



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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, ACCOUNTANT MEMBER

ITA no.4311/Mum./2017
(Assessment Year : 2011-12)

ITA no.6652/Mum./2017
(Assessment Year : 2011-12)

Sachin Laxman Jangid
Ashu Apartment, Vishnu Nagar
Naupada, Thane (W) 400 602
PAN – ADBPJ0867C

..... Appellant

v/s

Income Tax Officer
Ward-3(3), Thane

..... Respondent

Revenue by : Shri M. Subramanyam
Assessee by : Shri Nitin Waghmode

Date of Hearing – 06.08.2019

Date of Order – 23.08.2019

ORDER

PER SAKTIJIT DEY. J.M.

Captioned appeals by the assessee are against two separate orders passed by the learned Commissioner of Income Tax (Appeals)-2, Thane, pertaining to the assessment year 2011-12.

ITA no.4311/Mum./2017

2. The aforesaid appeal arises out of quantum proceedings. The grounds raised in the memorandum of appeal pertain to the validity of ex-parte assessment order passed under section 144 r/w section 147 of the Act as well as on the merits of the addition made of ₹ 42,11,333, on account of non-genuine purchases. In addition, the assessee has raised additional grounds challenging the validity of re-opening of assessment under section 147 of the Act.

3. Brief facts are, the assessee is an individual engaged in the business of construction activity through his proprietary concern M/s. Sachin Construction. For the assessment year under dispute, the assessee filed his return of income on 29th September 2011, declaring total income of ₹ 71,16,370. The return of income filed by the assessee was processed under section 143(1) of the Act. Subsequently, on the basis of information received from the Sales Tax Department that the assessee is a beneficiary of accommodation entries provided by certain hawala operators by way of bogus purchase bills amounting to ₹ 42,11,333, the Assessing Officer 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, through proper documentary evidences, the

genuineness of purchases of ₹ 42,11,333, claimed to have been made from four parties. Further, to ascertain the genuineness of such transactions, the Assessing Officer conducted independent enquiry by issuing notices under section 133(6) of the Act to the concerned parties. As alleged by the Assessing Officer, in response to the query raised, the assessee did not furnish any evidence to prove the genuineness of the purchases. Further, the notices issued under section 133(6) of the Act either were not responded to or returned back un-served. In view of the aforesaid, the Assessing Officer proceeded to complete the assessment to the best of his judgment as per the provision of section 144 of the Act. While doing so, he added back the alleged bogus purchase of ₹ 42,11,333, to the income of the assessee. Against the aforesaid addition, the assessee preferred appeal before the first appellate authority.

4. In the course of appeal proceedings, learned Commissioner (Appeals) found that during the year, the assessee had effected total purchases of ₹ 2,48,49,832. Being of the view that the entire purchases shown by the assessee is not genuine, learned Commissioner (Appeals) issued notices for enhancement of income and after considering the submissions of the assessee, made further addition of ₹ 206,38,499.

5. The learned Authorised Representative submitted, due to unavoidable circumstances, the assessee could not appear and furnish supporting evidences before the Assessing Officer to prove the purchases which resulted in a best judgment assessment. Further, he submitted, learned Commissioner (Appeals) without properly appreciating the facts has enhanced the income by an amount of ₹ 2,06,38,499, disallowing all the purchases shown by the assessee. The learned Authorised Representative submitted, since the assessee is in construction activity, it is highly improbable for the assessee to carry on the construction work without purchasing materials like steel, cement, etc. He submitted, the fact that the assessee is engaged in construction activity is not disputed. Therefore, the entire purchase made by the assessee during the year cannot be treated as non-genuine. He submitted, the assessee has all the evidences to demonstrate that the materials like steel, cement, etc., were purchased and utilized in construction work during the year. Thus, he submitted, the addition made was not proper.

6. As regards the validity of assessment under section 147 of the Act, the learned Authorised Representative submitted, the Assessing Officer had no tangible material before him to re-open the assessment. Therefore, the re-opening of assessment under section 147 of the Act on a mere change of opinion is invalid.

7. The learned Departmental Representative submitted, in assessee's case no scrutiny assessment was made earlier and the return of income was processed under section 143(1) of the Act. He submitted, subsequently information came to the notice of the Assessing Officer indicating that the assessee has availed accommodation entries from hawala operators. That being the case, the re-opening of assessment having been made on the basis of tangible material is valid. As regards the merits of the addition, the learned Departmental Representative submitted, the assessee having failed to prove the genuineness of purchases made during the year, learned Commissioner (Appeals) was justified in enhancing the income of the assessee by disallowing the purchases. He submitted, the assessee has not proved with supporting evidence why such huge purchase of steel was required and how it was utilized. Thus, he submitted, the addition made should be sustained.

8. We have considered rival submissions and perused the material on record. Undisputedly, in assessee's case there was no scrutiny assessment earlier and the return of income filed by the assessee was only processed under section 143(1) of the Act. Subsequently, material came to the possession of the Assessing Officer indicating that the assessee had availed accommodation entries by way of bogus purchase bills. Therefore, in our considered opinion, the Assessing

Officer had sufficient tangible material available before him to form belief that income chargeable to tax has escaped assessment. That being the case, the re-opening of assessment under section 147 of the Act, in our view, is valid. As regards the merits of the addition made by the Assessing Officer and enhanced by learned Commissioner (Appeals), undisputedly, before the Assessing Officer the assessee had not furnished any evidence to prove the genuineness of purchases allegedly made from hawala operators. Therefore, he added such purchases to the income of the assessee. The learned Commissioner (Appeals) has even added back the rest of the purchases to the income of the assessee. To a query from the Bench as to whether the assessee can furnish quantitative details to show purchases and consumption of material in construction activity, the learned Authorised Representative submitted, given an opportunity, the assessee would furnish the details before the Assessing Officer. In view of the aforesaid submission of the learned Authorised Representative, we are inclined to restore the issue to the Assessing Officer for de novo adjudication after due opportunity of being heard to the assessee. Accordingly, grounds raised in the memorandum of appeal are allowed for statistical purposes, whereas, the additional grounds raised are dismissed.

9. In the result, assessee's appeal is partly allowed for statistical purposes.

ITA no.6652/Mum./2017

10. This appeal is against imposition of penalty under section 271(1)(c) of the Act.

11. As could be seen from the facts on record, on the basis of additions made on account of non-genuine purchases, the Assessing Officer initiated proceedings for imposition of penalty under section 271(1)(c) of the Act and ultimately passed order imposing penalty under section 271(1)(c) of the Act. Learned Commissioner (Appeals) also sustained the penalty imposed by the Assessing Officer.

12. While deciding assessee's quantum appeal in ITA no.4311/Mum./2017, hereinbefore, we have restored the issue relating to the addition made on account of non-genuine purchases to the Assessing Officer for de novo adjudication. Thus, for the present, the addition made does not survive. That being the case, penalty imposed under section 271(1)(c) of the Act on such addition cannot survive. Accordingly, we set aside the impugned order of learned Commissioner (Appeals) sustaining the penalty imposed under section 271(1)(c) of the Act. However, the Assessing Officer may initiate penalty proceedings, if warranted, depending upon the decision to be taken in respect of the

genuineness of purchases made by the assessee during the year. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

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

14. To sum up, ITA no.4311/Mum./2017 is partly allowed for statistical purposes and ITA no.6652/Mum./2017, is allowed for statistical purposes.

Order pronounced in the open Court on 23.08.2019

Sd/-
N.K. PRADHAN
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 23.08.2019

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

Assistant Registrar
ITAT, Mumbai