

आयकर अपीलिय अधिकरण

मुंबई पीठ “ एफ”

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “F”, MUMBAI

श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष एवं

श्री एस. रिफौर रहमान, लेखा सदस्य के समक्ष

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER.

आअसं. 6650/मुं/2018 (नि.व.2011-12)

ITA NO. 6650/MUM/2018 (A.Y.2011-12)

M/s.Framroze Marketing Co. Private Limited,
Unit No.9, 3rd Floor, Prabhadevi Industrial
Estate, Veer Savarkar Marg,
Mumbai 400 025
PAN: AAACF5027B

: अपीलार्थी/ **Appellant**

बनाम/ Vs.

The ACIT -6(3)(1),
Aaykar Bhavan, M.K.Road,
Mumbai 400 020

: प्रत्यर्थी/ Respondent

Assessee by : None
Revenue by : Shri Vijay Kumar Subramaniyan
सुनवाई की तारीख/
Date of Hearing : 03/12/2020
घोषणा की तारीख /
Date of Pronouncement : 22/02/2021

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-12, Mumbai (in short ‘the CIT(A)’) dated 19/09/2018 for the assessment year 2011-12.

2. The brief facts of the case as emanating from records are : The assessee is engaged in the business of trading in industrial thermometers, epoxy compounds, pressure gauges and other industrial equipments. The assessment

in the case of assessee for assessment year 2011-12 was reopened on the basis of information received by Investigation Wing that the assessee has obtained accommodation entries/ bogus purchase bills aggregating to Rs.8,83,970/- from various (six) hawala dealers. In reassessment proceedings the Assessing Officer asked the assessee to substantiate genuineness of alleged bogus purchase bills, as well as suppliers of the goods. The assessee furnished the details of payments made through banking channel, copies of purchase bills, delivery challans, the details of corresponding sales against the alleged bogus purchases. However, no confirmations from the parties who supplied the alleged goods or the documents to support trail of goods viz. octroi receipts, inward stock register, etc. were filed by the assessee. The Assessing Officer after considering the submissions and the documents furnished by the assessee made addition of Rs.1,10,496/- i.e. 12.5% of the total bogus purchases. Aggrieved by the assessment order dated 29/02/2016 passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short 'the Act'), the assessee filed appeal before the CIT(A) assailing addition on merits. The First Appellate Authority upheld the findings of Assessing Officer and dismissed the appeal of assessee. Now, the assessee is in second appeal before the Tribunal challenging the addition on account of bogus purchases, as well assailing validity of reopening u/s 148 of the Act.

3. Shri Vijay Kumar Subramaniyan, representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee. The Id.Departmental Representative submitted that the assessee has failed to file confirmations from the vendors from whom the bogus purchase bills were obtained. The Assessing Officer had issued notices under

section 133(6) to the vendors on the addresses furnished by the assessee , however, the same were unserved by the Postal Department as the said vendors were not available at the given addresses. Thus, the genuineness of the vendors as well as the bills under dispute could not be proved by the assessee. The Id.Departmental Representative further pointed that in first appeal before the CIT(A), the assessee raised no dispute with regard to validity of reopening.

4. We have heard the submissions made by Id.Departmental Representative and have examined the orders of authorities below. The assessee in appeal has raised four grounds. In ground No.1 of the appeal, the assessee has challenged validity of reopening. We find that this legal issue has been raised for the first time before the Tribunal. However, no material has been placed on record to substantiate that the reopening proceedings were not carried out in accordance with law. Consequently, ground No.1 of the appeal is dismissed being devoid of any merit.

5. In ground No.2(a) to 2(f)of the appeal, the assessee has assailed addition amounting to Rs.1,10,495/- on account of bogus purchase bills . The assessee has allegedly procured accommodation bills aggregating to Rs.8,83,970/- from various(six) suspicious dealers. The assessee could neither prove the genuineness of the purchases nor the suppliers. The notices issued under section 133(6) of the Act by the Assessing Officer could not be served on the suppliers as they were not available on the addresses furnished by the assessee. The assessee has also failed to furnish confirmation from the suppliers of the goods, which are subject matter of dispute. Further, to amplify delivery of goods, the assessee could not furnish documents viz octroi

receipts, inward stock register, etc. Mere payment by cheque is not a conclusive proof of alleged purchases. Thus, in the light of the above facts we concur with the findings of authorities below that the assessee has indulged in obtaining bogus purchase bills . It is an undisputed fact that the Revenue has not questioned the sales declared by the assessee. Without purchases, there cannot be sales. Therefore, it is only profit embedded in bogus transaction that has to be brought to tax. The Assessing Officer has estimated profit @ 12.5% on bogus purchase bills . The CIT(A) has upheld the same. The Hon'ble Bombay High Court in the case of PCIT vs. Mohammad Haji Adam & Co. In Income Tax Appeal No.1004 of 2016 decided on 11/02/2019 has upheld the findings of Tribunal in restricting the addition limited to the extent of difference in G.P rate on alleged bogus purchases and genuine purchases. We deem it appropriate to restore this issue back to the file of Assessing Officer for making addition on account of bogus purchases in line with the decision rendered by Hon'ble Jurisdictional High Court(supra). The ground No.2 of the appeal is allowed for statistical purposes.

6. In ground No.3 of appeal, the assessee has assailed levy of penalty under section 271(1)(c) of the Act and charging of interest under section 234A,234B 234C and 234D of the Act. The challenge to levy of penalty under section 271(1)(c) of the Act is premature, at this stage, the ground raised by the assessee is dismissed, accordingly. Charging of interest under section 234A,234B 234C and 234D of the Act are mandatory and consequential, therefore, ground No.3 raised by the Assessing Officer is dismissed being devoid of any merit.

7. The ground No.4 of the appeal is general in nature, hence, require no adjudication.

8. In the result, appeal by the assessee is partly allowed for statistical purposes in the terms aforesaid.

Order pronounced in the open Court on Monday, the 22nd day of February, 2021.

Sd/-

(S.RIFAUR RAHMAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 22/02/2021

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai