by the assessee, it stood revealed that the balances reflected in the books of account of the assessee in respect of certain supplier parties did not tally

with that shown by the said parties. It was further observed by the AO that in case of some parties the notices issued under Sec. 133(6) were returned unserved. As the assessee despite having been afforded sufficient opportunity by the A.O, could neither reconcile the variance in the accounts, nor substantiate the veracity of the purchase transactions in respect of the parties where the notices issued under Sec. 133(6) were returned unserved, hence resorted to Sec. 145(3) and after rejecting the books of accounts of the assessee made an addition of the unverified purchases of Rs.33,74,673/- to the returned income of the assessee, by observing as under:

- a. M/s. Millennium International:-** In this there has been difference of Rs. 40,748/-. It was claimed that this difference due to the fact that these expense were booked in F.Y.2003-04. But no supporting / explanation or even the ledger account copy of last year could not be furnished. Copies of purchase bills depicting such difference were also not produced.
- b. M/s Chheda Marketing:-** In this case assessee has claimed to make purchase of Rs. 26,80,058/- whereas as per the details furnished by M/s. Chheda Marketing that they have sold items worth Rs. 27,92,525/-. Therefore, the assessee was asked to explain the difference with proper supporting. The assessee in his reply stated that this difference of Rs. 1,12,467/- actually pertains to the invoices booked for last F.Y. i.e. 2003-04. But again no details could be furnished. Even copies of ledger account of last year and relevant copies of purchase voucher were not furnished.
- c. M/s. Intercraft:-** In this case notice u/s. 133(6) was issued to this party and reply was also furnished by them. As per the details furnished by the assessee he has purchased items worth Rs. 47,27,256/-. But as per the reply furnished by the M/s. Intercraft they have sold items of only Rs. 37,87,225/-. Thus there is difference of Rs.9,40,031/- which represents unexplained purchase on part of the assessee. Despite being given a number of opportunities and also despite being a number of attempts by the assessee, he could not furnish any explanation for the same. It is also pertinent to mention here that M/s Intercraft is a sundry creditor of the assessee to the tune of Rs.20,32,778/- as on 31.03.2005.
- d. M/s. K. Hetal Enterprises:-** In this case the assessee has claimed to have purchased of Rs. 11,84,262/- from this party. The notice u/s. 133(6) issued to this party at the address provided by the assessee, was returned un-served by the P & T. This was conveyed to the assessee on 30.11.2007 and was requested to prove the genuineness of these purchases. Notices to star International and Sara Trading were also returned un-served. But the assessee later on furnished confirmation from these parties. But in case of M/s. K Hetal Enterprises assessee could not furnish any details

or any explanation for these purchases. Even the copies of purchase bills with proof of payment were not Produced.

- e. **M/s. Beauty Impex:-** In this case notice u/s. 133(6) was issued to this party and reply was also furnished by them. As per the details furnished by the assessee he has purchased items worth Rs. 28,44,082/-. But as per the reply furnished by the M/s. Beauty Impex, they have sold items of only Rs.17,46,917/-. Thus there is difference of Rs. 10,97,165/- which represents unexplained purchase on part of the assessee. Despite being given a number of opportunities and also despite being a number of attempts by the assessee, he could not furnish any explanation for the same. Even the copies of purchase bills with proof of payment were not produced.”

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) after deliberating on the contentions advanced by the assessee and the material placed on record by him during the course of the appellate proceedings, confirmed the addition to the extent of Rs.22,04,269/- and allowed a consequential relief of Rs.10,70,404/- [Rs.33,74,673/- (-) Rs.22,04,269/-], observing as under:

“5.3 I have considered the submission made by the assessee and also perused the reasons given by the Assessing Officer while adding the amount as unaccounted purchases. The same is being discussed hereinunder:-

(1) *M/s. Millennium International:* The Assessing Officer has disallowed unreconciled difference of Rs.40,748/- in the copies of accounts as furnished by the assessee and as called under section 133(6) of the Act from M/s. Millennium International. I have gone through the copies of accounts furnished by the assessee to the Assessing Officer which is also filed to this office during the course of appeal proceedings, which shows that there is only un-reconciled difference of Rs.21,635/- being excess claim of purchase by the assessee. The purchases as per the assessee from M/s Millennium International are of Rs.10,52,404/- whereas M/s. Millennium International has sold goods to the assessee for Rs.10,30,769/- which include sale to Mumbai outlet and Thane outlet at Rs.8,05,942/- and Rs,2,24,827/- respectively. Therefore, there is only difference of Rs.21,635/- which is not explained by the assessee even during appeal proceedings. The addition of unexplained purchases to the extent of Rs.21,635/- is confirmed. The Assessing Officer is directed to delete the addition of excess disallowance of Rs.19,113/- cut of the total addition of Rs.40,748/-. The assessee will get relief of Rs.19,113/- accordingly.

(2) *M/s. Chheda Marketing:* The difference in purchases as per the ledger account copies of the assessee and M/s. Chheda Marketing is Rs.1,12,467/- as per the order of the Assessing Officer. The assessee has claimed and debited purchases of

Rs.26,80,058/- from M/s Chheda Marketing as per details furnished whereas M/s. Chheda Marketing has shown goods sold to the assessee as per copy of account filed in response to notice under section 133(6) of the Act at Rs.27,92,525/-. It means assessee has shown less purchase in the accounts than shown the seller. Therefore, there cannot be any addition on account of unaccounted purchases in the case of the assessee. The copies of accounts filed by the assessee to the Assessing Officer during the assessment proceedings shows that the difference of excess sales shown by the seller was on account of sales entered in current year in the books of accounts by M/s. Chheda Marketing whereas the assessee already claimed the same purchases in the earlier year to the extent of Rs.1,12,467/- as per the reconciliation statement and copies of accounts filed. Since there is no difference in the ledger entries on account of any unaccounted purchases, the addition made of Rs.1,12,467/- deleted. The Assessing Officer is accordingly directed to delete the addition made for unexplained purchases in the name of above party.

(3). M/s. Intercraft: The purchases from this party as per the assessee are of Ps.47,27,256/- whereas M/s intercraft has shown goods sold to the extent of Rs.37,87,225/- and accordingly there is difference of unexplained purchases in the hands of the assessee at Rs. 9,40,031/-. The Assessing Officer has asked the assessee to reconcile the difference but the same was not explained and reconciled. The assessee was also given opportunity during the appeal proceedings but the assessee failed to explain the difference and to file any plausible reason for such difference except the routine submission made earlier during assessment proceedings. Since the purchases claimed by the assessee from M/s. Intercraft to the extent of Rs.9,40,031/- are not reconciled and not reflected anywhere in the books of accounts, the addition made by the Assessing Officer as unexplained purchases at Rs.9,40,031/- is confirmed.

(4) M/s. Beauty Impex: There is difference in ledger account of purchases shown by the assessee and sales shown by M/s. Beauty Impex of Rs.10,97,165/-(Rs.28,44,082/- (-) Rs.17,46,917/-). The assessee has produced reconciliation statement and enclosed copies of accounts of both the parties. It is explained that difference of Rs.9,17,469/- is on account of entries in ledger of assessee on dated 07.05.2004 for Rs.5,23,154/-, Rs,36,783/- and Rs.3,57,532/- respectively which was claimed as purchases but pertains to rate differences in purchases of earlier year debited to the extent of Rs.9,17,469/-. This amount was not shown by M/s. Beauty Impex in sale of the year under reference as they have already included such amount as part of sales in earlier year and equal amount is now reflected in the opening balances of M/s. Beauty Impex as per the copy of accounts filed during the assessment proceedings. In view of the above, it is apparent that the assessee has claimed the purchases to the extent of rate difference of Rs.9,17,469/- in the year which was pertaining to the purchases made in

earlier years. Admittedly the expenditure being rate difference on purchases pertains to earlier Financial Year 2003-04 as shown by M/s. Beauty Impex, the same is not allowable expenditure for the year under reference being 'prior period expenditure'. Accordingly, the amount debited by the assessee to the Profit & Loss Account in the year under reference which was not reflected in the account of M/s. Beauty Impex to the extent of Rs.9,17,169/- is confirmed as expenditure not pertaining to the year under reference. As discussed above, assessee could not reconcile the difference to the extent of Rs.9,17,469/- out of total difference pointed by the Assessing Officer at Rs.9,17,469/- which leaves still unreconciled difference of Rs.1,79,696/- (Rs.10,97,165/- (-) Rs.9,17,469/-). Since the assessee has not filed any explanation and failed to reconcile the difference to the extent of Rs.1,79,696/-, the same is confirmed as unexplained purchases. In the result, Rs.9,17,469/- is confirmed as prior period disallowable expenditure and Rs.1,79,696/- as unexplained purchases.

(5) M/s K. Hetal Enterprises: In this case, the Assessing Officer issued notice under section 133(6) of the Act to the party at the address given but the notice was returned unserved. Officer asked the assessee to explain the reason and to prove the purchases along with proof of payments. In response to this, the assessee has filed copies of ledger accounts but could not produce any other details including payment proof during the assessment proceedings to the Assessing Officer. The Assessing Officer has, therefore, added entire amount of purchases shown from the above party as unexplained purchases to the extent of Rs.11,84,262/-. During the proceedings before this office, the assessee has filed copy of account of both the parties and a reconciliation statement which shows that M/s. K. Hetal has sold total goods to the assessee for Rs.10,38,824/- which includes sale to its store at Satellite area at Rs.7,92,172/- and Raipur area (Ahmedabad) at Rs.2,46,652/- during the year as against purchases claimed in the ledger account of assessee at Rs.11,84,262/-. Thus, as per the copies of account filed now as also to the Assessing Officer at the time of assessment proceedings, there is a difference of Rs.1,45,438/-. This difference of excess purchases shown is not reconciled by the assessee even in the appeal proceedings. The assessee has also filed confirmation from M/s K. Hetal Enterprises and contended that the same cannot be filed to the Assessing Officer as the party has closed business activities at Ahmedabad due to cancellation of distributorship and dealership by M/s. Hindustan Lever Ltd. It is also claimed that the party is assessed to tax at Ahmedabad and in support thereof copy of return of income for A.Y.2005-06 disclosing total income at Rs.1,55,070/- of the firm M/s. K. Hetal Enterprises vide receipt No.102 1006832 with ITO Ward 10(2), Ahmedabad is filed. Copies of all the bills and other relevant details including delivery challans indicating place of delivery are also filed. Regarding

payment of purchases, it is explained that all the payments were magic through account payee cheques and same are reflected in the copies of ledger accounts which was also filed to the assessing officer during assessment proceedings. All these evidence shows that purchases to the extent of Rs.10,38,824/- were made by the assessee from M/s K. Hetal Enterprises in the F.Y. 2004-05. The Assessing Officer is, therefore, directed to delete the addition to the extent of Rs.10,38,824/- out of unexplained purchases added in the name of above party of Rs.11,84,262. The remaining un-reconciled balance of purchases to the extent of Rs.1,45,438/- is confirmed as unexplained purchases.

In the result, the addition made by the Assessing Officer in the order on account of unaccounted purchases in the case of M/s. Millennium International, Vi/s. Intercraft, M/s. Beauty Impex and M/s K. Hetal Enterprises to the extent of Rs.21,635/-, Rs.9,40,031/-, Rs. 10,97,165/- (Rs.9,17,469/- (+) Rs. 1,79,696/-) and Rs. 1,45,438/- respectively total Rs,22,04,269/-) is confirmed. The Assessing Officer is directed to delete the remaining addition of Rs.10,70,404/- (Rs.33,74,673/- (-) Rs.22,04,269/-) out of unaccounted purchases in view of discussion made above. The ground of appeal is partly allowed.”

5. The assessee being aggrieved with the sustaining of the addition of Rs. 22,04,269/- by the CIT(A) had carried the matter in appeal before us. We find that the assessee despite having been put to notice as regards the date of hearing of the appeal, had however neither put up an appearance, nor any application seeking an adjournment had been filed before us. However, we find from the records that the assessee had way back on 30.07.2010 and 28.12.2010 placed on our record two paper books. We thus, in the backdrop of the aforesaid facts are constrained to proceed with under Rule 24 of the Appellate Proceedings Rules, 1963 and dispose off the appeal after hearing the respondent department, perusing the orders of the lower authorities and the material available on record. The Id. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities.

