

आयकरअपीलीयअधिकरण, मुंबईन्यायपीठ‘बी’मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL“B” BENCH, MUMBAI

श्री जी. एस. पन्नू, लेखा सदस्य, एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के
समक्ष
BEFORE SHRI G.S.PANNU, AM AND SHRI AMARJIT SINGH, JM

आयकरअपीलसं/I.T.A. No.6004/Mum/2014
(निर्धारणवर्ष / Assessment Year: 2010-11)

Income Tax Officer 24(3)(2) Room No.704, C-11, Pratayaksha Kar Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai - 400051	बनाम/ Vs.	Mrs. Manjula S. Shah Prop. Of M/s.Eastmen Chemicals, 3/202, Rishabh Mansion, S.V.Road, Nr. St. John School, Goregaon (W), Mumbai - 400062
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No. : AAPPS3790Q		
(अपीलार्थी/ Appellant)	..	(प्रत्यर्थी / Respondent)

Revenue by:	Shri M. Rajan
Assessee by:	Shri Vipul J. Shah

सुनवाईकीतारीख / Date of Hearing:27.09.2016
घोषणाकीतारीख /Date of Pronouncement: 29.12.2016
आदेश / ORDER

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 24.07.2014 passed by the Commissioner of Income Tax (Appeals)-34, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the assessment year 2010-11.

2. The revenue has raised the following grounds:-

- “1. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.22,12,600/- made on account of unexplained purchases made from M/s. Riddhi Enterprises ignoring the fact that Mr. Hemant Anant Thorat, Prop. Of M/s. Riddhi Enterprises has admitted that he was not doing any genuine business but was indulging in colourable device for accommodating people who needed his service of bogus sale and purchase bills.*
2. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.22,16,600/- made on account of unexplained purchase ignoring the fact that the notice issued to M/s. Riddhi Enterprises u/s.133(6) was received back unserved.*
3. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.16,06,800/- and Rs.5,22,600/- made on account of unexplained purchases made from M/s. Mahamantra Metal Loys Ltd. and M/s. Ramsha Trading Pvt. Ltd. ignoring the fact that the notices issued u/s.133(6) of the Act to these parties have returned back unserved by the postal authorities.*
4. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the additions of Rs.22,12,600/-, Rs.16,06,800/- and Rs.5,22,600/- made on account of unexplained purchases ignoring the fact that the onus lies on assessee to produce the concerned parties which assessee failed to do.*

3. The brief facts of the case are that the assessee filed the return of income on 21.09.2010 declaring total income to the tune of Rs.4,64,700/-. The return was processed u/s.143(1) of the Income Tax Act, 1961(in short “the Act”) on 27.05.2011. Thereafter, the

case was selected for scrutiny and notice u/s.143(2) of the Act dated 27.09.2011 was issued and served upon the assessee. Thereafter, the notice u/s.142(1) of the Act dated 05.01.2012 and 04.07.2012 were issued and served upon the assessee. The assessee is a manufacturer of chemicals and having income from business and other sources. Under the year of consideration, the assessee has shown her income from business, capital gain and income from other sources. Assessing Officer while during the assessment raised the question of purchases from three parties namely M/s. Mahamantra Metal Alloys Pvt. Ltd. to the tune of Rs.16,06,800/-, M/s. Ramsha Trading Pvt. Ltd. to the tune of Rs.5,22,600/- and M/s. Riddhi Enterprises to the tune of Rs.22,12,600/-, total amounting to Rs.43,42,000/-. The Assessing Officer disallowed the purchases from M/s. Riddhi Enterprises on the ground of that the said party was issuing bogus bills and its name was reflected at the official website of the Sales Tax Department, Government of Maharashtra www.mahavat.gov.in. Therefore, the said purchases was declined. So far as the purchases from M/s. Mahamantra Metal Alloys Pvt. Ltd and M/s. Ramsha Trading Pvt. Ltd. is concerned, the assessee failed to prove the genuineness of the claim. Therefore, the purchases were added to the income of the assessee and the income of the assessee was assessed to the tune of Rs.48,06,700/-. The assessee filed an appeal before the CIT(A) who applied the GP rate @ 7% in connection with the purchases from M/s.Riddhi Enterprises and deleted the addition in connection with the

purchases from M/s. Mahamantra Metal Alloys Pvt. Ltd and M/s. Ramsha Trading Pvt. Ltd. on finding of sufficient evidence on the file. Feeling aggrieved the revenue has filed the present appeal before us.

ISSUE NO.1 & 2:-

4. Issue no.1 and 2 are interconnected, therefore, are being taken up together for adjudication. Under these issues the revenue has challenged the deletion of the addition to the tune of Rs.22,12,600/- on account of unexplained purchases from M/s. Riddhi Enterprises. The learned representative of the department has argued that M/s. Riddhi Enterprises was issuing the bogus bills and his name was reflected at the official website of the Sales Tax Department, Government of Maharashtra [www.mahavat.gov.in.](http://www.mahavat.gov.in), therefore, the Assessing Officer has rightly treated the said expenditure as explained and added the amount in the income of the assessee but the learned CIT(A) has wrongly allowed the said deletion, therefore, the order of the CIT(A) is wrong against law and facts and is liable to be set aside. The learned representative of the assessee has placed reliance upon the order passed by the CIT(A) in question. Before going further it is necessary to advert the finding of the CIT(A) on this issue:-

“2.4 I have considered the submissions, supplementary submissions, material available on record in the form of paper book and the impugned assessment order on this

issue. It is seen that the appellant has submitted following details to the learned AO during the course of assessment proceedings itself:

Sr. No.	Details submitted to learned AO	Annexed as Exhibit
1.	Copy of Invoices along with delivery Challan received from the party.	1
2.	Copy of Ledger account of M/s.Riddhi Enterprises.	2
3.	Transporter Receipt of material brought to factory.	3
4.	Factory security Register showing Tempo Number with material.	4
5.	Bank statement reflecting payment made by account payee cheque in the name of party.	5
6.	Excise Return ER-1 where goods sold, manufactured out of purchases made from M/s. Riddhi Enterprises is disclosed.	6
7.	Stock Inward Register for the month of November, 2009.	7
8.	Summary of Material Consumption to Material Production with consumption ratio along with formula submitted to excise for Production of each item.	8
9.	A relevant extract of Sales Register showing	9

	material sold to various parties out of material receipt from the supplier.	
10.	Copy of Sales Bill, Delivery Challan, Purchase Order of the customer who purchased the material.	10

The learned AO has verified all the above details and after verification of above details he has advance arguments and the reply to the arguments are given in a table which are enumerated in the submissions as above in para 2.3. The Assessing Officer himself has confirmed in para 4.2(g) of his order that “the purchases of the assessee are not the issue here and these alleged purchases are not being treated as bogus”.It is seen that the Assessing Officer himself has contradicted his own argument by saying that the purchases are not bogus and sham but the expenditure incurred for purchase is not explained. However, the expenditure itself is a purchase and there are no other expenditure other than purchase. Once the purchases are recorded in the books of account same cannot be treated as unexplained. The Assessing Officer has simply relied on the statement given by Mr.Harish Anant Thorat without verifying the authenticity of the said statement. The Assessing Officer has not verified the genuineness of the statement or he has not provided any opportunity to the appellant to cross examine Mr.

Harish Anant Thorat. It is found that all the allegations made by the Assessing Officer are rebutted by the appellant point by point with reasoning and on the basis of the facts of the case, the appellant has submitted that the additions has been made by the Assessing Officer is based on the wrong understanding of the facts of the case and incorrect reasoning.

- 2.5 The appellant has relied on the Honourable Delhi High Court decision in the case of CIT Vs. M/s. Radhika Creating dated 30.04.2010 which supports the case of the appellant wherein it has been held that “As the expenditure was accounted in the regular books, the source is obviously explained. The provisions of section 69C are not applicable as there was no unaccounted expenditure.
- 2.6 The appellant has also relied on the decision of Mumbai High Court in the case of CIT Vs. M/s.Nikunj Eximp Enterprises P. Ltd. wherein it has held that what if the sales has been accepted the purchase can not be treated as non genuine in those cases where appellant has submitted all details of purchases and sales and payments for purchases has been made through cheque and also held that the Income tax Department just on the basis of information from third-party (in this case the Sales Tax Department) can not disallow the purchases. It is also held that in case the sale made by the party are not doubted or the books

of accounts are not rejected purchase can not be disallowed also. The appellant has also relied on the following case laws:-

1.	ACIT Vs. AA Testronics Solutions Pvt. Ltd. – ITA Nos.4223 to 4228/Del/2012 – Delhi Tribunal
2.	Babulal C. Borana Vs. ITO [2006] 282 ITR 251 (Bom)
3.	Balaji Textile Industries (P.) Ltd. Vs. ITO [1994] 49 ITD 177 (Mum)

Since the appellant has not been able to furnish the Ledger confirmation from the party, to buy peace of mind and to avoid ruinous litigation, the appellant requested to estimate an appropriate rate of G.P. margin on the purchases of Rs.22,12,600/- effected from M/s.Riddhi Enterprises. The appellant has submitted that the general rate of gross profit in similar trade is about 7%.

2.7 I have considered the case laws and appellant's request to adopt G.P. @ 7%. The Assessing Officer is directed to accept the G.P. @ 7% as the income escaped tax and delete the balance addition. These grounds of appeal are partly allowed.”

5. On appraisal of the above said finding of the CIT(A) on record, it came into the notice that the CIT(A) has considered each and every facts and circumstances of the present case. He did not add the whole

purchase as income of the assessee, however, taken into the consideration the GP rate @ 7% on the basis of the law relied by the CIT(A) in his order. The factual position is not quite different at this appellate stage also. No law different to the law relied by the CIT(A) has been placed before us. In view of the said circumstances, we are of the view that the CIT(A) has passed the order judiciously and correctly which is not required to be interfere with at this appellate stage. Accordingly, these issues are decided in favour of the assessee against the revenue.

ISSUE NO.3 & 4:-

6. Under these issues the revenue has challenged the disallowance of purchases of Rs.16,06,800/- from M/s.Mahamantra Metal Alloys Pvt. Ltd. and Rs.5,22,600/- from M/s.Ramsha Trading Pvt. Ltd. The learned representative of the revenue has argued that the assessee failed to prove the genuineness of the purchases but the CIT(A) has wrongly allowed the said purchases hence, the finding of the CIT(A) on this issue is wrong against law and facts and is liable to be set aside. The learned representative of the assessee has placed reliance on the finding of the CIT(A) on these issues. Before going further, it is necessary to advert the finding of the CIT(A) on record:-

“3.3 I have considered the submissions made by the appellant, materials available on record in the form of paper book

and the impugned assessment order on this issue. I have also gone through the various judgement relied on by the appellant. During the course of assessment proceedings, before the Assessing Officer the appellant has produced the entire details of purchase of goods, receipt of stock, its consumption in manufacturing of finished goods and further sale of such manufactured goods to various parties which are also submitted before me during the course of appellate proceeding. Regarding the purchases made from M/s.Mahamantra Metal Alloys Pvt. Ltd. Rs.16,06,800/- and M/s.Ramsha Trading Pvt. Ltd. Rs.5,22,600/-, the appellant has submitted the following details before me which were also submitted before the Assessing Officer during the course of assessment proceedings:-

- i) Copy of purchase bills and delivery challans.
- ii) Transporter Receipt of material brought to factory.
- iii) Factory security Register showing Tempo Number with material.
- iv) Stock Inward Register reflecting receipt of material.
- v) Summary of material consumption to material production with vi) consumption ration along with

formula submitted to excise for production of each item.

- vi) Excise Return ER – 1 where goods sold, manufactured out of purchases made from these parties.
- vii) A relevant extract of Sales Register showing material sold to various parties out of material receipt from the supplier.
- viii) Copy of Sales bill, delivery challan, purchase order of the customer who purchased the material.
- ix) Ledger account of the parties in the books of appellant duly confirmed by the parties.
- x) Name, address, PAN and copy of income tax returns and audited balance sheet of both these parties.
- xi) Copy of VAT returns filed by both these parties,
- xii) Copy of master data from MCA web record.

It is found that the appellant has furnished all the documents to prove the genuineness of the transactions from both the above parties i.e. proof of purchase, delivery of material, proof of payment to the party and the ledger confirmation etc. Hence non service of notice u/s.133(6) only could not be the ground for disallowing

purchases u/s.69C of the I.T.Act. It is also seen that these two parties were not appearing in the list of suspicious supplier published by the Sales Tax Department. The appellant has relied on the Honourable Mumba High Court decision in the case of Nikunj Eximp Enterprises Pvt. Ltd. ITA No. : 5604 of 2010 dated 17.12.2012 which supports the case of the appellant wherein it has been held that what if the sales has been accepted the purchases cannot be treated as non genuine in those cases where appellant has submitted all details of purchases and sales and payments for purchases has been made through cheque. It is also held that in case the sale made by the party are not doubted or the books of accounts are not rejected, purchases can not be disallowed also. It may also be noted that if purchases were bogus, we would not have been in a position to sell the goods to the third parties.

- 3.4 Since the appellant has produced all the documents to prove the genuineness of the transactions such as proof of purchase, delivery of material, proof of payment to the parties and the ledger confirmations in respect of M/s. Mahamantra Metal Alloys P. Ltd. and M/s. Ramsha Trading P .Ltd. the addition made by the Assessing

Officer of Rs.16,06,800/- in respect of purchases made from M/s. Mahamantra Metal Alloys P. Ltd. and Rs.5,22,600/- in respect of purchases from M/s.Ramsha Trading P. Ltd. are directed to be deleted. These grounds are allowed”.

7. On appraisal of the above said order, it came into the notice that the CIT(A) has considered each and every evidence adduced by the assessee in connection with the purchases from the above mentioned two parties. The evidences have been discussed in the above mentioned orders, therefore, there is no need to repeat it again. No distinguishable material has been placed on record which may effect the finding of the CIT(A) on these issues. The CIT(A) has passed the order on the basis of the material / evidences which has been discussed in the order mentioned above and nothing contrary found at this appellate stage, therefore, we are of the view that the CIT(A) has passed the order on this issue judiciously and correctly which is not required to be interfere with at this appellate stage. Accordingly, finding of the CIT(A) is hereby confirmed and these issues are decided in favour of the assessee against the revenue.

8. In the result appeal filed by the revenue is hereby Dismissed

Order pronounced in the open court on 29th December,
2016

Sd/-

Sd/-

(G.S.PANNU)

(AMARJIT SINGH)

लेखासदस्य / ACCOUNTANT MEMBER

न्यायिकसदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 29th December, 2016

MP

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त (अपील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापितप्रति //True Copy//

उप/सहायकपंजीकार (Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai