



IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND

SHRIS. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA no.6324/Mum./2018
(Assessment Year : 2010-11)

Privi Organics Ltd.
A-71, TTC, Thane Belapur Road
Near Koparkhairane Railway Station
Koparkhairane, Navi Mumbai 400 709
PAN – AAACP4717A

..... Appellant

v/s

Dy. Commissioner of Income Tax
Circle-4(3)(1), Mumbai

..... Respondent

ITA no.6357/Mum./2018
(Assessment Year : 2010-11)

Dy. Commissioner of Income Tax
Circle-4(3)(1), Mumbai

..... Appellant

v/s

Privi Organics Ltd.
A-71, TTC, Thane Belapur Road
Near Koparkhairane Railway Station
Koparkhairane, Navi Mumbai 400 709
PAN – AAACP4717A

..... Respondent

Assessee by : Shri Sanjay R. Parikh
Revenue by : Shri Kumar Padmapani Bora

Date of Hearing – 18.12.2019

Date of Order – 30.12.2019

ORDER**PER SAKTIJIT DEY. J.M.**

Aforesaid cross appeals arise out of order dated 24th August 2018, passed by the learned Commissioner of Income Tax (Appeals)-9, Mumbai, for the assessment year 2010-11.

2. The only common issue on which both the assessee and the Revenue have come in appeal before us is on part allowance of assessee's claim of depreciation.

3. Brief facts are, the assessee company is carrying on business of manufacturing, trading and export of aroma Chemicals. For the assessment year under dispute, the assessee filed its return of income on 15th October 2010, declaring total income of ₹ 8,52,45,790. Subsequently, the assessee filed a revised return of income on 29th April 2011, offering income of ₹ 13,28,07,892. The assessment in case of the assessee was completed under section 143(3) of the Income Tax Act, 1961 (for short "*the Act*") vide order dated 28th February 2013, accepting the income declared in the revised return of income. Subsequently, the Assessing Officer received information from the DGIT (Inv.), Mumbai, as well as the Sales Tax Department, Government of Maharashtra that the purchases worth ₹ 10,23,750,

claimed to have been made from Asian Steel is not genuine as the concerned selling dealer has been identified as a hawala operator by the Sales Tax Department. On the basis of such information, the Assessing Officer re-opened the assessment under section 147 of the Act. During the assessment proceedings, the Assessing Officer called upon the assessee to prove the genuineness of purchases by furnishing various details, such as, purchase bills, payment details, lorry receipt, inspection note, gate pass, stock inward note, stock outward note, stock movement register, bank statement, etc. In response, as observed by the Assessing Officer, the assessee filed certain details. From the details furnished, the Assessing Officer found that the purchases effected is towards capital goods viz. glass lined reactor. The Assessing Officer observed that as per the information received from the Sales Tax Department, the seller/supplier from whom the assessee claimed to have effected the purchases is a bogus dealer. Further, to verify the genuineness of purchases, the Assessing Officer issued notices under section 133(6) of the Act. However, as observed by the Assessing Officer, the notices returned back unserved. Thus, ultimately, the Assessing Officer concluded that the purchases claimed to have been made by the assessee for an amount of ₹ 10,23,750, is not genuine. Since, the purchase effected was for a capital good on which the assessee had claimed depreciation @ 15%,

the Assessing Officer ultimately completed the assessment by disallowing assessee's claim of depreciation. The assessee challenged the said disallowance before the first appellate authority.

4. After considering the submissions of the assessee in the context of facts and material on record, learned Commissioner (Appeals) having found that the subject purchase involving a capital good (machinery) has been installed by the assessee in its factory, opined that the assessee in fact has purchased the goods. However, he observed that the assessee has not purchased the goods from the declared source but from grey market by paying lesser price. Accordingly, he reduced 50% from the purchase value and thereafter allowed depreciation on the balance amount. Against the aforesaid decision of the first appellate authority, both, the Revenue and the assessee are in appeal before the Tribunal.

5. The learned Authorised Representative submitted, the assessee has furnished all documentary evidences to prove the genuineness of purchases. He submitted, lorry receipt, good receipt note, delivery challan, purchase invoice, etc., were all furnished before the Assessing Officer as well as before the first appellate authority. In this context, he drew our attention to the relevant Pages of the paper book, wherein, the aforesaid documentary evidences have been placed. The

learned Authorised Representative submitted, when the assessee has furnished all the documentary evidences to not only prove the purchase but also the delivery of goods from the concerned selling dealer at assessee's premises, merely because the notice issued under section 133(6) of the Act returned back un-served, the purchase cannot be treated as non-genuine and part of depreciation claimed cannot be disallowed. He submitted, without making any enquiry on the documentary evidences furnished by the assessee, the Assessing Officer as well as learned Commissioner (Appeals) have treated the purchases as non-genuine by merely relying upon the information received from the Sales Tax Department. Thus, he submitted, the depreciation claimed by the assessee has to be allowed in full.

6. The learned Departmental Representative submitted, as the assessee has failed to prove the genuineness of purchase, even a part of depreciation cannot be allowed.

7. We have considered rival submissions and perused the material on record. Though, it may be a fact that the Assessing Officer was in receipt of information from the Sales Tax Department that certain goods purchased by the assessee is doubtful, however, in the course of assessment proceedings, the assessee had furnished various documentary evidences to prove such purchases. In fact, the Assessing Officer himself has stated that in response to the query

raised by him, certain details were furnished by the assessee. As it appears from the body of the assessment order, the primary reason for which the Assessing Officer treated the purchases as bogus is the information received from the Sales Tax Department and the fact that the notice issued under section 133(6) of the Act to the selling dealer returned back un-served. It is evident, in course of assessment proceedings, the assessee has furnished various documentary evidences including purchase invoice, goods received note, lorry receipt, purchase order, transporter's bill, etc. to demonstrate that not only the goods were purchased from the concerned selling dealer, but they were also delivered at assessee's premises. On a perusal of the aforesaid documentary evidences, it is noticed that all these documents bear the name of the concerned selling dealer. In fact, learned Commissioner (Appeals), on a perusal of the aforesaid documents, has recorded a factual finding that as per the goods receipt note, the machinery was received by the assessee on 20th June 2009. Thus, facts on record do establish that the assessee had purchased the machinery and it was installed in its factory. When such evidences were filed before the Assessing Officer, the minimum which is expected from him was to verify the authenticity of these documents before treating the purchases as non-genuine. However, as it appears from record, the Assessing Officer has not conducted any effective

enquiry qua the documentary evidences filed by the assessee. It is further evident, merely relying upon the information received from the Sales Tax Department and the fact that the notice issued under section 133(6) of the Act returned back un-served, the Assessing Officer has disallowed assessee's claim of depreciation. Whereas, learned Commissioner (Appeals) without any justifiable reason has reduced the purchase value by 50% and allowed depreciation thereon. It is not forthcoming from the order of learned Commissioner (Appeals) on what basis he has reduced 50% of the purchase value. In our opinion, when the assessee has furnished certain documentary evidences demonstrating purchase of goods from the declared source and delivery of such goods at its premises, without bringing any contrary material to falsify such evidences, assessee's claim cannot be rejected on presumption and surmises. More so, when learned Commissioner (Appeals) has factually found that the machinery was received by the assessee and was installed in its factory. Thus, in the facts and circumstances of the present case, we hold that the assessee is entitled to claim depreciation on the entire purchase value of ₹ 10,23,750, as permissible in law. Accordingly, the Assessing Officer is directed to allow assessee's claim of depreciation on the amount of ₹ 10,23,750, keeping in view the period for which the asset was put to use.

8. In the result, assessee's appeal is allowed and Revenue's appeal is dismissed as indicated above.

Order pronounced in the open Court on 30.12.2019

Sd/-
S. RIFAUR RAHMAN
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 30.12.2019

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