

**IN THE INCOME TAX APPELLATE TRIBUNAL
"F" Bench, Mumbai**

**Before Shri Jason P. Boaz, Accountant Member
and Shri Sandeep Gosain, Judicial Member**

ITA No. 6235/Mum/2014
(Assessment Year: 2009-19)

M/s. V.K. Developers 604, 6 th Floor C/o. Vinod V. Bhatia Sarala Sadan, S.G. Road Malad (W), Mumbai 400064 PAN - AAGFV0235L	Vs.	Income Tax Officer Ward 24(2)(3) Mumbai
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Appellant

Respondent

Appellant by: None
Respondent by: Shri Vijay Kumar Soni

Date of Hearing: 15.09.2016
Date of Pronouncement: 21.09.2016

ORDER

Per Jason P. Boaz, A.M.

This appeal by the assessee is directed against the order of the CIT(A)-34, Mumbai dated 21.07.2014 for A.Y. 2009-10.

2. In this appeal the assessee has raised the following grounds: -

- “1. The Ld. CIT(A) has erred in fact and law by not considering the evidences submitted before him and confirming the addition of Rs.7,22,500/- in case of purchases made from Dhanraj Marketing by relying on the remand report which is been based on partial information without considering evidences on record.
2. The Ld. CIT(A) has erred in fact and law by not considering the evidence on record and confirming the addition of Rs.7,22,500/-.
3. The appellant craves leave to add, alter, amend or drop any grounds of appeal at the time of the appeal proceedings.”

3. The case was fixed for hearing on a number of occasions, but none was present for the assessee nor was any request for adjournment of hearing furnished. Even the notice sent by RPAD was returned back unserved. Even on the last date of hearing, i.e. 15.09.2016, when the case

was called for hearing, none was present for the assessee, but the learned D.R. for Revenue was present and ready to argue for Revenue. In these circumstances, we are of the view that the assessee is not serious or interested in pursuing this appeal and we therefore proceed to dispose off this appeal with the assistance of the learned D.R. for Revenue and the material on record.

4. From the grounds raised (supra), it is seen that the only issue for consideration and adjudication before us is with regard to the learned CIT(A) confirming the addition of ₹7,22,500/- in respect of purchases made from Dhanraj Marketing. It is the contention of the assessee in these grounds that the learned CIT(A) erred in confirming the addition of ₹7,22,500/- in respect of purchases from Dhanraj Marketing by relying on the Assessing Officer's (AO) remand report, instead of considering the evidence put forth by the assessee.

5.1 The learned D.R. for Revenue strongly supported the orders of the authorities below on this issue. According to the learned D.R., in the course of assessment proceedings, the AO had issued notice under section 133(6) of the Income Tax Act, 1961 (in short 'the Act') to M/s. Dhanraj Marketing in respect of purchases of ₹7,22,500/- shown to have been made from this party by the assessee; and since there was no response thereto, the assessee was required to produce this party before the AO for examination. Failure to do so, led to the AO being of the view that the assessee had failed to establish the genuineness of the purchase of ₹7,22,500/- from M/s. Dhanraj Marketing and the same was added to the income of the assessee as unproved/bogus purchases.

5.2 The learned D.R. submitted that on appeal, the assessee had, inter alia, furnished certain additional evidences in the form of copy of purchase invoices with M/s. Dhanraj Marketing and copy of ledger account before the learned CIT(A), who after admitting the same called for a remand report thereon from the AO. The AO's remand report dated 05.05.2014, holding that the alleged purchases of ₹7,22,500/- from Dhanraj Marketing was unproved/bogus, was made available to the assessee. According to the

learned D.R., the learned CIT(A), after considering the additional evidences put forth by the assessee, the AO's remand report and the assessee's rejoinder dated 28.05.2014, came to the conclusion that the assessee had failed to establish the genuineness of the alleged purchases of ₹7,22,500/- made from M/s. Dhanraj Marketing and therefore confirmed the addition of ₹7,22,500/- made by the AO in this regard. The learned D.R. prayed that in the light of the above, the impugned order of the learned CIT(A) be upheld.

6.1 We have heard the learned D.R. for Revenue and perused and carefully considered the material on record. It is seen from the impugned order that the appeal before the learned CIT(A) was in respect of unproved purchases of ₹9,84,653/- (viz. ₹2,62,158/- from M/s. Arihant Electronics and ₹7,22,500/- from M/s. Dhanraj Marketing). We find that, on the basis of additional evidences filed by the assessee, the AO's remand report thereon dated 06.02.2014, the assessee's rejoinder dated 28.05.2014 on the AO's remand report, the learned CIT(A), while allowing the assessee's appeal in respect of purchases of ₹2,62,158/- from M/s. Arihant Electronics, has rejected the assessee's contentions and upheld the AO's addition of ₹7,22,500/- on account of unproved purchases from M/s. Dhanraj Marketing, holding as under: -

"2. The only ground of appeal relates to addition of ₹9,84,658/- on account of unproved purchases.

2.1 The Assessing Officer had discussed this issue in para 4 & 5 of the assessment order. During the course of assessment proceedings, to verify the genuineness of purchase transactions shown by the appellant, notices u/s. 133(6) were issued to four parties on random. Out of 4 notices, one notice issued u/s. 133(6) to M/s. Arihant Electricals was returned back by the postal authorities as unserved and one party M/s. Dhanraj Marketing has not replied though notice was served. A fresh notice u/s.133(6) was issued to M/s. Arihant Electricals on the new address and in response to which, M/s. Arihant Electricals replied vide letter dated 21.12.2011 that they have not made any single transactions with the appellant during the A.Y,2009-10. The appellant has filed confirmation from M/s. Arihant Electricals, however, the party has denied to have made any transactions with the appellant during the year. Hence the appellant's claim of purchases from M/s. Arihant Electricals amounting to ₹262,158/- were treated as unproved/bogus purchases by the Assessing Officer.

2.2. Regarding purchases from M/s. Dhanraj Marketing, the Assessing Officer had issued notice u/s.133(6) to this party during the course of assessment proceedings, but no reply has been received from this party. The onus lies on the appellant to prove the genuineness of purchases claimed, however, the appellant has filed only confirmation from the party and the party has not replied to notice u/s.133(6). Since the appellant has failed to prove the genuineness of purchase transaction with M/s. Dhanraj Marketing, therefore, the alleged purchases shown from M/s. Dhanraj Marketing amounting to ₹7,22,500/- was treated as unproved/bogus purchases and added to the total income of the appellant.

2.2. During the course of appellate proceedings, the appellant had additional evidence in the form of copy of purchase invoice with Dhanraj marketing and copy of ledger account which was admitted by me and hence the issue was remanded to the Assessing Officer for his remand report vide this office letter dated 6.2.2014, in response to which the Assessing Officer had filed his remand report vide letter No.ITO 24(2)(3)/Remand Report/2014-15 dated 0.05.2014 through the JCIT 24(2), Mumbai. In the remand report, the appellant has reported as under:-

“The issues remanded for verification and report thereon are:

- 1. The assessment was completed u/s. 143(3) of the Income Tax Act, making addition of Rs. 9,84,658/- on account of unproved purchases from M/s Arihant Electronics and M/s Dhanraj Marketing.**

The remarks on examination of the details are as under:-

During the course of scrutiny proceedings to verify the genuineness of purchase transactions shown by the assessee, notice u/s 133(6) were issued to M/s Arihant Electricals was returned back by the postal authority as unserved and to M/s Dhanraj Marketing has not replied though notice was served.

*The assessee was asked to give the new address of the M/s Arihant Electricals. The assessee provided the new address of M/s Arihant Electronics, accordingly notice u/s. 133(6) was issued and in response M/s Arihant Electronics replied vide their letter dated 21.12.2011 received in this office on dtd. 22.12.2011 **that they have not made any single transactions with the assessee during the A.Y. 2009-10.** Assessee filed confirmation of M/s Arihant Electronics even though M/s Arihant Electricals denied that they have not made any transaction with the assessee, therefore addition were made in the total income of the assessee of Rs. 2,62,158/- treated as unproved/bogus claim of purchases.*

Similarly assessee filed confirmation from M/s Dhanraj Marketing for the purchases claimed by assessee of Rs. 7,22,500/- . Notice was issued u/s. 133(6) to M/s Dhanraj Marketing which was duly served but no reply was received till the order u/s. 143(3)

of the I.T. Act, was passed. Hence, the addition were made of Rs.7,22,500/- as unproved / bogus claim of purchases. During the remand proceedings to verify the genuineness notice u/s. 133(6) was served by the postal authority to M/s Dhanraj Marketing on dt. 26.02.2014 and by Ward Inspector on dt. 22.04.2014 which was duly served but no reply was received till date. It can be seen that even though the notices were issued to M/s Dhanraj Marketing no response has been received by this office and so on the genuineness of the transactions rests unproved. Therefore, the purchases shown from M/s Dhanraj Marketing are treated as unproved/bogus."

A copy of the remand report was sent to the Authorized Representative of the appellant, in response to which the Authorized Representative of the appellant has submitted rejoinder vide letter dated 28.5.2014. The contents of the rejoinder is reproduced as under-

"The creditors comprises of two parties namely:-

1. M/s. Arihant Electricals : ₹2,62,158/-
2. M/s. Dhanraj Marketing : ₹7,22,500/-

M/s.Arihant Electricals

During the course of assessment the learned ITO had called for confirmation of purchase u/s.133(6). Due to some misunderstanding M/s. Arihant Electricals did not confirm transaction with our client who had only one transaction during the year for which payment was made by A/c. payee cheque to them. However ledger account confirmed by M/s. Arihant Electricals as appearing in our books were filed with learned ITO. Copy of Bank statement and confirmed ledger account is enclosed for perusal of your honour.

M/s.Dhanraj Marketing:

During the course of assessment the ITO had called for confirmation of purchases u/s.133(6). Ledger account as appearing in our books of account was filed with learned ITO. The concerned person in M/s. Dhanraj Marketing was out of station and therefore confirmation could not be filed d at the time of assessment. It is now confirmed by them and copy of letter filed with Income Tax Officer enclosed herewith for perusal of your honour.

In the remand report copy of which is given to us the learned ITO stick to the findings & assumption of his predecessor. Infact he did not understood facts of our chase. It was submitted before learned ITO that our client is in construction activity and generally contract is given to a contractor with material and it is the contractor who places order for required material at site and payment is made by our client. In such cases creditor directly knows contractor and therefore transaction could not be confirmed in case of M/s. Arihant Electricals.

The learned ITO even failed to take note of confirmation filed by M/s. Dhanraj Marketing in his office on 11.4.2014 in response to notice.

In view of the above facts we request your honour to allow appeal and oblige."

*2.3. I have considered the impugned assessment order, remand report and rejoinder filed by the appellant. Regarding M/s. Arihant Electricals, in the remand report, the Assessing Officer has reported that the appellant has filed confirmation of M/s. Arihant Electricals even though M/s. Arihant Electricals denied that they have not made any transaction with the appellant. However, in the rejoinder, the Authorized Representative of the appellant has stated that the appellant is in construction activity and generally contract is given to a contractor with material at site and payment is made by the appellant. In such cases creditor directly knows contractor and therefore transaction could not be confirmed in case of M/s. Arihant Electricals which is found to be correct. The Authorized Representative of the appellant has furnished copy of bank statement and confirmed ledger account confirmed by M/s. Arihant Electricals as appearing in the appellant's books to substantiate the claim in respect of M/s. Arihant Electricals. **In view of the above, the addition of ₹2,62,158/- made by the Assessing Officer on account of unproved purchases from Arihant Electricals is directed to be deleted.***

2.3.1. Regarding M/s. Dhanraj Marketing, during the course of remand proceedings, to verify the genuineness of the transaction, notice u/s.133(6) was served on M/s. Dhanraj Marketing but no reply was received. Hence the genuineness of the transactions rests unproved. Therefore, in the remand report, the purchases shown from M/s. Dhanraj Marketing were treated as unproved/bogus. In view of the remand report, the addition of ₹7,22,500/- on account of purchases from Dhanraj Marketing is confirmed. Hence the disallowance restricted to ₹7,22,500/- (₹9,84,658 (-) ₹2,62,158/-)."

6.2 From a perusal of the impugned order of the learned CIT(A) on the issue of bogus/unproved purchase of ₹7,22,500/- from M/s. Dhanraj Marketing (supra), we find that the learned CIT(A), after judiciously considering all the material on record, i.e. the additional evidence filed by the assessee, the AO's remand report thereon and the assessee's rejoinder dated 28.05.2014 to the AO's remand report, rendered the above finding confirming the addition made by the AO. Except for raising the ground, no material evidence has been placed before us to controvert the finding rendered by the learned CIT(A) (supra). We, therefore, in the factual matrix of the case, as discussed above, uphold the order of the learned CIT(A)

confirming the addition of ₹7,22,500/- on account of bogus/unproved purchases from M/s. Dhanraj Marketing. Consequently, grounds 1 to 3 of the assessee's appeal are dismissed.

5. In the result, the assessee's appeal for A.Y. 2009-10 is dismissed.

Order pronounced in the open court on 21st September, 2016.

Sd/-
(Sandeep Gosain)
Judicial Member

Sd/-
(Jason P. Boaz)
Accountant Member

Mumbai, Dated: 21st September, 2016

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -34, Mumbai*
4. *The CIT - 24, Mumbai*
5. *The DR, "F" Bench, ITAT, Mumbai*

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.