



ITA No.1150/Mum/2018  
Rajiv Ishwarlal Gandhi  
Assessment Year :2011-12

**आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“D” BENCH, MUMBAI**

**माननीय श्री शक्तिजीत दे, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI SAKTIJIT DEY, JM AND**  
**SHRI HON’BLE MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ I.T.A. No.1150/Mum/2018  
(निर्धारण वर्ष / Assessment Year: 2011-12)

ITO-25(3)(3) R.No.606, 6 <sup>th</sup> Floor Pratyakshkar Bhavan Bandra Kurla Complex Bandra (East), Mumbai-400 051	<b>बनाम/ Vs.</b>	<b>Rajiv Ishwarlal Gandhi</b> 4, Bajaj Society, Bajaj Road Vile Parle (West) Mumbai – 400 057
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. <b>AADPG-3967-F</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	None
<b>Revenue by</b>	:	Ms. Jyoti Lakshmi Nayak-Ld.DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	24/02/2020
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	11/03/2020

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by revenue for Assessment Year [in short referred to as ‘AY’] 2011-12 contest the order of Ld. Commissioner of Income-Tax (Appeals)-37, Mumbai, [in short referred to as ‘CIT(A)’], *Appeal No.*



*CIT(A)-37/IT-490/ITO-25(3)(3)/2016-17* dated 04/12/2017 *qua* deletion of certain additions on account *alleged bogus purchases*.

2. None appeared for assessee and no valid adjournment application was on record. The perusal of order sheet entries would reveal that the assessee has not made any representation on multiple occasions. Therefore, the matter was proceeded with *ex-parte qua* the assessee. The Ld. DR pointed out factual errors committed by learned first appellate authority while granting the relief to the assessee. We have carefully considered the arguments advanced by Ld. DR and also perused the orders of lower authorities. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

3.1 Facts on record would reveal that assessee being resident individual stated to be engaged in dealing in pharmaceutical items under proprietorship concern namely M/s Chemipack Corporation, was assessed for year under consideration u/s. 143(3) r.w.s. 147 on 29/02/2016, wherein the income was determined at Rs.175.36 Lacs after sold addition of Rs.164.81 Lacs on account of suspicious purchases, as against returned income of Rs. 10.55 Lacs filed by the assessee on 29/09/2011. The original return was processed u/s 143(1).

3.2 Pursuant to receipt of certain information from DGIT (Investigation) / Sales Tax Department, it transpired that assessee obtained bogus bills aggregating to Rs.164.81 Lacs from 4 entities, the details of which have already been extracted in opening para of the quantum assessment order. Accordingly, the case was re-opened as per due process of law vide issuance of notice u/s. 148 on 05/01/2016 which was followed by



notices u/s. 143(2) & 142(1) wherein the assessee was directed to substantiate the purchase transactions.

3.3 Summons u/s. 131 were issued to stated entities to confirm the transactions but the same were returned back by postal authorities. The assessee failed to produce any of the suppliers and also could not furnish latest whereabouts of the suppliers.

3.4 During the course of assessment proceedings for AY 2009-10 in the case of the assessee, summons u/s 131 were issued to one of the suppliers i.e. M/s Fair chem and the statement of proprietor of that entity namely Shri Ajay Yashwant Ghadi was recorded who categorically denied having supplied any goods to the assessee. The relevant portion of the statement has already been extracted in para-7 of the quantum assessment order. Upon perusal of said statement, an opinion was formed that the assessee obtained mere accommodation entries from the said entity which was further fortified by the fact that there were immediate cash withdrawals from the bank account of that entity.

3.5 The assessee failed to submit any ledger account, copy of sale / purchases register, copy of bank statement, stock register, delivery challans, transport receipts / details, Octroi details as called for by Ld. AO to verify the authenticity of the transactions.

3.6 Keeping in the view the factual matrix, the books were rejected u/s 145(3) and entire purchases were disallowed and added back to the income of the assessee.

4.1 The Ld. CIT(A) noticed that there was no change in method of accounting and the books were duly audited u/s 44AB. The books of accounts were accepted for AY 2010-11. No adverse remarks were



given by the Auditor as to maintenance of stock register. Hence, the rejection of books u/s 145(3) was not justified.

4.2 After considering the ratio of various judicial pronouncements, it was noted in para 5.9 that Ld. AO failed to make any investigation and completed the assessment on mere suspicion. It was incumbent on the part of Ld. AO to verify the payment details from the bank account of the assessee as well as payee to ascertain whether there was immediate cash withdrawal from the bank account. No such exercise was stated to be carried out. Therefore, a conclusion was drawn that the assessee fulfilled the onus casted upon him. It was also observed that the Tribunal, in assessee's appeal for AY 2009-10 vide ITA No.7417/Mum/2016 order dated 09/06/2017, restricted the additions to 10% of suspicious purchases. Following the same, the additions were restricted to 10%. Aggrieved, the revenue is under further appeal before us.

5. After due consideration of factual matrix as enumerated hereinabove, we find that Ld. CIT(A) has made an error in noting the correct factual matrix. As per assessment order, summons u/s 131 were issued to all the suppliers but the same were returned back by postal authorities. The assessee failed to provide the latest addresses of the suppliers and also failed to produce any of the suppliers. The assessee failed to submit any ledger account, copy of sale / purchases register, copy of bank statement, stock register, delivery challans, transport receipts / details, Octroi details as called for by Ld. AO to verify the authenticity of the transactions. In the above background, no option would be left with Ld. AO but to reject the books and disallow the purchases. The observation that merely because the books were



accepted in AY 2010-11 and therefore the books could not be rejected, is also without any substance since it was incumbent on the assessee to maintain adequate records for each of the year separately. The Ld. AO had also noted that there were immediate cash withdrawal from the bank accounts. The decision of Tribunal as relied upon by Ld. CIT(A), is stated to have been recalled subsequently. Therefore, considering the entirety of facts and circumstances, we deem it fit to set-aside the impugned order and restore the matter back to the file of Ld. CIT(A) for re-adjudication in the light of findings given by Ld. AO. The assessee is directed to substantiate his claim failing which Ld. CIT(A) shall be at liberty to re-adjudicate the same on the basis of material on record.

6. The appeal stands allowed for statistical purposes.

*Order pronounced in the open court on 11th March, 2020.*

**Sd/-**

**(Saktijit Dey)**

न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated : 11/03/2020

*Sr.PS, Jaisy Varghese*

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

**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/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**