

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI RATHOD KAMLESH JAYANTBHAI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 12/RPR/2019

निर्धारण वर्ष / Assessment Year : 2014-15

Asstt. Commissioner of Income-tax-1(1),
Raipur

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s Refracast Metallurgicals Pvt. Ltd.
23, Industrial Area, Birgaon, Raipur
PAN : AABCR4431J

.....प्रत्यर्थी / Respondent

Assessee by : Shri Praveen Goyal

Revenue by : Shri G. N. Singh

सुनवाई की तारीख / Date of Hearing : 06.06.2022

घोषणा की तारीख / Date of Pronouncement : 07.06.2022

आदेश / ORDER**PER RATHOD KAMLESH JAYANTBHAI, AM:**

The present appeal filed by the Revenue is directed against the order passed by the Commissioner of Income Tax, Appeals-I, Raipur (C.G.) dated 25.06.2018, which in turn arises from the order passed by the assessing officer under Sec. 143(3) of the Income-tax Act, 1961 (for short 'the Act') dated 12.12.2017, for assessment year 2014-15 wherein the revenue has taken the following grounds of appeal.

"1. Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in deleting the addition Rs.2,82,522/- ignoring the fact that these purchases are nothing, but bogus purchases managed through bogus bills?"

2. Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) having concurrent powers of the AO u/s 250(4) of the Act, was justified in ignoring the finding of Commercial Tax Department who has treated the seller namely M/s Sai Traders and M/s Piyush Enterprises as bogus entity as well as FIR has been lodged against such dealers and the notice issued to these entity got unserved and returned back?"

3. Whether on points of law and on facts & circumstances of the case, the Id. CIT(A) was justified in ignoring the ratio of the landmark decision of the Supreme Court in the case of McDowell and Co. Ltd. Vs Commercial Tax Officer 154 ITR 148 (SC), as the same ratio of this landmark decision is applicable to the facts and circumstances of the instant case of the assessee?"

4. Whether on points of law and on facts & circumstances of the case, the Id. CIT(A) was justified in ignoring the ratio of the ITAT Mumbai in the case of Soman Sun City Vs. JCIT, wherein it is held that purchases could not be

treated as genuine even if the purchase bill produced and payment is made through banking channel and other evidence is lacking?"

5. *Whether on points of law and on facts & circumstances of the case, the Id. CIT(A) was justified in ignoring the ratio of Hon'ble Delhi High Court in the case of CIT-II vs. Jansampark Advertising & Marketing (P.) Ltd. reported in [2015] 56 taxmann.com 286(Delhi) held that "though it is obligation of assessing officer to conduct proper scrutiny of material, in even of assessing officer failing to discharge his functions properly, obligation to conduct proper inquiry shifts to commissioner(Appeals) and Tribunal and they cannot simply delete addition made by assessing office on ground of lack of inquiry."*

6. *Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in accepting the fresh evidence produced by the assessee without allowing the AO if any, proper opportunity to examine the same, thereby violating the provision on law under Rule 46A of IT Rules?"*

7. *Whether on points of law and on facts & circumstances of the case, the Id. CIT(A) was justified in deleting the addition of Rs. 2,82,522/- by ignoring the fact available on record as the findings of the Commercial Tax Department that said seller M/s Sai Traders and M/s Piyush Enterprises namely are bogus, cancellation of TIN registration of alleged entity on account of no business activity, FIR lodged against them due to issuance of bogus bills and non-existence of the concerns at the registered address, thereby rendering a decision, which is perverse?"*

8. *Whether on points of law and on facts & circumstances of the case, the Id. CIT(A) has erred in law by holding the decision favour of the assessee and against the revenue though there is no nexus between the conclusion of fact and primary fact upon which without conclusion is based?"*

9. *The order of Ld. CIT (A) is erroneous both in law and on facts.*

10. *Any other ground that may be adduced at the time of hearing."*

2. Central Board of Direct Taxes (CBDT) vide Circular No. 17/2019 dated 08.08.2019 has amended Circular No. 3/2018 dated 11.07.2018 for further enhancement of monetary limit for filing of appeals by the Department before the ITAT, High Courts and SLPs/Appeals before Supreme Court as measures for reducing litigation.

3. CBDT vide Circular No. 3/2018 dated 11.07.2018 has specified that appeals shall not be filed before the Income Tax Appellate Tribunal (ITAT) in cases where the tax effect does not exceed the monetary limit of Rs.20,00,000/-. For this purpose, 'tax effect' means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of issues against which appeal is intended to be filed. Further, 'tax effect' shall be taxes including applicable surcharge and cess. However, the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the amount of interest shall be the 'tax effect'. In cases where returned loss is reduced or assessed as income, the 'tax effect' would include notional tax on disputed additions. In case of penalty order, the 'tax effect' will mean quantum of penalty deleted or reduced in the order to be appealed against.

At para 13 of the above Circular, it has been mentioned that:

“13. This Circular will apply to SLPs/appeals/cross objection/references to be filed henceforth in SC/HCs/Tribunal and it shall also apply retrospectively to pending SLPs/appeals/cross objections/references. Pending appeals below the specified tax limits in para 3 above may be withdrawn/not pressed.”

4. As a step towards further management of litigation, CBDT vide Circular No. 17/2019, dated 08.08.2019 has fixed the monetary limit for filing of appeals before ITAT at Rs.50,00,000/-.

5. In the instant appeal filed by the Department, it was averred by the Id. A.R that the ‘tax effect’ therein involved was below the monetary limit of Rs.50,00,000/-. The said fact was brought to the notice of the Id. Departmental Representative (for short ‘D.R’) who did not controvert the same but submitted it fall in the exception that the sales tax department has passed the relevant information and assessment was done in accordance with that information.

6. The learned AR appearing on behalf of the assessee submitted that it does not fall within the exception listed at Sr No. 10(e) of the CBDT circular no. 142/2007 dated 20.08.2018 and thus the appeal of the department has below tax appeal and not maintainable. In support his arguments he has relied upon the decision of jurisdictional high court on this aspect having direct bearing and has similar set of facts the relevant extract of the decision relied upon by the Id. AR the decision of Hon’ble High Court of Chhattisgarh, Bilaspur in case of DCIT 1, Bhilai vs, Bhojraj Lal Chand Nawani, Maharashtra is extracted as under:

“3. Having heard learned counsel for revenue and having seen the subject clause 10(e), it appears the same would apply where addition is based on information received from external sources in the nature of law enforcement agencies such as CBI/ED/DRI/SFIO/Directorate General of GST Intelligence (DGGI). In the case at hand the information on the basis of which this MCC has been filed was received from the Department of Sales Tax of the State of Maharashtra. Thus, the said information having not emanated from the CBI/ED/DRI/SFIO/DGGI, clause 10(e) would have no application.

4. In our considered view, the TAXC No. 11 of 2019, was rightly dismissed being hit by the Circular dated 11.07.2018 read with the amendment in the said circular vide subsequent CBDT circular dated 20.08.2018.”

7. As the Hon'ble jurisdictional High Court has already clarified that the information received from the sales tax department is not emanated from the CBI/ED/DRI/SFIO/ DGGI, clause 10(e) would have no application.

8. Respectfully, following the said observation the appeal involving a 'tax effect' of less than Rs.50,00,000/- is required dismissed in compliance of the board circular.

9. In the result, appeal of the Revenue is dismissed in terms of our aforesaid observations.

Order pronounced in open court on 7th June, 2022.

Sd/-

**RAVISH SOOD
JUDICIAL MEMBER**

Sd/-

**RATHOD KAMLESH JAYANTBHAI
ACCOUNTANT MEMBER**

रायपुर/ RAIPUR ; दिनांक / Dated : 07th June, 2022

*Ganesh Kumar

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G)
4. The Pr. CIT-1, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on		Sr.PS/PS
2	Draft placed before author		Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		