

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Shri Shamim Yahya (AM)

I.T.A. No. 857/Mum/2020 (Assessment Year 2010-11)

M/s. Jivanlal Corporation 409, Western Edge II Western Express Highway Borivali East Mumbai-400 066. PAN : ACFJ3353K (Appellant)	Vs.	ITO-17(2)(1) Kautilya Bhavan Bandra Kurla Complex, Bandra East Mumbai-400051. (Respondent)
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Assessee by	Shri Bhupendra Shah
Department by	Ms. Smita Verma
Date of Hearing	12.10.2021
Date of Pronouncement	09.11.2021

ORDER

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] 14.11.2019 pertaining to assessment year 2010-11.

2. The grounds of appeal read as under :-

- “1) In the facts and the circumstances of the case and in law, the learned Assessing Officer erred in reopening the assessment merely on the basis of borrowed satisfaction, presumption and surmises.
- 2) In the facts and the circumstances of the case and in law, the learned Assessing Officer erred in disallowing Rs 6,49,534/-(5% of Rs. 1,30,03,560/-) as alleged non-genuine purchases:
 - a) By disregarding rectification u/s 154 submitted by the Appellant vide letter dt. 03.06.2015.
 - b) By not issuing notices u/s 131 and 133(6)
 - c) By not affording the appellant an opportunity to cross examine the parties based on which the additions were made.
 - d) By ignoring the fact that no additions can be made if suppliers are not traceable
 - e) Without rejecting books of accounts u/s 145(3)

- f) Without appreciating the fact that payment was made vide account payee cheques to the alleged non-genuine dealers
- g) By disregarding the fact that suspicion however strong cannot form the basis of reassessment

3) In the facts and the circumstances of the case and in law, the learned Commissioner of Income Tax (A) erred in dismissing the grounds of appeal without appreciating the merits of the case

4) The AO wrongly charged interest u/s 234A, B & C and also initiated penalty u/s 271(l)(c).

|B| Relief Prayed: The appellant therefore prays Your Honor;

- 1) To quash the reopening made by the Assessing Officer.
- 2) To delete the disallowance of Rs 6,49,534/-(5% of Rs. 1,30,03,560/-) made as alleged non-genuine purchases.
- 3) To delete interest charged u/s 234A, B & C and also initiated penalty u/s 271(1) (c).
- 4) To quash the order passed by the Commissioner of Income Tax (A) without appreciating the merits of the case.

3. Brief facts are that the assessee is a trader in chemical and solvent. Pursuant to information from sales tax department that the assessee has purchased from following bogus parties, the Assessing Officer reopened the assessment.

SN	Name	PAN	Amount (Rs.)
1.	M/s DRSHAN SALES CORP.	AAGPG7681P	925749
2.	M/S P. S. SHAH & SONS	AAEPS9167L	390362
3	M/s Chetan Chemical Corp.	AAAPV5986C	303 7041
4	M/s Nina Enterprises	AAEPS8840E	3306469
5	M/s ASHAPUFM ENTERPRISES/AKSHAD ENTERPRISES	AKIPR2119P	4705939
		Total	1,30,03,560

4. The assessee produced the invoice and payments were through banking channel. The Assessing Officer proceeded to make 5% disallowance out of the bogus purchases on the ground that the parties were not produced by the assessee and he inter alia took following reasoning :-

- The Sales Tax Department, being a statutory authority, has certified that the aforesaid parties are Hawala Operators after conducting independent enquiries.
- The purchases from hawala operator falls within the ambit of the term 'colourable devices' and the Hon'ble Supreme Court observed in the case of McDowell and Co. Ltd. Vs. CTO 154 ITR 148 that "Tax planning may be legitimate provided it is within the framework of law. Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious method. It is obligation of every citizen to pay the taxes honestly without resorting to subterfuges."
- The Sales Tax Department made a finding and uploaded on its website the name of entities which are involved in giving bogus bills only after carrying out a detailed enquiry & investigation.
- As far as the independent enquiries in the above mentioned case conducted by the Sales Tax Department are concerned, the reports of the Sales Tax Department, which were given after conducting enquiries, indicates that the aforesaid party was not available at the given premises. It was also reported that the hawala parties, in their statement recorded in front of sales tax authorities.

5. Assessee filed application under section 154 of the Act to the Assessing Officer informing that the name of M/s. Nina Enterprises does not appeared in the list of bogus parties of sales tax department and pleaded that 5% disallowance out of purchases of Rs. 39,06,496/- i.e. Rs. 1,95,523/- should be deleted. The Assessing Officer rejected the plea.

6. Upon assessee's appeal learned CIT(A) held that this issue cannot be a subject matter of 154 application and he confirmed the Assessing Officer's action.

7. Against the above order assessee is in appeal before the ITAT.

8. I have heard both the parties and perused the records. I note that the assessee has raised various grounds. However, the only ground emanating out of the learned CIT(A)'s order is relating to the rejection of 154 application regarding purchase from Nina Enterprises.

9. Upon careful consideration, I note that the addition was primarily made on the basis that the said party was on the list of hawala/bogus dealers of sales tax department. The Assessing Officer's emphasis on this aspect is apparent in the assessment order. The portion of the assessment order giving much emphasis upon sales tax department list and finding are already reproduced above. When it is found that these aspects are not at all applicable in case of this party, this mistake by the Assessing Officer is quite apparent. Once it is found that the said party is not in such a list the very basis of addition fails. Hence in my considered opinion the mistake is apparent and ought to have been corrected. The Assessing Officer and learned CIT(A) have erred in this regard. Hence, I direct that disallowance of 5% in purchase from Nina Enterprises is to be deleted.

10. In the result, assessee's appeal is partly allowed.

Pronounced in the open court on 9.11.2021.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 09/11/2021

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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