

आयकर अपीलीय अधिकरण, मुंबई "सी" खंडपीठ

Income-tax Appellate Tribunal "C" Bench Mumbai

सर्वश्री राजेन्द्र, लेखा सदस्य एवं पवन सिंह, न्यायिक सदस्य

Before S/Sh. Rajendra, Accountant Member & Pawan Singh, Judicial Member

आयकर अपील सं./I.T.A./1895/Mum/2014, निर्धारण वर्ष /Assessment Year: 2006-07

Income tax Officer-14(3)(2) 6 th Floor, Earnest House, Nariman Point Mumbai-400 021.	Vs.	M/s. P.R. Syndicate 492, Chandra Chowk, M.J. Market Mumbai-400 002. PAN:AAFFP 9056 L
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by: Shri Naveen Gupta-DR

Assessee by: Shri Anuj Kishnadwala-AR

सुनवाई की तारीख / **Date of Hearing: 21.06.2016**

घोषणा की तारीख / **Date of Pronouncement: 24.06.2016**

आयकर अधिनियम, 1961 की धारा 254(1) के अन्तर्गत आदेश

Order u/s.254(1) of the Income-tax Act, 1961 (Act)

लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-

Challenging the order dated 12.12.2013 of CIT(A)-25 Mumbai the Assessing Officer (A.O.) has filed the present appeal. Assessee firm-engaged in the business of selling of cloth filed return of income on 31.10.2006, declaring total income of Rs.50,960/-. The assessment was made u/s. 143(3) r.w.s. 147 of the Act on 15.12.2010 determining the income of the assessee at Rs.88.55 lakhs.

2.The effective Ground of appeal is about deleting the disallowance made of Rs.88,04,103/- out of the purchases.During the assessment proceedings it was noted that an action u/s. 133A of the Act was carried out in the case of Rakesh Kumar M. Gupta (RMG) and his family members on 13/14.02.2009, that the RMG Group concerns were found to be engaged in the activities of issuing accommodation bills, that the assessee had purchased goods worth Rs.88.04 lakhs from RMG group concerns (Manoj Mills-Rs.24.41 lakhs, Shreeram Sales and Synthetics-Rs.33.97 lakhs and Astha Silk Industries-Rs.29.64 lakhs). Vide his letters dt.29.10.2010 and 8.11.2010 the AO directed the assessee to explain at why the purchases made from RMG Group should not be considered as bogus and inflated. The assessee vide his letter dt.29.11.2010 stated that there could not be any sale without any purchase, that it had not purchased the goods from other than the three parties, that statement given by the assessee's of RMG were not binding on it, that the payments for purchases were made through account payee cheques, that it had not inflated any purchases. The assessee mentioned that the purchases made from M/s. Manoj Mills, Shree Ram Sales & Synthetics

and M/s. Astha Silk Industries was of Rs.23.68 lakhs, Rs.34.28 lakhs and Rs.27.72 lakhs respectively. After considering the submission of the assessee, the AO held that RMG was issuing hawala bills, that Rakeshkumar Gupta (RMG) had admitted of issuing bogus bills during the course of survey, that there was no real purchase of goods, that the bills introduced in the books of account were nothing but colourable device adopted to cover up investment in purchases. Invoking the provisions of section 69 of the Act, the AO made an addition of Rs.88,04,103/-.

3.Aggrieved by the order of the AO, the assessee preferred an appeal before the First Appellate Authority (FAA). Before him it was argued that the assessee had furnished all the details and information in respect of the parties from whom it had made purchases, that the addition was made on the basis of statement of third party, that there was no specific mention about accommodation bill issued to the assessee by the Gupta group and the amounts thereof, that the copies of statement were recorded u/s. 133A of the Act, dt.13./14.2.2009 in the case of Rakesh Gupta and statement of Mahesh Gupta dt.23.2.2009 were not made available to the assessee, that no opportunity was given to the assessee to cross examine the said parties, that vide letter dated 6.4.2009, Rakeshkumar Gupta denied the facts unearthed during the course of survey. The assessee relied upon the case of Prakash Chand Nahta (301ITR134) and SMC Share Brokers Ltd. (288ITR345). Further, it was contended that the assessee had filed confirmation letter of the proprietors of all the three concerns namely M/s. Manoj Mills, Shree Ram Sales & Synthetics and M/s. Astha Silk Industries, that the payments were made by account payee cheques only, that the copies of relevant bank statement about said payments were submitted during the assessment proceedings, that the assessee was maintaining regular books of accounts and all the transactions were properly recorded in the books, that it was maintaining the purchase and sale registers, that it had maintained the quantity of the clothes purchased and sold during the year under consideration, that it had shown reasonable Gross Profit(GP) @ 9.61%, that if the alleged unproved purchase of Rs.88,04,103/- lakhs was excluded, the GP for the year under appeal would shoot upto 58.77%.

4.After considering the submission of the assessee and the assessment order, the FAA held that the AO had relied upon the statements of RMG and others, that he did not provide any opportunity of cross examination of that party to the assessee inspite of specific request made by it referring to the judgment of Kishanchand Chelaram (125ITR713) he held that the

statement of RMG group could not be used against the assessee, that the assessee had maintained the purchase and sale register wherein the names of the parties, dates, bills no. quantity of meters purchased and sold were entered, that it had prepared date wise and month-wise stock register showing quantity of goods purchased and sold, that there could not be any sales without corresponding purchases, that when the sale of the appellant was not disputed the addition of entire purchase was not justified, RMG group was issuing accommodation bills to several parties. Considering the peculiar circumstances of the case, the FAA held that the cause of justice would be met by making addition @10% of purchases in order to fill the difference of GP of the alleged purchases as well to plug any leakage of revenue. Finally, he partly allowed the appeal filed by the assessee.

5. During the course of hearing before us the Departmental Representative (DR) strongly relied upon the case of AO and stated that RMG had admitted that the group concerns were issuing accommodation bills. The Authorised Representative (AR) stated that it had not challenged the order of the FAA, that without purchases there could not be any sales. He relied upon the cases of M/s. Jitendra Harshadkumar Textile (ITA Nos.771/M/2011 & Ors) (A.Y.2007-08) dated 21.11.2012; M/s. C.Chotalal & Co. (ITA Nos.3690 to 3967/ Mum/ 2012 A.Y.s 2002-03 to 09-10 & Ors.) dated 24.9.2013; M/s. Pramit Textiles (ITA Nos.3648 to 3953/M/2012 and Ors. for (A.Y.s 2005-06 and Ors. dated 27.02.2015) and M/s. Khaveri Hathising Gopalji & Sons (ITA Nos.6141 & 6142/M/2013 & Ors. A.Y.s 2008-09 dated 23.06.2015.

6. We have heard the rival submissions and perused the material before us. We find that the AO had made the addition on the basis of statement of Rakeshkumar Gupta and the members of his family, that the copy of the statements of Rakesh Gupta were not provided to the assessee, that the assessee had specifically requested for cross examination of Rakesh Gupta, that the AO did not provide the opportunity of cross examination to the assessee, that the statements given during survey proceedings were later on retracted, that the Gupta group had not named the assessee to whom they had issued accommodation bills. It is a fact that the AO had not rejected the books of account and accepted the sales. In our opinion when sales are accepted the AO cannot outrightly reject the purchases-no sale can take place without purchases. As the AO had violated the principles of natural justice by not supplying the copies of statement and by not providing opportunity of cross examination the addition made by him on account of bogus purchases should have been deleted only on that

account. However, the FAA sustained the addition @10% of the alleged purchases made during the year. Therefore, in our opinion his order does not suffer from any legal or factual infirmity. The case laws relied upon by the assessee support the view expressed by us. Therefore, confirming his order we decide the effective Ground of Appeal against the AO.

As a result appeal filed by the AO stands dismissed
फलतः निर्धारित अधिकारी द्वारा दाखिल की गई अपील नामंजूर की जाती है.
Order pronounced in the open court on 24th June, 2016.
आदेश की घोषणा खुले न्यायालय में दिनांक 24 जून, 2016 को की गई।

Sd/-

(पवन सिंह / Pawan Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 24.06.2016.

Jv.Sr.PS.

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

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

5.DR "G " Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ, आ.अधि.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.