

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

**BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.1041/M/2019
Assessment Year: 2009-10**

ACIT 25(1), Room No.402, C-10, BKC, Bandra (E), Mumbai – 400 051	Vs.	Mr. Vivek Sadanand Hegde, Unit No.6, Olumpus Industrial Estate, Off Mahakali Caves Road, Andheri (E), Mumbai – 400 093 PAN: ABUPH3357C
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri R. Bhoopathi, Sr. A.R.

Date of Hearing : 10.02.2020
Date of Pronouncement : 18.02.2020

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the Revenue against the order dated 22.12.2018 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10.

2. During the course of hearing, neither assessee nor his authorized representative appeared to attend the hearing nor any application seeking adjournment was filed. Therefore, we are disposing off the appeal after hearing the Ld. D.R. and going through the facts of the case.

3. The only issue raised by the Revenue in various grounds of appeal is against the deletion of disallowance of Rs.1,15,396/- made by the AO being 10% of total expenses of Rs.11,53,965/- on the ground that the most of the vouchers were self made and paid in cash.

4. The facts in brief are that the assessee filed the return of income on 29.09.2009 declaring an income of Rs.29,08,500/- which was processed under section 143(1) of the Act. Thereafter the case of the assessee was selected for scrutiny and statutory notices were duly issued and served upon the assessee. During the course of assessment proceedings, the AO observed that assessee has claimed various expenses such as conveyance of Rs.4,45,569/-, sales promotion of Rs.48,924/-, staff welfare of Rs.2,13,560/-, telephone expenses of Rs.97,308/- and depreciation on motor car of Rs.1,86,209/-. The AO noted that most of the expenses were either without vouchers or there were self made vouchers and thus came to conclusion that there is a possibility of personal element. Accordingly, 10% of the total expenses were disallowed by framing assessment under section 143(3) of the Act dated 28.12.2011.

5. Ld. CIT(A) deleted the disallowance after taking into consideration the assessee's submission by observing as under:

I have gone through the Assessment Order and the appellant's submission as well as the remand submitted by the AO. The assessment was re-opened as the allegation was the assessee has entered into HAWALA transactions for purchases amounting to Rs. 59,45,946/- from the parties namely Paradise Corporation, Apsara Enterprises and Ranakpur Sales Corporation. At the assessment stage, the appellant stated that they have not made any transactions with the said three parties but it was not accepted by the AO without giving any reason.

At the appellate stage, the assessee submitted the entire evidences along with the contention for verification which was sent to the Assessing Office for verification. The AO has submitted his remand report on 05/03/2018 stating that:

"After considering the submissions of the assessee and the verification conducted by this office, the Remand Report is hereby submitted as under:

a) The assessee has submitted the copy of Return of Income for AY 2009-10, computation of income, Balance Sheet, Trading, Profit & Loss a/c, list of purchases, list of creditors, and Audit Report, as additional evidence, with a specific comment that these were submitted at the time of assessment proceedings.

b) The assessee was requested to substantiate his submission, vide letter dated 30/05/2017. The assessee, vide his reply dated 31/08/2017, submitted the following: Letter of Authority, ITR V, computation, Balance Sheet, P&L, Tax Audit Report, Details of purchases, letters filed to ACIT during assessment proceedings for denying the purchases dated 28/01/2015 & 26/04/2017, Original order u/s. 143(3), Notice of Demand and form No. 35.

1. It is seen from the submissions that the assessee has denied the transactions with M/s. Ranakpur Slaes Corporation, M/s. Apsara Enterprises and M/s. Paradise Corporation, both during the re-assessment proceedings as well as remand proceedings.

2. The details of purchases and creditors do not contain the names of M/s. Ranakpur Sales Corporation, M/s. Apsara Enterprises and M/s. Paradise Corporation.

3. The additional evidences do not conclusively prove that the purchases were not made from M/s. Ranakpur Sales Corporation, M/s. Apsara Enterprises and M/s. Paradise Corporation.

c) The assessee was then asked to file copies of Annexure J- Section 1 and Section 2 to substantiate his claim, The Dy. Commissioner of Sales Tax (E 635) was also requested to provide the copies of original and revised, if any J1 and J2 , for the relevant period.

The assessee has submitted Annexure J Section 1 and Section 2. This office is also in receipt of the reply from the Dy. Commissioner of Sales Tax on 28/02/2018 (copy enclosed).

1. Annexure J-Section 1 and Section 2 submitted by the assessee and the copies of J1 and J2 submitted by the Dy. Commissioner of Sales Tax, appear to tally.

d) Therefore, it may be concluded that while the additional evidence submitted by the assessee do not conclusively eliminate the purchases of the assessee from M/s. Ranakpur Sales Corporation, M/s. Apsara Enterprises and M/s. Paradise Corporation, it is also seen that the Annexure J1 & J2

forwarded by the Dy. Commissioner of Sales Tax do not contain the TIN of M/s. Ranakpur Sales Corporation, M/s. Apsara Enterprises and M/s. Paradise Corporation.

In case, your Honour decides to admit the additional evidences filed by the assessee, the case may be decided on merits."

After considering the remand report of the AO, where he has specifically mentioned that the annexure J1 and J2 forwarded by the Dy Commissioner of Sales Tax do not contain the TIN of M/s. Ranakpur Sales Corporation, M/s. Apsara Enterprises and M/s. Paradise Corporation, it is evident that the appellant's contention is correct and in absence of any corroborative evidence, the addition cannot be sustained. Hence, the appeal is allowed.

In sum, the appeal is Allowed."

6. After hearing both the parties and perusing the material on record, we observe that Ld. CIT(A) has passed a very speaking and balanced order after considering the submissions of the assessee and after calling for a remand report which was filed by the AO on 05.03.2018 wherein the AO has clearly stated that the assessee has not made purchase from three parties namely Ranakpur Sales Corporation and Apsara Enterprises and Paradise Corporation. Therefore, we do not find any infirmity in the order of Ld. CIT(A) and uphold the same by dismissing the appeal of the Revenue.

7. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 18.02.2020.

**Sd/-
(C.N. Prasad)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 18.02.2020.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai

The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.