

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

BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 5267 & 5268/Mum/2017
(निर्धारण वर्ष / Assessment Years : 1986-87 & 1987-88)

Veetex Synthetics, 402, Maan Sarovar, Chincholi Fatak, Malad West, Mumbai-400064.	बनाम/ Vs.	ITO 24(2)(3) C-10, Pratyakshar Bandra East, Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAGFV7192Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri M.P Sharma, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri Akthar H Ansari, DR

सुनवाई की तारीख / Date of Hearing	10/01/2020
घोषणा की तारीख/Date of Pronouncement	10 /01 /2020

आदेश / ORDER

PER R.C. SHARMA, A.M:

These are the appeals filed by the assessee against the order of the Ld. CIT(A) for the A.Y 1986-87 & 1987-88, in the matter order passed u/s 144 of the Act.

2. Both these appeals the assessee is aggrieved for addition made on account of hawala transactions.

3. Rival contentions have been heard and record perused. Facts in brief are that the assessee firm was engaged in trading of yarn. Assessment u/s 144 was

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completed on 20.03.1989 determining total income at Rs. 29,01,286/-. The said order was set aside by the CIT(A) vide his order dated 16.12.1991. In pursuance, again order u/s 144 was passed on 25.03.1994 determining total income of Rs. 20,84,008/- on protective basis and Rs. 8,17,278/- on substantive basis. The CIT(A) adjudicated against order u/s 144 dated 25.03.1994 vide his order dated 26.02.1999 holding that the profit should be apportioned equally between M/s. Vee Tex Synthetics and Daga Group of concern. Appeal against the Tribunal Set aside the order of the CIT(A) was filed by both the revenue and the assessee and the Tribunal set aside the order of the CIT(A) dated 26.02.1999 and the matter was remitted to the file of the A.O for passing a fresh assessment. Accordingly, he present order u/s 143(3) r.w.s 254 dated 29.12.2006 was passed by the A.O.

4. From the record I found that a search and seizure action was conducted in Daga group of cases. The said group was found to be routing its transactions through several name lenders. During the course of assessment proceedings, it was submitted by the assessee that the assessee firm was mere name lender to Daga group. Daga group used the assessee firm as inter-mediaries. Actual purchase and sales was made by Daga group and the

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assessee firm has just received commission of 6% which had already been offered for taxation. The AO has referred to earlier assessment orders dated 28.02.1990 and 25.03.1994 and stated that this position (i.e actual transactions belong to Daga group) has not been accepted by Daga group. Accordingly A.O made addition of Rs. 28,94,157/-.

5. By the impugned order the CIT(A) confirmed the action of the A.O. The precise observation of CIT(A) was as under:

"I have considered the facts and circumstances of the case, the findings of the A.O in the assessment order and the submission of the appellant. The appeal is a very old one and only decision to be taken is whether the assessment order u/s 134(3) r.w.s 254 dated 29.12.2006 is correct or not. To take this decision, I do not find any logic to wiat for outcome of additions in case of Daga Group for the reason that the issue involved is whether the aforesaid order is correct in view of facts and circumstances of the case. The aforesaid assessment order does not suffer from any factual or legal infirmities. The A.O has assessed income arising out of sales and circumstances of the case. The aforesaid assessment order does not suffer form any factual or legal infirmities. The A.O has assessed income arising out of sales and purchase of synthetic wastes on protective basis in the hand of the appellant because these transactions are recorded in the books of the appellant. Once a transaction was recorded in the books of a person, it is very much justified to assessee the income arising out of the said transactions at least on protective basis in the hand of the person. The A.O has also clarified in the order itself the once additions made in Daga group are finally sustained, the total income of the assessee will be recomputed.

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Otherwise, it will be treated as own income of the assessee. The assessment order is perfectly correct and hence the same is sustained. The claim of the assessee to delink the assessment of the assessee from Daga group is not at all justified because the assessee itself has submitted that the transactions recorded in its books actually pertain to Daga group which has not been accepted by Daga group. In view of the above, all the grounds of appeal are dismissed.

6. Assessee is in further appeal before us. From the record we found that the assessee has booked bogus expenses and also offered commission of 6% on these bogus transactions. However, the lower authorities did not accept the same and made entire addition on protective basis in the hands of the assessee. Even though the Id. CIT(A) has observed in both the years that the A.O. has clarified in the order itself that once the addition made in the Daga group are finally sustained, the total income of the assessee will be computed accordingly. Since the matter are as old as 35 years old, it is not advisable to wait any more. Therefore, keeping in view the totality of facts and circumstances of the case, I direct the A.O. to restrict addition to the extent of 12% income on the alleged bogus transactions. The A.O. is further directed to give credit in the income already offered by the assessee in respect of such alleged bogus transactions. I direct accordingly.

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7. In the result, both the appeals are allowed in part for statistical purposes.

Order pronounced in the open court on 10th January, 2020.

Sd/-
(R.C. SHARMA)
ACCOUNTANT MEMBER

Mumbai, Dated 10 /01/2020

*Ranjan

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Mumbai