

आयकर अपीलीय अधिकरण, मुंबई "सी" बंडपीठ
Income-tax Appellate Tribunal " C " Bench Mumbai
सर्वश्री जोगिन्दर सिंह, न्यायिक सदस्य एवं राजेन्द्र, लेखा सदस्य
Before S/Shri Joginder Singh, Judicial Member & Rajendra, Accountant Member
आयकर अपील सं./I.T.A./5038/Mum/2014, निर्धारण वर्ष /Assessment Year: 2010-11

CMS Info Systems Private Limited CMS House, Plot No.91, Street No.7 Marol MIDC Andheri(E) Mumbai-400 093. PAN:AAMCS 2311 K	Vs.	ADCIT-5(3) Aayakar Bhavan, M.K. Road Mumbai-400 020.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by: Dr. Darsi Suman Ratham-DR

Assessee by: Shri Prakash Jotwani-AR's

सुनवाई की तारीख / **Date of Hearing: 30.05.2016**

घोषणा की तारीख / **Date of Pronouncement: 24.06.2016**

आयकर अधिनियम, 1961 की धारा 254(1) के अन्तर्गत आदेश

Order u/s.254(1) of the Income-tax Act, 1961 (Act)

लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-

Challenging the order, dtd. 23/05/2013 of the CIT (A)-9, Mumbai the assessee has filed the present appeal. Assessee-firm, engaged in the business of trading in Computer Systems, components and peripherals and other allied services, filed its return of income on 13.10.2010, declaring total income at Rs. NIL. It filed a revised return on 29.09.2011 showing income of Rs. 38,79,76,980/-. A revised return of income was filed on 30.09.2011, declaring total income of Rs. 38,26,36,760/-. The Assessing Officer (AO) completed the assessment, u/s. 143(3) of the Act, on 27.02.2013, determining the income of the assessee at Rs. 38.55 Crores.

2. The effective Ground of appeal is about addition of Rs. 11,57,884/- made by the AO in respect of purchases. During the course of assessment proceedings, the AO sought information from suppliers u/s. 133(6) of the Act with regard to local purchases made by the assessee company. Letter issued to one of the parties, namely M/s. Meetali Industries (MI) returned back unserved. It was also found that name of the said party appeared in the list of bogus suppliers identified by the Sales tax Department, Govt. of Maharashtra, that the said party was also a Hawala dealer and issued false bills without delivery of goods, that the proprietor of MI had categorically admitted before the sales tax authority that those bills were provided just for the sake of entry and no material was supplied as such, that they had supplied bills on receipt of cheques and later on cash withdrawn from the banks and after deduction of agreed commission balance money was returned in the cash account. Vide order sheet entry dated

22.1.2013, the AO asked the assessee to explain as to why the purchase of Rs.11.57 lakhs made from MI should not be disallowed and added to the total income. The assessee, vide its submission, dated 31.1.2013, submitted that it had made purchases of computer parts and printers on various dates from MI, that the goods were received by it and were duly recorded in the books of the assessee, that it had submitted copies of the bills and goods received note (GRN) on earlier occasion, that payment to MI was made by account payee cheques, that complete evidence of purchase of goods from MI was submitted. However, the AO held that assessee had admitted the fact of purchasing goods from MI, that it was regular practice in the business that when certain bogus bills were obtained journal entries would be made, that only entry in the books of accounts did not establish that actual delivery of goods had taken place, that Proprietor of MI had admitted before the sales tax authorities that he had never supplied goods, that he had issued accommodation bills only, that payments through cheques was not a conclusive evidence of purchase of goods. Finally, he held that purchases made from MI of Rs.11.57 lakhs were not genuine and added the said sum to the total income of the assessee.

3. Before the First Appellate Authority (FAA) the assessee submitted that it had submitted the copies of purchase bills, ledger accounts, GRN, bank statements, evidences of sales/consumption of the materials purchased from MI during the assessment proceedings, that the AO had not supplied copy of the statement given to the sales tax authorities by the MI, that no opportunity was given to confront/cross examine him regarding the purchases made, that the AO had merely relied on the information given by the sales tax department, that no independent enquiries were made by him, that the statement given by the proprietor of MI was general statement, that no specific mention of the assessee company was made in the statement, that the AO had not found any discrepancy in respect of documentary evidences filed by the assessee.

4. After considering the submission of the assessee and the assessment order, the FAA held that the assessee could not provide any convincing documentary evidence of actual delivery of material during the assessment proceedings, that the seller had admitted that it was providing accommodation entries, that during the appellate proceedings also the assessee had not filed any documentary evidence proving that MI was actually carrying out trading activities, that prima facie purchases did not appear genuine, that the detailed enquires by the Sales tax Department and Investigation Wing revealed that MI was not in a position to supply

the material to the assessee, that assessee had not produced any evidence in support of actual purchases. Finally, he held that purchases made by the assessee were not genuine.

5. During the course of hearing before us, the Authorised Representative (AR) argued that the addition was made on the basis of the statements recorded by the sales tax authorities, that in the statement the proprietor of MI did not mention the name of the assessee, that payment was made through banking channels, the supplier of the goods was assessed to tax, that all the details and documentary evidences were made available to the AO. He referred to the cases of Rajeev G. Kalathil (ITA No. 6727/Mum/2012, dated 20.08.2014, A.Y. 2009-10); Shri Rajkumar Agarwal (ITA No. 5233/M/2013, dated 10.04.2015, A.Y. 2010-11); Mohammedi Z. Kanchwala (ITA No. 3834/M/2013, dated 06.05.2016, A.Y. 2009-10) and iv) Ramesh Kumar & Co. (ITA No. 2959/M/2014, dated 28.11.2014, A.Y. 2010-11). The Departmental Representative (DR) supported the order of the AO and the FAA.

5. We have heard the rival submissions and perused the material before us. We find that the assessee had purchased goods from MI, that the sales tax department had recorded the statement of proprietor of MI, that in his statement he admitted to have issued accommodation bills, that he did not specifically mention the name of the assessee to whom accommodation bills were issued, that the copy of the statement of the proprietor of the MI was not made available to the assessee, that the assessee was not allowed cross examination of the proprietor of MI, that it had submitted the purchase bills, GRN, account of consumption of goods purchased for MI and their subsequent sales along with the copy of bank statements, that the AO had not made any further verifications with bank. In our opinion, the failure of the AO to supply the copy of the statement of the proprietor of the MI was a serious and fundamental defect. It is also found that opportunity to cross examine him was also not provided. The GRN were the primary documentary evidencing the movement of goods. The AO had not made any enquiry with regards to that. He had not made enquiry with the bank about the alleged 'immediate withdrawal of the cash' and the deposit in the assessee's account. The AO had not rejected the result of books of account of the assessee. In our opinion the order of the FAA can be reversed only on the basis of non observance of principles of natural justice. However, we would like to discuss the merits of the case also. The assessee had discharged its onus to prove the genuineness of the purchase of the goods. The sales made by the assessee were accepted in toto by the AO. Documentary evidences produced by the assessee were not rebutted by AO/the FAA. The FAA had not given any reason for rejecting the

various documents.Both the authorities have gone only by the enquiries by the Sales tax Department.The information received from the Maharashtra Govt. was a good starting point for making further enquiries.But, the AO instead of making enquiries rejected the evidences produced by the assessee without rebutting them. We find that in the case of Rajiv G. Kalathil (supra),the issue of bogus purchases and evidentiary value of inquiry made by sales tax authority was examined.We would like to reproduce the relevant portion of the said case which reads as follows:

“2.4. We have heard the rival submissions and perused the material before us. We find that AO had made the addition as one of the supplier was declared a hawala dealer by the VAT Department. We agree that it was a good starting point for making further investigation and take it to logical end. But, he left the job at initial point itself. Suspicion of highest degree cannot take place of evidence. He could have called for the details of the bank accounts of the suppliers to find out as whether there was any immediate cash withdrawal from their account. We find that no such exercise was done. Transportation of good to the site is one of the deciding factor to be considered for resolving the issue. The FAA has given a finding of fact that part of the goods received by the assessee was forming part of closing stock. As far as the case of Western Extrusion Industries. (supra) is concerned, we find that in that matter cash was immediately withdrawn by the supplier and there was no evidence of movement of goods. But, in the case before us, there is nothing, in the order of the AO, about the cash trail. Secondly, proof of movement of goods is not in doubt. Therefore, considering the peculiar facts and circumstances of the case under appeal, we are of the opinion that the order of the FAA does not suffer from any legal infirmity and there are not sufficient evidence on file to endorse the view taken by the AO. So, confirming the order of the FAA, we decide ground no. 1 against the AO.”

Considering the peculiar facts and circumstances of the case, we hold that by submitting documentary evidence of purchase, consumption and sale of computer components the assessee had discharged its burden of proof. The AO had not produced any evidence that could prove the non genuineness of the transaction. The case laws relied upon by the AR support the view taken by us. Therefore, reversing the order of the FAA, we decide the effective ground of appeal in favour of the assessee.

As a result, appeal filed by the Assessee is allowed.

फलतः निर्धारिती द्वारा दाखिल की गई अपील मंजूर की जाती है.

Order pronounced in the open court on 24th June, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक 24 जून, 2016 को की गई।

Sd/-

Sd/-

जोगिन्दर सिंह /Joginder Singh)

(राजेन्द्र / RAJENDRA)

न्यायिक सदस्य / JUDICIAL MEMBER

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 24.06.2016.

Jv.Sr.PS.

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

- 1.Appellant /अपीलार्थी
2. Respondent /प्रत्यर्थी
- 3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त
- 5.DR "G " Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अधि.मुंबई
- 6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**
उप/सहायक पंजीकार **Dy./Asst. Registrar**
आयकर अपीलीय अधिकरण, मुंबई /**ITAT, Mumbai.**