

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” Bench, Mumbai
Before Shri Shamim Yahya, Accountant Member

I.T.A. No. 7148/Mum/2019
(Assessment Year 2012-13)

Bhakti Enterprises 303/304, Vaikunth Building Upper Govind Nagar Malad(East) Mumbai-400 097 PAN : AADFB7625B (Appellant)	Vs.	ACIT-30(1)(1) C-13, 5 th Floor, Pratyakshakar Bhavan, BKC, Bandra(E) Mumbai-400 051 (Respondent)
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Assessee by	None
Department by	Ms. Smita Verma
Date of Hearing	13.10.2021
Date of Pronouncement	16.12.2021

O R D E R

Per Shri Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-41 dated 31.08.2019 and pertains to assessment year 2012-13.

2. Grounds of appeal read as under:-

1. In the facts and circumstances of the case and in law, the learned CIT(A) has erred in not holding that the assessment made u/s. 147 read with section 143(2) was bad in law.
2. The Ld.CIT(a) erred in confirming an addition of Rs. 13,24,208 being the 4% GP addition made by the Learned AO in relation to purchases made from six parties, on the footing that the said parties were alleged to be of Rajendra Jain group and hence were engaged only in providing the accommodation entries.

3. Brief facts of the case are as under:-

An information was received in this case from the DGIT(Inv.),Mumbai that the assessee firm is involved in bogus transactions amounting to Rs.3,31,05,202/- during the relevant previous year, which was a tangible material available on record to suggest that the assessee has not disclosed true and correct particulars of income. The A.O. considered the income was escaped for A.Y.2012-13 within the scope of section 147 of the I.T. Act after recording the reasons, notice u/s 148 of the Act was issued and served upon the assessee. In response, the assessee submitted that the return for A.Y.2012-13 may be treated as return filed in response to notice u/s 148. Thus, the case was reopened and necessary statutory notices were issued and the same was responded by the assessee.

The assessee firm is engaged in the business of trading of rough and polished diamonds. The A.O. noticed that the assessee has furnished requisite documents/evidences in support of its claim. Further, the A.O. gathered from the information received from DGIT(Inv.), Mumbai that persons who have floated various companies are engaged in the business of providing accommodation entries in the form of bogus unsecured loans, bogus purchases and bogus capital gains etc., and assessee is one of the beneficiaries operated and controlled by Shri Sanjay Choudhary Group. The assessee has obtained bogus purchases to the tune of Rs.3,31,05,202/-from six entities in the form of accommodation entries during the F.Y.2011-12 relevant to A.Y.2012-13. During the course of assessment proceedings, the A.O. asked the assessee to ascertain the genuineness of the said purchases transactions towards which the assessee stated that the purchases made from these parties are genuine and further contended that the purchases made by the assessee from these parties have been duly entered in books of account and payments have been made through cheques only. The A.O. issued summons u/s 131 of the I.T. Act to the six parties viz. M7s Kangan, M7s Dharam, M7s Aadi, M7s Arihant, M7s Kalash & M/s Sparsh. However, the parties failed to attend. The A.O. further stated that the parties had send the ledger extracts, bank statement, copy of confirmation, etc which they had already stated as bogus u/s 132(4) of the I.T. Act.

The assessee's submission was not acceptable by the A.O. The A.O. noticed from the details filed on record that barring the stock register entry and cheques payments, custom appraisal report in respect to export sales no other document such as delivery challans, etc were produced during the course of assessment proceedings which leads to prove that the purchases shown to have been made by the assessee from this firm is bogus. Further, the A.O. stated since the assessee has provided stock statement and entries of the said purchases, the only inevitable conclusion to be drawn is that the assessee might have made these purchases from open markets either directly or through broker from some parties best known to him. The A.O. has enumerated in detail the modus operand! of the bogus transactions in the assessment order. After analyzing the facts, the A.O. held a crystal clear view that the purchases made by the assessee from the above parties and claimed as expenses in the profit and loss account are not genuine. The A.O. further held that since the purchases to that extent remain unverifiable and cannot be accepted and hence rejected the books of accounts as provided in Section 145(3) of the I.T. Act.

Further, the A.O. stated that the endeavour is to impute the additional GP, which the assessee must have earned by purchasing the diamonds in the grey market, than from the regular dealer and this would be the margin which the petty trader in the grey market offers over the established genuine trader. The A.O. noticed that the assessee has already declared GP at 10.97% on entire purchases, including the purchases from these parties. Considering the facts and circumstances of the case and after discussion with the assessee, the A.O. held the view that it will be reasonable to estimate of additional 4% GP margin on the so called bogus purchases, which will take care of the margin earned by the assessee to indulge into such transaction. Accordingly, the assessee was asked to explain as to why the purchase made from the above parties should not be considered as bogus. In compliance, the assessee made submission vide letter dated 11.03.2016. On perusal of the reply of the assessee, the A.O. presumed that the margin in the market, for a petty dealer, would be additional 4% which is the same margin that is now being adopted for purchase made in cash from the grey market and for which the bills are procured from Shri Sanjay Choudhary Group and accordingly, made the addition of Rs. 13,24,208/- (Rs.3,31,05,202/- x 4%) to the total income of the assessee.

4. Upon assessee's appeal as regards the challenge to reopening, Ld.CIT(A) confirmed the same by observing as under:-

From the assessment order, it is observed that the assessee has duly acknowledged the notice issued by the AO & complied with it. I find no infirmity in the action of the AO as far as initiation of proceedings u/s 147 of the I.T. Act is concerned. So far the validity of re-opening is concerned, it is found that the reasons for reopening was provided by the AO wherein bogus purchase made by the assessee as per information from the office of the DGIT(Inv.) has been mentioned. There was search & seizure action in case of Shri Sanjay Choudhary Group by the Investigation wing of the Department and specific information related to accommodation entries provided by the concerns of Shri Choudhary to the appellant was forwarded to the AO. The findings during the course of Search & post Search enquiries gave reason to believe to the A.O. that Shri Choudhary & his concerns were providing accommodation entries without actual supply of goods. It was seen from the information so received that the present assessee's name appears in the list of beneficiaries who have taken accommodation entries. This led to the information of reason to believe that the income of the appellant has escaped assessment. Such formation of the reason to believe was on the basis of the information available, which the AO had in his possession and acted upon and therefore the reopening of the assessment in this case cannot be faulted. Reliance is placed on the decision of the Hon'ble Gujarat High Court in the case of Peass Industrial Engineers (P) Ltd Vs Deputy Commissioner of Income Tax [2016] 72 Taxmann.com 302 (Gujarat) where in it was held :

"At the initial stage what is required is reason to believe, but not established fact of escapement of income. Therefore, at this stage only question whether there was relevant material to form a reasonable belief is to be seen. In the background of facts, there is a specific information received about 'K' and it has been prima facie found that the assessee is also the beneficiary of the said 'K'. At this stage of the proceeding, the factum of said aspect whether the assessee is beneficiary or not is to be finally adjudicated upon by the Assessing Officer. Therefore, the Court is not in a position to dwell into it, but only has to examine whether there is a reasonable belief arrived at or not. From the basis of aforesaid circumstance prevailing on record, it appears that the Assessing Officer is justified prima facie in arriving at conclusion to reopen the assessment. A liberty is always available to the assessee to justify or to deal with the same, but this is not the stage where the process of reopening based upon aforesaid material is to be intercepted.

5. Upon assessee's appeal on merits Ld.CIT(A) confirmed the addition by concluding as under:-

In the present appeal, there is compelling evidence to show that this would be a case of purchase made from bogus parties rather than a case of bogus purchases. There is nothing to show that without making the purchases it was possible for the appellant to complete the sales declared in the return of income which have not been disturbed by the AO. On the other hand, the appellant has failed to establish the genuineness of purchases made from the parties claimed. This would indicate that the purchases were made from the open market without insisting for genuine bills and in such cases the suppliers would be willing to sell at a much less rate as compared to the rate that they would have charged otherwise.

Considering the overall facts and circumstances of the case and the general profit margins in the diamond industry, I find that the profit estimated @4% of alleged purchases is appropriate and will be in the interest of revenue as a general profit margin declared ranges between 1to 3%. Hence, I do not find any infirmity in the order of the assessing officer and therefore the addition of Rs. 13,24,208/- in the order is upheld. The ground of appeal number 2,3,4 & 5are dismissed.

6. Against the above order, assessee is in appeal before us.

7. I have heard the Ld. DR and perused the record. As regards the challenge to reopening ,I note that Ld.CIT(A) has duly dealt with the same and the case law from Hon'ble Gujarat High Court in the case of Industrial Engineering (P) Ltd. [2016] 72 taxmann.com 302 is germane and quiet applicable. I do not find any infirmity in the

order of the Ld.CIT(A) on the reopening. Hence, I confirm the same. As regards the merits of the case, I note that the Ld.CIT(A) has himself said that profit margin in the assessee's industry ranges between 1%-3%. In these circumstances, Ld.CIT(A) has held that estimated profit of 4% is appropriate. I find that this order of Ld.CIT(A) is contradictory in itself. When Ld.CIT(A) has given finding that sales are not doubted and purchases have been made from grey market. Then the estimated profit has to be made as per industry rate. When the Ld.CIT(A) himself is giving a finding that the rate ranges between 1-3%, I hold that 3% disallowance would be appropriate. Hence, I modify the order of Ld.CIT(A) and direct that disallowance should be made @3%.

8. In the result, this appeal by the assessee stands partly allowed.

Pronounced in the open court on 16.12.2021

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated :16 /12/2021

Thirumalesh, Sr.PS

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