

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI

BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER

ITA No.3644/Mum/2015
(Assessment Year: 2010-11)

Poona Galvanizers Pvt. Ltd., 117, Morya Estate, Andheri Link Road, Andheri (West), Mumbai 400 053	Vs.	The Dy. Commissioner of Income Tax- OSD Range 8(1), Aayakar Bhavan, 2 nd floor, Room No.209, M. K. Road, Mumbai 400 020.
PAN:AADCP 2111 R		
Appellant	..	Respondent
Appellant by	..	Shri R. S. Chokshi Smt. M. K. Patel, ARs
Respondent by	..	Shri Durga Dutt, Sr. DR
Date of hearing	..	16-08-2016
Date of pronouncement		16-08-2016

ORDER

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of order of CIT (A)-17, Mumbai in Appeal No. CIT (A)-17/IT-161/2013-14 dated 23-03-2015. Assessment was framed by DCIT (OSD) Range-8(1), Mumbai for the assessment year 2010-11 u/s 143(3) of the Income Tax Act, 1961 (hereinafter ‘the Act’) vide his order dated 26-03-2013.

2. The two interconnected issues in this appeal of the assessee are against the order of the CIT (A) in confirming the action of the AO:-

- (i) Rejecting the books and estimating the gross profit in respect of bogus purchases at 41.23% against declared by the assessee at 37.23% and also making addition of 1% of total bogus purchases as commission;
- (ii) Making addition on account of undisclosed purchases u/s 69 of the Act being undisclosed investment at Rs.25,97,262/-.

3. I have heard the rival contentions and gone through the facts and circumstances of the case. The brief facts leading to the above issue are that the assessee is engaged in the business of fabrication and galvanizing job work at Pune. The AO during the course of assessment proceedings noticed that the assessee has indulged in bogus purchases as under:-

<i>Sr. No.</i>	<i>Name of Party</i>	<i>Type of purchases as per assessee</i>	<i>Purchases made (in Rs.)</i>
1	<i>M/s. K. C. Enterprises</i>	<i>Purchase of fuel (furnace oil)</i>	<i>51,64,259</i>
2	<i>M/s. Hiten Enterprises</i>	<i>Purchase of packing material (MS wire)</i>	<i>19,07,670</i>
3	<i>M/s. Subham Enterprises</i>	<i>Purchase of chemicals</i>	<i>32,45,188</i>
	<i>Total</i>		<i>1,03,17,117</i>

According to the AO, summons issued to M/s. Hiten Enterprises could not be served and further, in response to summons u/s 131 of the Act M/s. K. C. Enterprises vide letter informed that the party has no knowledge for supply of goods to the assessee or of any financial transactions. According to the AO, the assessee could not produce transport challans and bilties and hence, he treated the entire purchases from the above three parties as undisclosed purchases and added to the returned income of the assessee at Rs.1,03,17,17/-. Aggrieved, the assessee preferred appeal before the CIT (A), who confirmed the action of the AO in regard to rejection of books of accounts. The CIT (A) first of all taken peak credit of the bogus purchases by treating the sales as genuine at Rs.25,97,262/- and confirmed the addition u/s 69C of the Act. The CIT (A) also increased the gross profit in respect to bogus purchases at 43.23% as against declared by the assessee at 37.23%. The CIT (A) also made addition of bogus purchases, commission @ 1% paid by it. Aggrieved, the assessee came in second appeal before the Tribunal.

4. Before me, the learned Counsel for the assessee stated that the entire purchases are accounted for in the books of accounts and complete bills and vouchers in respect of sales and purchases were produced before the AO as well as before the CIT (A), He also drew my attention to the assessee's paper book

consisting of 529 pages. According to him, complete details of vouchers in respect of the purchases and sales and expenses are enclosed. He also stated that the entire purchases are through account payee cheques and payments have been gone to the parties in respect of the alleged bogus purchases. The learned Counsel for the assessee also stated that in the line of fabrication business and galvanizing job work, assessee's gross profit is highest i.e. 37.23% and in this business assessee's maximum profit has been shown which is comparatively higher than the other competitors.

5. I have gone through the facts and circumstances of the case and noticed that the purchase parties do not exist or are not available. Even the payments through RTGS or cheques were encashed either by the seller party or by unknown persons through another bank account at Ville Parle Branch instead of the real bank on which the cheques were drawn. Even, the assessee has not produced the transportation bills/lorry receipts for movement of the goods to prove that purchases are genuine, but, one fact is that the Revenue has accepted the sales and even the stock registers maintained are not disturbed. The AO could not point out any specific defect in the books of accounts of the assessee, despite the complete books of accounts were produced before the AO. On query from the Bench, the learned Counsel for the assessee fairly agreed that he is not interested in acceptance of book result but he stated that a fair estimation of gross profit can be added in case the purchases are not accepted. I am in agreement with the arguments of the learned Counsel for the assessee that even if the purchases are bogus, the assessee might have made some purchases from the grey market, for that the assessee might have evaded tax. Hence, I am in agreement with the lower authorities that the books of account has rightly been rejected, but addition on account of undisclosed investment qua the purchases sustained by the CIT (A) at Rs.25,97,262/- is without any basis. At the best, the gross profit rate as enhanced by the CIT (A) at 41.23% would meet the justice. Accordingly, I estimate the gross profit rate at 41.23% as against declared by the assessee at 37.23%. This addition will further be enhanced by 1% of bogus purchases as commission has been paid by the assessee on this. In net effect, 5% of bogus

purchases have to be added by the AO. The balance addition on account of peak of bogus purchases confirmed by the CIT (A) cannot be sustained because the Revenue has accepted the sales in entirety. Once sales are accepted the assessee even though made purchases from grey market, the same are routed through books of accounts and payment is made through books of accounts. Once, the payment made is accepted as genuine, the peak addition on account of bogus purchases cannot be accepted. Accordingly, I delete the addition of peak of bogus purchases at Rs.25,97.262/-. I direct accordingly. Assessee's appeal stands partly allowed.

6. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 16-08-2016

Sd/-
MAHAVIR SINGH
JUDICIAL MEMBER

Mumbai, Dated: 16-08-2016
Lakshmikanta Deka/Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI

Sr.No.	Particulars	Date	Initials	Person Concerned
1	Dictation given on	16/8/16	LK Deka	
2	Draft placed before author	16/8/16		
3	Draft proposed/placed before The second Member			
4	Draft discussed/approved by Second member			
5	Approved Draft comes to the Sr.PS			
6	Kept for pronouncement on			
7	File sent to the Bench Clerk			
8	Date on which file goes to the Head Clerk			
9	Date of dispatch of Order-			

