

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

INCOME TAX APPEAL NO. 1940 OF 2017

Pr.Commissioner of Income Tax-13, Mumbai .. Appellant

v/s.

Vaman International Pvt. Ltd. .. Respondent

Mr. Akhileshwar Sharma for the Appellant.

**CORAM: UJJAL BHUYAN, &
MILIND N. JADHAV, JJ.**

DATE : JANUARY 29, 2020.

ORAL ORDER (PER UJJAL BHUYAN, J.) :-

. Heard Mr. Akhileshwar Sharma, learned standing counsel, revenue for the appellant.

2. This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 ("**the Act**" for short) against the order dated 16.11.2016 passed by the Income Tax Appellate Tribunal, "F" Bench, Mumbai ("**Tribunal**" for short) in Income Tax Appeal No. 794/Mum/2015 for the Assessment Year 2010-11.

3. Revenue has preferred the appeal projecting the following questions as substantial questions of law :

“(A) Whether on the facts and in the circumstances of the case and in law, Tribunal was justified in holding that provisions of section 69C of the Income Tax Act, 1961 are not applicable in case of bogus purchases or sales where the genuineness of the transaction is not explained or explanation offered by the assessee is not satisfactory and the same is to be treated as income of the assessee ?

(B) Whether on the facts and in the circumstances of the case and in law, Tribunal was justified in holding that in order to prove genuineness of the said purchase transaction even though assessee did not provide any lorry receipts or delivery challans for the delivery of goods and that the same fact is established by the Assessing Officer, then is it mandatory for the Assessing Officer to limit himself to the mere submission and other documents provided by the assessee even though the purchases are non-genuine ?

(C) Whether on the facts and in the circumstances of the case and in law, Tribunal was justified in holding that while applying the provisions of Section 69C of the Income Tax Act, 1961, the Assessing Officer was required to cause further enquiries in the matter to ascertain the genuineness or otherwise of the sham transaction ?”

4. From the above, it is evident that the issue before the Court for consideration is the addition made by the Assessing Officer to the income of the assessee on account of unexplained expenditure under Section 69C of the Act which was deleted by the first appellate authority and affirmed by the Tribunal.

5. Assessee is a company engaged in the business of trading and sale of furniture and allied items on wholesale basis. For the Assessment Year under consideration assessee filed e-return of income declaring total income of Rs.13,80,371/- and book profit under Section 115JB of the Act at Rs.14,55,806/-.

6. The case was selected for scrutiny and notices under Sections 143(2) and 142(1) of the Act were issued. In the course of

the assessment proceeding, Assessment Officer doubted the expenditure of Rs.4,75,42,385/- stated to be on account of purchase from two parties i.e. Impex Trading Co. for an amount of Rs.2,90,80,292/- and Victor Intertrade Pvt. Ltd. for an amount of Rs. 1,84,62,093/-. Assessing Officer acted on the basis of information received from the office of Director General of Income Tax (Inv), Mumbai and from the Sales Tax Department that in the list of bogus sales parties the names of the aforesaid two parties were included which rendered the purchase transaction doubtful. Show cause notice was issued by the Assessing Officer to the assessee to show cause as to why the aforesaid amount should not be treated as unexplained expenditure and added back to the income of the assessee. It is seen that the assessee submitted reply and the matter was heard.

7. Assessing Officer observed that the assessee did not produce lorry receipts and other related documents to reflect movement of goods sold and purchased which were crucial for determining genuineness of the purchase transaction. In the absence thereof, Assessing Officer drew a negative presumption.

8. By the assessment order dated 22.03.2013 passed under Section 143(3) of the Act, Assessing Officer added the said amount to the total income of the assessee u/s. 69C of the Act by treating the expenditure as bogus purchases.

9. Aggrieved by the aforesaid order of the Assessing Officer, assessee preferred appeal before the Commissioner of Income Tax (Appeals)-20, Mumbai (hereinafter referred to as the **“first appellate authority”**). On the grounds and reasons mentioned in the appellate order dated 12.11.2014, the first appellate authority held that such addition by the Assessing Officer could not be sustained. Accordingly, Assessing Officer was directed to delete the addition of Rs.4,75,42,385/-.

10. Against the decision of the first appellate authority, revenue preferred appeal before the Tribunal. Tribunal by the order dated 16.11.2016 upheld the order of the first appellate authority and dismissed the appeal of the revenue.

11. Hence, revenue is before us in appeal.

12. Mr. Sharma has taken us to the order passed by the

Assessing Officer and submits that considering the goods involved in the purchase and sale, assessee was required to produce documents to show the movement of materials as well as stock ledger of the goods. In the absence thereof, Assessing Officer was justified in invoking the provisions of Section 69C of the Act in making the addition. This fact was overlooked by the two lower appellate authorities below, thus vitiating the impugned order.

13. We have considered the submissions made by Mr. Sharma and also perused the orders passed by the authorities below.

14. At the outset, we may advert to Section 69C of the Act which is extracted hereunder :-

“69C : Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof or the explanation, if any, offered by him is not, in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year.

Provided that, notwithstanding anything contained in any other provisions of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income.”

15. Section 69C deals with unexplained expenditure. It says that where an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof or if the explanation offered by him is in the opinion of the Assessing Officer not satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for the financial year under consideration. As per the proviso, once such expenditure is treated as unexplained expenditure which is deemed to be the income of the assessee, the same shall not be allowed as a deduction under any head of income.

15.1. Thus, Section 69C contains a deeming provision. As per the deeming provision, if an assessee incurs any expenditure in the relevant previous year but he offers no explanation about the source of such expenditure or part thereof or if the explanation provided is not satisfactory to the Assessing Officer, then the

amount covered by such expenditure or part thereof shall be deemed to be the income of the assessee and once it is so deemed, the same shall not be allowed as a deduction under any head of income.

15.2 Gujarat High Court in *Krishna Textiles v/s. CIT*, 310 ITR227; has held that under Section 69C the onus is on the revenue to prove that the income really belongs to the assessee.

16. The first appellate authority while deleting the addition made by the Assessing Officer under Section 69C held that Assessing Officer did not doubt the sales and stock records maintained by the assessee. By submitting confirmation letters, copies of invoices, bank statement, payment order, payment by account payee cheques etc., assessee had proved that sale and purchases had taken place. By highlighting the fact that all the payments against the purchases were made through banking channel by way of account payee cheques, the first appellate authority held that source of expenditure was fully established by the assessee beyond any doubt. He has further recorded that during appellate proceedings the assessee had furnished complete

quantitative details of the items of goods purchased during the year under consideration and their corresponding sales.

17. We may now advert to the order passed by the Tribunal, relevant portion of which is extracted hereunder :

“4.4.1 We have heard the rival contentions and perused and carefully considered the materials on record, including the judicial pronouncements cited. On an appreciation of the materials on record, it is evident from the order of assessment that it is on the basis of information obtained from Sales Tax Department that the AO issued the show cause notice to the assessee to explain the said purchases and issued notices under section 133(6) of the Act to the said two parties from whom the said purchases were made, to which there was no response. The AO primarily relying on the information obtained from the Sales Tax Department and sworn statements given before the Sales Tax Department by Sri Pradeep Vyas of M/s. Victor Intertrade P. Ltd. and Shri Ketan Shah of M/s Impex Trading Company held the said purchases to be bogus. While it may be true that the said two purchase parties did not appear before the AO, for whatever reasons, the fact remains that the assessee itself had filed copies of purchase bills, copies of purchase/sale invoices, challan-cum tax invoices in respect of purchases, extracts of stock ledgers showing entry/exit of materials; copies of bank statements to evidence that payment from these purchases were made

through normal banking channels, etc. to establish the genuineness of the said purchases. It is a fact evident on record that the AO has not doubted the sales effected by the assessee and therefore it is in order to conclude that without corresponding purchases being effected, the assessee could not have made sales.

4.4.2 In our considered view, the AO has not brought on record any material evidence to conclusively prove that the said purchases are bogus. Mere reliance by the AO on information obtained from the Sales Tax Department or the sworn statement of two parties before the Sales Tax Department, without affording the assessee any opportunity to cross examine those witnesses in this regard or the fact that these parties did not respond to notice under section 133(6) of the Act, would not in itself suffice to treat the purchases as bogus and make the addition. If the AO doubted the genuineness of this said purchases, it was incumbent upon him to cause further inquiries in the matter to ascertain the genuineness or otherwise of the transactions. Without causing any further enquires in respect of the said purchases, the AO cannot make the addition under section 69C of the Act by merely relying on information obtained from the Sales Tax Department, the statement/affidavit of third parties, Shri Pradeep Vyas and Ketan Shah; without the assessee being afforded any opportunity of cross examination of that persons and for non-response to notices under section 133(6) of the Act.

4.4.3 In the factual matrix of the case, where the AO failed to cause any enquiry to be made to establish his suspicions that the said purchases are bogus, the assessee has brought on record documentary evidences to establish the genuineness of the purchase transactions, the action of the AO in ignoring these evidences cannot be accepted. Further, the Hon'ble Bombay High Court in the case of Ashish International (supra) has held that the genuineness of the statements relied upon by Revenue is not established when the assessee disputes the correctness of those statements and has not been afforded adequate opportunity to cross examine these parties even though he has asked for the same. Moreover, as correctly observed by the learned CIT(A), when the payment for the said purchases to the concerned two parties is through proper banking channels and there is no evidence brought on record by the AO to establish that the said payments were routed back to the assessee, the addition made by the AO under section 69C of the Act is unsustainable. We are fortified in this view of ours by the decisions of, inter alia, the Hon'ble Bombay High Court in the cases of Nikunj Eximp Enterprises Pvt. Ltd. (supra), Ashish International (supra), the decision of the Coordinate Benches of this Tribunal in the case of Hiralal Chunilal Jain (supra) and Imperial Imp & Exp (supra). In this factual matrix of the case, as discussed above, we find no requirement for interference in the order of the learned CIT(A) and consequently uphold the same. Therefore, Revenue's five grounds (i) to (vii) are dismissed.

In the result, Revenue's appeal for A.Y. 2010-11 is dismissed. Order pronounced in the open court on 16th November, 2016."

17.1. Thus, from the above, it is seen that Tribunal had returned a finding of fact that the assessee had filed copies of purchase bills, copies of purchase/ sale invoices, challan cum tax invoices in respect of the purchases, extracts of stock ledger showing entry/exit of the materials purchased, copies of bank statements to show that payment for such purchases were made through regular banking channels, etc., to establish the genuineness of the purchases. Thereafter, Tribunal held that Assessing Officer could not bring on record any material evidence to show that the purchases were bogus. Mere reliance by the Assessing Officer on information obtained from the Sales Tax Department or the statements of two persons made before the Sales Tax Department would not be sufficient to treat the purchases as bogus and thereafter to make addition under Section 69C of the Act. Tribunal has also held that if the Assessing Officer had doubted the genuineness of the purchases, it was incumbent upon the Assessing Officer to have caused further enquiries in the matter to ascertain genuineness or otherwise of the transaction

and to have given an opportunity to the assessee to examine/cross-examine those two parties vis-a-vis the statements made by them before the Sales Tax Department. Without causing such further enquiries in respect of the purchases, it was not open to the Assessing Officer to make the addition under Section 69C of the Act.

18. We are in agreement with the view expressed by the Tribunal. In fact, Tribunal has only affirmed the finding of the first appellate authority. Thus, there is concurrent finding of fact by the two lower appellate authorities.

19. This Court in the case of ***Commissioner of Income Tax -1, Mumbai v/s. Nikunj Eximp Enterprises(P.) Ltd.***, 372 ITR 619; wherein an identical fact situation arose did not interfere with the order passed by the Tribunal and held that no substantial question of law arose from such order. It was held that merely because the suppliers had not appeared before the Assessing Officer, no conclusion could be arrived at that the purchases were not made by the assessee.

20. On thorough consideration of the matter, we do not find any error or infirmity in the view taken by the Tribunal. No substantial question of law arises therefrom. Thus, there is no merit in the appeal. Appeal is accordingly dismissed. However, there shall be no order as to costs.

(MILIND N. JADHAV, J.)

(UJJAL BHUYAN, J.)