

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य, एवं श्री अनिल चतुर्वेदी, लेखा सदस्य, के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No 134/PUN/2016

निर्धारण वर्ष / Assessment Year : 2006-07

The Assistant Commissioner of Income Tax,
Circle-2,
Kolhapur.

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. RDS Construction Co.,
233/3, Malati Towers,
Tarabai Park,
Kolhapur.
Pin-416 001
PAN : AABFR4457M

.....प्रत्यर्थी / Respondent

Appellant by : Shri Ajay Modi

Respondent by : Shri Nikhil Pathak

सुनवाई की तारीख / Date of Hearing	28.03.2018	घोषणा की तारीख / Date of Pronouncement	06.06.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM

The appeal filed by the Revenue is against the order of the Commissioner of Income Tax (Appeals), Pune-11 dated 18.11.2015 relating to assessment year 2006-07 against order passed under section 143(3) r.w.s 147 of the Income Tax Act, 1961 (in short 'the Act').

2. The Revenue has raised following grounds of appeal:

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in concluding that the transactions between Manvir Metals Pvt. Ltd. and assessee are genuine on the basis of verification of transactions between Manvir Metals Pvt. Ltd. and Mahalaxmi Infraprojects Ltd. without giving opportunity to the AO under Rule 46A of the I.T. Rules.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by the AO of Rs.96,12,691/- (Tax Effect Rs.32,35,557/-) ignoring the fact that there was failure on the part of the assessee to prove before the AO the genuineness of purchases made from Manvir Metals Pvt. Ltd.

3. The appellant prays that the order of the Ld. CIT(A) be vacated and that of the Assessing Officer's order may be restored.

4. The appellant craves leave to add, alter, amend and modify the above grounds raised, any other grounds at the time of proceedings before the Hon 'ble Tribunal which may please be granted."

3. Briefly in the facts of the case, assessee is engaged in Civil Engineering business of contractors and was executing contracts of Civil works. The assessee had furnished original return of income on 30.10.2006 declaring total income at Rs.3,60,26,719/-. Search operation in the group case was carried out on 23.09.2009. The assessee in response to the notice under section 153A of the Act filed return of income declaring total income at Rs.3,62,86,720/-. The assessment proceedings were completed under section 143 (3) r.w.s.153A(b) of the Act on 29.12.2011, assessing income at Rs.4,38,93,157/-. The assessee being aggrieved with the assessment order preferred an appeal before the CIT(A) who allowed substantial relief to the assessee. After giving effect to the order of CIT(A), the revised total income was at Rs.3,63,58,934/-. The Revenue preferred appeal before the Tribunal against the order of CIT(A). Thereafter, the case was reopened under section 148 of the Act after recording reasons for reopening the same. Notice under section 148 of the Act was issued on 28.03.2013. The assessee in response to the said notice issued under section 148 of the Act filed the return of income declaring total income at Rs.3,63,58,933/-. The case of the assessee was picked up for scrutiny. Survey

action under section 133A of the Act was conducted in the business premises of M/s. Mahalaxmi Infraprojects Limited and group cases, Pune on 04.01.2013. Statement on oath of Mr. Ravindra Dhondiram Shinde, Managing Director of M/s. Mahalaxmi Infraprojects Limited, Pune and Shri Shri Balwant Patil, Accountant was recorded. During the course of survey action, the purchases made by the assessee from F.Y. 2005-06 to till date were verified. Further, the purchases made from M/s. Manvir Metal Pvt. Ltd. amounting to Rs.96,12,691/- in case of M/s. RDS Construction Co., sister concern of M/s. Mahalaxmi Infraprojects Limited were verified and found to be not supported by adequate documentary evidences. The Assessing Officer also noted that with respect to the purchases made from these parties, there is no approval from the project department, no purchase order, delivery challans/goods receipt note, inspection report and acknowledgement by the store department in respect of the above parties. The partner of assessee, Shri Ravindra Dhondiram Shinde was asked during the course of action that in absence of these evidences with respect to the above mentioned bills, how you can say that these purchases were genuine. Shri Ravindra Dhondiram Shinde in reply stated that apparently the bills were not supported by purchase order, delivery challan /goods receipt note. But he sought time to collect evidences supporting genuineness of purchase as old records were kept at Kolhapur Office and different sites. He further pointed that there may be some non genuine purchases and while estimating the said amount of purchases of M/s. Manvir Metal Pvt. Ltd. and M/s. RDS Construction Co, total amount of Rs. 24.71 Cr. and Rs.6.29 Cr. were disclosed by the above said two companies. In response to the summons issued to the assessee, Shri R. D. Shinde pointed out that payments to said parties were made through account payees cheques and some of the documents supporting said purchases were misplaced. The Assessing Officer, thus, noted that assessee had booked bogus expenses amounting to Rs.96,12,691/- under the head purchase of steel and cement in the case of M/s. RDS Construction

Co. The assessee requested that while estimating the amount of non genuine purchases, the set off with the disclosure already made be given for Financial Year 2006-07 to Financial Year 2009-10. The Assessing Officer observed that since the assessee had not given any details of bifurcation as from which concerns the purchases made were unaccounted and not recorded in the books of accounts; hence, the amount of expenses claimed by assessee at Rs.96,12,691/- were disallowed.

4. The CIT(A) noted the submissions of Shri R.D Shinde wherein he admitted that some of the purchases were not supported by purchases order, delivery challan and inspection report and he sought time to produce evidence. Eventually, he may not be able to substantiate all the purchases and in that case, credit may be allowed to him for the disclosure of additional income made during the search. The CIT(A) observed that it was not mentioned that purchases from Manvir Metal were not genuine. Further, reference was made to letter dated 08.01.2013 which was referred to by the Assessing Officer in the assessment order itself, who had reproduced part of the said letter. The CIT(A) has reproduced the said letter at Page 8 of the appellate order. The CIT(A) further noted that the list of the purchases offered as additional income do not include purchases from M/s. Manvir Metal. The CIT(A) observed as under:

“4.2.6. The annexure to the above letter are not reproduced here, but the list of the purchases offered as additional income does not include purchases from Manvir Metal. Thus, it is apparent that there was nothing either in the statement of Shri Shinde or in the letter dated 08/01/2013 to show that the appellant had admitted that the purchased from Manvir Metal were not genuine. Rather in the letter dated 8/01/2013 the appellant had categorically claimed that the purchases from Manvir Metal were absolutely genuine in all respects and had already been verified and so accepted by the department during the course of search action in the appellant case. Thus, the disallowance made by the AO relying on the statement of Shri Shinde is totally unjustified.”

5. Another aspect which was noted by the CIT(A) that the Assessing Officer failed to issue proper show cause notice to the assessee giving him an opportunity to substantiate his case. He further noted that assessment order where the Assessing Officer had mentioned the details filed by assessee were considered. However, referring to the letter of assessee dated 28.01.2014 filed on 05/02/2014 and reproducing contents at page 9 and 10 of the appellate order, the CIT(A) held that if the Assessing Officer had considered this letter in whole, he would have certainly known that there was no disclosure of additional income on account of the purchases from Manvir Metal and hence, he would have asked the appellant to show cause as to why no additional income was offered in the assessment year 2006-07 and why the disallowance of the purchases from Manvir Metals should not be made. Nothing of this sort had been done by the AO. The CIT(A), thus, held addition to have been made merely on the assumption of facts that the assessee had admitted the purchases to be bogus and hence there was no merit in the aforesaid addition. The CIT(A) also observed that survey action had been conducted by the department at the Manvir Metal's premises, thus he could not consider it as non-existent. PAN number was also available and enquiries of the said firm being assessed were conducted in the course of the proceedings under section 153A of the Act in the case of Mahalaxmi Infra for the same assessment year including assessment year 2006-07 and no addition was made in this regard. The assessee had claimed so in his letter dated 08/01/2013 submitted before Dy. DDIT (Inv.). The Assessing Officer referred to the said letter while making addition and did not read the letter entirely. The Assessing Officer did not consider the assessee's claim that the matter had been enquired into at the time of 153A assessment proceedings and the fact that purchases from Manvir Metal were not included in the list of purchases offered as additional income 'to buy peace of mind'. The CIT(A) further observed that it was incumbent on the Assessing Officer to make proper enquiries regarding purchases

from Manvir Metals and confront the assessee with the outcome of the same and in the absence of any such enquiries being made, the addition made by Assessing Officer was held to unsustainable in the facts of the case.

6. Now, the Revenue is in appeal against the order of CIT(A) on the ground that CIT(A) had erred in concluding the transactions between Manvir Metals Pvt. Ltd. and assessee were on the basis of verification of transactions between Manvir Metals Pvt. Ltd. and Mahalaxmi Infraprojects Ltd. without giving opportunity to the Assessing Officer under Rule 46A of the I.T Rules. The second issue raised in appeal is against the deletion of addition of Rs.96,12,691/-.

7. The Ld. DR for the relying on the order of Assessing Officer pointed out that the assessee had failed to furnish valid documents to substantiate its case.

8. The Ld. AR for the assessee after taking us through the factual aspects of case pointed out that search operations were conducted in Mahalaxmi Infraprojects Ltd. and group cases on 23.09.2009 and there was also consequential survey on Manvir Metals. He further pointed out that statement of Shri Ravindra Dhondiram Shinde, Managing Director of Mahalaxmi Infraprojects Limited and Shri Shri Balwant Patil, Accountant was recorded. He pointed out that during the course of survey action, the purchases made by the assessee from Financial Year 2005-06 to till date were verified and purchases from Manvir Metal Pvt. Ltd. were found to be genuine. During the course of survey, though there was no declaration with regard to purchases from Manvir Metal but addition was made in both the cases. Our attention has been drawn to the copy of ledger account at page 24 of the paper book where opening balance was at Rs.90,11,840/- and two purchases were made i.e. Rs.70,148/- and Rs.4,91,088/-. The Ld. AR further pointed that same addition in

respect of purchases from Manvir Metal Pvt. Ltd. were made in the hands of Mahalaxmi Infraprojects Ltd. in assessment year 2006-07 and 2007-08. The CIT(A) deleted the addition in both the years. The Revenue in assessment year 2006-07 has filed no appeal against the order of CIT(A). Though in assessment year 2007-08, appeal was filed by Revenue, but no ground was raised. The Ld. AR brought our attention to the decision of Pune Bench of Tribunal in the case of ACIT Vs. Mahalaxmi Infraprojects Ltd., ITA No. 142 to 145/PUN/2016 for assessment year 2007-08 to 2010-11 and ITA No.146 & 147/PUN/2016 for assessment year 2011-12 & 2012-13, order dated on 17.01.2018 wherein contents of the statement of Mr. Shinde were also noted in which there was no mention of purchases from M/s. Manvir Metal Pvt. Ltd. not any clear cut admission of said purchases being bogus. The Ld. AR further referred to contents of Para 7 of the Tribunal's order. The issue raised in the said appeal was the claim of deduction under section 80IA (4) of the Act on additional income offered on account of purchases. The action of the Revenue in not filing appeal against the alleged bogus purchases of Rs.48,78,977/- made on account of purchases from M/s. Manvir Metal Pvt. Ltd., has been noted by the Tribunal which were held to be not bogus purchases by the CIT(A).

9. We have heard the rival contentions and perused the record. The issue raised in the present appeal filed by Revenue is in relation to the purchases made by assessee which were held to be bogus purchases by Assessing Officer. The CIT(A) deleted the addition. In the facts of the case, survey under section 133A of the Act was carried out at the premises of assessee on 04.01.2013. Pursuant to the survey, the assessee vide letter dated 08.01.2013 offered additional income for assessment year 2008-09, 2010-11 to 2012-13 of Rs.5,17,85,419/-. The basis for offering additional income was party wise list of purchases which were furnished by assessee along with letter dated 08.01.2013. During the course of survey, a list of certain suppliers of the assessee was prepared which were believed to be suspicious. During

the course of survey, partner of the assessee firm, stated that some time was needed to furnish all the details. It may be pointed out herein itself that simultaneously, search was conducted at the premises of M/s. Mahalaxmi Infraprojects Ltd. which was sister concern of the assessee and Managing Director of the said concern is partner of the assessee firm. The Ld. A.R., before us, pointed out that there were many sister concerns of M/s. Mahalaxmi Infraprojects Ltd. who were making purchases on behalf of the connected parties/ sister concern and had also offered additional income during course of search/survey. The Tribunal has already decided the present issue in the case of ACIT Vs. Mahalaxmi Infraprojects Ltd (supra.) and the copy of said order has been made available by the assessee. While completing the assessment in the case of the said party also, addition was made by Assessing Officer on the plea that Managing Director of the said Company had admitted the purchases to be bogus. The CIT(A) after reading relevant parts of the statement of the Director observed that there was no mention of purchases from M/s. Manvir Metal Pvt. Ltd. nor any clear cut admission of said purchases being bogus. On the other hand, Mr. Shinde, Managing Director has specifically stated that some of the purchases were not supported by delivery challans, inspection report etc. Further, he was asked to produce evidence and eventually he stated that he was not able to substantiate all the purchases and in that case, credit may be allowed to him for the disclosure of additional income made during the course of search. The CIT(A) thereafter, referred to letter dated 08.01.2013 which was partly reproduced in the assessment order. The CIT(A) had deleted the addition made on account of alleged purchases made from M/s. Manvir Metal Pvt. Ltd. The Tribunal while deciding the appeal in the case of ACIT Vs. Mahalaxmi Infraprojects Ltd (supra.) noted the above said findings of CIT(A) vide Para 7 of Tribunal's order which reads as under:

