

**IN THE INCOME TAX APPELLATE TRIBUNAL "H", BENCH
MUMBAI**

**BEFORE SHRI M.BALAGANESH, AM
&**

SHRI AMARJIT SINGH, JM

**ITA No.1781/Mum/2018
(Assessment Year :2012-13)**

Shri Hemant K. Goda 79/7, Nav Parasmani Co-op Hsg. Soc., Garodia Nagar, Gharkopar(E) Mumbai – 77	Vs.	ITO – 27(1)(3) Mumbai
PAN/GIR No. AAAPG9952B		
(Appellant)	..	(Respondent)

Assessee by	Shri C.V. Dharkar
Revenue by	Shri Manoj Kumar Singh
Date of Hearing	11/10/2019
Date of Pronouncement	16/10/2019

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.1781/Mum/2018 for A.Y.2012-13 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-25, Mumbai in appeal No.CIT(A)-25/IT-548/2015-16 dated 17/01/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 26/03/2015 by the Id. Income Tax Officer – 27(1)(3), Mumbai (hereinafter referred to as Id. AO).

2. The Grounds 1 & 2 raised by the assessee is with regard to the action of the Id CITA sustaining the addition of Rs 9,11,492/- in respect of difference in value of sundry creditors of 3 parties.

2.1. The brief facts of this issue are that the assessee is engaged in the business of manufacture of garments and during the course of assessment proceedings, the assessee furnished the party wise details of purchases amounting to Rs 1,31,09,803/- as required by the Id AO. The Id AO issued notices u/s 133(6) of the Act to parties to verify the genuineness of assessee's claim of purchases and on receipt of the replies from the parties, he found the following discrepancies:-

Name of the Party	Amount Outstanding as per assessee's ledger	Amount outstanding as per parties ledger	Difference
M/s. Mayka Syntex	7,59,220/-	2,52,100/-	5,07,120/-
M/s. Geeta Textiles	1,14,675/-	5,10,025/-	--
M/s. Nandan Exim Ltd	31,65,132/-	31,65,232/-	100/-
M/s. Y2K Fashions Pvt. Ltd.	4,04,272/-	--	4,04,272/-
Total			9,11,492/-

The assessee was directed to reconcile the aforesaid difference in the balance outstanding of the parties. The assessee merely stated that he had made genuine purchases from the said parties. The Id AO observed that the assessee could not reconcile the balance outstanding in respect of the aforesaid parties and also could not prove the genuineness of purchases made from such parties by producing inward gatepass, transport receipts, stock register and corresponding sales. Accordingly, he proceeded to treat the purchases made from the aforesaid parties in the sum of Rs 9,11,492/- as non-genuine purchases and disallowed the same

u/s 37(1) of the Act as not incurred for the purpose of business in the assessment

2.2. The assessee submitted before the Id CITA as under:-

DISCREPANCIES OF OUR PURCHASE FIGURE AND SALE FIGURE OF OUR SUPPLIERS.

Sir, as per para-4 Ld. I.T.O. has mentioned the discrepancies of our purchase figure and sales figure of our suppliers and disallowed the same, details as under:

a) M/s.. Mayka Syntex :-

Sir, the goods worth Rs. 5,07,120=00 was defective and we informed supplier of it and negotiation was going on and Goods was Return by us in next F.Y but the supplier has taken in previous year relevant to this assessment. Because supplier wants to reduce his sales and in turn his profit.

b) -----

c) M/s. Y2K Fashions Pvt Ltd

Sir, we have purchased goods worth Rs. 4,04,272=00 but our supplier has not shown it in his sales. It may be the supplier want to conceal his sales and in turn profit. Sir, had he has not sold us goods, then how his invoices comes in our account, why we should pay them by cheque which is reflected in bank statement. If someone does a wrong thing, then why other be penalise by disallowing purchases.”

The Id CITA however ignored the aforesaid submissions and reiterated the findings of the Id AO and upheld the action of the Id AO. Aggrieved, the assessee is in appeal before us.

2.3. We have heard the rival submissions. We find that the Id AR drew our attention to page 33 of the paper book giving the entire party wise reconciliation of the aforesaid parties which were duly submitted before

the lower authorities together with the confirmation of balance, copy of ledger account of assessee as appearing in the books of Mayka Syntex and Y2K fashions pvt ltd for the relevant period and the relevant invoices. These documents are enclosed in pages 33 to 44 of the paper book filed before us. The Id AR also furnished a statement in respect of the aforesaid creditors along with other creditors evidencing the payments made to them by the assessee in subsequent year and also the movement of transactions in their respective accounts which is enclosed in page 45 of the paper book. The Id AR also furnished the confirmation of balance from the aforesaid disputed parties together with other parties as on 31.3.2013 , ledger account of respective parties in the books of assessee for the period 1.4.2012 to 31.3.2013 and copy of bank statement for the relevant period evidencing the payments made to those parties in subsequent year. These documents are enclosed in pages 46 to 96 of the paper book filed before us. We hold that these documents were not properly appreciated by the lower authorities. Hence we deem it fit and appropriate, in the interest of justice and fairplay, to remand this issue to the file of Id AO for denovo adjudication to primarily verify the various details filed by the assessee as detailed supra and decide the issue afresh in accordance with law. Needless to mention that the assessee be given reasonable opportunity of being heard. The assessee is also at liberty to furnish further evidences, if any, in support of his contentions. Accordingly, the Grounds 1 & 2 raised by the assessee are allowed for statistical purposes.

3. The Grounds 3 to 6 and Grounds 7 & 8 raised by the assessee are with regard to challenging the action of the Id CITA in sustaining the additions of Rs 47,93,758/- and Rs 7,31,195/- respectively made by the Id AO u/s 41(1) of the Act in respect of cessation of sundry creditors balances.

3.1. We have heard the rival submissions and perused the materials available on record. We find that the Id AO during the course of assessment proceedings had asked for the party wise details of sundry creditors which were duly furnished to the assessee. We find that pursuant to notice u/s 133(6) of the Act issued to those sundry creditors, which were duly replied by them before the Id AO directly, the Id AO observed that there were some difference in the closing balances of certain parties in respect of 6 parties and added the same u/s 41(1) of the Act in the sum of Rs 57,05,250/-. The assessee before the Id CITA pleaded that this addition of Rs 57,05,250/- is linked with the earlier addition made in the sum of Rs 9,11,492/- towards disallowance of purchases as both are two sides of the same transaction. Accordingly, the Id CITA reduced this sum of Rs 9,11,492/- from the total addition made by the Id AO and sustained the remaining addition of Rs 47,93,758/- (57,05,250 – 9,11,492) ignoring the various documentary evidences that are available on record evidencing the subsequent payments made to these parties by the assessee in the subsequent period. We find that similarly the Id CITA sustained yet another addition u/s 41(1) of the Act in the sum of Rs 7,31,195/- in respect of 2 parties by completely ignoring the various documentary evidences available on record. We find that the entire additions have been made without even verifying the various documents that are available on record which is placed in the paper book before us. Hence we deem it fit and appropriate, in the interest of justice and fair play, to remand this issue to the file of the Id AO for denovo adjudication as per law. Needless to mention that the assessee be given reasonable opportunity of being heard. The assessee is also at liberty to furnish further evidences, if any, in support of his contentions. Accordingly, the Grounds 3 to 8 raised by the assessee are allowed for statistical purposes.

4. The grounds 9 to 12 raised by the assessee are general in nature and does not require any specific adjudication.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 16/10/2019

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 16/10/2019
KARUNA, *sr.ps*

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai