

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में।
IN THE INCOME TAX APPELLATE TRIBUNAL "B"
BENCH, PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपीलसं. / ITA No.1546/PUN/2017
निर्धारणवर्ष / Assessment Year : 2011-12

The Income Tax Officer, Ward-2(4), Aurangabad.	Vs .	M/s.Saraswati Extrusions Pvt. Ltd., H-20, MIDC, Waluj, Aurangabad – 431136. PAN: AAJCS 6024 J
Appellant/ Assessee		Respondent /Revenue

आयकर अपीलसं. / ITA No.1716/PUN/2017
निर्धारणवर्ष / Assessment Year : 2011-12

M/s.Saraswati Extrusions Pvt. Ltd., H-20, MIDC, Waluj, Aurangabad – 431136. PAN: AAJCS 6024 J	Vs .	The Income Tax Officer, Ward-2(4), Aurangabad.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Pramod Shingte – AR
Revenue by	Shri M.G.Jasnani – DR
Date of hearing	11/07/2022
Date of pronouncement	29/08/2022

आदेश/ ORDER

Per S.S.Godara, JM:

These Revenue's and assessee's cross appeals ITA No.1546 and 1716/PUN/2017 for A.Y. 2011-12 arising against the ld.CIT(A)-2, Aurangabad's order dated 12.04.2017 passed in Appeal No.ABD/CIT(A)-2/e-file/57/2016-17, in proceedings under section 143(3) of the Income Tax Act, 1961 [in short "the Act"].

Heard both the parties. Case files perused.

2. It emerges at the outset that both these Revenue's and assessee's cross appeals raise a common issue of genuineness of the latter's alleged bogus purchases disallowance of Rs.4,05,92,816/- made in the course of assessment /re-assessment dated 17.03.2016 and restricted to the extent of 5% in the CIT(A)'s order as follows:

*“6. Ground Nos.1 & 2 pertain to the addition of Rs.4,05,92,816/- on account of purchases made from Hawala entities treated as bogus purchases meant to suppress the profits in assessment. In appellate proceedings, the assessee stated that the assessee had submitted all possible details and produced the books of accounts, sale and purchase bills, cash book, Excise records, VAT audit, production details, confirmations received from Zaham Impex and S.S.Traders, confirmation received from the original consignor for the **material M/s.Bothara Metals and Alloys**, copies of Excise Audit and the bank account statements during the course of assessment. It was stated that on 17/11/2015 the assessee had replied to the questionnaire dated 01/07/2015 and attended with all the books of accounts. On 26/02/2016 the books of accounts of verified and again on 27/02/2016 the books of accounts were verified. On 01/03/2016 the VAT audit report in Form 704, **tax paid challan** were produced. On this date the purchase vouchers were reconciled with the books of accounts. On 09/03/2016, the excise records were produced and the assessing officer had asked the complete production details. On 15/03/2016, detailed production records were given along with books of accounts and the production records were produced alongwith Excise Register. The confirmation from M/s.Bothara Alloys and Metals, the original consignor of goods was also produced. It was stated that the assessing officer has not been able to point out any discrepancy in the books of accounts and has not been able to prove any purchase to be false or non-genuine. The assessee stated that it had submitted before the assessing officer that purchases from these two parties were made on consignment basis and that the assessee is in possession of the transporter copy (MODVAT & CENVAT copy)*

of original consigned The assessee also contended that the records of purchases is an agreement with the excise records in the books of accounts. He stated that the stock register was submitted as well as the excise records along with books of accounts. It was stated that although the assessing officer had verified all the evidences produced before him, he finally relied on the information supplied by the DGIT(Inv.), Nagpur to make the addition. It was stated that the assessing officer had relied on the statement given by the dealer to the DGIT(Inv.), Nagpur but had not provided the same to the assessee despite demanding a copy of the same on several occasions during assessment proceedings. The assessee also stated that the assessing officer has concluded that purchases from Zaham Impex and S.S. Traders is non-genuine merely because the notices issued u/s.133(6) had returned back unserved by the postal authorities. It was stated **merely Because the notice was returned unserved it cannot be inferred that the party was bogus or the purchase was bogus.** The assessee relied upon the decision given in the case of **CIT Vs. Nikunj Eximp Enterprises (P) Ltd (2013) 216 taxmann 171 (Mag)(Bom.HC)** to state that purchases cannot be disallowed when sales are not doubted and where the suppliers had not appeared before the assessing officer or before the CIT (Appeals). He also relied upon the decision given in the case of **CIT Vs. MK Bros (1987) 163 ITR 249 (Guj.)** to state that the amount represented by purchases cannot be disallowed merely because the seller has admitted before the Sales Tax Authorities that they have issued bogus vouchers as there was no evidence that bogus vouchers were issued to the assessee. The assessee then relied upon the decision given in the case of **YFC Projects (P) Ltd Vs. DCIT (2010) 46 DTR 496 (Delhi-Trib)** to state that the assessing officer was not justified in making disallowance of purchases made by the assessee merely due to non-filing of confirmation of suppliers especially when the assessee had filed certificate from bank indicating the fact that the cheque issued by it was cleared and no defects in the books of accounts was pointed out. The assessee then relied upon the decision given in the case of **Rajesh P.Soni Vs. ACIT (2006) 100 TTD 892 (Ahd.-Trib)** wherein an addition had been made on the ground that the suppliers could not be located and were not produced for

examination. It was held that the purchases were recorded in regular books of accounts and were supported by proper bills and vouchers, where the payments are made through regular banking channels, where the assessee had filed the necessary details like name, address and sales tax number of the sellers and the sales were never doubted, an addition on account of bogus purchases could not be made. The assessee also relied upon an unreported judgement given in the case of **ITO Vs. Eagle Impex** in ITA No 05697/Mum/2010, ITAT Mumbai, Bench 'H' dated 22/02/2013 in which it has been held that where the assessee had discharged the primary onus which lay upon him and even though the assessee had failed to put up the appearance of parties before the assessing officer, it was incumbent **upon the assessing officer** to prove that the documents produced were not genuine. Hence, the addition made by the assessing officer as confirmed by the CIT (Appeals) was deleted.

7. The assessee further stated that the assessing officer has erred in holding that goods were never received by the assessee because the same tantamounts to denial of confirmation by the sender of goods and shows his disbelief in the Excise Audit done by the Central Excise Department in which no discrepancy has been found. It was stated that even the assessing officer has not found any discrepancy in the production record maintained by the assessee. It was stated that the assessing officer has not doubted the sales, has not found any discrepancy in the books of accounts, has not doubted the confirmation from the original sellers and sender of material and is therefore made the addition on the basis of suspicion which cannot be allowed. It was stated that the assessing officer has disregarded the payments made by cheque to the immediate purchasers. Finally, it was stated that addition if at all should have been restricted to the amount of actual profit as held in the cases of **CIT Vs. President Industries [2002] 258 ITR 654 (Guj.)** wherein it has been held that only profits embedded in the sale proceeds can be taxed. Further, the assessee relied on the decision given in the case of **Sanjeev Woolen Mills Vs. CIT [2005] 279 ITR 434 (SC)** to state that it is only the real income which is taxable under the Act.

8. The assessee also submitted the confirmation from original sender of goods namely Bothara Metals and Alloys Ltd, K.K. Enterprises, BSP Enterprises and Priyam Mittal Industries. These consignees have confirmed that the sale has been made through S.S.J Traders and Zaham Impex. They have also given the vehicle numbers through which the goods were transported. Copy of invoices and the transporters copy indicating that the **goods were supplied** to the assessee was also provided. The assessee also provided copy of Excise Audit for the period 2008' to October 2012 in which the quantitative details of manufacturing were scrutinised in depth including the quantitative input and output. The assessee also placed on record the confirmations given by S.S. Traders and Zaham Impex. It is also noticeable that all the payments have been made by cheque by the assessee. There is no evidence of the money coming back into the hands of the assessee. The sales and manufacturing done by the assessee has also not been doubted by the assessing officer.

9. In view of the above reasoning and submissions, the assessee stated that the addition made by the assessing officer should be deleted.

10. I have duly considered the grounds of appeal and submissions of the appellant. The addition has been made merely on the ground that the suppliers were declared as Hawala entities by the VAT Department. As held in the case of **DCIT 25(3), Mumbai Vs. Rajeev J. Kalathil** in ITA No 06727/Mum/ 2012, dated 20/08/2014 the information provided by the VAT Department and the DGIT(Inv.), Nagpur could be a good starting point for making further investigation and take it to logical end. Suspicion of highest degree cannot take place of evidence. The assessing officer could have called for the details of bank accounts of the suppliers to find out whether there was any immediate cash withdrawal from their account. However no such exercise was done. Transportation of goods to site is one of the deciding factors to be considered for resolving the issue. The fact of transportation of goods cannot be doubted as the material which has been received by the assessee was used in consumption and production. This fact has been certified by the Excise

*Audit done for the period 2008 to October 2012. The assessee has maintained, all the records including the stock register. I also find that the sales and production of the assessee has not been doubted upon by the assessing officer. If the assessee had not purchased the goods, there would have been no production and the production has been certified by the Excise authorities. Even the books of accounts have not been rejected. The assessing officer has also not bothered to correlate the invoices issued by the so-called Hawala entity is with the transportation copy of the consignor in which the assessee has been mentioned as the consignee. In view of the foregoing discussion, in my opinion, the percentage of disallowance of bogus purchases, has to be based on the facts of each case, hence the same cannot be generalized in every case. Moreover, the question whether entire purchases should be disallowed or addition should be restricted to the profits embodied in sale proceeds was answered by Hon'ble Gujarat High Court in the case of **CIT Vs. President Industries (258 ITR 654)** and Hon'ble Madhya Pradesh High Court in the case of **CIT Vs. Balchand Ajit Kumar (263 ITR 610)**. Considering the above decisions, it is clear that only the profits embodied on sale proceeds should be taxed instead of addition on account of entire purchases. Looking to the circumstantial evidence in the present case, it is evident that had received the entire goods from the consignors which was utilized for production and further sales. Hence, the only question which is Required to be answered is whether the impugned purchases from the alleged supplier was genuine or not and whether such purchases were actually made from open market. One has to consider the totality of facts, surrounding circumstances and human probability for arriving at such a conclusion. The assessee has failed to produce the suppliers but he has been able to prove that the goods in question were actually sent by the consignors. The action of the AO to disallow 100% of the purchases cannot be upheld and consequently impugned addition cannot be sustained. The assessing officer has not denied that the material was not consumed by the assessee. It would, therefore, imply that the appellant had actually received some amount back in cash from the Hawala entities by making the purchases from Hawala entities instead of purchasing directly from the consignors. It is*

*also not in dispute that the purchase amount had been paid to the alleged supplier through banking channel. What the appellant had actually earned in hawala transactions could not have exceeded **the quantum of** various taxes and profits on cash transactions. In view of these facts, this is not a case where the entire cash has been siphoned off by debiting the bogus purchases. This is a case where at the most, the purchases/expenses might have been inflated by taking the bills from the Hawala entities and that amount would have been to the extent of VAT element embedded in the bill. In this case, the VAT amount paid ranges between 5% to 6%. Therefore, in my opinion the assessee would have not saved any amount more than 5% due to the fact of taking the bills from the Hawala entities. In view of the above, relying upon the decision of Hon'ble Gujarat High Courts in the case of **Simit P Seth (356 ITR 451)**, I direct the assessing officer to restrict the addition to Rs.20,29,641/- (5% of Rs.4,05,92,816/-). The appellant gets relief of Rs.3,85,63,175/-.”*

This leaves both the parties aggrieved as the Revenue's endeavour is to get the impugned bogus purchase disallowance restored in entirety whereas the assessee's case is that the same has been wrongly restricted @5%; respectively.

3. We have given our thoughtful consideration to the foregoing vehement rival stands. It has come on record that although the assessee claims to have filed confirmation of the concerned suppliers i.e. M/s.Botara Metals and Alloys Ltd as well as M/s.Zaham Impex and S.S.Traders, the fact remains that the latter twin entities particularly had confessed before the DIT(Inv), Nagpur as to have been providing accommodation entries of bogus purchases. Learned counsel could hardly rebut this clinching fact. He indeed made very

much valiant attempts to buttress the point for allowing the assessee's entire purchases in light of documentary evidence filed before us that there is no doubt regarding genuineness of its purchases. All these assessee's submissions failed to convince us once its suppliers themselves had made their admission(s) of providing bogus purchase entries. The fact also remains that the CIT(A)'s has rightly recorded that the Assessing Officer(AO) had himself not doubted the assessee's stock-in-trade/assets added in the relevant previous year involving the impugned alleged bogus purchases.

4. Faced with the situation, we are of the opinion that the CIT(A) has rightly affirmed the impugned disallowance in principle except the fact that he has estimated the same at a much lower rate i.e.5% than that required at least @10% in the peculiar facts and circumstances involved herein. We order accordingly in light of hon'ble jurisdictional high court's recent decision [2019] 103 taxmann.com 459 (Bom) PCIT vs. Mohd Hazi Adam & Co. We partly accept the Revenue's arguments and restore the impugned disallowance restricted by the CIT(A) @5% of assessee's bogus purchases to the extent of 10% in very terms. Necessary computation shall follow as per law. Ordered accordingly.

5. To sum up, Revenue's appeal ITA No.1546/PUN/2017 is partly allowed and assessee's cross appeal in ITA No.1716/PUN/2017 is dismissed in above terms. A copy of this common order be placed in the respective files.

Order pronounced in the open Court on 29th August, 2022.

Sd/-
(DR. DIPAK P. RIPOTE
ACCOUNTANT MEMBER

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 29th Aug, 2022/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.