"7. The CIT(A) observed that the basis for making addition by the Assessing Officer was on the plea that the Director of assessee company had admitted the purchases to be bogus. However, after reading the relevant part of

statement of Director, the CIT(A) observed that on plain reading of statement, there is no mention of purchases from M/s. Manvir Metal Pvt. Ltd. nor any clear-cut admission of said purchases being bogus. Mr. Shinde has simply said that some of the purchases were not supported by delivery challans, inspection reports, etc. Further, he asked time to produce evidence and eventually, he stated that he was not able to substantiate all the purchases and in that case, credit may be allowed to him for the disclosure of additional income made during the course of search. The CIT(A) thereafter, referred to letter dated 08.01.2013, which was reproduced in the assessment order. The CIT(A) has reproduced complete letter at pages 8 and 9 of the appellate order and has pointed out that the list of purchases offered as additional income does not include purchases from M/s. Manvir Metal Pvt. Ltd. Thus, there was nothing either in the statement or in the letter to show that assessee had admitted that the purchases from M/s. Manvir Metal Pvt. Ltd. were not genuine and in the letter, the assessee had categorically claimed that the purchases from M/s. Manvir Metal Pvt. Ltd. were absolutely genuine and had been verified and so accepted by the Department during the course of search action. The CIT(A) thus, held that disallowance made by the Assessing Officer relying on statement of Shri Shinde was totally unjustified. He also noted that the assessee had not disclosed any additional income in the return filed in response to notice under section 148 of the Act in respect of purchases from M/s. Manvir Metal Pvt. Ltd. If the Assessing Officer wanted to make any addition on this account, then he should have issued proper show cause notice to the assessee giving an opportunity to substantiate the claim. The CIT(A) thus, held that in the absence of any disclosure being made by the assessee, there was no merit in making any addition on account of purchases from M/s. Manvir Metal Pvt. Ltd. Further, reference was made to the evidences filed by the assessee and verified during the course of search proceedings in respect of purchases from M/s. Manvir Metal Pvt. Ltd. Hence, the addition made by the Assessing Officer was held to be not sustainable and the addition of Rs.1,41,60,277/- was deleted. This decision of the CIT(A) was in respect of assessment year 2006-07. On similar reasoning, the CIT(A) deleted addition of Rs.48,78,977/- made on account of purchases from M/s. Manvir Metal Pvt. Ltd. in assessment year 2007-08 i.e. year under appeal."

10. The Tribunal also noted the fact that Revenue was not in appeal against the order of CIT(A) in holding that purchases made from M/s. Manvir Metal Pvt. Ltd. were not bogus. The Tribunal observed the same as per Para 11 which read as under:

"11..... The jurisdiction of the Assessing Officer was limited to additional income which was added consequent to the Survey proceedings and 147 assessment proceedings. He further pointed out that two additions were made by the Assessing officer on account of bogus purchases i.e. Rs.48,78,997/- being purchased made from M/s. Manvir Metal Pvt. Ltd., which has been held by the CIT(A) not bogus purchases and the Revenue is not in appeal; hence the claim of deduction under section 80IA(4) of the Act is restricted to additional income of Rs.35,98,460/- only, which merits to be allowed in the hands of assessee."

11. In the facts of the present case, addition was made on the ground purchases made from M/s. Manvir Metal Pvt. Ltd. were bogus as admitted by the partner of the assessee firm, Mr. Shinde. Similar addition was also made in the hands of M/s. Mahalaxmi Infraprojects Ltd. i.e. addition on account of purchases made from M/s. Manvir Metal Pvt. Ltd. on the ground that Mr. Shinde, Managing Director of the Company admitted the purchases to be bogus. The CIT(A) noted the fact that CIT(A) had held there was no such admission by Mr. Shinde and in the absence of the same, purchases made from M/s. Manvir Metal Pvt. Ltd. could not be held to be bogus. Against the said findings of the CIT(A), Revenue was not in appeal before the Tribunal, though it had filed appeal in respect of other issues. However, against the order of CIT(A) in the case of assessee in deleting the addition on account of purchases made from M/s. Manvir Metal Pvt. Ltd., the Revenue is in appeal where the basis of additions in both i.e. in the case of assessee and M/s. Mahalaxmi Infraprojects Ltd. was same. Since in both the cases, CIT(A) allowed the claim of assessee and the Tribunal in the case of M/s. Mahalaxmi Infraproject Limited (supra) accepted the factual aspect of the case; we hold that there was no basis in holding that the purchases made from M/s. Manvir Metals Pvt. Ltd. were bogus. Accordingly, we uphold the order of CIT(A) and dismiss the grounds of appeal raised by Revenue.

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

Order pronounced on this 6th day of June, 2018.

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 06th June , 2018

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals), Pune-11.
4. The CIT (Central), Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

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आदेशानुसार / BY ORDER,

निजी सचिव /Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

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