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

INCOME TAX APPEAL NO.1404 OF 2017
WITH
INCOME TAX APPEAL NO.1418 OF 2017

Pr. Commissioner of Income Tax – 5 ….Appellant

V/s.

Allied Blenders and Distillers Pvt. Ltd. ….Respondent

Mr. N.C. Mohanty for appellant.
Ms. Nikita Abhyankar i/b. Roy's Law Firm for respondent.

CORAM : K.R. SHRIRAM &
AMIT B. BORKAR, JJ.
DATED : 22nd NOVEMBER 2021

P.C. :

INCOME TAX APPEAL NO.1418 OF 2017

1 This is an appeal in which appellant proposes the following three substantial questions of law :

> *6.1 Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified in deleting the addition of Rs.4,92,43,370/- made on account of bogus purchases on the basis of self serving documents produced by the assessee without appreciating the fact that these alleged suppliers were non-existent at the addresses, not engaged in genuine business activities suppliers were declared as hawala dealers by the Maharashtra Sales-tax Department on the basis of on the spot enquiries conducted and statements recorded on various parties?*
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> *6.2 Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified in deleting the addition of Rs.4,92,43,370/- made on account of bogus purchases merely stating that payments were made through banking channel and without appreciating the fact that payment by account payee cheque itself is not sufficient to establish the genuineness of the alleged purchases?*
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> *6.3 Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified in deleting the addition of Rs.4,92,43,370/- made on account of disallowance of non-genuine purchases without appreciating the fact that the*

assessee failed to establish the physical delivery of goods from the alleged purchase parties?

2 Respondent was engaged in the business of manufacturing and selling Indian made Foreign liquor. The return of income was filed on 27th September 2010 declaring a total income of Rs.8,39,89,526/-. Subsequently, the case was selected for scrutiny under Section 143 (3) of the Income Tax Act, 1961 (the said Act) and on 28th March 2013, an order came to be passed determining the total income of respondent at Rs.14,20,47,620/- by making various additions/disallowances to the total income. Among the various additions/disallowances made to the total income, an addition on account of bogus purchase was made to the tune of Rs.4,92,43,370/-. Aggrieved by this order, respondent preferred an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. The appeal was only partly allowed because the addition by the Assessing Officer on account of alleged bogus purchases was confirmed by the CIT(A). Respondent impugned this order of CIT(A) before the Income Tax Appellate Tribunal (ITAT). To the extent CIT(A) had allowed the appeal, Revenue preferred an appeal before ITAT. ITAT dismissed Revenue's appeal and allowed respondent's appeal. The ITAT relied on a judgment of the co-ordinate bench of the ITAT in the case of M/s. MPIL Steel Structure Limited V/s. DCIT (ITA No.6602/Mum/2014) for Assessment Year 2011-2012, wherein similar issue was involved and deleted the addition towards bogus purchases. Unhappy

with the conclusions of the ITAT, this appeal has been preferred.

3 We are inclined to agree with the opinion of the ITAT. In making the addition, the Assessing Officer has primarily relied upon some information received from the office of the Director General of Income Tax (Investigation), Mumbai regarding bogus purchases. The Assessing Officer has also relied upon a notification issued by the Sales Tax Department declaring certain persons as hawala dealers. It is alleged that from the purchase details submitted by respondent, it is found that during the year under consideration, respondent made purchases amounting to Rs.4,92,43,370/- from the bogus dealers who had issued false bills without delivery of goods. The bogus purchases made by respondent are mentioned to be from RCL Trading Pvt. Ltd. in the sum of Rs.29,83,250/-, Kotsons Impex Pvt. Ltd. in the sum of Rs.2,79,74,170/-, Hermitage Trading Co. Pvt. Ltd. in the sum of Rs.1,82,85,950/-. According to the Assessing Officer, from the records of the Sales Tax Department, these three parties were involved in bogus billing. They just issued bills for commission without actual supply of goods and the Director of the said parties (not even his name is mentioned in the Assessing Officer's order or the date of the affidavit is mentioned) in a sworn notarised affidavit cum declaration filed before the Sales Tax Investigation Branch, Mumbai and in deposition before the Assistant Commissioner of Sales Tax (I-27), Investigation Branch, Mumbai, the Director has admitted issuing only invoices/bills without delivery of

goods. In the assessment order, it is also stated that the said hawala bill provider has categorically admitted during deposition before the sales tax authorities that these bills are provided just for the sake of entry and as such no materials were supplied by them and that they had only supplied bills on receipt of cheques and later on cash withdrawn from the banks and after deduction of agreed commission balance money was returned in cash. The Assessing Officer says his statement is available on website and same is treated as an evidence to justify the issue involved in the case. It is also stated by the Assessing Officer that the notice issued to these three parties under Section 133 (6) of the Act remained unserved because they are not available/traceable. It is also stated that by an office order sheet noting dated 19th March 2013, respondent was requested to produce the said parties before officer for verification but respondent did not produce them.

4 It is respondent's case that they purchased various gift article for promoting sales and respondent also filed copies of photographs taken during promotional activity, stock register stating the various gift item purchased from various parties, delivery challans and also confirmation from few wine shops about description of goods and quantity of goods distributed.

The ITAT has on facts came to a conclusion that respondent has filed before the Assessing Officer complete books of accounts, items wise stock register evidencing the receipts of gift materials and issue thereof.

ITAT has also accepted the photographs of the functions and promotional activities and confirmations from the shop keepers. What really tilted the opinion of ITAT in favour of respondent is that respondent had produced copies of bank statements of Punjab National Bank and Axis Bank evidencing the payments through banking channels by account payee cheques to the suppliers. There is nothing in the order of the Assessing Officer that the Assessing Officer has looked into or considered this fact dispassionately. The ITAT, therefore, came to a conclusion that respondent has discharged its onus by producing the books of accounts, stock register, stock tally and also filed various documentary evidences such as statements of banks. According to ITAT, once respondent has discharged this burden, the onus shifts to the Revenue and the Assessing Officer has not conducted any independent inquiry or further verification of the records produced before him. We have to note that this view of ITAT has not even been challenged and no substantial question of law has been proposed.

5 On the Assessing Officer's conclusions, we also observed that admittedly the three parties are private limited companies. The Assessing Officer does not mention anywhere to which address the notice under Section 133 (6) of the Act was sent because being a company, certainly the records in the office of the Ministry of Corporate Affairs or the Registrar of Companies will indicate the address of the registered office of these three entities. The Assessing Officer only says the notices remained unserved

because companies are not available/traceable. That is neither here nor there because the Assessing Officer should have stated why the notices were not served - Was it because of any endorsement by the postal authorities that there was no such company in existence at the address mentioned or intimation posted but not collected or refused. Another point we have to note is that the Director of these three companies, on whose notarised affidavit cum declaration the Assessing Officer was relying upon, was not even made available for cross examination.

6 In our view, the Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law.

7 The appeal is devoid of merits and it is dismissed with no order as to costs.

INCOME TAX APPEAL NO.1404 OF 2017

8 The facts in this case are almost identical to the facts as mentioned in Income Tax Appeal No.1418 of 2017 except to the extent that the Assessing Officer has recorded that the concerned Inspector was deputed to serve the notice under Section 133 (6) of the Act on two parties instead of three at their given address but in the said report of the Inspector

dated 26th February 2014, it is noted that the address of one party was found locked and the other party was not traceable, the address was not correct and the said party was not operating from the said premises. It would still not help the case of the Revenue because it it not clear from the Assessing Officer whether the two addresses were the registered office address and on what day of the week the Inspector went to serve and whether it was a holiday or a working day and just because the office premises was locked or a party was not available at the time the Inspector visited the particular address does not mean those parties were not carrying on business or non existent or bogus parties. We say this because even in this case, payments have been made by cheques to these parties and the Assessing Officer could have called upon the banks to provide details of the payees to whose account the amounts have been credited.

9 This appeal also accordingly stands dismissed.

(AMIT B. BORKAR, J.) **(K.R. SHRIRAM, J.)**