

आयकर अपीलिय अधीकरण, न्यायपीठ – “C” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
(समक्ष) Before श्री जे. सुधाकर रेड्डी, लेखा सदस्य एवं/and श्री ऐ. टी. वर्की, न्यायीक सदस्य
[Before Shri J. Sudhakar Reddy, AM & Shri A. T. Varkey, JM]

I.T.A. No. 2474/Kol/2019
Assessment Year: 2011-12

M. dhara & Brother (PAN: AAFFM3283Q)	Vs.	Deputy Commissioner of Income-tax Circle-48, Kolkata
Appellant		Respondent

Date of Hearing	15.01.2020
Date of Pronouncement	05.02.2020
For the Appellant	Shri K. M. Roy, FCA
For the Respondent	Shri Supriyo Pal, JCIT, Sr. DR

ORDER

Per Shri A.T.Varkey, JM

This is an appeal filed by the assessee against the order of Ld. CIT(A)-14, Kolkata dated 25.09.2019 for AY 2011-12.

2. Though ground no.1 of appeal of the assessee is a legal issue, it has not been argued before us, so we dismiss this ground of appeal. Coming to ground no.2, which is against the action of the Ld. CIT(A) confirming partly the addition [by restricting to GP @ 26.88% at Rs.15,07,579/-] when the AO had added the entire bogus purchases to the tune of Rs.56,08,544/-.

3. Brief facts of the case are that the assessee is a firm which is engaged in the trading activity and had filed the return of income disclosing total income of Rs.13,98,720/- which was processed u/s. 143(1) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) by the CPC Bangalore on 16.02.2012. Later the AO received information that during search and seizure operation conducted by the DDIT(Inv.), Unit-4(2), Kolkata on 31.03.2016 in the case of one Shri Sanjiw Kumar

Singh it revealed that Shri Sanjiw Kumar Singh is mainly engaged in the business of providing accommodation entries through bogus billings, share capital, share premium and unsecured loans. According to AO, it was gathered that Shri Sanjiw Kumar Singh & Group having office address at 109, Jaynarayan Babu Anand Dutta Lane, Howrah-711101, had been carrying on the business of bogus billing and accommodation entry against cash received from various clients. The AO noticed that Shri Sanjiw Kumar Singh admitted u/s. 132(4) of the Act that bogus billing and accommodation entry were made through various paper/sham companies/concerns wherein he and his family members are directors/partners/proprietor. According to the AO, a verification of beneficiaries list disclosed that M/s. M. Dhara & Brothers is beneficiary of Shri Sanjiw Kumar Singh and during the assessment year 2011-12 the assessee firm had made transaction totaling Rs.58,42,234/- with the sham concerns of Shri Sanjiw Kumar Singh. Thereafter, the AO had reopened the assessment after issuing notice u/s. 148 of the Act. During the reassessment proceeding, the AO noticed that on 27.11.2018 the Ld. AR of the assessee firm filed petition enclosing copy of the declaration u/s. 183 of the Finance Act, 2016 in respect of IDS 2016 on behalf of the assessee before the DCIT, Circle-48 and ACIT, Circle-48, Kolkata for seeking direction u/s. 144A of the Act. According to the assessee, an amount of Rs 2,33,690/- was offered as undisclosed income as per reasons that the bills were arranged to substitute the evidence of bills from unregistered dealers from whom actual purchases were made. According to the assessee, the rate of purchase was inflated to convert the cost of arranging the bills from those suppliers to the extent of 4%. So, the excess cost claimed at 4% of Rs.58,42,234/- which works out to Rs.2,33,690/- was offered as undisclosed income in the IDS. The AO noticed that the Addl. CIT, Range-48 also has corroborated this fact that assessee had offered Rs.2,33,960/- in the IDS scheme as undisclosed income for arranging the bills to the tune of Rs.58,42,234/-. Thereafter, the AO gave opportunity to the assessee by issuing show cause as to why the entire amount disclosed to the IDS should not be treated as bogus and taxed. The AO in the assessment order thereafter states about the said Shri Sanjiw Kumar Singh whom he described as the bill master and who was involved in providing accommodation entries in the form of bogus bills to

various parties in lieu of commission. According to AO, the department came across 2500 beneficiaries and that the said Shri Sanjiw Kumar Singh had 80 bank accounts and has been operating various concerns/companies with the family members of Shri Sanjiw Kumar Singh shown as dummy directors. According to AO, despite giving opportunity to the assessee to furnish details of the payments, actual date of delivery, mode of delivery, inward transportation of goods in its godown/show room etc. the assessee failed to produce any documents as called for, he added the entire purchase amount (Rs.58,42,234/-) minus Rs.2,33,690/- (declared by assessee IDS as undisclosed income) i.e. Rs.56,08,544/-. Aggrieved assessee preferred an appeal before the Ld. CIT(A) who gave partial relief to the assessee by restricting the addition to GP of 26.88% at Rs.15,07,579/- by observing as under:

“Therefore, after considering the factual matrix of the case, it appears that the AO in the assessment order had treated the entire alleged purchase as bogus but has not rejected the books of account which is essentially means that he has accepted the sales. Under such circumstances, the Hon’ble courts including jurisdictional High Court in M/s. Subarna Rice Mills (supra) have taken a view that the entire unverified purchase are not rendered vulnerable for addition; only the element of profit embedded from such purchase should be considered for addition. The appellant had disclosed a GP of 26.88% for the AY 2011-12. Therefore, it would be reasonable to limit undisclosed profit embedded in the bogus purchase to 26.88% at Rs.15,07,579/-. This undisclosed income embedded in bogus purchase amounting to Rs.56,08,554/- has not been declared in IDS-2016. The declaration under IDS-2016 made by the appellant is therefore not complete. The addition of Rs.56,08,554/- is restricted to Rs.15,07,579/-. This ground of appeal partly succeeds and is, therefore, partly allowed.”

4. Still not being satisfied by the partial relief granted by Ld. CIT(A) the assessee is before us.

5. Assailing the decision of the Ld. CIT(A), the Ld. AR submitted that since the AO has not disturbed the sales as well as the purchases of pipes made by the assessee, according to him purchases of goods cannot be rejected without disturbing the sales. For this proposition of law he relied on the order of the Hon’ble Bombay High Court in the case of PCIT Vs. M/s. Mohammad Haji Adam & Co. in ITA No. 1004/16. According to Ld. AR, the action of the AO is erroneous since even if the purchases from whom accommodation entry of bills were procured are treated as bogus it does

not necessarily mean that the entire amount should be disallowed since the assessee's explanation was that assessee a contractor of supply of pipes and laying/installation of pipe line for the Govt. of West Bengal (Public Health Engineering Deptt.)(PHED) had procured the goods/pipes from the grey market and had supplied it to the government which goes through the watchful eyes of engineers who has to certify about the quantity and quality of supplies, and then only the assessee gets the payment and moreover according to him, it is common knowledge that the installation/laying of pipe lines can be completed only by laying pipes. So, the question of raising only the bogus bills without supply of pipes in such a scenario does not arise and since the bills were procured to cover the purchases made from grey market and assessee had already disclosed the cost of getting the bills by disclosure in the IDS scheme of 2016, no addition was warranted. Per contra, the Ld. DR supported the order of the AO as well as Ld. CIT(A) and submitted that when the assessee was confronted with the fact that assessee's purchases to the tune of Rs. 58 lakhs was bogus, it has duly accepted the same and, therefore, the AO has added the entire amount minus the amount declared in the IDS of Rs.2.33 lakhs because bogus accommodation being bills generated for commission and no goods were passed on to the assessee and, therefore, he does not want us to interfere with the order of the authorities below.

6. We have heard rival submission and gone through the facts and circumstances of the case. We note that assessee is a government contractor who supplies pipes as well as lays/installs pipe lines. The AO was in receipt of information that assessee had procured accommodation bills approximately of Rs.56 lakhs from certain accommodation entry providers. When confronted with this fact, the assessee accepted that it had indulged in getting accommodation entry /bills to the tune of Rs.56 lakhs in order to cover up the goods/pipes purchased from the grey market of the same value and in this process the assessee incurred cost to the tune of Rs.2.33 lakhs for getting the accommodation entry, which he in turn duly offered for transaction in the IDS scheme of 2016 which has been accepted by the Ld. Pr. CIT-16. However, the AO brushed aside the explanation of the assessee and made addition of the entire amount [minus the

amount of IDS] which comes to [Rs.58,48,234/- - Rs.2,33,690/-] = Rs.56,08,544/-. On appeal, the Ld. CIT(A) taking note that assessee had disclosed GP of 26.86% for the AY 2011-12, restricted the addition to the GP of 26.88% of Rs.56,08,544/- which comes to Rs.15,07,579/-. Still not satisfied with the action of the Ld. CIT(A), the assessee is before us challenging the impugned order and we note that the assessee was supplying pipes to Govt. of West Bengal [Public Health Department] and was installing the pipeline on contract basis. It has been brought to our notice that the pipes/goods required for installing the pipeline has not been rejected by the Govt. department and that only after detailed verification in respect of the quality and the quantity of the pipes/goods, the competent authority/Engineer certified it fit for payment and then only assessee received the income from contract work with Govt. which assessee has offered as income and the AO has accepted the sales figure shown by the assessee in full. It is also noted that AO did not doubt about the completion of installation of pipeline/contract work. In such a back-drop, the consumption of the pipes/goods required for successfully completing the laying/installation of pipelines cannot be doubted, because without pipes being supplied by assessee, the question of proper laying/installation of pipeline does not arise.

7. So in the light of the explanation given by the assessee that since pipes/goods were procured from grey market without bills and the assessee had got these accommodation bills arranged to cover the documentation of receipt of materials ought to have been accepted in the absence of any other material to prove the assessee's explanation wrong. We note that out of the total purchases assessee made of Rs. 1.9 crore which eventually culminated to sales of Rs.2.52 crores as revealed from the profit & Loss Account of the assessee, which figures the AO has not tinkered with [ie, the sales figures of Rs. 2.52 cr. and purchases of Rs.1.9 cr.] and that the physical existence of closing stock of goods worth Rs.25 lacs as per the books has also been accepted. This goes on to show that the inflow and outflow of materials crystallizing into the inventory at year end has not been doubted. And we note that the assessee has already declared GP of 26 % on audited accounts which have been accepted by the AO.

Further, it is noted that assessee had declared under Income Declaration Scheme 2016 offered @ 4% on total alleged bogus purchase of Rs.56.75 lakhs (Rs.2.33 lakh) as undisclosed income to cover the cost of arranging the bills accommodation entry. We note that the PCIT-16 had accepted the declaration and it is noted that this declaration of undisclosed amount has not yet been revoked or repudiated. Accordingly, the assessee prays for full relief taking into consideration the assessee's IDS declaration and we note that since assessee has already offered GP of 26% on the purchases and sales booked as per the P& Account which has not been tinkered with by the AO/Ld. CIT(A) and that as the assessee has also offered the cost of procuring the accommodation bills amounting to Rs.56.75 lakhs @ 4% which comes to Rs.2.33 lakhs in the IDS and offered tax for the undisclosed amount. So according to us, no more addition is warranted because when this IDS tax also is added to the GP of the assessee, then it will come to 30% GP. Therefore, no separate addition on the undisclosed amount of profit is warranted since it is not the case that AO/Ld. CIT(A) could unearth any hidden profit which was discovered as investments/cash/bullion etc. so in the aforesaid facts and circumstances, the addition made is deleted.

8. In the result, the appeal of assessee is allowed.

Order is pronounced in the open court on 5th February, 2020

Sd/-
(J. Sudhakar Reddy)
Accountant Member

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated : 5th February, 2020

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – M/s. M. Dhara & Brother, 8/2, I. R. Bellious Lane, Howrah Sadar, West Bengal-711101
2. Respondent – DCIT , Circle-48, Kolkata.
3. The CIT(A)-14, Kolkata (sent through e-mail)
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

/True Copy,

By order,

Asstt. Registrar.