

IN THE INCOME TAX APPELLATE TRIBUNAL "A"
BENCH, MUMBAI
BEFORE SHRI R. C. SHARMA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.4876/Mum/2014
(निर्धारण वर्ष / Assessment Year: 1998-99)

M/s. Kalpit Trading P. Ltd. 1, Raj Bhavan, Marve Road, Malad West Mumbai- 400064.	<u>बनाम/</u> Vs.	Dy. CIT, OSD-II, Central Range-7, Old CGO Bldg, M.K. Road, Mumbai 400020.

(ITA. No. 4875/Mum/2014)

(निर्धारण वर्ष / Assessment Year: 1999-2000)

M/s. Cavalier Trading P. Ltd. 1, Raj Bhavan, Marve Road, Malad West Mumbai- 400064.	<u>बनाम/</u> Vs.	Dy. CIT, OSD-II, Central Range-7 Old CGO Bldg, M.K. Road, Mumbai-400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACC5018P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Revenue by:	Shri V. Vidyadhar (DR)
Assessee by:	Shri Baboolal M. Ostwal (AR)

सुनवाई की तारीख / Date of Hearing: 06.03.2018
घोषणा की तारीख /Date of Pronouncement: 29.05.2018

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the above mentioned appeals against the different order passed by the Commissioner of Income Tax (Appeals)-40, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.1998-

99 & 1999-2000. Since common question of law and facts are involved in the above mentioned appeals, therefore, the said appeals are being taken up together for adjudication.

ITA. NO. 4876/M/2014:-

2. The assessee has filed the present appeal against the order dated 12.03.2014 passed by the Commissioner of Income Tax (Appeals)-40, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the assessment year 1998-99.

3. The assessee has raised the following grounds: -

“1. On facts and in the circumstances of the case and in law. Id. AO had erred in rejecting the books of account and estimating the appellant's income at 3% of aggregate of purchases and sales. Ld. CIT-A has erred in confirming rejection of books of account and estimating appellant's income at Rs.25,00,000/- i.e. at 1,5 %of aggregate of purchase and sales.

2 On facts and in the circumstances of the case and in law, the learned assessing officer has erred in considering inter alia the purchase and sales bills in respect of which the appellant has already declared income at 6% u/s. 44AD and to That extent the learned assessing officer has computed the income twice In respect purchase and sales bills.

3 On facts and in the circumstances of the case and in law. Id. AQ had erred in estimating the income at i.e Rs.3,89,505/- by applying flat rate of 3% on purchases and sales transactions of Shares and adding such estimated income to the income returned from share transactions at Rs 3,94,079/- which had also resulted in considering the same income twice. Ld CIT-A has erred in confirming the addition to the extent of Rs,1.94.798/-.

A. Appellant craves leave to amend, alter or delete any of the above grounds of appeal.”

4. The brief facts of the case are that the Assessee filed his return of income on 27.11.1998 declaring total income to the tune of Rs.6,40,105/-. The return was processed u/s 143(1)(a) of the Act. Thereafter, the case was selected for scrutiny. Therefore, notice u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee company has shown income from trading in various commodities including steel, ropes, plastics etc. The necessary documents were furnished which were in the custody of the Sales Tax Authorities. A search action u/s 132 of the Act in July/Aug 1998 was initiated in the case of **Krishna Filaments Ltd and other cases** of that group. It was found that the assessee company was issuing accommodation bills to certain parties including Krishna Filaments Group. Action u/s 133A of the Act was taken and statement of Shri B.B. Joshi was recorded. Enquiry reveals that no transaction resulting in the delivery of goods took place. The assessee nowhere took the delivery and gave the delivery goods though shown as purchased and sold in the books. After recording each and every facts of the case, the books of account of the assessee was rejected and the profit ratio @ 3% was assessed on a sale and purchase. The assessee was not satisfied, the assessee filed an appeal before the CIT(A) who restricted the addition to the extent of 1 ½ on the sale and purchase. Aggrieved by this order also, the assessee filed the present appeal before us.

ISSUE NOS 1 TO 2:-

5. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. A search and seizure action was taken u/s 132 of the Act in the case of Krishna Filaments Group. It was disclosed that the assessee was involved in issuing the bills without delivery of goods and also purchasing the goods without delivery of actual goods. The assessee neither did not delivery nor gave the delivery of goods. However, the Assessee showed the transaction in his books of account. The book of accounts was rejected. However at the time of completion of the assessment order, the AO issued the noticed to assess the profit @3% on the purchase and sale reflected in the books of accounts. After reply of the assessee and considering the each and every aspects of the case, the AO assess the income @ 3% on sale and purchase. Thereafter, the assessee challenged the said order before the CIT(A) who restricted the claim to the extent of 1.5%. The argument of the assessee is that in view of the notice dated 22.08.2001 in the profit should be estimated on sale and purchase @ 1% on sale and purchase. It is also argued that in the subsequent year, the AO assessed the estimated profit @ 1% on the sale and purchase, therefore, in these appeals also the profit ratio on sale and purchase is liable to be assessed @ 1% in accordance with law. However, on the other hand, the Ld. Department has refuted the said contention. Before going further, we deemed it necessary to advert the finding of the CIT(A) on record.: -

“II.I have carefully considered the facts of the case, order of the AO and submissions and contentions of the assessee. The learned AO has not given any basis or reasons or justification for adopting, brokerage rate of 3% in respect of issue of bogus sale/purchase bills. No comparative cases or instances have been cited by AO. Accordingly, the decision of the AO in adopting brokerage rate of 3% appears to be purely on guess work and estimate basis. In fact, initially, the AO wanted to adopt a brokerage rate of only 1%. However, later on, while completing the assessment, he adopted rate of 3%. My learned predecessor, while deciding the appeal of the assessee in the present year itself, had directed to adopt profit rate of 1.5%, vide order dated 28/12/2001, I am totally in agreement with the order of my learned predecessor and feel that in the absence of any evidence to the contrary, it will be fair and reasonable to estimate income of the assessee by way of brokerage, etc, for issuing non-genuine bills for sales and purchases, aggregating to Rs.16,59,91,616/- at the rate of 1.5%. I further agree with my learned predecessor that actual turnover of bogus sales and purchase can be taken at Rs.16,59,91,616/-, which includes purchase of Rs.12,77,80,307/- and sales of Rs. 3,82,11,309/- with the outside parties and turnover happening within the group concerns is not considered, as there is no likelihood of earning any brokerage/commission/service charges from the group concerns. The learned AO has nowhere rebutted the finding of my predecessor, either regarding profit rate of 1.5% or adaption of the turnover of Rs. 16,59,91,616/-. He has simply passed the assessment in a summary manner, without really examining the relevant issue, in light of Hon'ble ITAT's order and simply repeated the additions made in the original assessment order. Therefore, resulting income @ 1.5% on turnover of Rs.16,59,91,616/- works out to Rs.24,89,874/-, or Rs.25,00,000/-. Therefore, out of the total addition of Rs.80,07,149/- an amount of Rs.25,00,000/- is confirmed and the remaining amount of Rs.55,07,149/- is confirmed and the remaining amount is directed to be deleted.”

6. On appraisal of the above said finding, we nowhere found any cogent and convincing reason to reduce the profit ratio on the sale and purchase @ 1%. The AO has rejected the books of account on seeing the facts and circumstances of the case and assessed the income of the assessee @ 3% on sale and purchase. The CIT(A) reduced the the

same @ 1.5% of profit on sale and purchase. No distinguishable material has been produced before us to which it can be assumed that the same is liable to be reduced to the extent of 1% profit on sale and purchase. The assessment has been effected on the basis of the estimation basis by rejecting the books of account. The order of subsequent years passed by AO nowhere seems to binding upon us. Each year is the different year and facts of each year is liable to be considered on seeing the facts and circumstances of the case separately. We found no justifiable ground to interfere with the order passed by the CIT(A) in question. Therefore, these issues are decided in favour of the revenue against the assessee.

ISSUE NOS 3 TO 4:-

7. Under these issues the assessee has challenged the confirmation of addition to the extent of 1.5% on unexplained share transaction. Before going further, we deemed it necessary to advert the finding of the CIT(A) on record.:-

“15 Before me, it has been argued that whatever income the appellant had earned on share transactions has been recorded in the books. It is argued that the estimate by the AO is only on guess work. I partially agree with the appellant that estimation of income @ 3% is on higher side, as transactions in shares have to be in accordance with the quoted prices. The AO has neither referred to the quoted prices nor to any other deal comparable based on the facts. The income from other transactions which were non-genuine has been from other transactions which were non-genuine has been estimated by me @ 1.5% of the transaction amount, herein above. Therefore, it would be fair and reasonable if income from

these share transactions, on behalf of KFL, is also estimated at 1.5% of the transaction amount. The total quantum of purchase/sale bills for Krishna Filament Group companies, in respect of various shares, works out to Rs.64,65,642/- (purchases) + Rs.65,20,870/- (sales), totaling to Rs.129,86,512/-. Thus, the income of the assessee @ 1.5% on this works out to Rs.1,94,798/- as against the figure of Rs.3,89,595/-. Thus, the appellant gets a relief of Rs.1,94,797/- on this account, and this ground of appeal is partly allowed.”

8. The AO noticed the assessee's transaction of shares belonging to Krishna Filaments Ltd. and M/s. Krishna Vinyls Ltd. The AO estimated the profit @ 3% on purchase of shares and sales of share. The estimation of 3% by the AO was on the basis of sale and purchase of share of M/s. Satyanand Prasad Finance P. Ltd which was @ 6% profit on sale of shares. Therefore, the profit on sale and purchase of share was adopted @ 3% in view of the statement made by the Shri M.B. Joshi director of the appellant company. However, at the time of hearing before the CIT(A), the assessee contended that the income @ 3% is on the higher side. No comparable prices were produced on record. The CIT(A) assessed the income on the basis of other transaction @ 1.5%, therefore, he found reasonable to assess the profit ratio on account of sale and purchase oh shares @ 1.5%. No distinguishable material is on record. The assessment was based on the estimation basis. We nowhere found any material to interfere the finding of the CIT(A) on record. Therefore, we confirmed the finding of the CIT(A) on this issue and decide these issues in favour of the revenue against the assessee.

ITA NO. 4875/M/2014:-

9. The assessee has filed the present appeal against the order dated 13.03.2014 passed by the Commissioner of Income Tax (Appeals)-40, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.199-2000.

10. The assessee has raised the following grounds: -

"1 On facts and in the circumstances of the case and in law. Id AO had erred in rejecting the books of account and estimating the appellant's income at 3% of aggregate of purchases and sales. Id. CIT-A has erred in confirming reaction of Docks of account and estimating appellant Income at Rs. 1,01,67,870. i.e. at 1.5 %of aggregate of purchase and sales.

2 On facts and in the circumstances of the case and in law, Id AO had in estimating the appellant's income disregarding the fact that in the assessment year 1997-98 the same was estimated at 1% of aggregate of total purchases and total sales and Id. CIT-A has erred in confirming such disregard.

3. On facts and in the circumstances of the case and in Jaw, Id. AO had erred in disallowing the expenditure incurred exclusively for business purposes and Id. CIT-A has erred in confirming the same.

4. On facts and in the circumstances of the case and in law Id AO had erred in accepting some averments made in the affidavit by a director and disregarding some other averments by a director Ld.CIT-A has erred in confirming the same."

11. The facts of the present case are the same as mentioned in the appeal no 4876/M/2014 above, therefore, there is no need to repeat the same. The matter of controversy the above mentioned appeal is same, therefore, finding in the ITA. No. 4876/M/2014 is quite applicable as Mutatis Mutandis.

12. In the result, the appeals filed by the assessee is hereby ordered to be dismissed.

Order pronounced in the open court on 29.05.2018.

Sd/-
(R. C. SHARMA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai दिनांक Dated : 29.05.2018

VIJAY

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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai