

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH MUMBAI
BEFORE SHRI R.C.SHARMA, AM
ITA No.6794/Mum/2016
(Assessment Year :2007-08)

A Varshit & Co., 802, Millenium Apartments, Plot No.661, Lalubhai Park Road, Vile Parle (W) Mumbai – 400 056	Vs.	ITO 25(2)(1), Mumbai – 400 051
PAN/GIR No.		AAKFA6008L
Appellant)	..	Respondent)

Assessee by	Shri Sanjiv M. Shah
Revenue by	Ms. Beena Santosh
Date of Hearing	27/04/2017
Date of Pronouncement	27/04/2017

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by the assessee against *exparte* order of CIT(A)-37, Mumbai dated 30/08/2016 for the A.Y. 2007-08, in the matter of order passed u/s.143(3) r.w.s. 147 of the IT Act.

2. It was contended by learned AR that since similar issue was involved, assessee has requested before the CIT(A) for consolidation of both the appeals, however, the CIT(A) has dismissed the appeal on the plea that nobody appeared on behalf of the assessee. Accordingly it was requested by learned AR that matter should be restored back to the file of the CIT(A) for passing order after giving due opportunity to the assessee.

3. On the other hand, learned DR contended that inspite of giving so many opportunities, assessee could not produce anything in support of

the purchases being genuine, accordingly CIT(A) was justified in confirming the same.

4. I have considered rival contentions and gone through the orders of the authorities below. The brief facts of the case are that the assessing officer received information from DIT(Inv) and Sales-tax Department that the appellant had taken bogus purchase entries of Rs. 16,16,268/- from two parties namely M/s Sun Diam and M/s Vatrag Jewels. Accordingly the AO initiated proceedings u/s 147 by issuing notices u/s 148. Subsequently notices u/s 143(2) and 142(1) were also issued and served on the assessee. The assessee is a firm engaged in the business of Diamond Trading. The AO issued notices u/s 133(6) to the two parties from whom the appellant had made purchases to verify the genuineness of purchase transactions, however no reply was furnished by the said parties. Accordingly, AO added entire amount of purchase in assessee's income.

5. By the impugned order, CIT(A) confirmed the action of the AO and assessee is in further appeal before us.

6. So far as reopening is concerned, we are satisfied that after recording reasons for reopening, the AO has issued notice u/s.148. Thus, there is no infirmity in the order of CIT(A) for upholding the reopening.

7. Now, coming to the merit of the addition, we found that allegation of the AO was as per information from the Sales Tax Department, assessee has taken accommodation purchases. However, the corresponding sales have not been denied by the AO. Without purchases there cannot be

sale. Therefore, adding entire amount of purchases in assessee's income is not justified.

8. Keeping in view the totality of facts and circumstances of the case, vis-à-vis nature of assessee's business, I restrict addition to the extent of 12.5% of such bogus purchases.

9. In the result, appeal of the assessee is allowed in part.

Order pronounced in the open court on this 27/04/2017

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 27/04/2017

Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai