

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर

IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री कुल भारत, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI KUL BHARAT, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA No.508/JP/2016
निर्धारण वर्ष / Assessment Year : 2007-08

M/s Beauty Tax (Earlier Florals India), E-11, Ram Path, Shyam Nagar Extension, Jaipur	बनाम Vs.	DCIT, Circle-2 Jaipur
स्थायी लेखा सं./ जीआईआर सं./ PAN No. AAFF1950C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Dinesh Goyal (CA)
राजस्व की ओर से / Revenue by : Shri R.A.Verma (ACIT)

सुनवाई की तारीख / Date of Hearing : 03.04.2017
घोषणा की तारीख / Date of Pronouncement : 10.04.2017

आदेश / ORDER

PER SHRI VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id CIT(A) dated 01.02.2016 wherein the assessee has taken following grounds of appeal:

"The learned Commissioner of Income Tax (Appeals) erred in sustaining trading addition of Rs. 13,39,969/- made on account of purchase from M/s Mahaveer Textiles alleged as bogus purchase."

2. The brief facts of the case are that during the course of assessment proceedings for A.Y 2008-09, the Assessing Officer observed that the name of M/s Mahaveer Textile Mills figured in list of creditors where the amount exceeded Rs. 10 lacs. Information u/s 133(6) was called for from M/s Mahaveer Textile Mills and thereafter, summons were issued u/s 131 of the

Act calling for the personal appearance of the said party. On non-compliance by M/s Mahveer Textile Mills, the assessee was asked to produce the said party along with certain documents. However, as the assessee could not produce the said party, the entire purchase transaction was held to be non-genuine and purchases of Rs. 13,39,969/- was treated as bogus and added to the income of the assessee. The assessee carried the matter in appeal before Id. CIT(A) and submitted that it has purchased raw material from M/s Mahaveer Textile Mill worth of Rs. 13,39,969/- in F.Y 2006-07 and the payment was still outstanding. During the course of appellate proceeding for AY 2008-09, the appellant provided statement of accounts, bills signed by the supplier, confirmation of account by the supplier. The Id. CIT(A) without going into the merits of the case noted that since purchases do not pertain to A.Y 2008-09 but pertain to previous A.Y 2007-08, the disallowance of purchases worth Rs. 13,39,969/- was deleted. The Revenue did not appeal against the said order passed by the Id. CIT(A) for AY 2008-09. However, based on the said findings of the Id CIT(A), the assessment proceedings for AY 2007-08 were reopened by issuance of notice u/s 148 of the Act and thereafter the reassessment was completed bringing the said amount of Rs. 13,69,962/- to tax in the impugned A.Y 2007-08.

3. The Assessing Officer stated in his reassessment order that the assessee has claimed to have made purchases amounting to Rs. 13,39,969/- from M/s Mahaveer Textiles Mills. On examination of the details furnished by the assessee, it is observed that the assessee has debited Rs. 3,08,505/- on 03.01.2007/-, Rs. 1,20,267/- on 16.01.2007, Rs. 2,28,036/- on 08.02.2007, Rs. 1,37,000/- on 14.02.2007, Rs. 4,31,945/- on 04.03.2007 and Rs. 1,14,216/- on 14.03.2007. It is found that no payment against these claimed expenses have

been made to the party till the year end. During the course of assessment proceedings, the assessee was asked to produce the said party for examination so that the genuineness of the transaction can be ascertained. On 07/9/2012, the assessee vide it's A/Rs letter of even date submitted that "Purchases from Mahaveer Textile Mill and Job work from Tara Devi Chhajer are genuine. We are not in position to present the party at present for verification kindly complete the assessment proceedings and oblige." Further, the Assessing Officer drawn reference to the assessment proceeding for AY 2008-09 and finally held that the assessee was accorded ample opportunity to produce the party so as to establish genuineness of the transactions claimed to have been made with the said party. However, the assessee failed to prove the genuineness of the expenses claimed by it inspite of providing all the reasonable opportunity. The AO finally held that in view of conclusive evidence brought on record, it can be safely held that the expenses of Rs. 13,39,969/- debited by the assessee as payable to M/s Mahaveer Textile Mills are bogus which deserves to be disallowed and was added back to the declared income to the assessee.

4. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) and he has confirmed the disallowance of purchases of Rs. 13,39,969/- and his relevant findings are contained at para 5.5 of his order which is reproduced as under:

"From the given facts, it is clear that purchase of Rs. 13,39,969/- from M/s Mahavir Textiles have remained unproved despite ample opportunities given by the AO during the course of assessment proceedings for the relevant assessment year as well as A.Y. 2008-09. Under the Income Tax Act, the onus is on the appellant to adduce necessary evidence in support of any claim. Evidently, the appellant has not adduced sufficient evidence to support its claim for purchase of Rs. 13,39,969/-.

The appellant is contending that M/s Mahavir Textiles had sent confirmation of account on 05.10.2010 by registered post but it is not understood how the same confirmation could not reach the AO. Moreover, a simple confirmation is not sufficient to establish the fact of purchase. In view of the fact that an addition of Rs. 78,80,818/- was made in the assessment for A.Y 2008-09 on account of bogus purchases, the appellant should have made all the more efforts to establish genuineness of the purchase in the assessment for the relevant assessment year. Further, in view of past history, the appellant is not entitled for any benefit of doubt and thus, this ground is dismissed.”

6. Now the assessee is in appeal against the order of the Id. CIT(A) and has submitted as under:-

“The appellant is running a partnership concern in the name of M/s Beauty Tex (Florals India) doing manufacturing and 100% exports of embroidered Cloth, Curtain and made-ups

1. Books of accounts of appellant are audited, vouched and verifiable. Books of accounts has not been rejected u/s 145 of the Income Tax Act, 1961 and trading results, Exports Turnover, Gross Profit, Opening stock, Closing Stock etc has been accepted as it is without any addition/disallowance. Copy of return, audited balance-sheet is at PB 1-51

2. Total purchases during the year is Rs. 3.95 Crores out of which purchases from one party M/s Mahaveer Textiles was Rs. 13,39,969. Copy of ledger account and purchases bills of M/s Mahaveer Textiles is on PB 52-58, copy of PAN card of Neetu Gupta prop. Of M/s Mahaveer Textiles Mills is on PB 59. Copy of confirmation of account sent by M/s Mahaveer Textiles Mills to department by registered post in response of notice received by that party is being submitted herewith with receipt of postal department for registered

post made by M/s Mahaveer Textiles. Additions for bogus purchases has been made on the ground that we did not produced supplier for verification before the learned AO. We could not produce supplier as the supplier was from Delhi and on our request he denied to visit Jaipur for this purpose and he replied that he has sent requisite confirmation by registered post.

3. Amount outstanding against supplier has been paid by account payee cheque in April, May, 2015 and now there is no outstanding against the supplier. Copy of Bank Statement showing clearance of cheques for payment to Mahaveer Textiles are given at PB 61-62.

4. Cloth purchased has been exported and same has not been doubted by the learned AO

5. GP Rate Higher than preceeding year.Export turnover during the AY 2007-08 was Rs. 6.40 Crores with GP rate of 29.72% which is higher than Turnover of Rs. 5 crores and GP Rate of 27.18% in the preceeding assessment year i.e. 2006-07

Assessment Year	G.P. Ratio
2006-07	27.81%
2007-08	29.72%
2008-09	29.34%

6. In AY 2008-09 (PB-127) and 2010-11 (PB 139) in the appellant's own case, addition for bogus purchases was deleted, appeal was allowed and it has been held by Hon'ble ITAT Jaipur bench, Jaipur that:

“The exports of the assessee are not doubted. Moreover the books of account of the assessee have not been rejected on account of unverifiable purchases and without rejecting the books, no such trading addition can be made. In case any addition is to be made after rejection of the books, only past history has to be applied. Since the past history of the assessee is almost comparable with this year, there is no need to disturb the declared results.”

7. Further, reliance placed on following case laws where purchases made have been treated as genuine and additions made on account of purchase have been directed to be deleted:

- DCIT Circle-2 vs Gems Paradise ITA No. 700/JP/2009
- M/s Sambhav Gems Ltd Vs ACIT 36 TW 254 (JP)
- M/s Vaibhav Gems Ltd Vs ACIT (ITA No. 654/JP/06 dated 13th Oct 2006
- Shri Badri Narain Modi Vs DCIT ITA No. 50/JP/04 dated 29th Sept 2006-39 TW 105
- M/s Shree Narain International Vs ACIT ITA No. 472/JP/05 dated 31/5/2007
- Shri Paras Mal Jain Vs DCIT ITA No. 40/JP/05-36 TW 67(JP)”

7. The Id. DR is heard who has relied on the order of the lower authorities.

8. We have heard the rival submissions and pursued the material available on record. It is noted that the Assessing Officer has blindly followed the findings given in assessment proceedings for A.Y for 2008-09 while bringing the subject transaction with M/s Mahaveer Textiles to tax in the year under consideration. There are other transactions (other than the transaction with Mahaveer textiles) which were held to be bogus in nature by the AO in AY 2008-09 and subsequently, even the said transactions have not been held as bogus and additions were ultimately deleted by the Coordinate Bench. Further,

the AO has referred to certain conclusive evidences brought on record to treat the subject transaction as bogus but we are unable to see any such evidence which has been brought on record by the Assessing Officer either during the course of assessment proceedings for AY 2008-09 or the reassessment proceedings for the impugned AY 2007-08. The only grievance of the Assessing Officer is that the assessee has failed to produce the party so as to establish genuineness of the transaction and secondly, no payment has been made to the party till the year end. The Id.CIT(A) while confirming the disallowance has stated that though confirmation has been obtained from the party, however, a simple confirmation is not sufficient to establish the fact of purchase without elaborating what more is required from the assessee to justify its claim. Regarding non appearance of the supplier, the assessee has submitted that the supplier was based in Delhi and he has denied coming to Jaipur but at the same time, he has sent its requisite confirmation directly to the department by the registered post. Further the amount outstanding against the said purchases has been paid by account payee cheque in April and May, 2015 and now there is no outstanding amount against the said supplier. Regarding the other details submitted by the assessee, namely copy of Ledger amount and purchase bill of M/s Mahaveer Textiles, copy of the confirmation of the amount sent by M/s Mahaveer Textile Mills to the department and the fact that the materials so purchased form part of the turnover and which has been exported, there is no finding by the Assessing Officer as to reasons for non-acceptance of the said documents and in absence of that, the stand taken by the Revenue cannot be accepted. Merely non-appearance of the supplier in absence of any other corroborate evidence cannot be a basis to justify the stand of the Revenue that the transaction of purchase is bogus. In the result the purchases made from M/s Mahaveer Textiles have not been proved to be

bogus by the Revenue and the said additions cannot be sustained in the eye of law in absence of any conclusive evidence brought on record. The ground of appeal taken by the assessee is thus allowed.

In the result the appeal filed by the assessee is allowed.

Order pronounced in the open court on 10/04/2017.

Sd/-
(KUL BHARAT)
न्यायिक सदस्य / Judicial Member

Sd/-
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Jaipur

Dated:- 10/04/2017

*Ganesh

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

1. अपीलार्थी / The Appellant- M/s Beauty Tax (Earlier Florals India),
2. प्रत्यर्थी / The Respondent- Dy. CIT Circle-2 Jaipur
3. आयकर आयुक्त / CIT –TDS, Jaipur
4. आयकर आयुक्त(अपील) / The CIT(A)-III, Jaipur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.508 /JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar