IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1662 OF 2018

Pr. Commissioner Of Income Tax-1 … Appellant

Versus

SVD Resins & Plastics Pvt. Ltd. …Respondent

WITH
INCOME TAX APPEAL NO. 1664 OF 2018

Pr. Commissioner Of Income Tax-1 … Appellant

Versus

SVD Resins & Plastics Pvt. Ltd. …Respondent

Mr. Suresh Kumar, for the Appellant.
Mr. Tanzil Padvekar a/w Ms. Tejal Kharkar, for Respondent.

CORAM: G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.
DATED: 7 August 2024

Oral Judgment (Per: G. S. Kulkarni, J.)

1. These are two appeals filed by the revenue assailing a common order dated 3 August 2017 passed by the Income Tax Appellate Tribunal (for short **"the Tribunal"**) whereby the appeals filed by the revenue stand partially allowed and the appeals filed by the assessee, were dismissed.

2. The revenue has raised the following questions of law :-

> "(A) "Whether on the facts & in the circumstances of the case, and in view, the Hon'ble ITAT was justified in restricting

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the addition u/s.69C of the I.T. Act to the extent of 12.5%, when the assessee had failed to prove the genuineness of purchase transaction in entirety?

(B) "Whether on the facts & in the circumstances of the case and in law, the Hon'ble ITAT was justified in relying upon the decision of the Hon'ble Bombay High Court in the case of CIT v/s. Hariram Bhambhani (ITXA No.313 of 2013), when the issue of addition u/s.69C as to the Bogus Sales was not involved in the present case?"

3. The assessment years in question are assessment years 2009-2010 and 2010-2011. Briefly, the facts are the assessee is stated to be engaged in the business of trading in resins and chemicals on wholesale basis. On information received from the DGIT (Investigation), Mumbai the Assessing Officer (**AO**) invoked Section 147 of the Income Tax Act, 1961 (for short **"the Act"**) to reopen the completed assessment by issuing notice under Section 148 dated 12 March 2013. In response thereto the assessee filed a revised return on 20 March 2013, as also sought the reasons as recorded by the A.O. The A.O. was of the opinion that the assessee had made purchases amounting to Rs.1,34,25,500/- from six parties who were declared by the Sales Tax Department as ingenuine dealers. It is not in dispute that during the assessment proceedings, the assessee filed ledger accounts, conformation of suppliers, purchase bills, delivery bank statements and other documentary evidences to justify the genuineness of the purchases. The AO nonetheless was of the opinion that the disputed purchases did not have nexus with the corresponding sales. Accordingly, he made an addition of the said amount

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under Section 69C of the Act on the ground of there being unexplained payments qua the disputed purchases.

4. Such order passed by the A.O. was challenged by the assessee in appeal before the Commissioner of Income Tax (Appeals) [for short, **"CIT(A)"**] wherein the assessee contended that the AO has not rejected the books of accounts by invoking the provisions of Section 145(3), hence, the A.O. was not justified in invoking the provisions of Section 69C. It was also assessee's case that during the hearing in question as well as the preceding two years, the assessee had declared gross profit for the assessment year 2007-2008 at 4.23% and for the assessment year 2008-2009 at 4.28%. It was also contended that for the subsequent assessment year 2009-2010 a gross profit of 4.74 % was declared in respect of the disputed purchase the disclosed gross profit was 0.27% which was lower by 4.47% than the normal gross profit margin of 4.74% in respect of other accepted genuine transactions. It was also contended that if the disallowance is sustained, there will be an abnormal increase in the gross profit at 17.81% which was almost impossible in trading activity of chemicals and hence it was urged before the CIT(A) that an alternate to estimate the total income at 5% on the purchases needs to be accepted.

5. Considering the rival contentions, the CIT(A) estimated the profit at 12.5% on the purchases made by the assessee and more particularly,

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considering the decision of the Gujarat High Court in the case of **CIT Vs. Smit P. Sheth**[1] as also in the case of **Bholanath Polyfab Pvt. Ltd.**[2]. As the assessee had shown gross profit at 4.74% in the assessment year in question, the CIT(A) reduced the same from 12.5% and confirmed the addition to the extent of 7.76%.

6. Against the aforesaid orders passed by the CIT(A) the revenue had approached the tribunal, against the reduction of the said addition. The assessee also filed a cross appeal against sustaining the addition at 7.76%.

7. The Tribunal considering the proceeding and the respective contentions as urged on behalf of the revenue passed the impugned order in which it was observed that the CIT(A) has rightly estimated the profit in regard to the purchases at 12.5%, however, the Tribunal observed that CIT(A) was not correct in reducing the gross profit already returned by the assessee at 4.74% out of the 12%, for the reason that the gross profit returned by the assessee related to the sales made by the assessee and did not have link to the purchases for which assessee might have procured bills by making savings in VAT etc. For such reason the tribunal partly allowed the grounds as raised by the revenue and directed the AO to estimate the income at 12.5% in each of the assessment year, on the purchases so made. The Tribunal rejected the assessee's challenge to the orders passed by the

1 356 ITR 451

2 355 ITR 290

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CIT(A) while partly allowing the revenue's appeals and dismissing the assessee's appeal.

8. Mr. Suresh Kumar, learned counsel for the appellant/revenue has limited submissions in assailing the impugned order. It is his primary submission that the approach of the CIT(A) as also the part acceptance of such approach by the tribunal in the impugned order needs interference of this Court on the question of law as raised by the revenue. It is submitted that entire purchases of Rs. 1,34,25,500/- were required to be discarded as bogus purchases and the relevant amounts brought to tax by making additions to the assessee's income, as rightly undertaken by the AO. However, in making such submission, Mr. Suresh Kumar is not in a position to dispute that the assessee had furnished all the relevant documents in so far as the purchases are concerned namely the ledger accounts, confirmation of suppliers, purchase bills, delivery statements and other documentary evidence, despite which the A.O. on the basis of information received from the Sales Tax Department had decided to make additions of the said amounts on the ground that the purchases were presumed to be doubtful. Mr. Suresh Kumar is also not in a position to point out anything from the orders passed by the AO and/or from the order passed by the CIT(A) as to whether the information which was received by the department qua the transactions of the assessee was specific to the assessee's transactions as

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questioned by the department. Mr. Suresh Kumar has fairly stated that notices were issued to some of the suppliers. He also states that the suppliers were not independently examined nor their evidence was recorded. Mr. Suresh Kumar would accordingly submit that the Court needs to consider the present appeal on the questions of law as raised.

9. On the other hand, learned counsel for the assessee has opposed these appeals. He submits that all these are factual issues which are being raised by the revenue and no question of law raises for consideration of the Court. He has also placed reliance on the decision of a co-ordinate bench of this Court in the case of **Pr. Commissioner of Income Tax-17 Vs. Mohammad Haji Adam & Company,**[3] to contend that in similar circumstances the Court had not entertained the revenue's appeal and the same was dismissed, with observations that no question of law had arisen for consideration of the Court in similar facts. He has accordingly prayed for dismissal of the appeal.

10. Having heard learned counsel for the parties and having perused the orders passed by the AO as also of the CIT(A) and the impugned order passed by the Tribunal, we are not inclined to accept the contentions as urged on behalf of the Revenue for the reasons we discuss hereunder.

11. We may observe that in the facts of the present case, the basic premise on the part of the A.O. so as to form an opinion that the disputed purchases

3 [2019] 103 taxmann.com 459 (Bombay)

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were not having nexus with the corresponding sales, appears to be not correct. It is seen that what was available with the department was merely information received by it in pursuance of notices issued under Section 133(6) of the Act, as responded by some of the suppliers. However, an unimpeachable situation that such suppliers could be labeled to be not genuine qua the assessee or qua the transaction entered with the assessee by such suppliers, was not available on the record of the assessment proceedings. It is an admitted position that during the assessment proceedings, the assessee filed all necessary documents in support of the returns on which the ledger accounts were prepared, including confirmation of the supplies by the suppliers, purchase bills, delivery bank statements etc. to justify the genuineness of the purchases, however, such documents were doubted by the AO on the basis of general information received by the AO from the Sales Tax Department. In our opinion, to wholly reject these documents merely on a general information received from the Sales Tax Department, would not be a proper approach on the part of the AO, in the absence of strong documentary evidence, including a statement of the Sales Tax Department that qua the actual purchases as undertaken by the assessee from such suppliers the transactions are bogus. Such information, if available, was required to be supplied to the assessee to invite the response on the same and thereafter take an appropriate decision. Unless such specific

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information was available on record, it is difficult to accept that the AO was correct in his approach to question such purchases, on such general information as may be available from the Sales Tax Department, in making the impugned additions. This for the reason that the same supplier could have acted differently so as to generate bogus purchases qua some parties, whereas this may not be the position qua the others. Thus, unless there is a case to case verification, it would be difficult to paint all transactions of such supplier to all the parties as bogus transactions.

12. In our opinion, a full addition could be made only on the basis of proper proof of bogus purchases being available as the law would recognise before the AO, of a nature which would unequivocally indicate that the transactions were wholly bogus. In the absence of such proof, by no stretch of imagination, a conclusion could be arrived, that the entire expenditure claimed by the petitioner qua such transactions need to be added, to be taxed in the hands of the assessee.

13. In a situation as this, the A.O. would be required to carefully consider all such materials to come to a conclusion that the transactions are found to be bogus. Such investigation or enquiry by the AO also cannot be an enquiry which would be contrary to the assessments already undertaken by the Sales Tax Authorities on the same transactions. This would create an anomalous situation on the sale-purchase transactions. Hence, in our

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opinion, wherever relevant any conclusion in regard to the transactions being bogus, needs to be arrived only after the A.O. consults the Sales Tax Department and a thorough enquiry in regard to such specific transactions being bogus, is also the conclusion of the Sales Tax Department. In a given case in the absence of a cohesive and coordinated approach of the A.O. with the Sales Tax Authorities, it would be difficult to come to a concrete conclusion in regard to such purchase / sales transactions being bogus merely on the basis of general information so as to discard such expenditure and add the same to the assessee's income.

14. Any half hearted approach on the part of the AO to make additions on the issue of bogus purchases would not be conducive. It also cannot be on the basis of superficial inquiry being conducted in a manner not known to law in its attempt to weed out any evasion of tax on bogus transactions. The bogus transactions are in the nature of a camouflage and/or a dishonest attempt on the part of the assessee to avoid tax, resulting in addition to the assessee's income. It is for such reason, the approach of the AO is required to be well considered approach and in making such additions, he is expected to adhere to the lawful norms and well settled principles. After such scrutiny, the transactions are found to be bogus as the law would understand, in that event, they are required to be discarded by making an appropriate permissible addition.

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15. Be that as it may, the orders passed by the CIT(A) in the present case are partly interfered in favour of the revenue as discussed by us hereinabove. In doing so the tribunal has observed that the CIT(A) was not correct in reducing the gross profit already returned by the assessee at 4.74% from 12%, as the gross profit returned by the assessee in relation to the sales made by the assessee, did not have bearing on the purchases of the assessee, qua the bills procured by the assessee, by making savings in VAT etc. It is on such premise the revenue's appeal has been allowed, by making a direction to the AO to assess the income from such transaction at 12.5% in each of the assessment years, on the purchases so made by the assessee.

16. The assessee has happily accepted such finding as this has benefited the assessee, looked from any angle. However, in a given case if the Income Tax Authorities are of the view that there are questionable and / or bogus purchases, in that event, it is the solemn obligation and duty of the Income Tax Authorities and more particularly of the A.O. to undertake all necessary enquiry including to procure all the information on such transactions from the other departments / authorities so as to ascertain the correct facts and bring such transactions to tax. If such approach is not adopted, it may also lead to assessee getting away with a bonanza of tax evasion and the real income would remain to be taxed on account of a defective approach being followed by the department.

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17. The decision in **Mohammad Haji Adam & Company** (supra) as relied on behalf of assessee is also quite apposite in the context in hand. In this decision, the Court observed that the findings which were arrived by the CIT(A) as also by the tribunal would suggest that the department did not dispute the assessee's sales, as there there was no discrepancy between the purchases as shown by the the assessee and the sales declared. This was held to be an acceptable position, in dismissing the revenue's appeal on the ground that no substantial question of law had arisen for consideration of the Court.

18. In the light of the above discussion, these appeals would not give rise to a substantial question of law. The appeals are accordingly dismissed. No costs.

(SOMASEKHAR SUNDARESAN, J.) (G. S. KULKARNI , J.)

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