6. We have perused the 'Paper books' filed by the assessee, viz. (i) Paper book No. 1, dated 27.07.2010 that was filed on 30.07.2010 ; and (ii). Paper book No. 2, dated Nil that was filed on 28.12.2010. We find that the assessee had by placing on record exhaustive material, viz. (i). reconciliation statements in respect of the parties under consideration; (ii). copies of the ledger accounts of the parties ; and (iii). copies of sale bills of the

aforementioned parties, had tried to reconcile the variance appearing in the accounts of the respective parties, as had been confirmed by the CIT(A), viz. (i) M/s Millennium International; (ii) M/s Intercraft; (iii) M/s Beauty Impex; and (iv) M/s K. Hetal Enterprises. However, the facts averred by the assessee in the respective reconciliations and the documents in support thereof placed on record by him, i.e copies of the invoices, copies of the ledger accounts etc. cannot be summarily accepted and would require thorough verification. We thus, taking cognizance of the fact that as certified by the assessee, the documents forming part of both the 'Paper books' are available on the records of the lower authorities or are the extracts of its books of account for the year under consideration, which were produced before the A.O during the course of the assessment proceedings, are of the considered view that the matter in all fairness requires to be restored to the file of the A.O for fresh adjudication after making necessary verifications of the documents placed on record by the assessee in support of its reconciliation. We thus, in all fairness restore the issue to the file of the AO, who is directed to readjudicate the same after considering and making necessary verifications of the material filed by the assessee before us. Needless to say, the A.O in the course of the set aside proceedings shall afford reasonable opportunity of being heard to the assessee. We thus, restore the matter to the file of the A.O for fresh adjudication in terms of our aforesaid observations.

7. The appeal filed by the assessee is allowed for statistical purposes.

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8. We shall now advert to the appeal filed by the assessee against the order passed by the CIT(A)-35, Mumbai, dated 25.02.2013, which in itself arises from the order passed by the A.O under Sec. 271(1)(c) of the Act, dated 30.03.2010. The assessee assailing the order of the CIT(A) had raised before us the following grounds of appeal:

- “1. *The Learned Commissioner of Income Tax Appeals 35 [CIT (A)] erred in confirming penalty U/s 271(1)(c) levied by Income Tax Officer Ward 25(3) (1) Mumbai of the Income Tax Act, 1961 (the Act).*
2. *The Learned CIT(A) further erred in making incorrect & irrelevant observation that disallowance confirmed by first appellate authority is clearly case of furnishing inaccurate particulars of income & therefore confirmed penalty.*
3. *The Learned CIT(A) failed to appreciate and ought to have held that discrepancy arisen out of reconciliation with party ledger account does not amount to be bogus purchases and/or concealment of income.*
4. *The appellant therefore craves to delete the penalty confirmed by the Learned CIT (A) u/s 271 (1) (c) of the Act.*
5. *The Appellant craves leave to add to alter and/or delete all or any of the above ground.”*

9. Briefly stated, the facts of the case are that the A.O after the order passed by the CIT(A) in the quantum appeal, called upon the assessee to show cause as to why penalty under Sec.271(1)(c) of the Act may not be imposed on him in respect of the unverified purchases of Rs.22,04,269/- which were sustained in appeal by the CIT(A). The explanation of the assessee that no such penalty was liable to be imposed did not find favour with the A.O, who vide his order dated 25.02.2013 imposed a penalty of Rs.7,41,957/- under Sec. 271(1)(c).

10. Aggrieved, the assessee carried the matter in appeal before the CIT(A), who vide his order dated 25.02.2013 sustained the penalty imposed by the A.O under Sec. 271(1)(c) and dismissed the appeal.

11. The assessee being aggrieved with the order of the CIT(A), had carried the matter in appeal before us. We are of the considered view that as we have set aside the quantum assessment to the file of the A.O for fresh adjudication in terms of our aforesaid observations, hence the issue as regards penalty imposed under Sec. 271(1)(c) is also to be restored, on the same terms, to the file of the A.O. The A.O shall remain at a liberty on the

issue of imposition of penalty under Sec. 271(1)(c) after readjudicating the quantum issue.

12. The appeal of the assessee is allowed for statistical purpose.

13. The appeals of the assessee i.e ITA No. 2624/Mum/2009 and ITA 2958/Mum/2013, are allowed for statistical purposes.

Order pronounced in the open court on 31/05/2018.

Sd/-
(R.C SHARMA)
ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक 31.05.2018
Ps. Rohit

Sd/-
(RAVISH SOOD))
JUDICIAL MEMBER

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)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

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आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

