

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' SMC BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री अब्राहम पी.जॉर्ज, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1388/Chny/2017

निर्धारण वर्ष / Assessment Year : 2009-10

M/s Sri Rathnamahal Jewellers,
R-12, Eashwari Complex,
70-71, K.G. Street,
Coimbatore – 641 001.

v. The Income Tax Officer,
Non Corporate Ward - 1(4),
Coimbatore.

PAN : ABJFS 9746 H

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri K. Raghu, CA

प्रत्यर्थी की ओर से/Respondent by : Shri B. Sagadevan, JCIT

सुनवाई की तारीख/Date of Hearing : 21.06.2018

घोषणा की तारीख/Date of Pronouncement : 26.06.2018

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) -2, Coimbatore, dated 30.03.2017 and pertains to assessment year 2009-10.

2. Shri K. Raghu, the Ld. representative for the assessee, submitted that the assessee engaged itself in the business of gold jewellery and

diamonds. According to the Ld. representative, the assessee filed return of income on 30.11.2009 admitting the taxable income of ₹6,060/-. The Assessing Officer reopened the assessment by issuing notice under Section 148 of the Income-tax Act, 1961 (in short 'the Act') on 30.03.2015. According to the Ld. representative, the Assessing Officer found that there were bogus purchases to the extent of ₹19,96,000/- from M/s Avi Exports, Surat during the financial year 2008-09. The assessee explained before the Assessing Officer that the purchases were made from M/s Avi Exports to the extent of ₹19,96,000/- and these were not bogus purchases as claimed by the Assessing Officer. According to the Ld. representative, the payment to M/s Avi Exports was made through account payee demand draft. The sales of diamonds were also reflected in the books of account maintained in the regular course of business. Therefore, according to the Ld. representative, there cannot be any disallowance.

3. Shri K. Raghu, the Ld. representative for the assessee, further submitted that the Assessing Officer rejected the explanation of the assessee on the basis of the statement said to be recorded from one Shri S. Rajendra Jain, the proprietor of M/s Avi Exports. According to the Ld. representative, copy of the statement said to be recorded from Shri Rajendra Jain was not furnished to the assessee and the assessee had no occasion to go through the so-called statement said to be recorded

from Shri Rajendra Jain. Therefore, according to the Ld. representative, the CIT(Appeals) is not justified in confirming the order of the Assessing Officer. When the assessee purchased diamonds from M/s Avi Exports and the payment was made through account payee cheque and the sale of diamonds was also reflected in the books maintained by the assessee in the regular course of business, according to the Ld. representative, there cannot be any reason to doubt the genuineness of transaction merely on the basis of the statement said to be recorded from Shri Rajendra Jain.

4. On the contrary, Shri B. Sagadevan, the Ld. Departmental Representative, submitted that the Department examined Shri Rajendra Jain, the proprietor of M/s Avi Exports, who clarified that there was no trading in diamonds but indulged in paper transactions only. Therefore, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the order of the Assessing Officer. The Ld. D.R. further submitted that in case the assessee wants a copy of statement recorded from Shri Rajendra Jain, the matter may be remitted back to the file of the Assessing Officer for reconsideration after furnishing a copy of the statement recorded from Shri Rajendra Jain.

5. We have considered the rival submissions on either side and perused the relevant material available on record. The fact that the payment was made to M/s Avi Exports by demand draft is not in dispute.

The Assessing Officer doubted the genuineness of transactions on the basis of the statement said to be recorded from Shri Rajendra Jain, the proprietor of M/s Avi Exports. It is also not in dispute that the sales made by the assessee were reflected in the books maintained by the assessee in the regular course of business. If the Assessing Officer doubts the very purchase of diamonds, then there cannot be any addition for investment made in the diamonds itself. The assessee explained before the Assessing Officer that ₹19,96,000/- were paid through account payee demand drafts and the sales were also reflected in the books of account. Therefore, this Tribunal is of the considered opinion that when the Revenue doubts the genuineness of purchase of diamonds from M/s Avi Exports, a copy of statement said to be recorded from Shri Rajendra Jain ought to have been furnished to the assessee and Shri Rajendra Jain ought to have been made available for cross examination by the assessee.

6. The Ld. representative for the assessee placed his reliance on the judgment of Delhi High Court in I.T.A. No.106 of 2007 and the judgment of Apex Court in S.L.P.(C) No.28961 of 2009. When the assessee was in the business of jewellery and diamonds and the Revenue found that there were some bogus purchases introduced and the information available with the Department was not put to the assessee for rebuttal or cross examination, the Delhi High Court and the

Apex Court found that there cannot be any disallowance on the basis of such information or statement available with the Department. In view of the judgment of Delhi High Court and Apex Court, more particularly in CIT v. J.M.D. Computers And Communications Pvt. Ltd. in S.L.P. (C) No.28961 of 2009, this Tribunal is of the considered opinion that there cannot be any disallowance in the facts and circumstances of the case. Therefore, this Tribunal is unable to uphold the orders of the lower authorities. Accordingly, orders of both the authorities below are set aside the disallowance of ₹19,96,000/- is deleted.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 26th June, 2018 at Chennai.

Sd/-
(अब्राहम पी.जॉर्ज)
(Abraham P. George)
लेखा सदस्य/Accountant Member

Sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 26th June, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-2, Coimbatore
4. Principal CIT, Coimbatore
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.