

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

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

ITA NO. 2354/MUM/2012 : A.Y : 2008-09

M/s. Muscovite Construction Vs. Addl. Commissioner of Income
716, Marathon Max, Junction of Tax-23(2), Mumbai. (Respondent)
LBS Marg, Mulund (West),
Mumbai 400 080. (Appellant)
PAN : AAIFM0621M

Appellant by : Shri Devendra Jain
Respondent by : Shri Chaitanya Anjaria

Date of Hearing : 13/08/2018
Date of Pronouncement : 13/08/2018

ORDER

PER G.S. PANNU, AM :

The captioned appeal filed by the assessee pertaining to Assessment Year 2008-09 is directed against an order passed by CIT(A)-33, Mumbai dated 07.02.2012, which in turn arises out of an order passed by the Assessing Officer under Section 143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 29.12.2010.

2. In this appeal, the solitary issue relates to the disallowance of purchase of shuttering ply and timber of Rs.31,77,900/-.

3. The relevant facts are that the appellant is a partnership firm which is engaged in the business of civil contracting. In the course of assessment proceedings, the Assessing Officer noted that purchase of shuttering ply and timber was made by the assessee from two suppliers, namely, M/s. Shyam Enterprises – Rs.26,75,700/- and M/s. Griffon India – Rs.5,02,200/-. The Assessing Officer carried out verification exercise with respect to the aforesaid purchases by issuance of summons u/s 131 of the Act. Though the discussion in the assessment order reveals that initially both parties were not found at the stated addresses, after assessee gave the new addresses, notices were issued by the Assessing Officer and in response, both parties appeared. Their statements were recorded by the Assessing Officer, whose relevant portion has been reproduced in the assessment order itself. It transpires that during their deposition, both parties denied having supplied the material to the assessee and, therefore, the Assessing Officer treated the purchases of Rs.26,75,700/- and Rs.5,02,200/- as 'unexplained' and added the said amount to the returned income. The CIT(A) has also sustained the said action of the Assessing Officer.

4. Notably, before the Assessing Officer as well as before the CIT(A), assessee sought to justify the purchases on the basis of copies of invoices, etc. It was also asserted that the payments to the two parties have been made through account payee cheques. Assessee also explained that the purchases in question were of shuttering ply and timber, and if such purchases were held to be 'unexplained', then, assessee would not have been in a position to complete construction of the projects undertaken. Another aspect which was raised by the assessee was that it has not been

allowed an opportunity to cross-examine the two suppliers who denied effecting supplies to the assessee.

5. Before us, the learned representative for the assessee, at the outset, referred to the plea of the assessee that the statement of the two parties has been used against the assessee without affording the assessee an opportunity of cross-examination. It was also submitted that the assessee would be satisfied at the present if the Assessing Officer is directed to allow cross-examination of the said two parties as the assessee stands a good chance to demonstrate that the denial by the two parties was unjust and contrary to the actual state of affairs.

6. The Id. DR appearing for the Revenue defended the orders of the authorities below, but did not seriously oppose the plea of the assessee for remanding the matter back to the file of the Assessing Officer for allowing an opportunity to the assessee to cross-examine the suppliers.

7. Having considered the rival stands and the short plea of the assessee, we find that the assessee does deserve an opportunity of cross-examination of the two parties in question. Ostensibly, assessee has been consistently claiming that supplies have indeed been received from the two concerns and, in support, basic documents have also been brought out before the lower authorities. In fact, before us assessee referred to copies of bank statement of the subsequent period to show that payments have indeed been effected to the two parties through banking channels. We have also perused the questions put by the Assessing Officer to the two parties. It is quite strange that in an answer to a question as to whether the amount has

been received by the party through a cheque issued by the assessee, the payment has been denied. At the same time, the bank statement reveals that payment has indeed transferred from the assessee to that concern. Under these circumstances, it is in the fitness of things that assessee's plea for cross-examination the parties ought to have been allowed by the lower authorities in order to bring out the actual state of affairs. Therefore, considering the plea of the assessee, we hereby remand the issue back to the file of the Assessing Officer who shall revisit the entire controversy after allowing the assessee an opportunity to cross-examine the parties and considering the submissions and material that the assessee may put forth in support of his stand, in accordance with law.

8. We may clarify here that our action of setting-aside the matter to the file Assessing Officer should not be taken as any reflection on the merits of the case, which the Assessing Officer shall be free to arrive at in the ensuing proceedings, in accordance with the law.

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

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

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Mumbai, Date : 13th August, 2018

SSL

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

Copy to :

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

By Order

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