

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ "ए" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

BEFORE HON'BLE S/SHRI JOGINDER SINGH (JM), AND RAJESH KUMAR,(AM)

आयकर अपील सं./I.T.A. No.1846/Mum/2013
(निर्धारण वर्ष / Assessment Year :2011-12)

Paramount Minerals and Chemicals Ltd, 33, Old Hanuman 1 st Cross Lane, Kalbadevi road, Mumbai-400002	बनाम/ Vs.	Asstt. Commissioner of Income Tax, 4(3), 649, Aayakar Bhavan, M K Road, Mumbai-400020.
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./जीआइआर सं./PAN No. :AAACP2721Q

अपीलार्थी ओर से / Appellant by:	None
प्रत्यर्थी की ओर से/Respondent by	Shri H M Wanare

सुनवाई की तारीख / Date of Hearing : 20.7.2016
घोषणा की तारीख /Date of Pronouncement : 12.08 .2016

आदेश / O R D E R

Per RAJESH KUMAR, Accountant Member:

This is an appeal filed by the assessee and is directed against the order of the Ld. CIT(A)-9, Mumbai dated 30.1.2015 pertaining to A.Y.2011-12. Despite of service of notice, none appeared on behalf of the assessee, therefore, we proceed to decide the appeal ex-parte without presence of assessee on the basis of material available before us and after hearing the Id.DR.

2. Only issue raised in the various grounds of appeal is qua upholding the addition of Rs.1,34,917/- by the Id.CIT(A) as made by the AO under section 69C of the Income Tax Act, 1961(hereinafter referred to as the Act) on account of peak of cash credit in respect of alleged bogus purchase from M/s Raj Tool Corporation and M/s Shah Enterprises.

3. Facts of the case are that the assessee filed its return of income on 14.9.2011 declaring total income of Rs.99,92,560/-. Thereafter, the case of the assessee was selected for scrutiny and statutory notice u/s 143(2) and u/s 142(1) were issued and served upon the assessee. The AO made the addition of Rs.1,34,970/- on the basis of peak credit under section 69C of the Act, 1961 by framing the assessment under section 143(3) vide order dated 21.1.2014 by assessing the income at Rs.1,01,41,601/- under the normal provisions of Act. Aggrieved by the order of AO, the assessee preferred an appeal before the Id. CIT(A). Before the Id. CIT(A) it was submitted that the addition u/s 69C of Rs.1,34,917/- was not justified as the amount pertains to the suppliers namely M/s Raj Tool Corporation and M/s Shah Enterprises who have not confirmed the purchases made by the assessee from them. It was also submitted before the Id. CIT(A) that the above two suppliers were declared suspicious dealers by the Sales Tax Department, Government of Maharashtra. The said information was passed on to the Income Tax Department by the Sales Tax Department, Government

of Maharashtra. The Id. CIT(A) finally dismissed the appeal of the appeal by holding as under :

"2.2 I have considered the facts of the case, order passed by the AO and submission filed by the appellant. During the course of assessment proceedings, it was noticed by the AO that M/s Shah Enterprises and M/s. Raj Tool Corporation have issued bills to the appellant without actually delivery of the goods. These parties have issued accommodation bills without delivery of goods. It is also seen from the order passed by the AO that Maharashtra Sales Tax Department has sent the list of suspicious dealers who has issued bogus bills without delivery of goods and on verification, AO found that above two names of the parties were appearing in the list provided by the Maharashtra Sales Tax Department. Appellant during the course of assessment proceedings and during the appellate proceedings before me failed to provide any evidence in respect of actual delivery of goods from these two parties. In view of above and for the reasons mentioned by the AO in the order passed I am of the opinion that AO has rightly added peak of cash credit of Rs.1,34,917/- u/s 69C of the Act. Thus, the addition made by the AO is upheld and accordingly these grounds of appeal are treated as dismissed"

4. We have carefully considered the submissions of the parties, perused the material placed before us including the orders of authorities below. We find that in the case before us, the disallowance of Rs.1,34,917/- was made by the AO which relates to two suppliers of materials M/s Raj Tool Corporation and Mr. Shah Enterprises on the ground that purchase of material could not be confirmed from these suppliers. We further find that the AO received information from the Sales Tax Department qua the above suppliers being suspicious dealers and were engaged in providing accommodation entries. We find merit in the arguments of the Id. AR that sources of purchases of material were not in dispute. The assessee has made purchases from these suppliers and duly made payments to the said suppliers

and these payments were duly reflected in the books of accounts of the assessee and therefore the provisions of section 69C of the Act cannot be invoked. For the sake of convenience and better understanding, the provisions of section 69C are reproduced below:

"69C. *Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year :*

A perusal of the provisions of section 69C reveals that where the assessee has incurred any expenditure and the sources whereof can not be explained before the AO or AO is not satisfied with the explanation of the assessee only then provisions of section 69C could be invoked and not otherwise and therefore the order of CIT(A) upholding the order of AO by confirming the addition u/s 69C is wrong and cannot be sustained which is made on the basis of peak cash credit. Accordingly we set aside the order of CIT(A) and direct the AO to delete the addition of Rs. 1,34,917/-.

5. In the result, the appeal of the assessee is allowed.

The above order was pronounced in the open court on 12th Aug, 2016.
घोषणा खुले न्यायालय में दिनांक: 12th Aug,2016 को की गई ।

Sd
(JOGINDER SINGH)
Judicial Member

sd
(RAJESH KUMAR)
Accountant Member

मुंबई Mumbai: 12th Aug, 2016.
व.नि.स./ SRL , Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned
4. आयकर आयुक्त / CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai concerned
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

True copy

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai