

आयकर अपीलीय अधिकरण "D" न्यायपीठ मुंबई में

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस रिफाउर रहमान, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VP AND SHRI S. RIFAUR RAHMAN, AM

आयकर अपील सं./ ITA No. 2053/Mum/2019
(निर्धारण वर्ष / Assessment Year 2013-14)

आयकर अपील सं./ ITA No. 2054/Mum/2019
(निर्धारण वर्ष / Assessment Year 2011-12)

आयकर अपील सं./ ITA No. 2055/Mum/2019
(निर्धारण वर्ष / Assessment Year 2014-15)

The Dy. Commissioner of Income Tax-8(2)(1), Aayarka Bhawan, Room No. 624, M.K. Rd., Mumbai-400 020	बनाम/ Vs.	M/s Shobha Asar Jewellery Pvt. Ltd. 78-B, Sunshine Building, Dr. Annie Besant Road, Worli, Mumbai-400 018
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. ALLCS9865R		

अपीलार्थी की ओर से/ Appellant by	:	Shri Bharat Andhle, AR
प्रत्यर्थी की ओर से/ Respondent by	:	None

सुनवाई की तारीख / Date of hearing:	27.07.2021
घोषणा की तारीख / Date of pronouncement:	27.07.2021

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष के द्वारा /

PER MAHAVIR SINGH, VP:

These appeals of the Revenue are arising out of order of the Commissioner of Income Tax (Appeals)-14, Mumbai [in short CIT(A)], in Appeal No. CIT(A)-14/IT-104C/16-17, CIT(A)-14/IT-

105/16-17, CIT(A)-14/IT-218/16-17 vide dated 29.10.2018. The Assessments were framed by the Dy. Commissioner of Income Tax, Circle 8(2)(1), Mumbai (in short ACIT/ AO) for the A.Ys. 2013-14, 2011-12, 2014-15 vide order dated 19.03.2016, 01.12.2016 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only common issue in these three appeals of the Revenue, for three assessment years, against the different order of CIT(A) restricting the disallowance of bogus purchases at 6% as against disallowance made by Assessing Officer by estimating the profit rate at 12.5% of the bogus purchase. For this, Revenue has raised identically worded grounds in all the three years and facts and circumstances of the case are exactly identical except the quantum and figures. Hence, we will take the facts from Assessment Year 2013-14 in ITA No.2053/Mum/2019. The grounds raised by Revenue read as under: -

"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) justified in restricting the addition made by the Assessing Officer to 6% of Rs.1,99,81,707/- against the addition made at 12.5% of the bogus purchases, ignoring that the assessee was unable to prove the genuineness of the purchase either by producing the supplier for examination or by furnishing other substantiating documents which were required by the Assessing Officer?

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in overlooking the fact that the addition made by the AO was based on

the details of the scam unearthed by the Investigation Wing of Income Tax, wherein it was established that the assessee has taken mere accommodation entries/bogus bills from the suppliers without actually making purchase from them?"

3. The Assessing Officer received information from sale tax department that the assessee has obtained bogus bills for alleged bogus purchases amounting to ₹1,99,81,707/-. The Assessing Officer asked the assessee to show cause as to why the aforesaid transactions should not be treated as bogus and assessee replied by submitting the purchase bills, bank statements highlighting that the payments are made through account payee cheques. The assessee has made purchase from one party M/s Kingstar. As the assessee failed to produce the party M/s Kingstar and also could not prove actual delivery/ physical delivery of the goods. Hence, the Assessing Officer treated the purchase as bogus and estimated the profit rate by observing in para 7.7 as under:-

"7.7 Even though the assessee has produced certain details but could not produce the party, and after elucidation of facts of the case and discussion as above, the method to be adopted must be which is approximately nearer to the truth, having regard to the facts and circumstances of the case and following the judicial decisions of the Hon'ble Gujarat High Court in the case of M/s. Bholenath Poly Fab Pvt. Ltd. 355 ITR 290 (Guj.) and Simit P. Sheth 356 ITR 451 (Guj), I am of the considered opinion that 12.5% of the total amount of 1,99,81,707/- which comes to ₹24,97,713/- be taken as unproved/ non-

genuine purchases and added to the total income returned. Penalty proceedings under section 271(1)(c) of the I.T. Act, 1961 is initiated separately for furnishing inaccurate particulars of income.”

