

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI

BEFORE SHRI SHAMIM YAHYA, AM

ITA No.4154/Mum/2018
(Assessment Year: 2011-12)

M/s. Ru-met Corporation Shop No.4/5, Janki Niwas, Ground Floor, Khadilkar Road, Mumbai-400 004	Vs.	Income Tax Officer, Ward-19(3)(2), Matru Mandir, Tardeo, Mumbai-400 007
PAN/GIR No. AAEFM 7499 M		
(Appellant)	:	(Respondent)

Appellant by	:	Shri M. B. Sanghvi
Respondent by	:	Shri Chaitanya Anjaria

Date of Hearing	:	20.06.2019
Date of Pronouncement	:	16.09.2019

ORDER

Per Shamim Yahya, A. M.:

This appeal by the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals)-6, Mumbai (‘ld.CIT(A) for short) dated 23.04.2018 and pertains to the assessment year (A.Y.) 2011-12.

2. In this appeal, the assessee has challenged the validity of reopening as well as the merits of confirmation of addition at the rate of 12.5% out of the bogus purchases.

3. As regards the challenge to reopening, the learned counsel of the assessee has limited the argument to the pleading that notice u/s.143(2) was issued beyond time. In this regard, we note that learned CIT(A) has dismissed this argument of the assessee by holding as under:

As far as assessee’s contention regarding issue of notice u/s. 143(2) being beyond time limit is concerned, it is stated that time limit prescribed in I.T. Income Tax

Act, 1961 is for issue of notice u/s. 143(2), when return has been filed u/s. 139(1) of the Income Tax Act, 1961. The instant proceedings being u/s. 148, there is no time limit prescribed. However, the same was issued on 05.02.2016, which was well before date of completion of the impugned order.

4. In this regard, the learned counsel of the assessee has referred to decision of Hon'ble Delhi High Court in the case of *Alpine Electronics Asia Pte. Ltd. vs. Director General of Income Tax & others* [2012] 341 ITR 247 (Del), wherein it was expounded that the time limit for issuing notice under section 143(2) also applies to proceedings under section 148. In this regard, the learned counsel of the assessee submitted that assessee has duly raised its objection regarding the time-barred issue of notice vide letter dated 22/2/2016.

5. Upon careful consideration I may gainfully refer to the relevant portion of the Hon'ble Delhi High Court decision referred by the learned counsel of the assessee which reads as under:

Section 143(2) of the Income-tax Act, 1961, is applicable to proceedings under section 147/148 of the Act. The proviso to section 148 of the Act grants liberty to the Revenue to serve notice under section 143(2) of the Act before passing the assessment order for returns furnished on or before October 1, 2005. In respect of returns filed pursuant to notice under section 148 of the Act after October 1, 2005, it is mandatory to serve notice under section 143(2) of the Act, within the stipulated time limit.

Section 292BB incorporates the principle of estoppel. It stipulates that an assessee, who has appeared in any proceeding and co-operated in any enquiry relating to assessment or reassessment shall be deemed to be served with any notice which was required to be served and would be precluded from objecting "If the notice was not served upon him or was served upon him in an improper manner or was not served upon him in time. However, the proviso that the principle of estoppel incorporated in the main section would not apply, if the assessee has raised objection in reply to the notice before completion of assessment or reassessment

6. Upon careful consideration, I note that the ratio emanating from the above decision mandates that assessee should have duly raised its objection regarding the delayed receipt of notice before completion of assessment. In this regard, the assessee has submitted a copy of letter which is purported to be dated 22/2/2016. This letter doesn't contain any objection to the notice being time-barred. It contains objection to the reopening. This letter has been duly responded by the assessing officer. Assessee has further claimed that he has submitted another letter to the assessing officer, this also strangely dated 22/2/2016 in which objection to the notice being time-barred has been raised. In my considered opinion, this aspect has not been examined and dealt with by the learned CIT(A). Accordingly, in the interest of justice, I remit the issue to the file of learned CIT (A). The learned CIT(A) shall examine this issue afresh after verifying and examining the content of the said letter claimed to have been filed on 22/2/ 2016 and also referring to the High Court decision as above and the provisions of law in this regard.

7. As regards the assessee's challenge to the merits is concerned, I note that in assessee's own case, this ITAT vide order dated 18.10.2017 in ITA No.2000/M/2017 for A.Y. 2009-10 has upheld a similar addition made by the learned CIT (A) and dismissed the appeal filed by the assessee.

8. Respectfully following the precedent from the assessee's own case as above I not find any infirmity in the order of Commissioner of income tax appeals as regards the merits of the case is concerned. Accordingly, I uphold the order of learned CIT(A) in this regard.

9. In the result, this appeal filed by the assessee stands partly allowed for statistical purposes.

Order pronounced in the open court on 16.09.2019

Sd/-

(Shamim Yahya)
Accountant Member

Mumbai; Dated : 16.09.2019
Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai