

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, F, मुंबई ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "F", MUMBAI**

**श्री अमित शुक्ला, न्यायिक सदस्य एवं
श्री अश्वनी तनेजा, लेखा सदस्य, के समक्ष**

**Before Shri Amit Shukla, Judicial Member, and
Shri Ashwani Taneja, Accountant Member**

**ITA No.3602/Mum/2013
Assessment Year: 2007-08**

&

**ITA No.614/Mum/2013
Assessment Year: 2009-10**

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| Vipra Drugs P. Ltd. 4101, Oberoi Gardan Estate, Sakivihar R.D. Chandiali Andheri(E) Mumbai-400072 | बनाम/ Vs. | ITO WD 8(3)(4) Aayakar Bhavan, Mumbai |
| (Appellant) | | (Respondent) |
| P.A. No.AACCV1960B | | |

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| Appellant by | Shri Vimal Punmiya (DR) |
| Revenue by | Shri Asghar Zain (DR) |

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| सुनवाई की तारीख/ Date of Hearing: | 25/07/2016 |
| आदेश की तारीख / Date of Order: | 11/08/2016 |

आदेश / O R D E R

Per Ashwani Taneja (Accountant Member):

These appeals have been filed by the same assessee against different orders of Ld. CIT(A).

First We shall take up for A.Y. 2007-08 in ITA No.3602/Mum/2013

This appeal has been filed by the Assessee against order of Ld. Commissioner of Income Tax(Appeals) dated 25.02.2013 passed against the penalty order of the AO u/s 271(1)(c) dated 28.03.2012 for A.Y. 2007-08 on the following grounds:

“1.Learned Commissioner of Income Tax (Appeals) erred in confirming penalty levied u/s 271(1)(c) of the Act by Learned Assessing Officer on the plea that the Appellant has furnished inaccurate particulars of Income and also alleged that Appellant has failed to offer any explanation. Appellant submits that in view of the facts and circumstances of the case as well as in law the said penalty levied u/s 271(1)(c) of the Income Tax Act, 1961 is bad in law and deserves to be deleted.”

2. During the course of hearing, arguments were made by Shri Vimal Punmiya, Authorised Representatives (AR) on behalf of the Assessee and by Shri Asghar Zain, Departmental Representative (DR) on behalf of the Revenue.

3. The brief facts of the case are that during the year under consideration assessee was engaged in the business of trading of drugs and pharmaceuticals. During the course of assessment proceedings, the AO rejected the books of accounts u/s 144(3) and passed ex parte order u/s 144 on the ground of not being able to verify the transactions. Accordingly, the AO held that assessee was in the business of accommodation entries and income was quantified @ 2% of the purchases.

3.1. Being aggrieved, the assessee preferred an appeal before the Ld. CIT(A) against the addition made by the AO wherein

Ld. CIT(A) partly accepted the order of the AO by upholding rejection of books of accounts, but determined the income @ 1% of purchase as against 2% assessed by the AO. It was submitted by the Ld. Counsel that since tax effect was low therefore, no appeal in quantum was preferred against the order of Ld. CIT(A) before the Tribunal. Subsequently, the AO initiated penalty proceedings and passed ex-parte penalty order u/s 271(1)(c) levying the penalty of Rs.3,18,457/- on the amount of addition sustained by the Ld. CIT(A).

3.2. Being aggrieved, the assessee filed appeal before the Ld. CIT(A) where no relief was given and penalty order was confirmed.

3.3. Being aggrieved again, the assessee filed appeal before the Tribunal. During the course of hearing it was submitted by the Ld. Counsel that it is a case where addition was made on surmises and conjunctures despite the fact that complete evidences were brought on record. The addition was made on estimate basis and the estimate made by the AO was also changed by the Ld. CIT(A) and no adverse material at all was found by the AO which could support the bald allegation made by the AO in the assessment order. Under these circumstances, levy of penalty was highly unjustified. Per contra, Ld. DR supported the orders of the lower authorities.

3.4. We have gone through the facts of this case. It is noted that the assessee made purchases during the year from four suppliers; out of these one of the suppliers namely M/s. Arch Pharmed Labs Ltd., from whom the assessee had made 80% of its total purchases, had confirmed the transaction as has been

accepted by the AO also. It is further noted that admitted facts are that assessee placed on record exhaustive evidences from all the four suppliers in support of the purchases i.e. confirmations, copy of bills, ledger accounts, delivery challans and VAT returns etc. The accounts of the assessee are audited and tax audit report as well as statutory audit report was submitted before the AO. It is further noted by us that exhaustively maintained stock register was produced before the AO, showing quantitatively reconciliation of purchases and sales. All the transactions of purchases and sales have been made through banking channels and no cash was deposited or withdrawn from the bank accounts except for petty cash expenses. These evidences have not been rebutted by the AO. The only allegation made by the AO was that suppliers were not produced and transport bills were not submitted. It is noted that assessee brought on record all the evidences which were not controverted by the AO. With regard to transport expenses, it was submitted these were not incurred by the assessee, and therefore these were not debited in the profit and loss account. It was further submitted that assessee as well as suppliers were having godown in the same area i.e. Bhiwandi and therefore, no major transportation was involved.

3.5. We have examined the entire facts and circumstances of the case and find that the penalty order is highly unfair and unjustified for various reasons. First of all, the addition is made purely on estimate basis and even that estimate itself has been changed by Ld. CIT(A); the addition was made @ 2% of purchases which has been reduced to 1% by Ld. CIT(A).

Further, no incriminating material has been brought on record by the AO before making serious allegations of accommodation business. Further, assessee has submitted overwhelming evidences in support of its claim which have not been negated by the AO before rejecting these evidences ex-parte. The case of the assessee has neither been disproved nor proved to be false by the AO. Under these circumstances, it cannot be said at all that there was any type of concealment of income or furnishing of inaccurate particulars of income by the assessee. Therefore, penalty levied by the AO being contrary to law and facts is deleted.

Now, we shall take up appeal filed by the assessee in ITA No.614/Mum/2013 For A.Y. 2009-10:

4. This appeal is filed against the order passed by the Ld. CIT(A) dated 12.12.2012 passed against assessment order of the AO u/s 144 dated 23.12.2011 on the following grounds:

- “1. The learned Commissioner of Income Tax (Appeals) erred in upholding the rejection of books of account of the appellant without recording any proceeding of having examined the books of account.*
- 2. The learned Commissioner of Income Tax (Appeals) erred in upholding the invoking the provisions of section 144 of the Income Tax Act, 1961.*
- 3. The learned Commissioner of Income Tax (Appeals) erred in confirming the order of the Assessing Officer in respect of the estimation of commission income @ 1% on Sales and Purchase Transaction at Rs.41 42,000.*
- 4. The learned Commissioner of Income Tax (Appeals) erred in not appreciating the facts of the case and the history of proceedings of earlier years before arriving at the conclusion for the year under consideration.*
- 5. The Appellant craves leave to add, amend, alter, and/or delete all or any of the forgoing grounds of appeal.”*

5. In this case, the AO had made addition of 1% on sale and purchase transactions separately aggregating to Rs.41,42,000/-, after rejecting the books of account and passing ex parte assessment order u/s 144. The main allegation of the AO was that as per his view, the business done by the assessee was not genuine and it was business of accommodation entries. Ld. CIT(A) endorsed the order of the AO without any proper reasoning and without discussing evidences submitted by the assessee.

5.1. We have gone through the orders passed by the lower authorities and found the same to be illegal and contrary to law and facts. It is noted that books of the assessee are duly audited; the sale and purchase are duly settled through proper banking channels. It is further noted by us that none of the authorities brought on record any material or documentary evidences to reach on the conclusion that assessee was engaged in the business for providing accommodation entries. No basis whatsoever has been provided for estimating the income of the assessee that too @ 1% of purchases and 1% of sales. The assessee had produced with respect to all the parties, copy of ledger accounts, VAT returns, sales and purchase invoices, rent agreements, requisite information from internet to establish that some of these parties existed on the net also. The sales tax department in the case of all these suppliers had accepted their sales of returns. The assessee submitted stock register showing quantitative reconciliation of purchase and sales. Copies of audited accounts and audit

report were also submitted. It is also noted that the AO had issued inquiry letters to these parties and most of the parties responded positively to the AO. None of the parties declined the transactions or gave any kind of negative reply. The addition has been made by the AO and confirmed by Ld. CIT(A) on surmises, conjectures and irrelevant considerations and without considering or rejecting overwhelming evidences submitted by the assessee. We find the addition to be wholly illegal and unjustified and therefore same is directed to be deleted.

6. In the result, both the appeals filed by the Assessee are allowed.

Order pronounced in the open court on 11th August, 2016.

Sd/-

(Amit Shukla)

Sd/-

(Ashwani Taneja)

न्यायिक सदस्य / JUDICIAL MEMBER लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 11/08/2016

Patel, P.S. नि.स.

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai