

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'SMC' NEW DELHI**

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No. 6583/Del/2018
Assessment Year: 2010-11

M/s. Rohan Tooling Solutions Pvt. Ltd. C/o CA MR Sahu, M. Sahu & Associates, CA, House No.651, Ist Floor, Sector 10A, Nr. Meenakshi Public School, Gurgaon-122001 (Hr.)	Vs.	ITO, Ward-21(3), New Delhi.
PAN :AACCR7221B		
(Appellant)		(Respondent)

Appellant by	Shri M.R. Sahu, CA
Respondent by	Shri Om Parkash, Sr. DR

Date of hearing	10.04.2023
Date of pronouncement	19.04.2023

ORDER

This is an appeal by the assessee against order dated 23.08.2018 of learned Commissioner of Income-Tax (Appeals)-7, New Delhi pertaining to assessment year 2010-11.

2. Before I proceed to deal with the issue arising in the appeal, it is necessary to observe, this appeal was disposed of earlier by the Tribunal vide order dated 22.18.2019. However, while disposing of the appeal, the additional ground raised by the assessee, inadvertently, remained undecided. Therefore, the assessee filed a miscellaneous application under Section 254(2) of the Income-Tax Act, 1961, being MA No.887/Del/2019, seeking rectification of the order.

3. After considering the submissions of the assessee, the Tribunal vide order dated 14.02.2023 recalled the appellate order for the limited purpose of adjudicating the following additional grounds:

- i) On the facts and circumstances of the case and in law, the appellant submits that sales amount and quantitative details of opening stock, purchases, sales, closing stock are duly accepted by A.O in such situation entire bogus purchases of Rs.30,00,000/- would not be held as undisclosed income rather profit margin embedded in such purchases would be subject to tax having regard to the ratio of the decision of Hon'ble Gujarat HC in the case of CIT vs. Bholanath Pvt. Ltd. (2013) 355 ITR 290 (Guj.HC).
- ii) AR of the assessee is humbly praying before your good self to accept the additional ground of appeal raised before date of hearing of appeal having regard to the ratio of the decision of the Hon'ble Supreme Court in the case of National Thermal Power Corporation vs. CIT (1998) 229 ITR 383 (SC).”

4. Since, the additional grounds can be decided without making fresh investigation into facts, I am inclined to admit the additional grounds.

5. Briefly, the facts relating to the additional grounds are, the assessee is a resident corporate entity stated to be engaged in the business of trading in chemicals. For the assessment year under dispute, the assessee had filed its return of income on 28.09.2010 declaring income of Rs.10,78,300. Subsequently, the Assessing Officer received information from the investigation wing indicating that the assessee has availed accommodation entry by way of bogus purchases worth Rs.30,00,000 from M/s. Global Trading Corporation. Based on such information, the Assessing Officer reopened the assessment under Section 147 of the Act.

6. In course of assessment proceedings, the Assessing Officer called upon the assessee to prove the genuineness of the purchases of Rs.30,00,000 from M/s. Global Trading Corporation. As observed by the Assessing Officer, in course of assessment proceedings, though, inquiry was carried on to ascertain the genuineness of the purchases by issuing summons under Section 131 of the Act to the concerned

entity, however, the summons returned back unserved. Even, notice issued under Section 133(6) did not elicit any response from the concerned party. Thus, ultimately, the Assessing Officer treated the purchases of Rs.30,00,000 as unexplained investment and added back to the income of the assessee. Though, the assessee contested the addition before learned Commissioner (Appeals), however, the addition was sustained.

7. Before me, learned counsel appearing for the assessee submitted that assessee's accounts are under statutory audit and all purchase and sale transactions including the transaction with M/s. Global Trading Corporation were recorded in the books of accounts. He submitted, even in the sales-tax return filed for the relevant financial year, the assessee disclosed the purchases from M/s. Global Trading Corporation and the corresponding sale transactions. He submitted, quantitative tally of purchases and sales were furnished before the Assessing Officer. Thus, he submitted, when sales effected by the assessee have been accepted without any doubt, purchases could not have been doubted. He submitted, even if there is some doubt regarding the source of purchases, in that scenario, the entire

purchases cannot be disallowed or treated as income of the assessee but only the profit element embedded in such purchase can be considered for addition. Thus, he submitted, the addition may be restricted to the profit element.

8. Learned Departmental Representative strongly relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

9. I have considered rival submissions and perused the material available on record.

10. Undisputedly, in the year under consideration, the assessee had shown purchases worth Rs.30,00,000 from M/s. Global Trading Corporation. From the observations of the Assessing Officer in the assessment order, it is evident that notice issued under Section 133(6) of the Act seeking certain information from the concerned seller did not evoke any response. Therefore, the Assessing Officer assumed that the concerned party has provided accommodation entries without any real transaction. However, it is a fact on record that assessee has not only maintained books of account but its accounts are under statutory audit. It is the contention of the assessee that all purchase and sale

transactions have been duly recorded in the books of accounts. On a careful reading of the assessment order, it is observed that the Assessing Officer has not pointed out any deficiency in the books of accounts maintained by the assessee. In fact, the Assessing Officer has not rejected the books of accounts. The contention of the assessee that all purchase and sales have been duly reflected in the sales tax return and the fact that quantitative tally of purchase and sales have been furnished before the Assessing Officer, could not be controverted by the Revenue. In such a scenario, the fact that the assessee had purchased the quantum of goods in dispute cannot be doubted for the simple reason that in absence of such purchases, the assessee could not have effected corresponding sales. Therefore, the doubt, if any, remains only with regard to the source of purchases. Though, it may be a fact that due to complete lack of response from the seller, the authenticity of source of purchase could not be fully established, however, it can be said that assessee might have purchased the goods from unverified source to suppress its profit. In such situation, the entire purchase cannot be treated as income of the assessee but only the profit element embedded in such purchases can be considered for

addition. From the material placed before me, it is observed that the average profit margin of the assessee in different years works out to 5.8%.

11. Considering the above, I direct the Assessing Officer to restrict the addition by estimating profit at 7% of the alleged bogus purchase of Rs.30,00,000. In other words, the addition is restricted to 7% of Rs.30,00,000. Ground is partly allowed.

12. In the result, the appeal is partly allowed.

Order pronounced in the open court on 19th April, 2023.

**Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER**

Dated: 19th April, 2023.
Mohan Lal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi