



IN THE INCOME TAX APPELLATE TRIBUNAL

"SMC" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA no.3263/Mum./2019
(Assessment Year : 2009-10)

Sourabh Navalkishore Garg
Flat no.711, B-Wing, Swapnil Co-op.
Housing Society Ltd., Nagardas Road
Andheri (East), Mumbai 400 004
PAN – ALNPG6600J

..... Appellant

v/s

Dy. Commissioner of Income Tax
Central Circle-7(3), Mumbai

..... Respondent

Assessee by : Shri Dharmesh Shah
Revenue by : Shri Sanjay Sethi

Date of Hearing – 23.11.2020

Date of Order – 08.12.2020

ORDER

The aforesaid appeal has been filed by the assessee challenging the order dated 27th March 2019, passed by the learned Commissioner of Income Tax (Appeals)-49, Mumbai, pertaining to the assessment year 2009-10.

2. In grounds no.1, 2 and 3, the assessee has challenged the validity of re-opening of assessment under section 147 of the Act.

3. Brief facts are, the assessee, an individual, claims to be engaged in the business of manufacturing and trading in precious and semi-

precious stones and jewelry through his proprietary concern Sangam Exports. For the assessment year under dispute, the assessee filed his return of income on 29th September 2009, declaring income of ₹9,26,480. In consequence of a search and seizure operation conducted under section 132 of the Act in case of Rajat Pharma, a survey action under section 133A of the Act was carried out in the business premises of the assessee on 12th December 2008. During such survey proceedings, the assessee, as stated by the Assessing Officer in the original assessment order, confessed of having only provided accommodation entries and no actual transaction of purchase and sales had taken place. On the basis of such information gathered during the survey operation and statement recorded from the assessee, the Assessing Officer completed the assessment originally under section 143(3) of the Act vide order dated 30th December 2011, holding that the assessee has not actually carried out any purchase and sales transactions and has only provided accommodation entries. Thus, he held that what the assessee has earned by providing such accommodation entries is commission. On the basis of such conclusion, the Assessing Officer proceeded to estimate commission income @ ₹ 100 per one lakh. The assessee having shown the turnover of ₹ 80,09,66,181, the commission income worked out to ₹ 8,00,966. Further, the Assessing Officer allowed 10% of the expenses claimed by

the assessee. As a result of the addition/disallowance made by the Assessing Officer, total income was determined at ₹ 40,54,164. After completion of the original assessment as aforesaid, information was received by the Assessing Officer from the Sales Tax Department, Government of Maharashtra, through DGIT (Inv.), Mumbai, indicating that purchases worth ₹ 5,04,94,046, claimed to have been made during the year from three parties viz. Kotsons Impex Pvt. Ltd., Shree Jalaram Enterprises and Excellent Diamonds Pvt. Ltd. are non-genuine. On the basis of such information the Assessing Officer, Circle-2, Ajmer, re-opened the assessment under section 147 of the Act. Since, assessee's assessment jurisdiction subsequently was transferred to Mumbai, the Assessing Officer, Central Circle-7(3), Mumbai, also re-opened the assessment under section 47 of the Act on the basis of very same information. However, the Assessing Officer, Circle-2, Ajmer, completed the assessment first vide order dated 27th March 2015, adding back the entire purchases of ₹ 5,04,94,046, to the income of the assessee. Subsequently, the Assessing Officer, Central Circle-7(3), Mumbai, relying upon the very same information received from the Sales Tax Department, concluded that though in the original assessment order passed under section 143(3) of the Act, the Assessing Officer has computed the commission income on sales turnover, however, he did not compute commission income on

purchase turnover. The Assessing Officer held that since the purchases are also bogus, the assessee must have earned commission income on purchase turnover also. Accordingly, adopting the basis of computation of commission income in the original assessment order, the Assessing Officer worked out the commission income on purchase turnover at ₹ 8,02,686 and added back to the income of the assessee. The assessee challenged the aforesaid addition before learned Commissioner (Appeals).

4. After considering the submissions of the assessee in the context of facts and material on record, learned Commissioner (Appeals) found that while deciding similar issue in assessee's own case in assessment year 2008-09, the first appellate authority has confirmed the addition of commission income @ 2% only on the imports and has deleted the commission income on the domestic purchases. Following the aforesaid order of the first appellate authority, learned Commissioner (Appeals) estimated the commission income on the total imports and restricted the addition made by the Assessing Officer to ₹ 2,40,274.

5. The learned Counsel for the assessee challenging the validity of re-opening of assessment submitted, in the course of original assessment proceedings itself the Assessing Officer has held that entire purchases and sales shown by the assessee are bogus. Hence,

he has estimated commission income on the sales turnover. He submitted, once the purchases and sales turnover have been held as bogus and commission income has been estimated, the re-opening of assessment cannot be made under section 147 of the Act, again on the allegation that the purchases are bogus. Further, he submitted, on the basis of very same information received from the Sales Tax Department, Government of Maharashtra, the Assessing Officer at Ajmer had re-opened and completed the assessment by treating the entire purchases from three parties as bogus and adding them back to the income of the assessee. Therefore, any further action under section 147 of the Act on the basis of very same information is untenable. The learned Counsel for the assessee submitted, when assessee's purchases and sales have been found to be bogus and it is found that the assessee is providing accommodation entries on receipt of commission, the commission income can be estimated only on the basis of sales turnover as the persons who provide bogus purchase bills earn commission rather than the persons who receive such bogus purchase bills. In this context, the learned Counsel for the assessee relied upon a number of decisions. Finally, he submitted, the assessee has been seriously prejudiced as on the very same transaction, he has been taxed three times. The learned Counsel for the assessee submitted, once the commission income has been estimated on sales

turnover and the entire purchases on the basis of information received from the Sales Tax Department have been disallowed and added back to the income of the assessee, no further addition on account of commission on purchases could have been made. Thus, he submitted, re-opening of assessment under section 147 of the Act should be held as invalid and the addition made should be deleted.

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

7. I have carefully considered the rival submissions in the light of decisions relied upon and perused the material on record. The factual matrix clearly reveal that pursuant to a survey under section 133A of the Act carried out in case of the assessee certain information came to the notice of the Department indicating that the assessee was actually not carrying out any purchase or sales transactions and was merely providing accommodation entries. In the statement record during the survey operation, the assessee also admitted the aforesaid factual position. Thus, while completing the assessment originally the Assessing Officer treated the entire purchase and sales transaction by the assessee as bogus and estimated commission income on the sales turnover shown by the assessee. As could be seen, after completion of

the original assessment, the Department received information from the Sales Tax Department, through the DGIT (Inv.), Mumbai, revealing that purchases worth ₹ 5.04.00.000, claimed to have been made from three parties are non genuine. On the basis of such information, two parallel proceedings under section 147 of the Act were initiated at Ajmer as well as in Mumbai. The Assessing Officer, Ajmer, while completing the assessment under section 143(3) r/w section 147 of the Act had disallowed the entire purchase of ₹ 5.4 crore by treating it as bogus and added back to the income of the assessee. Whereas, the Assessing Officer at Mumbai while completing the assessment has estimated commission income on purchase turnover. Thus, as could be seen, the assessee has been subjected to tax on the very same turnover three times. In the original assessment, the Assessing Officer had treated the entire purchase and sales transaction as bogus and has concluded that the assessee is merely providing accommodation entries, he has estimated commission income on the sales turnover. In the assessment order passed by the Assessing Officer at Ajmer, the entire purchase of ₹ 5.04 crore made from three parties have been disallowed and added back to the income of the assessee relying upon the information received from the Sales Tax Department. In the impugned assessment order, the Assessing Officer has again estimated commission income on the very same

purchase turnover which was fully disallowed in the earlier assessment order. Thus, in real sense there is no income which has escaped assessment. Moreover, in my opinion, the contention of the learned Counsel for the assessee that the commission income has to be estimated only on the sales turnover is acceptable. Thus, I am of the considered opinion, there is no escapement of income to enable the Assessing Officer to invoke the provisions of section 147 of the Act to re-open the assessment. Therefore, I have no hesitation in holding that the re-opening of assessment under section 147 of the Act being invalid the impugned assessment order deserves to be quashed. Accordingly, I do so. Consequently, the impugned order of learned Commissioner (Appeals) is set aside. In view of my decision above grounds no.4 and additional grounds raised by the assessee have become academic, hence do not require adjudication.

8. In the result, appeal is allowed.

Order pronounced in the open court on 08.12.2020

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 08.12.2020

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