

आयकर अपीलीय अधिकरण पुणे न्यायपीठ “एक-सदस्य” मामला पुणे में

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE**

श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

BEFORE SHRI VIKAS AWASTHY, JM

आयकर अपील सं./ ITA Nos. 145 & 146/PUN/2018

निर्धारण वर्ष / Assessment Years: 2010-11 & 2011-12

M/s. Metallurgical Products (India)
Pvt. Ltd.
Plot No. T-27, MIDC Indl. Area,
Taloja, Taluka- Panvel, Raigad.
PAN : AACCM7042D

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-3, Panvel,
Dist. Raigad.

.....प्रत्यर्थी / Respondent

Appellant by : Shri Prayag Jha
Respondent by : Shri M.K. Verma

सुनवाई की तारीख / Date of Hearing : 22.11.2018

घोषणा की तारीख / Date of Pronouncement : 26.11.2018

आदेश / ORDER

PER VIKAS AWASTHY, JM

These two appeals by assessee are directed against the order of Commissioner of Income Tax (Appeals)-2, Pune for the assessment years 2010-11 & 2011-12, respectively. Both the impugned orders are of even date i.e. 07.09.2017.

2. Since the issue raised by assessee in both the appeals is identical and is arising from same set of facts, these appeals are taken up together for adjudication and are being disposed of vide this common order.

ITA No. 145/PUN/2018
A.Y.2010-11

3. In ITA No.145/PUN/2018, the assessee has assailed the order of Commissioner of Income Tax (Appeals) by raising following concise grounds/ additional grounds of appeal:

“1. The learned CIT(A) erred in sustaining the disallowance of Rs.16,53,022/- made on account of bogus purchases without appreciating that the disallowance was made mechanically without considering the evidences furnished by the assessee and also without rejecting the books of account.

2. Without prejudice to Ground No.1, the Learned CIT(A) erred in not appreciating that at best only a percentage of the alleged bogus purchases could have been disallowed and not the entire claim of Rs.16,53,022/-.”

Additional Grounds of Appeal:

1. The learned CIT(A) erred in not appreciating that the Learned Assessing Officer while passing the Assessment order had ignored the fact that the assessee, being a 100% Export Oriented Unit, was eligible for deduction u/s.10B of the I.T. Act.

2. The Learned CIT(A) erred in not appreciating that the Learned Assessing Officer, while passing the assessment order, had not allowed set off for depreciation of Rs.59,40,244/- of the current year and also the business losses and depreciation brought forward from the earlier assessment years.”

4. Shri Prayag Jha appearing on behalf of the assessee submitted at the outset that in the assessment year under appeal, re-assessment proceedings were initiated on the basis of information received from Maharashtra Sales Tax Department. The Assessing Officer in re-assessment proceedings held that the assessee has made purchases from suspicious hawala dealers viz. M/s. Riddhi Associates and M/s. A.P Enterprises and made addition of the entire purchases made from the above said dealers aggregating to Rs.16,53,022/-.

4.1 The ld. AR submitted that during re-assessment proceedings, the assessee had furnished necessary documents to substantiate the purchase of goods. The assessee vide communication dated 19.12.2014 had submitted before the Assessing Officer copy of ledger account of M/s. Riddhi Associates and M/s. A.P Enterprises, copy of tax invoice of the aforesaid parties, copy of stock register for the period relevant to assessment year 2010-11, copy of purchase order and copy of bank account statements from 01.04.2009 to 03.03.2010. The assessee had made payment for the purchase through banking channels. The Assessing Officer without taking into consideration above said documents, made addition of the entire purchases. The assessee assailed the addition before the Commissioner of Income Tax (Appeals). The First Appellate Authority without appreciating the documents on record confirmed the addition, in toto. Hence, the present appeal.

4.2 The ld. AR filed additional ground of appeal stating that Authorities below have failed to take into consideration that the assessee is 100% Export Orientated Unit and eligible for deduction u/s.10B of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') and also the fact that assessee has suffered losses. The addition, if any, is to be set off against loss.

5. Shri M.K. Verma representing the Department vehemently supported the impugned order. The ld. DR submitted that the assessee has failed to show genuineness of the dealers from whom purchases were made. The Department had received information from Maharashtra Sales Tax Department regarding hawala dealers. The assessee is one of the beneficiaries from the dealers who indulge in providing book entries without actual supply of goods. The ld. DR prayed for dismissing the appeal of assessee.

6. Both sides heard. Orders of the Authorities below perused. The assessee in appeal has assailed the addition of Rs.16,53,022/- made on account of bogus purchases. The assessee is engaged in the business of manufacturing of chemicals like Niobium Oxide using Niobium and Tantalum. During the period relevant to the assessment year 2010-11, the assessee had made purchases from M/s. Riddhi Associates and M/s. A.P Enterprises. Purportedly both the above said firms have been declared as hawala dealers by the Maharashtra Sales Tax Department. The Assessing Officer made addition of Rs.16,53,022/- on account of goods purchased by assessee from the aforesaid parties. The assessee was asked to prove genuineness of the purchases by the Assessing Officer. The assessee vide letter dated 19.12.2014 furnished following documents;

- i) Copy of Ledger account of M/s. Riddhi Associates and M/s. A.P Enterprises.
- ii) Copy of tax invoices from M/s. Riddhi Associates and M/s. A.P Enterprises.
- iii) Copy of stock register
- iv) Copy of purchase order
- v) Copy of bank account statements indicating payments.

The short contention of the ld. AR for the assessee is that while holding the purchases as non genuine, Authorities below have failed to consider documents furnished by the assessee.

7. The ld. AR has raised additional grounds of appeal stating that the assessee is 100% Export Oriented Unit and eligible for deduction u/s.10B of the Act. Further, the Assessing Officer has not allowed set off of depreciation of the current year and the business losses and depreciation brought forward from earlier assessment year. The additional grounds raised by assessee are legal in nature, hence, the same are admitted in line with the decision of

Hon'ble Supreme court of India in the case of NTPC Ltd. Vs. CIT reported as 229 ITR 383 (SC).

8. After taking into consideration entire facts of the case, we are of considered view that the appeal needs a revisit to the file of Assessing Officer for examination of the documents filed by the assessee during the course of assessment proceedings. The Assessing Officer is further directed to examine assessee's claim u/s.10B of the Act and the claim of set off of brought forward business loss and depreciation as claimed in additional grounds of appeal. The Assessing Officer after considering the documents furnished by assessee to prove genuineness of the purchases transaction and the claim of deduction u/s.10B shall pass a speaking order after granting sufficient opportunity of hearing to the assessee, in accordance with law.

9. In the result, the impugned order is set aside and appeal of the assessee is allowed for statistical purpose.

ITA No. 146/PUN/2018
A.Y.2011-12

10. The ld. AR submitted that in the assessment year 2011-12, similar addition was made by the Assessing Officer in respect of alleged bogus purchases from hawala dealers viz. M/s. Shradha Trading Company and A.P. Enterprises aggregating to Rs.2,71,762/-. The assessee for the assessment year 2011-12 as well, had furnished all the documents in support of the purchases made by the assessee. However, Authorities below have failed to consider the same. The Assessing Officer made addition of the entire purchases made by the assessee from the alleged hawala dealers and the Commissioner of Income Tax (Appeals) has confirmed the same.

11. The ld. AR submitted that the assessee has raised additional grounds of appeal qua assessee's eligibility for claiming deduction u/s.10B of the Act and set off of depreciation and brought forward business losses. The additional grounds raised in assessment year 2011-12 are identical to additional grounds raised in assessment year 2010-11.

12. Both sides heard. Both sides are unanimous in stating that the facts and grounds of appeal in assessment year 2011-12 are identical to assessment year 2010-11. For the sake of brevity the grounds of appeal/ additional grounds are not reproduced again. The only difference is that in the assessment year 2011-12, the assessee has made alleged bogus purchases from M/s. Shradha Trading Company instead of M/s. Riddhi Associates. The total alleged bogus purchases made by assessee in assessment year 2011-12 are to the tune of Rs.2,71,762/-. In view of identical issues and facts in both the appeals, the findings given in ITA No.145/PUN/2018 for assessment year 2010-11 would *mutatis-mutandis* apply to assessment year 2011-12, as well. Accordingly, appeal of the assessee in assessment year 2011-12 is allowed for statistical purpose.

13. To sum up, the appeals of assessee for assessment year 2010-11 and 2011-12 are allowed for statistical purpose.

Order pronounced on Monday, the 26th day of November, 2018.

Sd/-
(विकास अवस्थी /VIKAS AWASTHY)
न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 26th November, 2018.

SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-2, Pune.
4. The Pr. CIT-2, Thane
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव /Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.