



ITA No.4424/Mum/2018
Assessment Year :2007-08
M/s. Naren Gems P.Ltd.

आयकर अपीलीय अधिकरण “बी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI

माननीय श्री महावीर सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.4424/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2007-08)

M/s. Naren Gems P.Ltd. EE-8070, East Wing 8 th Floor, Bharat Diamond Bourse, Bandra Kurla Complex Mumbai- 400 051.	बनाम/ Vs.	Income Tax Officer-14(2)(3), RoomNo.431, Aaykar Bhavan M.K. Road Mumbai- 400 020.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AAACN-5028-N		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Anuj Kumar Dwivedi-Ld. AR
Revenue by	:	Ms. Kavita P. Kaushik-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	28/11/2019
घोषणा की तारीख / Date of Pronouncement	:	29/11/2019

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as ‘AY’] 2007-08 contest the order of Ld. Commissioner of Income-Tax (Appeals)-22, Mumbai, [in short referred to as ‘CIT(A)’], Appeal No. CIT(A)/22/IT/124/2015-16 dated 07/05/2018 on following grounds of appeal: -



“Re-opening bad in law

1. *The Learned Commissioner of Income Tax (Appeals) erred in confirming the validity of the reopening the Assessment u/s 147 of the Act as done by the Assessing officer merely on basis of the information received from the report of the office of the Investigation wing of the department; without carrying out any independent inquiry or investigation of his own to come to be satisfied that there was an Income escaping assessment as per Sec. 147 of the Income Tax Act and hence the reopening is bad in law.*

Violation of principles of natural justice

2. *The Learned Commissioner of Income Tax (Appeals) erred in confirming the validity of the reopening the Assessment u/s 147 of the Act as done by the Assessing officer without appreciating that the Assessing officer had erred in not providing the Appellant a proper opportunity to be heard as the Assessing officer has not shown any cognizance of the letter dated 06/05/2014 in which the Appellant requested that the original return of Income filed be treated as return filed u/s 148 along with furnishing copies of computation of Income and audited financials to the Assessing officer.*

Merits

3. *The Learned Commissioner of Income Tax (Appeals) erred in holding the genuine purchases of Rs. 78,72,000/- made by Assessee from various parties as non-genuine despite sufficient proof regarding the genuineness of the purchases being presented during the appellate proceedings in the form of invoices, quantitative details of purchase and sale of the alleged non-genuine purchases, bank statements and ledger confirmation and confirming an addition of 12.5% thereof.*

4. *The Learned Commissioner of Income Tax (Appeals) erred in confirming the addition on account of alleged non-genuine purchases despite the Assessing officer not having mentioned the provision of law / section under which the said purchases were being disallowed.*

5. *The Learned Commissioner of Income Tax (Appeals) erred in confirming the addition on account of alleged non-genuine purchases at 12.5% on an estimate basis even though the books of account have not been rejected by the Assessing officer.*

6. *The Learned Commissioner of Income Tax (Appeals) erred in not granting set off of the gross profit of at 7.12% already offered upon the said alleged bogus purchases.”*

2. We have carefully heard rival submissions, perused relevant material on record and deliberated on various judicial pronouncements being relied upon by both the representatives.

3.1 Facts on record would reveal that the assessee being resident corporate assessee stated to be engaged as dealer of diamonds, was assessed for impugned AY u/s. 143(3) r.w.s. 147 on 27/03/2015 wherein



the income of the assessee was determined at Rs.12.61 Lacs, after sole addition of alleged bogus purchases for Rs.9.84 Lacs as against returned income of Rs.2.77 Lacs e-filed by the assessee on 06/10/2007 which was processed u/s.143(1).

3.2 Pursuant to receipt of certain information received from investigation wing of the Department, Mumbai in the course of search action u/s 132 in the case of Shri Rajendra Sohanlal Jain etc., it transpired that the assessee stood beneficiary of bogus / accommodation purchases bills aggregating to Rs.78.72 Lacs from 4 entities of the said group. The details of party-wise purchases have already been extracted in para 2.1 of the quantum assessment order. Accordingly, the case was reopened as per due process of law vide issuance of notice u/s 148 on 27/03/2014 which was followed by statutory notices u/s 143(2) and 142(1) wherein the assessee was directed to substantiate the purchase transactions and produce the stated suppliers to confirm the transactions.

3.3 The assessee defended the purchases by furnishing purchase / sale register, date-wise stock statement, bank statements, details of purchases made from the stated parties and corresponding sales, copies of purchase / sale invoices etc. The stated suppliers, in response to notice u/s 133(6), furnished ledger confirmation, copies of ITR-V and extracts of bank statement etc. As an alternative, the assessee offered Gross profit addition of 7.2% on suspicious purchases of Rs.78.72 Lacs.

3.4 However, not fully satisfied with assessee's submissions / explanations, Ld. AO estimated the additions @12.5% against these purchases and added the same to the income of the assessee. The



stand of Ld. AO, upon confirmation by first appellate authority, is under challenge before us.

4. After careful consideration of orders of lower authorities and after appreciating the arguments advanced by respective representatives, we are of the considered opinion that there could be no sale without actual purchase of material keeping in view the assessee's nature of business. Undisputedly the assessee was in possession of primary purchase documents and the payments to the suppliers were through banking channels. The assessee was a corporate entity and its books of accounts were subjected to audit under various statutes. The assessee furnished adequate stock details and also furnished corresponding sales made by him against these purchases. However, at the same time, none of the suppliers was produced to confirm the transactions. The investigation carried out by the department revealed that these entities were being managed by a common person and all the entities were engaged in providing accommodation entries without carrying out any actual business.

5. The stated factual matrix, in our considered opinion, would make it a fit case for making estimated additions, which lower authorities have rightly done so. However, keeping in view the rate of Gross Profit already reflected by the assessee, we find the estimation of 12.5% to be on the higher side. Hence, we reduce the same to 5% of alleged bogus purchases of Rs.78,72,000/- which comes to Rs.3,93,600/-. The balance addition stands deleted. The orders of lower authorities stand modified to that extent.



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6. The assessee has also assailed reopening on legal grounds. However, we do not find much substance in the same since the original return of income was processed u/s 143(1) and the reassessment proceedings were triggered upon receipt of specific information from investigation wing of the department, which indicated possible escapement of income in the hands of the assessee. These grounds stand dismissed.

7. Resultantly, the assessee's appeal stands partly allowed in terms of our order.

Order pronounced in the open court on 29th November, 2019.

Sd/-

(Mahavir Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 29/11/2019
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.