

IN THE INCOME TAX APPELLATE TRIBUNAL AT AHMEDABAD
"D" BENCH

**Before: Shri A.K. Garodia, Accountant Member and
Shri Kul Bharat, Judicial Member**

**I.T.A. No.226/Ahd/2009
A. Y. 2005-06
C.O. No.35/Ahd/2009(By Assessee)
(Arising out of ITA No.226/Ahd/2009)**

Income Tax Officer, Ward-9(3), Room No.420 Aayakar Bhavan, Majura Gate, Surat Appellant	Vs.	M/s Navjivan Synthetics, Survey No.414-415 Reshamwala Compound Vasta-Devdi Road, Surat PAN-AABFN9913E Respondent
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**Department by : Shri B.L. Yadav, Sr. D.R.
Assessee by : Shri J.P. Shah, A.R.**

Date of hearing : 02.05.2012
Date of pronouncement : 06-07.2012

आदेश/ORDER

PER : KUL BHARAT, JUDICIAL MEMBER

The Revenue and the assessee have filed appeal and cross objection respectively against the order of Ld. Commissioner of Income Tax (Appeals)-V, Surat dated 21.10.2008, passed in appeal No.CAS-V/302/2007-08.

First we take up the appeal of the Revenue.

2. In this appeal Revenue has raised following grounds of appeal:-

"1. On the facts and in the circumstance of the case and in law, the Id. CIT(A) has erred, in deleting the addition of Rs.1,24,012/- made by the A.O. on account of work in progress, without appreciating the facts of the case.

2. On the facts and in the circumstance of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs.4,45,327/- made by the A.O. on account of bogus purchases, without appreciating the facts of the case.

3. On the facts and in the circumstance of the case and in law, the Id. CIT(A) has erred, in deleting the addition of Rs.1,10,125/-, made by the A.O. on account of rebate and discount, without appreciating the facts of the case."

3. The facts, in brief, are that in this case return for income for the assessment year 2005-06 declaring NIL income was filed on 24.10.2005. The assessee is engaged in the business of dying, finishing & printing work of Art Silk Grey Fabrics. The case was picked up for scrutiny and the assessment was framed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'). Thereby the Assessing Officer, after discussing the case and examining the details filed by the assessee, made additions on account of disallowance u/s 40(a)(ia) of the Act of Rs.2,64,101/-, addition of Rs.1,24,012/- on account of work in progress and purchases treated as bogus of Rs.5,55,415/-. The assessee, feeling aggrieved by the order of the Assessing Officer carried the matter before Id. CIT(A), who confirmed the disallowance of Rs.2,64,101/- as was made on account of disallowance u/s 40(a)(ia) of the Act. However, Ld. CIT(A) deleted the addition made on account of work in progress to the extent of Rs.1,10,125/- and also deleted the addition made on account of bogus purchase totaling to Rs.5,55,452/- including the amount of rebate and discount amounting to Rs.1,10,155/-. The first ground is against deletion of addition made on account of work in progress.

4. Ld. Departmental Representative vehemently argued that the order of Ld. CIT(A) is erroneous. He strongly supported the order of the Assessing Officer. On the contrary Ld. Authorised Representative supported the order of Ld. CIT(A) and submitted that the assessee has been following the same method from the inception. He submitted that work in process is not shown in the books of accounts and this practice was being followed. It is submitted that if the work in progress is recorded as on 31.03.2005, the assessee should get benefit of the same in the next financial year i.e. on 01.04.2006. It is the submission that while calculating work in process, the Assessing Officer ought to have considered the opening stock work in progress also. The Assessing Officer did not consider the work in process in opening stock. Ld. Authorised Representative submitted that the Assessing Officer has wrongly applied the decision of Hon'ble Supreme Court in the case of CIT Vs. British Paint India Ltd. reported in 188 ITR 44 (SC). Ld. Authorised Representative relied upon the judgment of Hon'ble High Court of Delhi in the case of CIT Vs. Mahavir Aluminum Ltd. reported in (2008) 297 ITR 76 (Delhi).

5. We have heard the rival submissions and perused the material available on record. We find that the Assessing Officer has observed that on verification of the books of accounts, it is seen that the assessee has not shown closing stock of work in progress. It is pertinent to mention here that the fabric under process bears part of expenses incurred on account of colour, chemical, wages, power and fuel etc. Therefore, on 31.03.2005 the fabrics under progress did carry such expenses which formed part of closing stock of work in progress. Further, the Assessing Officer observed the valuation of closing stock of work in

progress is to be worked out and added to the income of the assessee. However, the claim of the assessee for setting off opening work in progress was rejected on the ground that assessee had never shown work in progress in the past year or in the subsequent years. The Hon'ble High Court of Delhi in the case of CIT Vs. Mahavir Aluminum Ltd. (supra) observed that paragraph 23, 1.3 of the guidance note itself make it clear that whenever any adjustment is made in the valuation of inventory, this will affect both, the opening as well as the closing stock. Further, it was observed by Hon'ble High Court that if any adjustment is required to be made by statute, the effect of same should be given irrespective of opening consequence for tax purpose. Section 145A of the Act begin with a non-obstante clause and therefore, to give effect to Section 145A of the Act, if there is a change in closing stock as on March, 31, 1999 there must necessarily be a corresponding adjustment made in the opening stock as on April, 1998. We find that Ld. CIT(A) while dealing with this issue observed as under:-

"The assessee submitted the statement/work in process of opening stock as well as the closing stock. The A.O. did not consider the work in process of work in stock. The Hon'ble Supreme Court in its decision in the case of CIT Vs. British Paint India Ltd. (supra) specifically stated that recalculating the value of the opening stock and closing stock by adding overhead expenditure, I have carefully considered both the positions. I think that the work in process of the working stock is also required to be considered."

6. We do not find any infirmity in the order of Ld. CIT(A) in view of the law laid down by Hon'ble High Court of Delhi in the case of Mahavir Aluminium (supra) wherein it has been held that whenever any adjustment is made in the

valuation of stock, this will affect both; opening as well as closing stock. It is evident that Assessing Officer has not taken into account working of the opening stock of work in progress, therefore, we do not find any merit into this ground of appeal of the Revenue. This ground of appeal of the Revenue is hereby rejected.

7. Ground No.2 and 3 are interconnected hence are being taken together.

8. Next ground is with regard to deletion of addition of Rs.4,45,327/- made by the Assessing Officer on account of bogus purchases. Ld. Departmental Representative strongly relied upon the order of the Assessing Officer. He submitted that from the confirmation of account from M/s Agrawal Enterprises it was noticed that there was total purchases of Rs.12,14,042/- only and there was a difference of Rs.4,45,327/- in the account of M/s Agrawal Enterprises and the ledger of M/s Agrawal Enterprises submitted by the assessee before the Assessing Officer wherein the assessee has shown total purchase of Rs.16,59,369/-. He submitted that the Assessing Officer had also noticed from the confirmation that it had allowed a discount of Rs.1,10,125/- to the assessee.

9. We have heard the rival contention and perused the material available on record. We find that Ld. CIT(A) has dealt this issue asunder:-

"This issue has been dealt with in para No: 4.5 of the assessment order. The AO asked for contra account of five parties. The assessee submitted all the contra confirmation accounts except M/s. Agarwal Enterprise. The assessee repeatedly demanded the contra confirmation account of the assessee from the books of M/s. Agarwal Enterprise. M/s. Agarwal Enterprise asked for the copy of account in the books of the assessee. The assessee immediately sent the copy of account of M/s. Agarwal Enterprise from its books of account. Even then, M/s. Agarwal Enterprise didn't send the contra confirmation account to the assessee. Thereafter, the assessee vide its letter dated 12-12-2007 informed the AO to collect the contra confirmation from M/s. Agarwal Enterprise.

*The assessee submitted the copies of accounts of M/s. Agarwal Enterprise for the F.Y 2004-05. 2005-06 and 2006-07. The assessee shown the payments by account payee's cheques to the tune of Rs.12,02,240/- to M/s. Agarwal Enterprise in the F.Y. 2005-06 and submitted the copy of bank statements for proving the cheques clearance. The assessee further submitted the copies of bill, which shown and which were not shown in the accounts. The assessee further submitted the copies of **delivery challans and weighing slips**. All these material shows that the assessee had shown all the purchase bills while M/s. Agarwal Enterprise has not shown cash sales bills.*

M/s. Agarwal Enterprise has allowed rebate and discount amounting to Rs.1,10,125/- when one truck of lignite valuing to about Rs.20,000/- who will give rebate and discount of about 5 trucks. I have carefully considered both the positions. I do not think that any disallowance could be made from the cash purchase as bogus and non-verifiable. Regarding rebate and discount amounting to Rs.1,10,125/- the assessee states who will give such a huge amount as rebate and discount, but it is done for making adjustment of accounts and at the same time wrongly claimed as rebate and discount in the profit & loss account. The addition of the sum of Rs.4,45,327/- as bogus purchase and Rs.1,10,125/- being the amount of rebate and discount, totaling to Rs.5,55,452/- will therefore, stand deleted.

It is pertinent to note that this however will not prevent the AO to inform the Assessing Officer of the supplier party about these findings so that the issue can be examined for ascertaining the tax implication at the suppliers end. Prima facie it seems that Ms Agarwal Enterprise has not shown these sales to the appellant, in their books of accounts."

10. Ld. Authorised Representative strongly supported the order of Ld. CIT(A). He submitted that it is categorically recorded by Ld. CIT(A) that the assessee had submitted copy of the delivery chalan and weighing slips etc. evidencing that the assessee had in fact made purchases from M/s Agrawal Enterprises. He submitted that for the lapse on the part of M/s Agrawal Enterprises, the assessee cannot be made to suffer. The assessee has furnished the evidence in support of its claim of the purchases, therefore, its purchases cannot be termed as bogus merely on the basis that such purchases were not

recorded by the seller in his books of accounts. So far rebate and discount are concerned, the assessee had never received rebate and discount and such rebate and discount who will give when the price of lignite is of Rs.20,000/-

11. We find that the Assessing Officer has observed that in response to show cause notice issued to the assessee specifying the defects noticed in M/s Agrawal Enterprises, the assessee has simply escaped by saying that it is not their mistake if the seller did not show the cash sales in their books of accounts. It was further observed by the Assessing Officer that on verification of the copies of account furnished by the assessee, it was noticed that the assessee had claimed to have made cash purchase from M/s Agrawal Enterprises during the period 22.10.2004 to 31.12.200 however, verification of the contra confirmation filed by M/s Agrawal Enterprises, it was noticed that they had not shown such cash in their account. The contention of the assessee was not found acceptable by the Assessing Officer because of the reason that the assessee could not explain the necessity of making payment of the accounts below Rs.20,000/- when full amount exceeded Rs.20,000/-. Moreover, it was noticed from 22.10.2004 the assessee had shown purchase bill numbers from Sl. No.185 of 196 and from 10.01.2005 the Sl. No. of the bills start from 209. This showed certain discrepancies in the bills. The bills started from Sl. No.209 dated 10.01.2005 onwards only finds space in the account of supplier M/s Agrawal Enterprises. In such circumstances, the cash purchases claimed to have been made by the assessee was not verifiable. We find that Ld. CIT(A) has recorded that the material produced in the form copies of bills which were recorded into the books of assessee but were not recorded into the

accounts of M/S Aggrawal Enterprises. He further recorded that the assessee has submitted the copies of delivering challans and weighing slips. On the basis of material placed before him he came to conclusion that the assessee had shown all the purchase bills while M/S Aggrawal Enterprise has not shown all the purchases bills while M/S Aggrawal Enterprises has not shown cash sales. This finding is not controverted by Revenue by placing the material evidence. In this view of the matter we do not find any infirmity of the order of Ld. CIT(A) therefore, this ground of Revenue appeal is rejected.

12. The next issue is with regard to discount and rebate. Since the Assessing Officer has categorically observed that such amount reflected into confirmation of accounts of M/s Agrawal Enterprises, the contention of the assessee is that such huge discount and rebate would not have been given as the seeing the value of material. Moreover, CIT(A) has given a finding that M/S Aggrawal Enterprises has not recorded the correct transaction in his books of accounts. The Revenue has not brought any material to rebut the finding of Ld. CIT(A) This contention of the assessee is acceptable on the basis that in the normal practice nobody would give such a huge rebate. This ground of the Revenue's appeal is dismissed.

13. In the result, the appeal of Revenue is dismissed.

Now we take up the cross-objection of the assessee.

14. The assessee has raised following ground of cross-objection:-

"The CIT(Appeals) erred in upholding the disallowance of Rs.2,64,101/- though there was no breach of sec.40(a)(ia)."

15. The only issue for determination is whether the assessee is liable to deduct tax u/s 194(C) of the Act. The contention of Ld. Authorised Representative is that since no payment was in excess of Rs.20,000/- therefore, the assessee was not liable to deduct tax Ld. A.R. submitted that authorities failed to appreciate the fact that there was no contract between the assessee and transporters. He submitted that GMDC supplies lignite from their various mines and such supply is affected through various transporters as such there was no contract between the assessee and the transporters. On the contrary, Ld. DR supported the order of the authorities below on this issue.

16. We have heard rival submissions perused material available on record. We find that AO has observed as under:-

"As regards non-deduction of TDS on transportation charges paid to transporters, it is noticed that though the assessee was liable for deduction of TDS on transportation u/s 194C of the I.T Act, the assessee has not made TDS at all on the such payments, thereby liable for disallowance of whole such expenditure u/s 40(A)(ia) of the I.T. Act.. In this connection, there is no force in the contentions put forth by the assessee for not making TDS from the payments made to transporters. It is mandatory on the part of the assessee to deduct tax at source when the aggregate value of contract exceeds Rs. 50,000/- in a financial year. Up

to 30-09-2004, the assessee was not liable to deduct tax u/s. 194C since no payment in excess of Rs. 20,000/- was made to a single person as was the law till that date. However, after 01.10.2004, the law was amended to provide deduction of tax when aggregate value of contract exceeds Rs. 50,000/- in a financial year. On verification of the both these two accounts it is noticed that the assessee has made payment to the following parties which is liable for deduction of tax u/s 194C of the I.T Act **but still not deducted and paid to Govt. account, as per Sec. 22(1) of the I.T. Act.** In view of the above, the transportation charges paid on which the TDS has not been made and not deposited in the Govt. A/C are liable to be disallowed u/s. 40a(is) of the I.T. Act.”

17. Further Ld. CIT(A) has decided this issue as under:-

“During the proceedings before me, the assessee explained that the transportation expenses were actually incurred and Xerox copies of all the bills were submitted. The assessee explained its case vide its letter dated 12-12-2007 and 24-12-2007 and vide submission dated 11-08-2008. M/s. Radhey Transport of Char Rasta, Jagadia, Dist: Bharuch 393110 was paid Rs. 1,24,414/- by way of transport charges is assessed to income-tax on P. A/c No: ADZPP-8246-K and M/s,. Pooja Roadways of Char Rasta, Jhagadia, Dist: Bharuch 393110 was paid Rs. 1,07,721/- as transport charges and also assessed to income-tax bearing P. A/c. AEUPP-7806-H. The total of 2 transport agencies comes to Rs. 2,64,101/- (Rs.1,24,414+1,07,721). The total addition of Rs. 2,64,101/- was made, out of this Rs. 2,32,135 as stated above explained and hence the difference of Rs. 31,966/- (Rs. 2,64,101-2,32,135), Which is below Rs. 50,000/- and hence not

required to deduct tax. The addition of the sum of Rs. 2,64,101/- has therefore, been sought to be deleted.

I have gone through the rival contentions and applied my mind to the issue. I see no merit in the appellant's argument who has tried to complicate the issue and stretched a simple logic too far. The crux of the matter is that the total payment on which tax was to be deducted is Rs. 264101. This has not been done and therefore the same has been justifiably disallowed as per provisions of section 40 (a)(ia) of the Act. I do not therefore see any infirmity in the AO's action and the same is upheld."

18. We have given one thoughtful consideration to rival submissions of the parties. Section 194 C(1) of the Act mandates deduction of Tax by a person who is responsible for paying any sum to any contractor for carrying out any work in pursuance of a contract between the contractor and a specified person. Further, in case, the sum credited or paid or likely to be paid are credited to the account of the contractor or the contractor if such sum does not exceed 20,000/- no tax is deductible in terms of Section 194C(5) of the Act, however, if the aggregate of the amount paid during the financial year exceeds the limit prescribed by the provision to Section 194C(5) of the Act. Therefore, from the plain reading of the provision it is evident that tax is deductible if the payment is made for carrying out a work in pursuance of a contract. Since the aggregate amount paid exceeds the limit prescribed under Section 194C(5) of the Act, therefore, first argument of the assessee is not acceptable. The other argument that there was no contract between the transporter and the assessee is also not acceptable in view of the

fact, although the transporter was assigned by GMDC, but the payment to such transporter is made by the assessee on execution of such work. The opening line of Section 194(C)(1) makes it clear that the assessee was liable to deduct tax since it reads any person responsible for paying any sum to any resident. In this case admittedly the assessee was responsible for paying sum to the transporter. In this view of the matter we do not find any infirmity into the order of Ld. CIT(A). Therefore, this ground of cross objection is dismissed.

Order pronounced in open Court on 06 .07.2012

Sd/-

(A.K. Garodia)
Accountant Member

Sd/-

(Kul Bharat)
Judicial Member

N.K. Chaudhary, Sr. P.S./A. Kumar, P.S.

आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-

1. अपीलार्थी / Appellant
2. प्रत्यर्थी / Respondent
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद ।

Strengthen preparation & delivery of orders in the ITAT	
1) Date of taking dictation	15.06.2012
2) Direct dictation by Member straight on computer/laptop/dragon dictate	N.A.
3) Date of typing & draft order place before Member	18.06.2012
4) Date of correction	
5) Date of further correction	
6) Date of initial sign by Members	
7) Order uploaded on	
8) Original dictation pad has been enclosed in this file	Yes
9) Final order and 2nd copy send to Bench Clerk on	