



IN THE INCOME TAX APPELLATE TRIBUNAL

"SMC" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA no.838/Mum./2019
(Assessment Year : 2010-11)

Rainbow Cable Corporation
Room no.1, 51/53, Popatwadi
Kalbadevi Road, Mumbai 400 002
PAN – AAGPR0145M

..... Appellant

v/s

Income Tax Officer
Ward-18(3)(1), Mumbai

..... Respondent

Assessee by : Shri Ajay Singh
Revenue by : Shri Sanjay Sethi

Date of Hearing – 23.11.2020

Date of Order – 27.11.2020

ORDER

Captioned appeal has been filed by the assessee challenging the order dated 7th February 2018, passed by the learned Commissioner of Income Tax (Appeals)-29, Mumbai, pertaining to the assessment year 2010-11.

2. There is a delay of 277 days in filing the present appeal. The assessee has filed application seeking condonation of delay being supported by an affidavit. It has been stated by the assessee that the delay was caused due to the fact that the partnership firm was dissolved on 12th January 2010, and the partners were not in good

terms. Thus, all these factors led to delay in filing the appeal. After considering the submissions of the learned Authorised Representative and averments made in the affidavit, I am satisfied that the delay in filing the appeal is due to reasonable cause. Accordingly, I condone the delay and admit the appeal for adjudication on merit.

3. In ground no.(i), the assessee has challenged the validity of re-opening of assessment under section 147 of the Income Tax Act, 1961 (for short "*the Act*"). However, at the time of hearing, the learned Counsel for the assessee did not press this ground. Accordingly, this ground is dismissed as not pressed.

4. In ground no.(ii), the assessee has challenged the addition made on account of non-genuine purchases.

5. Brief facts are, the assessee is a partnership firm engaged in trading of industrial cable, wires, etc. For the assessment year under dispute, the assessee filed its return of income on 22nd September 2010, declaring income of ₹ 1,260. The return of income was initially processed under section 143(3) of the Act. Subsequently, the Assessing Officer received information from the Sales Tax Department, Government of Maharashtra, and the DGIT (Inv.), Mumbai, that purchases worth ₹ 21,94,017, claimed to have been made during the year from six parties are non-genuine as the concerned parties are

merely providing accommodation bills. On the basis of such information, the Assessing Officer re-opened the assessment under section 147 of the Act. In the course of assessment proceedings, the Assessing Officer called upon the assessee to prove the genuineness of purchases. Though, the assessee furnished some evidences, however, the Assessing Officer was not convinced with them. Thus, he was of the view that the purchases made by the assessee are non-genuine. However, instead of disallowing the entire purchases, the Assessing Officer restricted the addition to the profit element embedded in such purchases by estimating it @ 12.5%. Thus, he made the addition of ₹ 2,74,252. The aforesaid addition was also sustained by learned Commissioner (Appeals) while deciding assessee's appeal.

6. The leaned Counsel for the assessee submitted, in the course of assessment proceedings, the assessee has furnished necessary evidences, such as, purchase bills, bank statement showing payment made through cheques, details of corresponding sales, ledger account, etc. Thus, he submitted, in absence of purchases, the assessee could not have effected the sales. Further, he submitted that the VAT rate on cables and wires is 4%, whereas, the assessee has shown gross profit rate of 3.50%. Thus, he submitted, at the most addition, if any, should be restricted to 4%. In support of such contention, the leaned Counsel for the assessee relied upon the following decisions:—

- i) PCIT v/s Pinaki D. Panani, ITA no.1543/2017, dated 08.01.2020;*
- ii) Mohammad Haji Adam & Co., ITA no.1004/2016, dated 11.02.2019; and*
- iii) Param Shakti Pvt. Ltd., ITA no.413/2017, dated 15.07.2019.*

7. The learned Departmental Representative relied upon the observations of learned Commissioner (Appeals) and the Assessing Officer.

8. I have considered rival submissions and perused the material on record. Undisputedly, the Assessing Officer on the basis of information received from the Sales Tax Department has treated certain purchases made by the assessee to be non-genuine. However, fact remains, before the Assessing Officer the assessee had furnished purchase invoices, bank statement showing payment to the selling dealers and sales invoice with quantitative tally. Undisputedly, the Assessing Officer was convinced that the assessee has made corresponding sales against the purchases shown. So, the doubt, if any, is only with regard to the source of purchases. For this reason only, the Assessing Officer added the profit element by estimating @ 12.5%. Thus, ultimately, it boils down to the reasonable profit element which can be considered for addition. It can be assumed that by purchasing from undeclared/unidentified sources what the assessee might have suppressed is the payment of VAT. It is the contention of the assessee

before us that VAT rate on the product sold by the assessee is @ 4%. Thus, at best, what the assessee might have gained is the VAT not paid to the Department. In my considered opinion, if the addition is restricted to the VAT rate suppressed by the assessee, it would be fair and reasonable. Accordingly, I direct the Assessing Officer to restrict the addition to 4% of the alleged non-genuine purchases. The ground raised by the assessee is partly allowed.

9. In the result, appeal is allowed.

Order pronounced in the open court on 27.11.2020

**Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER**

MUMBAI, DATED: 27.11.2020

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

Assistant Registrar
ITAT, Mumbai