



IN THE INCOME TAX APPELLATE TRIBUNAL

"SMC" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA no.921/Mum./2018
(Assessment Year : 2010-11)

Rishabh Consumer Products Pvt. Ltd.
Flat no.705, Mitha Tower, Sector-17,
Plot no.41, Navi Mumbai 400 705
PAN – AACCR8140D

..... Appellant

v/s

Income Tax Officer
Ward-15(3)(1), Mumbai

..... Respondent

Assessee by : Ms. Dinkle Hariya
Revenue by : Shri S.K. Bepari

Date of Hearing – 11.09.2018

Date of Order – 11.09.2018

ORDER

Aforesaid appeal has been filed by the assessee challenging the order dated 17th November 2017, passed by the learned Commissioner (Appeals)-24, Mumbai, for the assessment year 2010-11.

2. Brief facts are, the assessee a company is engaged in manufacturing of oil and oil related product. For the assessment year under dispute, the assessee filed its return of income on 15th October 2010, declaring total income of ₹ 6,15,890. The return of income filed by the assessee was processed under section 143(1) of the Income

Tax Act, 1961 (for short "*the Act*"). Subsequently, on the basis of information obtained from the Sales Tax Department, State of Maharashtra, the Assessing Officer found that purchases of ₹ 78,92,528, shown to have been made by the assessee from Laxmi Enterprises is not genuine as the said party has been identified as a hawala operator providing accommodation bills. On the basis of such information, the Assessing Officer re-opened the assessment under section 147 of the Act. During the assessment proceedings, when the Assessing Officer called upon the assessee to prove the genuineness of such purchases, the assessee denied of having made any purchases from the said party. However, rejecting the submissions of the assessee, the Assessing Officer held that the purchases made by the assessee from Laxmi Enterprises remained unproved. However, on the basis of submissions made by the assessee for addition of gross profit @ 11.17% of the bogus purchases the Assessing Officer made addition of ₹ 8,81,595. Being aggrieved of such addition, though, the assessee filed an appeal before the first appellate authority, however, the learned Commissioner (Appeals) sustained the addition made by the Assessing Officer.

3. Though, the assessee has contested the order of the learned Commissioner (Appeals) raising various grounds including validity of

re-opening of assessment under section 147 of the Act as well as violation of rules of natural justice, however, at the time of hearing of appeal before me, the only submission made by the learned Authorised Representative is, though, from the stage of assessment proceedings itself the assessee has been claiming that in the relevant previous year, it has not effected any purchase from Laxmi Enterprises, the claim of the assessee was not considered properly. Though, the learned Authorised Representative agreed that purchases from Laxmi Enterprises were shown in the VAT audit report, however, she submitted that the assessee, in fact, has not made any purchases from the said party. Therefore, she requested for an opportunity to prove such fact before the Assessing Officer.

4. The learned Departmental Representative relied upon the observations of the Assessing Officer and the learned Commissioner (Appeals).

5. I have considered rival submissions and perused the material on record. The basic contention of the assessee before me is, it has not made any purchase from Laxmi Enterprises during the relevant previous year. Though, from the discussion of the Assessing Officer and the learned Commissioner (Appeals) it appears that the assessee itself has shown purchases from Laxmi Enterprises in the VAT audit

report, however, it is equally true that in course of assessment proceedings as well as before the learned Commissioner (Appeals) the assessee has claimed that it has not made any purchases from Laxmi Enterprises during the relevant previous year.

6. Before me, the learned Authorised Representative has submitted that the assessee was seriously handicapped in placing the real facts before the departmental authorities due to unavailability of relevant records and documents in its office, hence, has requested the Assessing Officer to supply certain documents.

7. Having considered the submissions of the learned Authorised Representative, I am of the view that the assessee deserves an opportunity to establish its claim that it has not effected any purchase from Laxmi Enterprises in the relevant previous year. However, the onus to prove such fact through proper and authentic documentary evidence is entirely on the assessee. Accordingly, I restore the issue relating to the addition made on account of alleged bogus purchases to the file of the Assessing Officer for de novo adjudication after due opportunity of being heard to the assessee. In view of the above, grounds no.2 and 3 are allowed for statistical purposes and ground no.1 is dismissed as not pressed.

8. In the result, assessee's appeal is partly allowed for statistical purposes.

Order pronounced in the open Court on 11.09.2018

**Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER**

MUMBAI, DATED: 11.09.2018

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury
Sr. Private Secretary*

By Order

(Sr. Private Secretary)
ITAT, Mumbai