



IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA no.687/Mum./2018
(Assessment Year : 2010-11)

Meridian Foods Pvt. Ltd.
903, Reheja Centre
Free Press Journal Marg
Nariman Point, Mumbai 400 021
PAN – AANCS0271M

..... Appellant

v/s

Income Tax Officer
Ward-5(3)(4), Mumbai

..... Respondent

Assessee by : Shri Suresh Anchaliya
Revenue by : Shri Vivek Anand Ojha

Date of Hearing – 06.03.2019

Date of Order – 22.03.2019

ORDER

Aforesaid appeal has been filed by the assessee challenging the order dated 21st September 2017, passed by the learned Commissioner (Appeals)-10, Mumbai, pertaining to the assessment year 2010-11.

2. Brief facts are, the assessee company is engaged in the business of manufacturing and trading in diamond. In a search and seizure operation conducted under section 132 of the Income-tax Act, 1961 (for short "*the Act*"), on Bhanvarlal Jain Group on 3rd October 2013

certain incriminating materials were found and seized. On the basis of information / incriminating material, the Assessing Officer found that the assessee is one of the beneficiaries of the accommodation entries provided by Bhanvarlal Jain Group. Accordingly, he re-opened the assessment under section 147 of the Act. In the course of assessment proceedings, the Assessing Officer called upon the assessee to prove the genuineness of the purchases of ₹ 1,87,56,587 from Pushpak Gems, an entity allegedly controlled by Bhanvarlal Jain Group. In response to the query raised by the Assessing Officer, the assessee furnished copies of purchase bills, confirmation and affidavit, bank statement, income tax assessment details, etc. However, the assessee could not produce the concerned party before the Assessing Officer. The Assessing Officer after analyzing the information / incriminating material available on record, including statements of third parties, ultimately concluded that purchases of ₹ 1,87,56,587, are non-genuine. Therefore, he added back an amount of ₹ 15,00,527 to the income of the assessee, being 8% of the non-genuine purchases. The aforesaid addition was also sustained in appeal by the learned Commissioner (Appeals).

3. The learned Authorised Representative submitted, though, the assessee had produced all evidences to prove the genuineness of the purchases, however, only because the assessee could not produce the

concerned selling dealer, the Assessing Officer made the impugned addition. He submitted, now the selling dealer is willing to appear before the Assessing Officer. He submitted, in case the Assessing Officer issues summons to the selling dealer, the assessee would ensure appearance of the concerned party before the Assessing Officer. Thus, he submitted, the issue may be restored to the Assessing Officer for de novo adjudication.

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

5. I have considered rival submissions and perused materials on record. As could be seen from the facts on record, the Assessing Officer has accepted that in the course of assessment proceedings the assessee had furnished various documentary evidences including confirmation and affidavit of the selling dealer. It appears, only because the assessee could not produce the concerned selling dealer, the Assessing Officer has treated the purchases as non-genuine and made the impugned addition. Of course, while doing so, the Assessing Officer has relied upon certain third party statements. As submitted before me by the learned Authorised Representative, if the selling dealer is willing to appear before the Assessing Officer to authenticate the sales made by it to the assessee, the Assessing Officer must take

into account the evidence of the selling dealer. Therefore, I am inclined to restore the issue to the Assessing Officer for de novo adjudication after due opportunity of being heard to the assessee. I direct the Assessing Officer to issue summons under section 131 of the Act to the selling dealer upon intimation to the assessee. Once such summons under section 131 of the Act is issued to the selling dealer, the assessee must ensure appearance of the concerned selling dealer before the Assessing Officer. With the aforesaid observations, grounds are allowed for statistical purposes.

6. In the result, appeal is allowed for statistical purposes.

Order pronounced in the open Court on 22.03.2019

**SD/-
SAKTIJIT DEY
JUDICIAL MEMBER**

MUMBAI, DATED: 22.03.2019

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

True Copy
By Order

(Sr. Private Secretary)
ITAT, Mumbai