4. Aggrieved, assessee preferred the appeal before Commissioner of Income Tax (Appeals). The CIT(A) further reduced the estimation and restricted at 6% by following the Tribunal decision by observing as under:-

“Reliance is also placed on the decision of ITAT, Mumbai in the case of Ratnagiri Stainless (P.) Ltd. Vs. Income-tax Officer, 5 (3) (1), Mumbai_[2017] 80 taxmann.com 265 (Mumbai - Trib.)./[2017] 164 ITD 136 (Mumbai - Trib.), head note of which reads as under:-

Section 69C, read with section 147, of the Income-tax Act, 1961 - Unexplained expenditure (Reassessment) - Information was received by Assessing Officer from DGIT (Inv.), Mumbai that there were some parties who were engaged in hawala transactions and were involved in issuing bogus bills for sale of material without delivery of goods, and that assessee was beneficiary of hawala/accommodation entries from 28 entry providers - Assessing Officer reopened assessment and assessee was asked to produce parties and also file documents to substantiate its claim of purchase etc. - Assessee did not submit documentary evidence to show that there was movement of goods and notices issued to 28 parties were returned unserved - Thus, he concluded purchases were not genuine purchases and further, Assessing Officer

made gross profit additions at rate of 12.5 per cent over total purchases - Whether, on facts, there was tangible material which clearly indicated assessee to be beneficiary of bogus purchase entries from 28 bogus entry providers and, thus, reopening was justified - Held, yes - Whether further since directors of 28 entities had admitted of issuing only invoices for sake of entry without delivery of goods Assessing Officer was justified in treating it as bogus purchases - Held, yes - Whether ends of justice will be met if GP ratio of 12.5 per cent on alleged bogus purchases was added to income of assessee against which credit for declared GP ratio on alleged bogus purchases be granted by Assessing Officer after verification - Held, yes [Paras 10 and 11] [Partly in favour of assessee]

In the body of the order, honourable tribunal has observed as under:-

It was observed by the Assessing Officer that these parties just issue bogus bills in lieu for earning commission without actual supply of goods. In an sworn Affidavit Cum Declaration filed before Sales Tax Investigation Branch, Mumbai, and in deposition before the Assistant Commissioner of Sales tax, Investigation Branch, Mumbai ,the directors of the said 28 entities have admitted of issuing only invoices for sake of entry without delivery of goods.

Notices under section 133(6) were issued by the Assessing Officer to all the above 28 parties. All these notices except one notice were either returned un-served

or were not replied to. Only one party, categorically stated that they have not supplied any material to the assessee concern. The Assessing Officer asked the assessee to produce the parties but the assessee failed to produce the parties. The parties were not produced even before Commissioner (Appeals). The assessee also failed to produce suppliers, transporters or brokers before the Assessing Officer for verification and enquiry.

The assessee was not able to discharge burden cast under section 106 of 1872 Act as the assessee did not produce the original documents before the Assessing Officer and file documents for showing movement of goods from supplier to assessee and from assessee to customer as evidence although it stated in its reply that said documents are being filed. The assessee filed delivery challan in one case only and that too there was no mention of transportation details. The assessee did not file confirmations from these parties nor transportation details of the material purported to be purchased from these suppliers were furnished. The parties were also not produced before the authorities below. The only party who responded to notice under section 133(6) issued by the Assessing Officer namely Ranakpur deposed against the assessee. The assessee did not ask for cross examination of Ranakpur. The assessee has to first discharge its primary onus cast under law and if the same stood duly discharged which is not rebutted by authorities , but despite that then also the authorities proceed to put assessee to prejudice solely relying on the basis of

incriminating statement recorded of third party at the back of the assessee, then certainly the right to cross examination the said third party whose incriminating statement recorded at the back of the assessee is relied upon by authorities to prejudice the assessee will become absolute. But in the instant case, primary onus cast on the assessee itself did not stand discharged by the assessee. The Assessing Officer made gross profit additions at the rate of 12.5% over the total bogus purchases of Rs.2,39,83,261/- which were held to be non-genuine by the authorities below, which addition came to Rs. 29,97,908/- which addition was confirmed by the learned Commissioner (Appeals). In such circumstances, GP ratio needs to be estimated which definitely involved some estimation/guesswork but the said estimation/guesswork should be fair, honest and rational keeping in view factual matrix of the case and cannot be arbitrarily applied at the discretion of authorities.

The authorities below in the instant case did not make any industry comparisons to arrive at fair, honest and rational estimation of GP ratio, rather applied GP ratio of 12.5 per cent on alleged bogus purchases which estimation was in addition to the normal GP ratio declared by the assessee in return of income filed with revenue. The revenue made aforesaid additions relying on the presumption that the material was in-fact purchased from grey market at a lower rate and to cover deficiencies in record, the invoices were procured from these entry operators to reduce the profit. It was also considered that there will be savings on

account of taxes while procuring material from grey market.

The books of account were not rejected under section 145(3) by the revenue. In the immediately preceding year i.e. assessment year 2008-09, the assessee earned GP ratio of 4.3 per cent on total turnover, while for the year under consideration GP ratio earned was 5.45 per cent. Based on facts and circumstances of the case, end of justice will be met if GP ratio of 12.5 per cent on alleged bogus purchases was added to income of the assessee against which credit for the declared GP ratio on the alleged bogus purchases will be granted by the Assessing Officer after verification by the Assessing Officer because of failure of the assessee to come forward to discharge primary onus cast upon him for which assessee is to be blamed and in the midst of afore-stated un-rebutted allegation against the assessee and non discharge of primary onus, the declared lower GP ratio of 5.45 per cent in the instant previous year under appeal cannot be accepted. [Para 11].

Since the facts of the assessee's case are similar, respectfully following the above decisions, some percentage of such purchases is required to be taxed in the hands of the appellant towards element of profit embedded in such purchases from M/ Kingstar. The AO has estimated such profit at 12.5% of the purchases in view of the decisions quoted above. However, the appellant is engaged in the jewellery business and in the case of M/s Ralf Gems Put. Ltd vs. ITO, vide order dated

11/12/2017 in ITA No. 3707/Mum/2016, honourable Tribunal has held that estimation of profit at the rate of 6% is appropriate in this line of business. Respectfully following the decision of the jurisdictional tribunal, the AO is directed to tax 6% of such bogus purchases as element of profit embedded in such purchases. Accordingly, this ground of appeal is partly allowed."

Aggrieved, now Revenue is in appeal before us.

5. We have heard rival contentions and gone through the facts and circumstance of the case. We noted that the assessee has produced bills, vouchers, stock tally and payment through account payee cheques, the details of bank statements. The assessee is unable to produce any evidence regarding physical delivery has taken place or not or he could not produce the party M/s Kingstar. We noted that Assessing Officer has also estimated the profit rate at the rate of 12.5% as the assessee is engaged in the diamond and jewellery business. We noted that the CIT(A) has rightly restricted the profit rate at 6%. Now before us, Revenue could not controvert the findings of CIT(A) which is based on the decision of this Tribunal in the case of Ratnagiri Stainless (P.) Ltd. Vs. Income-tax Officer, 5 (3) (1), Mumbai_[2017] 80 taxmann.com 265 (Mumbai - Trib.) vide order dated 04.04.2017. Hence, we find no infirmity in the order of CIT(A) and this appeal of the Revenue is dismissed.

6. The facts and circumstances in ITA Nos. 2054/mum/2019 & 2055/Mum/2019 for Assessment Years 2011-12 & 2014-15 are pari-materia to those considered by us in ITA No. 2053/Mum/2019 for

Assessment Years 2013-14. Thus, our decision therein shall apply mutatis mutandis in these appeals also.

7. In the Result these appeals of Revenue are dismissed.

Order pronounced in the open court on 27.07.2021.

Sd/-

(एस रिफाउर रहमान/ S. RIFAUR RAHMAN)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 27.07.2021

सुदीप सरकार, व. निजी सचिव/ Sudip Sarkar, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील)/ The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि आयकर, अपीलीय अधिकरण मुंबई, /
DR, ITAT, Mumbai
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True - व. निजी सचिव/ raterceS etavirP .rS /

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai