

IN THE INCOME TAX APPELLATE TRIBUNAL "B(SMC)", BENCH KOLKATA

BEFORE SHRI P.M. JAGTAP, V.P & SHRI S. S. GODARA, JM

S.A No.27/Kol/2020

(निर्धारण वर्ष / Assessment Year: 2011-12)

B.M. Industries 126/2, Mahendra Bhattacharya Road, Kolkata – 711014.	Vs.	ITO, Ward-46(2), Kolkata
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAFFB7101E		
(Appellant)	..	(Respondent)

&

आयकर अपीलसं./I.T.A No.83/Kol/2020

(निर्धारण वर्ष / Assessment Year: 2011-12)

B.M. Industries 126/2, Mahendra Bhattacharya Road, Kolkata – 711014.	Vs.	ITO, Ward-46(2), Kolkata
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAFFB7101E		
(Appellant)	..	(Respondent)

Appellant by : Shri Soumitra Choudhury, Advocate

Respondent by : Shri Jayanta Khanra, JCIT, Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 13/03/2020

घोषणाकीतारीख/Date of Pronouncement : 19/06/2020

आदेश / O R D E R

Per Shri S. S. Godara:

This assessee's stay application filed u/s 254(2) of the Income Tax Act 1961 seeks to restrain the department from effecting recovery of the outstanding demand to the tune of Rs.14,82,360/- during the pendency of its main appeal ITA No.83/Kol/2020.

Heard both the parties. Case file perused. With the consent of both parties, we take up the foregoing main appeal itself for adjudication.

2. It transpires at the outset that the Assessing Officer had framed his reassessment; ex parte, against the assessee whilst disallowing/adding its alleged bogus purchases of Rs.21,69,165/- from four parties namely M/s Durga Sales, M/s Rajputana Vanijya Pvt. Ltd., M/s Singh Mercantile Pvt. Ltd. & M/s Viwadhara Supply Syndicate involving sums of Rs.4,26,666/-, Rs.6,70,951/-, Rs.5,93,034/- & Rs.4,78,514/-; respectively on the ground that their authorized person one Sri Sanjiw Kumar Singh had deposed in the department's search carried out on 05.07.2016 that he had been providing bogus purchase bills in the name of all four entities for deriving commission income. This made the Assessing Officer to disallow/add assessee's foregoing purchase sums as bogus u/s 69C of the Act followed by commission @2% u/s 69C of the Act. The CIT(A)'s ex parte lower appellate order has confirmed the same.

3. We have given our thoughtful consideration to rival submissions. Learned counsel vehemently contends that both the lower authorities have erred in law and on facts in disallowing assessee's genuine purchases from the four above-stated entities as bogus alongwith commission thereupon @2% despite the fact that the assessee's corresponding sales have been taken as genuine. And also all the four alleged entry provider entities also stand assessed qua the purchase amounts under business head. The Revenue's case, on the other hand, is that the Assessing Officer as well as the CIT(A) have rightly disallowed the assessee's purchases. We find no reason to sustain the Revenue's stand in entirety. As already indicated at the assessee's behest, it has come on record that its income from corresponding sales has already been accepted during the course of assessment as correct. Meaning thereby the impugned purchases sought to be treated as bogus have been assessed as business income in case of all four parties as well as in assessee's case. Coupled with this, we also find that neither the Assessing Officer nor the CIT(A)

have confronted the assessee with copy of the search statement of Mr. Singh right from the beginning also has nowhere indicated all purchase sums in its case as bogus. We therefore are of the view that all these factual aspect requires afresh verification from the Assessing Officer's end. We order accordingly. The assessee's sole substantive ground as well as its main appeal ITA No.83/Kol/2020 is accepted for statistical purposes and stay application SA No.27/Kol/2020 is rendered infructuous.

4. Before parting, it is noted that the order is being pronounced after ninety (90) days of hearing. However, taking note of the extraordinary situation in the light of the COVID-19 pandemic and lockdown, the period of lockdown days need to be excluded. For coming to such a conclusion, we rely upon the decision of the Co-ordinate Bench of the Mumbai Tribunal in the case of *DCIT vs. JSW Limited in ITA No. 6264/Mum/2018 & 6103/Mum/2018, Assessment Year 2013-14, order dt. 14th May, 2020.*

5. This assessee's SA No.27/Kol/2020 is dismissed as infructuous & ITA No.83/Kol/2020 is allowed for statistical purposes.

Order is pronounced in the open court on 19.06.2020.

Sd/-
(P. M. Jagtap)
VICE-PRESIDENT

Sd/-
(S. S. Godara)
JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 19/06/2020

RS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. The Appellant- B.M. Industries
2. The Respondent- ITO, Ward-46(2), Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A), Kolkata [sent through email]
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata [sent through email]
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Assistant Registrar,
I.T.A.T, Kolkata Benches,
Kolkata.