

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC-3', NEW DELHI**

BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER

ITA No.1186/Del/2016

AY: 2006-07

MM Impex
E 10, CC Colony
Delhi 110 007

vs. ITO, Ward 20(3)
New Delhi

PAN: AADGM 0316 C
(Appellant)

(Respondent)

Appellant by : Sh. Raj Kumar Gupta, C.A.
Respondent by : Sh. Anil Sharma, Sr.D.R

ORDER

This is an appeal filed by the assessee directed against the orders of the Ld. Commissioner of Income Tax (Appeals)- 12, New Delhi dated 31.12.2015 for the Assessment Year (A.Y. 2006-07).

2. Facts in brief:- The assessee is an individual. He filed his return of income on 09.06.2006 declaring income of Rs. 1,05,525/-. The assessee had made purchases of brass scrap from M/s Om Agencies for Rs. 9,03,020/- and Rs. 9,64, 533/-. A search and seizure operation was conducted at the office and residential premises of Sh. Rakesh and Sh. Vishesh Gupta of M/s Om Agencies. During the course of search, statements were recorded and both these persons admitted that they were in the business of issuing bogus purchase bills, accommodation entry bills to the interested parties, cheques were received from them and thereafter cash was withdrawn after clearance of the cheques. On receipt of such information from ACIT, Central circle - 10, New Delhi the Assessing Officer (A.O.) issued notice under section 148 of the Income Tax Act, 1961 (the Act), after recording reasons for reopening. The assessee filed a letter dated 09.05.2013 stating that the return filed on

09.06.2006 be treated as a return filed in response to the notice. The A.O. determined the total income of the assessee at Rs. 19,82,416/- inter alia adding the purchases of Rs. 18,67,553/- from Om Agencies as non-genuine. Aggrieved the assessee carried the matter in appeal without success. Further aggrieved the assessee is before me.

3. The Ld. Counsel for the assessee Shri Raj Kumar Gupta, contended that, the purchases were genuine and in proof of the same he drew the attention to, purchase invoice, stock register, corresponding sales, Ledger accounts, bank statement of assessee, purchase details filed with VAT Department and VAT returns and submitted that the AO has not pointed out any discrepancy in these records. The Ld.Counsel pointed out that sales cannot take place without purchases and the A.O. had accepted the sales. It is further submitted that neither Sh. Rakesh or Sh. Vishesh Gupta have stated that the sales to the assessee are bogus and that they admitted that 5% of the sales are genuine without specifying which of the sales are genuine. He relied on the following case laws and submitted that the issue is covered in favour of the assessee.

(i) CIT vs. Leaders Valves (P) Ltd. 285 ITR 435 (P&H)

(ii) Sumesh Agarwal (Delhi ITAT) order dt. 11.9.2015 for A.Y. 2006-07 SMC-2.

4. He further contended that the statements were taken at the back of the assessee and the request for cross examination not provided. He challenged the reopening on the ground that the AO has not applied his mind to the information received from the investigation wing. He challenged the approval given by the Additional Commissioner under section 151 of the Act as without application of mind. He prayed for relief.

5. Shri Amrit Lal, the Ld.Sr.Departmental Representative on the other hand relied on the orders of the lower authorities and submitted that a categorical

statement was made by Sh. Rakesh and Sh. Vishesh Gupta that they have issued bogus entries. He submitted that the assessee could not prove the genuineness of these transactions. He contended that the A.O. on receipt of information from Additional CIT, Central circle, had applied his mind while recording reasons and thereafter issued notice under section 148 of the act. He pointed out that summons were issued to Om Agencies by the AO but there was no response. He argued that the burden of proof lies on the assessee and that this is not discharged. He relied on the decision of the Hon'ble Delhi High Court in the case of CIT vs. La-medica (2001) 250 ITR 575 Delhi.

6. After hearing rival contentions I find that this bench of the Tribunal in ITA No. 1034/Delhi/2015 in the case of Shri Sumesh Agarwal vide order dated 11.09.2015 at paragraph 3 held as follows:

“after hearing rival contentions, I am of the considered opinion that this disallowance cannot be sustained as the payments in question to Om Agencies, is made through account payee cheques. The assessee produced the tax invoice of Om Agencies, copies of the purchase register recording the purchases, copies of the stock register after giving item wise and quantity wise inward and outward stock, copies of bank account evidencing transfer of funds through banking channels. Copies of tax invoice is given by the assessee and copies of sales register, copies of bank statement evidencing sale of these stocks, which were purchased from M/s Om Agencies, evidence of transportation is also filed before me. The assessee has not been given an opportunity to cross examine the revenue's witnesses Sh. Rakesh Gupta and Sh. Vishesh Gupta and hence their statements cannot be relied upon. In any event this disallowance u/s 40A(3) cannot be made on the assumption that the purchases should have been made in cash. Taking the totality of the facts and circumstances of the case, I am of the considered opinion that the disallowance in question has to be deleted and the appeal of the assessee be allowed”

7. In the case on hand also, the entire addition is based on the statements of Sh. Rakesh Gupta and Sh. Vishesh Gupta. The assessee has not been given any opportunity to cross examine these persons. Hence the statements given by them cannot be taken as evidence in the present case. The assessee has produced, sales invoices of Om Agencies for both these purchases, the corresponding sales invoices issued by the assessee on 27.2.2006 and 02.03.2006. The assessee furnished DVAT-30 i.e. purchase information filed to VAT Department, VAT returns and details of bank payments in support of his claim of purchases. In my view the assessee has discharged the burden of proof that lay on him. The contention of the assessee is that, the purchases are out of the 5% genuine sales, out of bills issued by Om Agencies. This is a case where the sales of these goods have been accepted by the revenue. Under the circumstances the addition of the entire amount of Rs. 18,67,553/-, in my view is unjustified, the consequential addition of Rs. 9, 338/- is also not justified. In the result I delete these additions and allow this appeal of the assessee.

6. In the result the appeal by the Assessee is allowed.

Order pronounced in the Open Court on 28th September, 2016.

Sd/-
(J. SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 28th September, 2016

- *Manga*

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR