

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "E", MUMBAI

Before S/Shri Saktijit Dey, Judicial Member
& M Balaganesh, Accountant Member

ITA No.1768/Mum/2018
Assessment Year 2009-10

Triveni Bialetti Industries P Ltd, Survey NO.231, Khardi Mumbai Nasik Road, Shahpur, Dist Thane 421 304 PAN AACCT6685P (Appellant)	Vs.	ACIT Circle-1, Kalyan (Respondent)
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Appellant By : Shri Subodh Ratnaparkhi
Respondent By : Shri Arun Pratap Singh

Date of Hearing : 19.09.2019

Date of Pronouncement : 25.09.2019

ORDER

Per Saktijit Dey, Judicial Member:

This is an appeal by the assessee against order, dated 06.11.2017, of learned CIT(A)-2, Pune, for the A.Y. 2009-10.

2. The effective grounds raised by the assessee read as under:

"On the facts and in law,

- 1. The Hon. CIT(A) erred in confirming the addition of Rs.50,15,844/- made on account of alleged hawala purchases from two parties debited to the profit and loss account of the appellant, not appreciating that the said purchases were genuine purchases, duly supported by substantial evidences and that the material purchases was consumed by the appellant in manufacturing of kitchen appliances like pressure cookers and*

non stick cookwares etc. and therefore, the addition was not justified.

2. The Hon. CIT(A) erred in upholding the addition of Rs.50,15,844/-, made on account of alleged hawala purchases, without affording your appellant with any opportunity to cross examine the source of adverse evidence, thereby breaching the silent principles of equity, fairplay and natural justice."

3. Briefly, the facts are the assessee is stated to be engaged in manufacture and sale of pressure cookers. For the assessment year under dispute, the assessee filed its return of income on 30.09.2009 declaring loss of Rs 17,15,76,053/-. The return of income filed by the assessee was initially processed u/s. 143(1) of the Act. Subsequently, on the basis of information received from the Sales Tax Department, Government of Maharashtra, that purchases worth Rs 50,15,844/- claimed to have been made from two parties are not genuine, as the concerned parties are hawala operators indulging in providing accommodation bills, the Assessing Officer re-opened the assessment u/s. 147 of the Act. As alleged by the Assessing Officer, in the course of assessment proceedings though the Assessing Officer called upon the assessee to furnish various information and supporting evidence to prove the purchases, however, the assessee except furnishing the purchase bills did not produce the transportation bills, delivery challans, goods receiving note, octroi receipts etc. He observed, even attempts made by him to independently verify the purchases through letters issued u/s. 133(6) of the Act also became futile as such notices returned un-served. Thus, the

Assessing Officer, ultimately, concluded that the purchases made from the concerned parties are not genuine and, accordingly, added them to the income of the assessee. Being aggrieved with such addition, assessee preferred appeal before learned CIT(A). However, the learned CIT(A) also sustained the addition made by the Assessing Officer.

4. The learned AR submitted, simply relying upon the information received from the Sales Tax Department, the Assessing Officer has treated the purchases as non-genuine. He submitted, in the course of assessment proceedings the assessee had furnished purchase bills, delivery challans, sales bills, quantitative details of purchases, consumption and sales. To support the aforesaid contention, the learned AR took us through the various documentary evidences placed in the Paper-book. He submitted, even party-wise details of sales was furnished before the Assessing Officer. He submitted, in the face of said documentary evidences, the purchases made could not have been treated as bogus. The learned AR submitted, the assessee is a reputed concern and, during the year, has effected purchases of more than Rs 3 crore. Hence, for such a negligible amount of Rs 50 lacs, the assessee would not have indulged in such practice. Without prejudice, the learned AR submitted, the information collected from the Sales Tax Department, including the alleged statement from the concerned dealers, were never confronted to the assessee in the course of assessment proceedings. He submitted, no opportunity was provided to the assessee to

either offer his explanation in respect of adverse material or to cross-examine the persons, whose statements were relied upon. Thus, he submitted, the addition made without following the principles of natural justice is bad in law.

5. The learned DR relied upon the observations of the Assessing Officer and leaned CIT(A).

6. We have considered the rival submissions and perused the material on record. Undisputedly, on the basis of information received from the Sales tax Department, Government of Maharashtra, that purchases worth Rs 50,15,844/- made by the assessee from two parties are non-genuine, the Assessing Officer had re-opened the assessment and, ultimately, added the said purchases by treating them as non-genuine. It is the contention of the assessee that not only supporting evidence including delivery challans were furnished before the Assessing Officer, the assessee had also furnished quantitative details of purchases, consumption and sales. Further learned AR has also contended before us that the adverse material including the statement of third parties available with the Assessing Officer were never confronted to the assessee, though, such materials were utilized for making the addition. On perusal of the orders passed by the departmental authorities and the material placed in the paper-book, we are of the view that various documentary evidences including delivery challan as well as quantitative details of purchases, consumption and sale claimed to have been

furnished by assessee requires proper verification which, as it appears, has not been done by the departmental authorities. Further, the contention of the learned AR that adverse material in possession of the Assessing Officer should be confronted to the assessee, merits consideration. It is fairly well settled, if the Assessing Officer intends to make any addition on the basis of adverse material in his possession, rules of natural justice demands that such material has to be confronted to the assessee. Thus, on overall consideration of facts and material on record, we are inclined to restore the issue to the Assessing Officer for denovo adjudication after complying with the rules of natural justice and only after affording due opportunity of being heard to the assessee.

Grounds are allowed for statistical purposes.

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

Order pronounced in the open court on this 25th day of September, 2019.

Sd/-
(M Balaganesh)
ACCOUNTANT MEMBER

Sd/-
(Saktijit Dey)
JUDICIAL MEMBER

Mumbai; Dated :25th September, 2019.
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Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT
5. DR, 'E' Bench, ITAT, Mumbai

BY ORDER,

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai