

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

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.1245/Mum./2019
(Assessment Year : 2014-15)

Deputy Commissioner of Income Tax
Central Circle-6(2), Mumbai

..... Appellant

v/s

M/s Mumbai Gems and Diamonds
Pvt. Ltd., 408B, 4th Floor, Glitz Mall,
99, Vithalwadi, Mumbai 400 002
PAN – AAFCM2228Q

.....Respondent

Assessee by : Ms. Chandni Tanna, Adv.
Revenue by : Dr. Mahesh Akhade, CIT DR

Date of Hearing – 23/11/2022

Date of Order – 24/01/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the Revenue challenging the impugned order dated 24/12/2018 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals)-9, Mumbai [*"learned CIT(A)"*], for the assessment year 2014-15.

2. In this appeal, the Revenue has raised the following grounds:

"1(a)"Whether on the facts and the circumstances of the case and in law, the Id.CIT(A) has erred in deleting the addition of Rs.11,84,48,419/- made u/s 41(1) of the IT Act. 1961"

(b)"Whether on the facts and the circumstances of the case and in law, the Id.CIT(A) failed to appreciate that the notice issued to creditors u/s 133(6) were not duly replied to?"

(c)"Whether on the facts and the circumstances of the case and in law, the Id CIT(A) has given the relief without appreciating the fact that the assessee has not discharged the onus cast upon it?"

2 (a)"Whether on the facts and the circumstances of the case and in law, the Id.CIT(A) has erred in deleting the addition of Rs.11,90,33,194 on account of bogus purchases?"

(b)"Whether on the facts and the circumstances of the case and in law, the Id.CIT(A) failed to appreciate that the notice issued to purchase parties u/s 133(6) were not duly replied to?"

(c)"Whether on the facts and the circumstances of the case and in law, the Id.CIT(A) has given the relief without appreciating the fact that the assessee has not discharged the onus cast upon it?"

3. (a)"Whether on the facts and the circumstances of the case and in law, the Id.CIT(A) has erred in deleting the addition of Rs.22,20,12,982/- made u/s68 of the IT Act. 1961?"

(b)"Whether on the facts and the circumstances of the case and in law, the Id.CIT(A) failed to appreciate that the notice issued to creditors u/s 133(6) were not duly replied to?".

(c)"Whether on the facts and the circumstances of the case and in law, the Id.CIT(A) has given the relief without appreciating the fact that the assessee has not discharged the onus cast upon it?"

3. The brief facts of the case as emanating from record are: The assessee is engaged in the business of trading in Gold, Diamond and Silver Jewellery. During the year under consideration, the assessee e-filed its return of income on 27/09/2014 declaring a total income at Rs.2,39,000/-. During the assessment proceedings, it was observed that for the year under consideration, the assessee had a turnover of Rs.209,05,17,091/- and a net profit of Rs.2,25,111/-. Thus, compared to the turnover the net profit of the assessee was only 0.010%. Further, it was observed that the trade payables as of 31/03/2013 were Rs.56,37,96,664/-, whereas the trade payables as of 31/03/2014 were Rs.157,20,30,237/-. Thus, there is an increase of

Rs.100,82,33,573/- in trade payables as of 31/03/2014, as compared to the preceding year. Accordingly, in order to verify the genuineness of the trade payables and purchases, information was called from the parties, and notices were issued u/s133(6) of the Act at the addresses provided by the assessee. However, notices issued by the Assessing Officer ("AO") to many of the parties were returned unserved. Even in cases where notices are not returned, reply from the said parties was not received before the due date. Accordingly, in order to provide fair opportunity to the assessee, summons u/s 131 of the Act was issued and served upon the assessee requiring the assessee to attend personally and to produce the witnesses and other documents in order to prove identity, genuineness, and creditworthiness of the trade creditors, purchase parties and sundry creditors. However, the assessee did not produce any of the parties on the appointed date i.e. on 28/12/2016 and instead, the assessee filed a letter referring to the submission earlier made. The assessee further sought time of two weeks to produce the parties. Since the limitation for completing the assessment was getting expired on 31/12/2016, the AO proceeded to conclude the assessment on the basis of material available on record. The AO vide order dated 29/12/2016 passed u/s 143(3) of the Act held that the amount payable to the trade creditors i.e. Anant Exports and Yash Overseas is for last three years, however, these parties are not worried about their money and the assessee is not also aware of the current address of these parties. Accordingly, the AO treated the liability to have ceased and added an amount of Rs.11,84,48,419/- to the total income of the assessee u/s 41(1) of the Act. Further, as regards purchases of Rs.11,90,33,194/-, the AO in absence of purchase invoice, inward custom invoices, delivery challans,

transports receipts (in case of import), etc. to establish the genuineness of the purchases treated the party as bogus and added the sum of Rs.11,90,33,194/- u/s 69C of the Act. As regard the sundry creditors also, in absence of satisfactory evidence to establish the identity and creditworthiness of the parties, and genuineness of the transaction treated the sum of Rs.22,20,12,982/- as bogus liabilities and added the same to the total income of the assessee u/s 68 of the Act.

4. The learned CIT(A) vide impugned order allowed the appeal filed by the assessee on the basis that the AO has not conducted the proceedings u/s 133(6) of the Act in a proper manner. The learned CIT(A) further held that field visits through the inspector were not conducted to find out the actual reasons for non-compliance of notice u/s 133(6) by any particular party. The learned CIT(A) also held that in the facts of the present case, section 41(1) of the Act is not applicable due to debt getting time-barred by limitation. As regards the purchases, the learned CIT(A) held that the parties indeed replied to the AO and thus the identity and creditworthiness of the parties and the genuineness of the transaction cannot be doubted. As regards the sundry creditors, the learned CIT(A) held that confirmation-ledger statements of the parties were submitted before the AO and thus the assessee's prime onus was discharged. Accordingly, it was held that the addition u/s 68 as unexplained cash credit cannot be sustained merely on suspicion. Being aggrieved, the Revenue is in appeal before us.

5. During the hearing, the learned Departmental Representative ("*learned DR*") submitted that the learned CIT(A) accepted the documents filed by the

assessee without verification particularly when the parties were not traceable/examined. By referring to the findings in the impugned order, the learned DR submitted that the notices issued u/s 133(6) of the Act were returned unserved, and therefore summons u/s 131 of the Act could not issued. The learned DR by placing reliance upon the decision of Hon'ble Delhi High Court in CIT Vs. Jansampark Advertising & Marketing (P) Ltd, (2015) 375 ITR 373 (Delhi), submitted that the addition cannot be deleted only on the basis of lack of enquiry. Further, despite the opportunity being granted, the parties were not produced before the AO during the assessment proceedings. Accordingly, the learned DR prayed that the matter be remanded to the AO for further enquiry.

6. On the contrary, the learned Authorised Representative ("*learned AR*") by referring to the paper book submitted that as the notices issued by the AO were returned unserved, therefore, the assessee filed the details as sought. However, these details were not taken into consideration by the AO while making the impugned additions.

7. We have considered the rival submissions and perused the material available on record. In the present case, due to high trade payables and very low net profit, the details of the parties with which the assessee has transactions of purchases and trade payables were sought. The AO in order to verify the genuineness of the trade payables and purchases sought information from the parties and issued notices u/s 133(6) of the Act. However, it is undisputed that many of these notices were returned unserved. It is also evident from the record that the AO issued summons u/s 131 of the Act to the

assessee to attend personally and produced the witnesses and other documents in order to discharge the onus of proving the identity and creditworthiness of the parties and genuineness of the transactions. It is further evident from the record that the assessee could not produce any of the parties with which it had transactions of purchases and trade payables during the year and sought further time to comply with the said directions. However, since the time period of completing the assessment was getting expired, the AO proceed to complete the assessment on the basis of material available on record. As per the assessee, as the notices issued u/s- 133(6) of the Act were returned unserved, therefore, it tried to file the details, as sought, before the AO. In this regard, reference was made to the letters filed before the AO, forming part of the paper book from pages no. 2-23. It is further evident that without considering the details/evidence filed by the assessee, the AO treated the liability due in assessee's books for the past 3 years to be ceased and made the addition u/s 41(1) of the Act. Further, the purchase transaction and sundry creditors were treated as bogus by the AO, and the addition was made in hands of the assessee. As various details filed by the assessee, as noted above, were not examined by the AO and the learned CIT(A) deleted the addition, inter-alia, on the basis of such documents without calling for any remand report on the same from the AO, therefore, we deem it appropriate to remand the matter to the file of AO for *de novo* adjudication after examination of the details filed by the assessee. Since the matter is restored to the file of AO, the assessee shall be at liberty to furnish all the other details as may be sought by the AO. Further, the assessee shall be at liberty to produce the witnesses in support of its claim. Needless to mention that no order shall be

passed without affording reasonable opportunity of being heard to the assessee. As a result, the grounds raised by the Revenue are allowed for statistical purposes.

8. In the result, the appeal by the Revenue is allowed for statistical purposes.

Order pronounced in the open Court on 24/01/2023.

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 24/01/2023

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Mahesh Sonavane
Stenographer

By Order

Assistant Registrar
ITAT, Mumbai