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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on 13th April, 2015

+ ITA 700/2014
CIT-VII

..... Appellant

Through: Mr. P.Roychaudhuri, Adv.

versus

MIS GREYSHAM & CO.

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The Revenue is aggrieved by the order of Income Tax Appellate Tribunal (hereinafter referred to as the "ITAT") dated 09.05.2014 whereby the Appellate Commissioner's order restricting the addition under Section 41(1) of the Income Tax Act, 1961 to ₹28,87,305/- for the Assessment Year (AY) 2003-04 was confirmed.

2. The assessee was engaged in manufacturing and sale of engineering goods comprising railways break system and components thereof for the Indian Railways and wagon builders. All the sales by the assessee are made to the government agencies such as Indian Railways and coach factories. The G.P Rate declared by the assessee in the A.Y. 2003-04 was better in comparison to that in the immediately preceding assessment year. The Assessing Officer (AO) in order to verify purchases made by the assessee made enquiries during the assessment proceedings by sending notices to

three parties. These parties did not respond and assessee by letters in response to enquiry submitted that two of the suppliers were duly registered with Excise and Sales Tax Department and appeared to be genuine parties. As far as confirmation of third vendor is concerned, assessee informed that the proprietor of the concern had died and, therefore, the business had closed. The AO observed that sum of ₹14,11,515/-, ₹14,34,586/- and ₹3,11,204/- being payable to the three concerns for purchases were outstanding in the year. The assessee was asked, and, it furnished, bills from the parties as also copies of the account. The AO observed that this was outstanding. Taking note of the lack of any response of the three parties, the AO disallowed as unverifiable amount, a sum of ₹76,39,453/-.

3. On appeal, the CIT(Appeals) took into consideration the materials and granted partial relief to the assessee in the following terms:

25. I have carefully considered the observations made by the A.O. in the Assessment Order and the facts of the case. On the basis of enquiries conducted by the A.O. he held that the appellant had failed to establish the identity of the three parties mentioned above. He therefore, held these parties to be nonexistent and disallowed the whole of the purchases made from the three parties. In this regard, it is seen that in second para on the first page of the assessment order the A.O. has observed that the G.P. rate during the year under consideration was better in comparison to the last year. Therefore, the purchases made by the appellant should not have been doubted by the A.O. As the appellant had failed to establish the existence of the above mentioned three parties and letter sent to them by the A.O had been received back unserved, the A.O. should have disallowed the amount outstanding to their credit in the appellant's books and added it to the appellant's income u/s 41(1) of the Act. Accordingly, the addition under this head is restricted to Rs. 28,87,305/-(14,34,585/-

+3,11,204/-+14,11,515/-) on account of cessation of liability of credit balance outstanding in the name of the three parties in the appellant's books.

26. In the result the appeal is partly allowed”.

4. The ITAT has merely confirmed the above conclusion.

5. It is urged by the Revenue that the impugned order is unsustainable since none of the parties, despite notices having been served to them, confirmed the purchases made by the assessee and consequently it could not be said that the assessee had established the identity of the suppliers. The expenses claimed were, therefore, suspected and the AO consequently was justified in disallowing the entire amount.

6. This Court has considered the material on record. What is apparent is that the AO based its conclusion on the basis of a narrow premise i.e. lack of response by the three parties i.e. M/s A.L. Metal & Methods Pvt. Ltd., M/s Laxmi Enterprises and M/s Komal Forging. The CIT (Appeals) noticed the inherent contradiction in the AO's action – on the one hand, accepting the higher GP Rate, which in turn was based upon the total turnover of the assessee, while on the other disallowed the entire amount of purchases from the three parties and not only with respect to the amount outstanding. Thus the CIT (Appeals) was justified restricting the addition to ₹28,87,305/- in the facts of the case, since that was the amount indicated as outstanding as on 31.03.2003.

7. This Court is of the opinion that there is no infirmity in the approach or interpretation of the law adopted by the CIT (Appeals) and confirmed by the ITAT. This case does not warrant any interference under Section 260A of the Act. No substantial question of law arises.

8. The appeal is, therefore, dismissed.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

APRIL 13, 2015

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