

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

**BEFORE SHRI PAWAN SINGH, JM &
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 6841 & 6842/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2010-11 & 2011-12)

M/s SBM Chemicals & Instruments Pvt. Ltd. C/o- Shankarlal Jain & Associates 12, Engineer Building 265, Princess Street, Mumbai – 400 002	बनाम/ Vs.	ACIT Cir 8(1)(2), 6 th floor, Aayakar Bhavan, Mumbai 400 020
स्थायीलेखासं./जीआइआरसं./PAN No. AABCS4417M		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri S. L. Jain, AR
प्रत्यर्थीकीओरसे/Respondentby	:	Shri V. Vinod Kumar, DR

सुनवाईकीतारीख/ Date of Hearing	:	15.01.2020
घोषणाकीतारीख / Date of Pronouncement	:	07.02.2020

आदेश / ORDER

PER S. RIFAUR RAHMAN (ACCOUNTANTMEMBER):

The present two (2) Appeals have been filed by the assessee against the order of Ld. Commissioner of Income Tax

(Appeals)-14, Mumbai, in short 'Ld. CIT(A)' dated 30.08.2018 for AY 2010-11 & 2011-12 respectively.

2. Since the issues raised in both the appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed of by this consolidated order. Firstly, we are taking ITA No. 6641/Mum/2018 for AY 2010-11 filed by the assessee.

3. The brief facts of the case are, assessee filed its return of income on 27.09.2010 declaring total income at Rs.10,63,59,470/-. The return was processed u/s 143(1) of the Act. Subsequently, the assessment was reopened by issued of notice u/s 148 of the Act with the reasons recorded for reopening that as per the information gathered /available in the office revealed that assessee has obtained bogus bills of Rs. 4,74,343/- from entities listed in Sales Tax website and declared as hawala dealers by the Sales Tax Department, Mumbai. Assessee was asked to explain and produce the above mentioned parties for verification, however assessee has failed to produce them.

Further, assessee was asked to produce all the supporting documents to ascertain the genuineness of the transaction alongwith their ITR and copy of bank statements showing the above transactions. Even though, several opportunities were given to the assessee, but assessee has not produced the aforesaid parties nor offered any documents for verification. Accordingly, these purchases were considered as bogus and addition was made 100% to the extent of bogus purchases.

4. Aggrieved with the above order, assessee preferred an appeal before Ld. CIT(A) and Ld. CIT(A) after considering the submissions of the assessee, dismissed the appeal of the assessee and sustained the disallowance made by the AO.

5. Aggrieved with order of Ld. CIT(A), assessee is in appeal before us raising the following grounds of appeal:-

1. The Ld. CIT(A) erred in upholding validity of notice u/s.148 without appreciating the fact that notice was issued without any tangible material, only based on information that certain entities from whom the assessee effected purchases, appeared on website for sales tax department declared to be hawala dealers,

without appreciating the fact that merely such information cannot be basis for recording belief of escapement of income.

2. *The Ld. CIT(A) failed to appreciate that bare information of having effected purchase from certain parties declared to be hawala dealers unaccompanied by any statement or report cannot be a tangible material, per se, for recording of the belief.*

3. *The Ld. CIT(A) erred in confirming the addition of Rs. 4,74,343 being purchases effected by the appellant for packing material without considering the fact that all the purchases were supported by bills issued by the suppliers, payments being made by account payee cheques and purchases of packing material being reasonable having regard to consumption in earlier years.*

4. *The Ld. CIT(A) further erred in confirming the addition without appreciating the fact that no statement recorded or any investigation carried out either by sales tax department or DGIT(INV) is being provided to the appellant and no opportunity of cross verification is being allowed. Mere name of certain suppliers on website of VAT Department cannot be basis of disallowance.*

5. The Ld. CIT(A) failed to appreciate that addition has been made without Ld. Assessing Officer carrying out any verification merely on the basis that appellant failed to make available the suppliers for Ld. Assessing Officer's verification, without consideration facts properly.

6. Appellant pray that addition made be deleted.

7. Appellant craved your honour's leave to add, amend or alter any Grounds of Appeal at the time of hearing or before.

6. Before us, Ld. AR of the assessee submitted that assessee imports chemicals and repacks them for retail purposes according to the requirement of the customers and assessee regularly buys packaging material for the above purpose and all the packaging materials were delivered at the place of business of the respective suppliers. Now, AO has disallowed the above said packaging material purchases and further books were not rejected and assessee could not produce the parties before the AO considering the fact that these suppliers were not available and AO has not given any opportunity for cross objection. He further submitted that a chart of expenditure in relation to packaging material and

profit declared by the assessee. He further submitted that from AY 2008-09, assessee is regularly incurring the packing expenditure to the extent of 4.36% to sales in AY 2008-09, 5.46% in AY 2009-10 and this year 3.3%. Whereas only this year, AO has disallowed the packaging material to the extent of Rs. 4.74 lakhs which will reduce the percentage of packaging material to 1.48%. He further submitted that the assessee has declared profit to the extent of 10.41 crores and 5.97 crores in the subsequent assessment years, which clearly shows that assessee has no reason to reduce the taxable profit to the extent of purchases disallowed by the AO. He further submitted that it has no relevance or effect of the taxable income declared by the assessee and no need to suppress any tax. He further submitted that assessee has not pressing ground no. 1 of reopening of assessment and prayed that bench may consider the submission of assessee.

7. On the other hand, Ld DR submitted that assessee has not discharged its duty by bringing the suppliers on record or filing the relevant supporting documents in respect of the purchases. In

this respect, he supported the finding of Ld. CIT(A) and relied upon the orders passed by the revenue authorities.

8. Considered the rival submissions and material placed on record. We notice that assessee is importing chemicals as one of the line of business and repacks them according to the requirement of customers. Considering the nature of business and packaging expenditure claimed by the assessee over the years shows that assessee is regularly purchasing packaging materials for the business which is in and around 4 to 5% of sales. The AO has disallowed 4.7 lakhs this year. Whereas, the assessee has declared considerable profit over the years and there is no need for the assessee to suppress any taxable income. Since the onus of proof lies on the assessee to bring on record the respective suppliers but since the suppliers of packaging material is very small and assessee could not submit any documents in support of purchases made from the suppliers. Since Ld. AR submitted that the packaging materials are delivered at the place of business.

9. Considering the overall position, we cannot reject the contention of the assessee. Since the assessee could not

substantiate the documentation for the purchases, we are inclined to disallow certain percentage of the purchases on the ground that assessee may not have carried on with the operation of repacking the chemicals without packaging material. Therefore, we are inclined to disallow 10% of the packaging material as reasonable. Accordingly, AO is directed to disallow 10% of the packaging material. Hence, grounds raised by the assessee are partly allowed.

10. The other appeal of assessee in ITA number 6842/Mumbai/2018, the facts in this appeal are similar to the facts in ITA number 6841/Mumbai/2018, therefore, the grounds raised in this appeal are also partly allowed.

11. In the net result, both the appeals filed by the assessee are **partly allowed.**

Order pronounced in the open court on 7th Feb 2020.

<i>Sd/-</i> (Pawan Singh) न्यायिकसदस्य / Judicial Member मुंबई Mumbai; दिनांक Dated : <i>Sr.PS. Dhananjay</i>	<i>Sd/-</i> (S. Rifaur Rahman) लेखासदस्य / Accountant Member 07.02.2020
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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/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai