

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 4722/Del/2014
Assessment Year 2009-10

Asstt. Commissioner of Income Tax, Central Circle-23, New Delhi.	Vs.	M/s. Kurele Packaging (P) Ltd., G-23, Site no. 1 Panki Industrial Area, Kanpur – UP 208022
(Appellant)		(Respondent)

Department by:	Shri J.K. Mishra, CIT(DR)
Assessee by :	Shri Sanjay Kumar, CA, Shri Ajay Kumar Dubey, CA Shri Akarsh Garg, Advocate
Date of Hearing	14/03/2019
Date of pronouncement	29/03/2019

ORDER

PER AMIT SHUKLA, JM :-

The aforesaid appeal has been filed by the revenue against impugned order dated 28.3.2014 passed by Ld. CIT(Appeals)XXXIII, New Delhi for the quantum of assessment u/s 143(3) for the assessment year 2009-10. In the grounds of appeal, revenue has raised the following grounds:-

1. *“On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in estimating the unaccounted purchases at Rs. 10,00,000/- when Rs. 2,54,73,510/- was added on this account on the basis of seized material and the fact was*

confirmed by Shri R.K. Seth in his statement recorded during the course of search.

2. On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in estimating the undisclosed profit at Rs. 78,000/- which is 7.8% of the estimated unaccounted purchases Rs. 10,00,000/- when the AO made addition at the same rate on the unaccounted purchases of Rs. 2,54,73,510/- amounting to Rs. 19,08,934/-.”

2. The facts in brief are that Assessee Company is engaged in the business of manufacturing and trading of co-extruded multilayer poly film, LDPE Film, Lay Flat Tubing and Plastic Granules. A search and seizure operation u/s 132 was carried out on Kurele Group including assessee on 19.1.2009. The assessee company filed its return of income for the Asstt. Year 2009-10 on 30.9.2009 at Rs. 66,980/-. Since it was year of the search order assessee's case was selected for scrutiny, vide notice dated 27.7.2010 issued u/s 143(2). Ld. AO noted that in the course of search and seizure operation at the premises of another person, Shri Ramesh Seth, he in his statement recorded u/s 132(4) stated that annexure seized from his premises i.e., LP-4, LP-5 and LP-6 are receipts of granules by the assessee company. He also stated that part of the premises was used by the family member of Shri Vinay Kumar Kurele which indicated receipts of granules by the assessee company, M/s. Kurele Packaging Pvt. Ltd. Accordingly, assessee was required to submit explanation, as to why, firstly, why the receipt of granules aggregating to Rs. 2,54,73,510/- as reflected in LP-4, LP-5 and LP-6 may not be treated as the assessee's unaccounted purchases from undisclosed sources; and secondly, why a gross profit of 7.8% should not be estimated on such purchases. In response the assessee submitted reply, though as per the AO was only with respect

to documents contained in LP-4 and no explanation was offered for document pertained to LP-6. After detailed discussion, he came to the conclusion that assessee was indulged in manipulating the books of accounts and, therefore, he was not satisfied about the correctness and completeness of the accounts and same were rejected u/s 145(3). He first of all treated the amount of Rs. 2,54,73,510/- as unaccounted purchases and added back the entire purchases to the income of the assessee; and thereafter, he also applied gross profit ratio of 7.8% on such purchases which again was added. He also observed that since in the hands of Shri Ramesh Seth addition was made on protective basis, therefore, addition of Rs. 2,75,27,420/- should be made on substantive basis in the case of the assessee.

3. Before the Ld. CIT (A), assessee filed its detailed rebuttal and explanation stating that, though initially Shri Ramesh Seth stated that seized documents pertained to the assessee, however later on, he has duly owned these documents belonging to him. Secondly, it was erroneous on the part of the AO to observe that the assessee has not given explanation with regard to other seized documents except for LP-4. Once AO has admitted that documents found from the resident of Shri Ramesh Seth pertained to transaction of purchase for manufacturing and sale of the assessee company, then no addition on account of total purchases could have been made; and at the most, reasonable rate of net profit on such transaction should have been added. It was further pointed out that in the first appellate order in the case of Shri Ramesh Seth, certain mistakes have crept in from taking the figures from the seized documents and also computational mistakes, should be removed from the case of the assessee also. Such arithmetical mistakes which have been appreciated by the Ld. CIT(A) in the case of Shri Ramesh Seth were as under :-

“Ld. AR has argued that these are errors in computing the transaction is LP-4. Ld. AR has argued following errors in computing of total transaction of LP-4.

- (i) On the basis of nothing on Page no. 11, 40 bags has been taken twice.*
- (ii) Page No. 52 mention 200 bags which has been taken as 2000 bags by the assessing officer & estimated transaction by Rs. 33,75,000/-*
- (iii) Page no. 53,40,33,13,3,2,1 are not evidencing the receipts of granules but commission etc. Which has been added for receipt of granule at Rs. 80,09,760/-*

I have perused the assessment order, copy of seized documents & claim of Ld. AR My views are as under:-

- (i) On page 2 of assessment order, in front of page 11 of LP-4 entry of 40 bags are mentioned twice. Therefore, prima facie, there is duplication of value of transaction for 40 bags being Rs. 75,000/-. The Ld. Assessing officer is directed to verify the original seized document of page no. 11 of LP-4 if there is only one entry of 40 bags, he is directed to delete the duplication of 40 bags valuing Rs. 75,000/- in total transaction value.*
- (ii) I have perused the photo copy of page 52 of LP-4. The narration on the said page is*

“200x 25 = 5000

200 bags.

Therefore, instead of 2000 bags, the said paper contains details of 200 bags of 25 Kg. Each. The assessing officer is directed to verify original seized paper if above entries are

correct, he is directed to compute transaction on the basis of 200 bags & not 2000 bags as mentioned in page 3 of assessment order.

(iii) I have perused page 53, 40, 33, 13, 3 & 21. The Ld. AR stated that these are not dispatch of granules but brokerage amount etc. On all these pages, there are figures with three digits after the sign such as “128 = 850”

Therefore, such figures cannot be in rupees as for rupees there would be two digit after the sign – ‘such as 79-50 signifies 79 rupees & 50 paisa.

Hence all these figure are in quantity in kilo grams & grams, which is the possible weight of granules as these papers are found along with the challan of granules. In any case, I have held that the appellant is not a brokerage for these transactions, hence, the Ld. AR’s argument that these pages do not contain weight of granules is not accepted.

After modifying the total transaction as per these seized documents the assessing officer is directed to apply gross profit rate of 7.8% to arrive at the profit & by adding initial investment, total undisclosed income is arrived at.

As held in earlier paragraph, these transaction belongs to M/s. Kurele Packaging Pvt. Ltd. the undisclosed income is sustained in appellant’s had protective basis as he had owned up these transaction.

Accordingly, on these grounds of appeal the appellant gets part relief to the extent of modification in total turnover / transaction.”

4. Ld. CIT(A) observed that similar arguments of ownership of paper was examined by him while disposing of the appeal in the case

of Shri Ramesh Seth, wherein he has given a categorical finding that these documents belong to the assessee company and represents unaccounted raw material purchase used for the production of the assessee company. He has then quoted the rectified portion of the appellate order. He has also taken note of the arithmetical mistakes as incorporated above. In so far as application of net profit is concerned, he held that it would be proper to estimate the gross profit and accordingly he upheld the GP ratio of 7.8% estimated by the AO. He also appreciated the assessee's submission that entire addition on account of unaccounted purchase could not have been made and in the case of Shri Ramesh Seth, AO has made addition of initial investment of Rs. 10 lacs for his unaccounted turnover which has been confirmed by him. Accordingly, he held that addition of turnover cannot be sustained as these entries contained in seized material continues to be unaccounted purchase which has been used in manufacturing process from where assessee has earned profit on such turnover. He estimated the initial investment to the extent of Rs. 10 lacs and confirmed the addition of Rs. 10 lacs and gross profit of 7.8% on modified turn over after correcting the arithmetical mistakes.

5. Against the said appellate order only revenue has come in appeal and assessee has accepted the addition which has been sustained by the Ld. CIT (A).

6. After considering the rival submissions and on perusal of the relevant finding given in the impugned order as well as material referred to before us, we find that, there is a categorical finding of the Ld. CIT (A) that the documents seized from the premises of Shri Ramesh Seth during the course of search carried out in his case, relates to some unaccounted purchase of raw material which was used for the manufacturing / production of the assessee company. Ld.

AO has treated the entire transaction on purchase of raw material as income from undisclosed and added the entire purchase aggregating to Rs. 2,54,73,510/- and has further applied GP ratio of 7.8 % for which addition of Rs. 19,86,934/- has been made separately. Undisputedly, there were certain arithmetical mistakes while considering the seized documents for quantifying the purchase of raw material and the inference drawn by the AO vis-a-vis the quantity of raw material as highlighted above, i.e., certain bags were taken twice and figure of 200 bags has been taken as 2000 bags and certain receipts of granules and commission etc. has been added in the receipt of the granules. Ld. CIT (A) in his appellate order in the case of Shri Ramesh Seth has analysed in detail and has duly appreciated this fact and has reduced the quantum of such purchases recorded in seized documents. It is also a matter of record that these unaccounted purchases were rotated in the manufacturing process for which certain profit has been estimated. Once the purchases have been utilised in the production and for manufacturing which fact itself is borne out from the seized documents, then profit on such turnover from production needs to be estimated. Ld. CIT (A) has first of all estimated the initial investment at Rs. 10 lacs which have been affirmed by him; and after rectifying the arithmetical mistakes on the figure of turnover, has estimated the GP ratio of 7.8%. Such a reasoning is based on sound principle, because when there is continuous purchases of raw material which are consumed for manufacturing and then sale, which is borne out from same account, then, even if it is presumed that there were certain unaccounted purchases, the initial investment for purchases can be estimated, because the in continuum process sale itself becomes the source of further purchase. In that case entire purchases cannot be added and in such a situation, net profit rate or gross profit rate can be added. 7.

Here in this case, the Ld. Counsel for the assessee has pointed out that the seized documents itself revealed that these raw materials have been used for production which is reflected in the accounts. Under such facts and circumstances, we agree with the reasoning of the Ld. CIT (A) that entire purchases cannot be added. Accordingly, the finding and reasoning given by the Ld. CIT (A) is affirmed and consequently the revenue's appeal is dismissed.

8. In the result appeal of the revenue is dismissed.

Order pronounced in the Open Court on 29th March, 2019.

sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 29/03/2019

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Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, New Delhi