

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" Bench, Mumbai**

**Before Shri Shamim Yahya, Accountant Member  
and Shri Ravish Sood, Judicial Member**

**ITA No.788/Mum/2017  
(Assessment Year: 2009 -10)**

Rajesh Metal Industries Pvt. Ltd.  
12/18, Vitthalbhai Patel Road,  
C.P. Tank,  
Mumbai 400 004

ITO Ward-5(3)(1)  
Mumbai  
Vs.

PAN – AAACR1847D

**(Appellant)**

**(Respondent)**

Appellant by: Shri Bhupendra Shah, A.R

Respondent by: Shri Chaitnya Anjaria, D.R

Date of Hearing: 22.04.2019

Date of Pronouncement: 30.04.2019

**ORDER**

**PER RAVISH SOOD, JM**

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-10, Mumbai, dated 28.10.2016, which in turn arises from the order passed by the A.O under Sec. 143(3) r.w.s 147 of the Income Tax Act, 1961 (for short 'I-T Act'), dated 16.03.2015. The assessee assailing the order of the CIT(A) has raised before us the following grounds of appeal :

- "(1) In the facts and the circumstances of the case and in law, the learned A.O. erred in passing the order u/s 143(3) r.w.s 147 and therefore rendering the whole reassessment bad in law on the basis of borrowed satisfaction, presumption and surmises.*
- (2) In the facts and the circumstances of the case and in law, the learned Assessing Officer erred in addition of Rs. 22,05,739/- being 12.5% out of total purchases of Rs 1,76,45,913/- made from 3 suppliers*

- a) *Without obtaining the sanction of the higher authorities before issuing notice u/s 148*
  - b) *Only on the basis of information received from the MVAT department*
  - c) *By not granting opportunity of cross-examination and merely relying upon third party statements and without providing the copy of statements of the suppliers.*
  - d) *By overlooking the fact that all the payments were made by A/C payee cheques.*
  - e) *By disregarding the stock book and various details like invoices, delivery challans etc submitted during the assessment*
  - f) *By not rejecting the books u/s 145(3) and not providing any comparable instances.*
- (3) *In the facts and circumstances of the case and in law, the learned Commissioner of Income Tax(A) erred in confirming all the above grounds.*
- (4) *The Assessing Officer wrongly charged interest u/s 234 and initiated penalty u/s 271(1)(c)."*

2. Briefly stated, the assessee company which is engaged in the business of manufacturing of stainless steel house wares and utensils had e-filed its return of income for A.Y. 2009-10 on 30.09.2009, declaring income of Rs. 60,752/-. The return of income filed by assessee was processed as such under Sec. 143(1) of the I.T Act. Subsequently, on the basis of information shared by the office of the DGIT (Inv.) Mumbai with the A.O that investigations carried out by the Sales Tax Authorities had revealed that the assessee was one of the beneficiary who had obtained bogus purchase bills amounting to Rs.1,76,45,913/- during the year under consideration i.e A.Y. 2009-10, the case of the assessee was reopened under Sec.147 of the I-T Act.

3. During the course of the assessment proceedings the A.O on the basis of the aforesaid information called upon the assessee to substantiate the genuineness and veracity of the purchases which were claimed by it to have been made from the following three parties :

Manish Industrial Corporation	AALFM3174C	Rs.95,71,900/-
Vidhi and Varushti Trade Ltd.	AACCV1061H	Rs.22,41,396/-
Subhlaxmi Sales Corporation	-	Rs.58,32,617

In order to verify the veracity of the aforesaid purchase transactions, the A.O called upon the assessee to produce the original purchase bills and vouchers for necessary verification. Further, the assessee was also directed to produce the aforementioned parties and also support its claim of purchases made from them by producing certain documents viz. (i) stock register; (ii) particulars of the transporters; (iii) medium of transport; (iv) date of transport; (v) transport vouchers; (vi) octroi post records and payment particulars; (vii) details of the warehouses; and (viii) documentary evidence showing the movement of the goods in the course of its purchase/sale transactions. In reply, it was submitted by the assessee that as a consistent practise while booking the purchases in the 'books of accounts', the value wise details along with quantity of the material purchased was recorded by it in the purchase and stock register. In order to impress upon the A.O that genuine purchases were made from the aforementioned parties, it was submitted by the assessee that the payments to the aforesaid supplier parties was made by account payee cheques. Apart there from, the assessee produced before the A.O documentary evidence viz. purchase bills, delivery challans and the banks certificates evidencing the payments made to the aforesaid parties. Further, the assessee in order to buttress its claim that it had made genuine purchases of material from the aforementioned parties, therein furnished the quantitative details along with the average rate of the material that was purchased from the aforementioned parties, as under:

Sr. No.	Name of the party	Details of purchase
1.	Vidhi and Varushti Trade Pvt. Ltd.	10,960.920 Kgs Stainless Steel Coils (S.S. Coils) @ Rs.196.62 Per KG
2.	Manish Industrial Corporation	49,750 Kgs (S.S. Coils) @ Rs. 185 KG
3.	ShubhLaxmi Sales Corporation	35,613 Kgs ( Stainless Steel Components) @ Rs.157.48 per KG

In the backdrop of the aforesaid facts, it was the claim of the assessee that mere non-traceability of the aforementioned supplier parties would

not justify characterising the purchases made from them as ingenuine. The A.O in order to fortify the veracity of the purchases claimed by the assessee to have been made from the aforementioned parties issued notices under Sec.133(6) to them, which however in all the cases were returned unserved for the reason that the said parties were unavailable.

4. The A.O after deliberating on the contentions of the assessee was however not persuaded to subscribe to its claim that it had made genuine purchases from the aforementioned parties. It was observed by the A.O that the assessee could not substantiate the genuineness of the purchases on the basis of irrefutable documentary evidence. Apart there from, it was observed by him that the notices that were issued under Sec. 133(6) to the aforementioned parties were also returned unserved for the reason that the said parties were unavailable. It was also noticed by the A.O that the assessee could not place on record any such documentary evidence which would substantiate the movement of the goods from the supplier to the factory of the assessee company. Insofar the contention of the assessee that inward freight was always paid by the vendor was concerned, the same also did not find favour with the A.O for the reason that no such arrangement was discernible from the copies of the purchase bills. However, the A.O also observed that purchases claimed by the assessee to have been made from the aforementioned parties comprised about 62% of the aggregate value of the purchases made by it during the year. Apart there from, considering the fact that the assessee had produced the stock register the A.O did not dislodge the sales shown by the assessee. In the backdrop of the aforesaid facts, the A.O held a conviction that the assessee had purchased the goods under consideration not from the aforementioned parties as claimed by it, but had procured the same from the open/grey market. The A.O was of the view that the assessee by procuring the goods from the open/grey market would have benefited by purchasing

the same at a discounted value, as against that accounted for in its books of accounts. On the basis of his aforesaid deliberations the A.O estimated the profit element @ 12.5% of the aggregate value of the purchases claimed by the assessee to have been made from the aforementioned parties and made an addition of Rs.22,05,739/-.

5. Aggrieved, the assessee carried the matter in appeal before the CIT(A). However, the CIT(A) after deliberating on the contentions advanced by the assessee was not persuaded to subscribe to the same and dismissed the appeal.

6. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The ld. Authorized Representative (for short 'A.R') for the assessee took us through the facts of the case as were discernible from the orders of the lower authorities. It was submitted by the ld. A.R that as the assessee had reflected a G.P rate of 17% during the year under consideration which was in conformity with that shown in the past years, thus no addition on account of the purchases made by the assessee from the aforementioned parties was liable to be made in its hands. In order to buttress his claim that genuine purchases were made by the assessee from the aforementioned parties, the ld. A.R took support of the fact that the said purchase transactions were routed through the stock register maintained by the assessee company. Apart there from, it was averred by the ld .A.R that the very fact that 62% of the total purchases were made by the assessee from the aforementioned three parties in itself inspired confidence as regards the genuineness of the purchase transactions under consideration. It was submitted by the ld. A.R that the lower authorities had whimsically characterised the purchases under consideration as ingenuine. In order to support his claim as regards the genuineness of the purchase of material made from the

aforementioned parties, it was vehemently averred by the ld. A.R that the said fact could safely be gathered from the production records of the assessee. In sum and substance, it was the claim of the ld. A.R that the purchases and the consumption of the raw material purchased by the assessee from the aforementioned parties was routed through its production records. On the basis of his aforesaid contentions, it was the claim of the ld. A.R that no addition in respect of the purchases made by the assessee from the aforementioned parties was liable to be made.

7. Per contra, the ld. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities.

8. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. Admittedly, the assessee had claimed to have made purchases aggregating to Rs.1,76,45,913/- from the aforementioned three parties viz. (i) Manish Industrial Corporation (Rs. 95,71,900/-); (ii) Vidhi & Vrushti Trading Pvt. Ltd. (Rs.22,41,396/-); and (iii) Shubhlaxmi Sales Corporation (Rs.58,32,617/-). As observed by us hereinabove, the names of the aforementioned parties as per the information received by the A.O [through the office of the DGIT(Inv.)] from the Sales Tax Authorities had figured in the list of the hawala dealers who were engaged in issuing bogus bills. In the course of the assessment proceedings, the A.O in order to verify the veracity of the aforesaid purchase transactions had issued notices under Sec.133(6) to the aforementioned parties, which however were returned unserved for the reason that the said parties were not available. Apart there from, the assessee despite having been specifically directed by the A.O to produce the aforementioned parties for necessary verification, failed to do the needful. Further, as is discernible from the orders of the lower authorities the assessee also could not produce documentary evidence

which would evidence the movement of goods from the premises of the aforementioned supplier parties to the factory of the assessee company. In the backdrop of the aforesaid facts, we are persuaded to subscribe to the observations of the lower authorities that the assessee had failed to discharge the onus as regards proving the authenticity of the purchases claimed to have been made from the aforementioned parties. However, at the same time we also cannot remain oblivious of the fact that the assessee during the year had claimed to have carried out purchases aggregating to 62% out of its total purchases from the abovementioned three parties. As observed hereinabove, it is the claim of the Id. A.R before us that the complete chain of purchase of raw materials viz. S.S. Coils, Stainless Steel Components (S.S. Components) etc. made by the assessee from the aforesaid parties and its consumption in the process of manufacturing of stainless steel house wares and utensils could safely be correlated from its production records. We have given a thoughtful consideration to the facts of the case, and are of the considered view that in the backdrop of the claim of the assessee that the genuineness of the purchase transactions under consideration can safely be gathered from a perusal of the production records and supporting documents, therefore, in all fairness restore the matter to the file of the A.O for fresh adjudication. In case, the assessee in the course of the set aside proceedings is able to substantiate on the basis of its production records and supporting documents that the raw material consumed in its business of manufacturing of stainless steel house wares and utensils etc. or forming part of its 'Closing stock' as on 31.03.2009, were made from the aforementioned three parties, then no adverse inferences as regards the genuineness of the purchases claimed by the assessee to have been made from them would be liable to be drawn. We thus in terms of our aforesaid observations set aside the matter to the file of the A.O for fresh adjudication. In the course of the

set aside proceedings, the assessee in order to fortify its claim as regards the genuineness of the purchase of raw materials from the aforementioned parties shall produce its production records and supporting documents for necessary verification before the A.O.

9. Before parting, we may herein observe that as the assessee has not assailed the order of the CIT(A) on other grounds raised before us in the memorandum of appeal, therefore, the same are not being adverted to and adjudicated upon and are left open.

10. The appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 30.04.2019

Sd/-  
(Shamim Yahya)  
ACCOUNTANT MEMBER  
मुंबई Mumbai; दिनांक 30.04.2019  
Ps. Rohit

Sd/-  
(Ravish Sood)  
JUDICIAL MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,  
उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

