IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL (IT) NO. 2168 OF 2018

Pr. Commissioner of Income Tax - 15 … Appellant

Versus

Rossari Biotech Pvt. Ltd. … Respondent

Mr. Suresh Kumar for Appellant.
Mr. K. Gopal i/b Satendra Kumar Pandey for Respondent.

CORAM K. R. SHRIRAM &
DR. N. K. GOKHALE, JJ.
DATED: 6th September 2023

P.C. :

1. The following substantial questions of law are proposed :

i. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was correct in confirming the order of the CIT(A) whereby additions of Rs. 2,50,66,604/- on account of bogus purchases were restricted to Rs. 31,33,326/- without appreciating that the onus was on the assessee to establish the genuine of such purchases by producing such parties before the Assessing Officer and the assessee failed to discharge its onus ?

ii. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was correct in stating the payment of cheque to such bogus parties and accepting the sales was sufficient to discharge the onus without appreciating that the assessee failed to produce the evidences of actually delivery of goods, delivery challans, goods inward register, weight bridge receipt, lorry receipt etc. to establish the movement of goods from premises of such bogus purchase parties to that of assessee ?

iii. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was correct in holding that only profit margin in such purchases is to be taxed *and restricting the disallowance on account of bogus purchases estimating the net profit at 12.5% of such bogus purchases on ad hoc basis without appreciating that the assessee evaded the taxes on whole of such bogus purchases and by restricting the disallowance to 12.5% the assessee continues to evade the taxes on the balance bogus purchases ?*

2. This is also the case of bogus purchases. The Assessing Officer ("**AO**") had disallowed a sum of Rs. 2,50,66,604/- that assessee had debited on the ground of having made purchases from one M/s. Orizon Pharma Pvt. Limited. AO took a view that M/s. Orizon Pharma Pvt. Limited was tagged as a 'bogus party' by the Sales Tax Department and because assessee made purchases from M/s. Orizon Pharma Pvt. Limited, the purchase bills pertain to bogus purchases. Hence, the entire amount of Rs. 2,50,66,604/- was added to the income of assessee.

3. This would also be covered by the judgment of this Court in the case of ***Nikunj Eximp Enterprises v. Commissioner of Income Tax***[1], the judgment of Gujarat High Court in the case of ***Commissioner of Income Tax v. Smith P. Sheth***[2] and also under the judgment of this Court in the case of ***Pr. Commissioner of Income Tax v. Mohd. Haji Adam & Co.***[3]. Relying on the last two judgments referred above, the Income Tax Appellate Tribunal ("**ITAT**")

1. 216 taxman.com 171 (Bom.).

2. 356 ITR 451 (Guj.).

3. 2019(103) taxmann.com 459 (Bom.).

confirmed the order passed by the Commissioner of Income Tax (Appeals) ("**CIT(A)**") where the CIT(A) held that what could be added was only 12.5% profit of the purchases made from the alleged bogus entity.

4. The view taken by the authorities is a reasonable and possible view. Thus, no substantial question of law arises for our consideration.

5. Appeal dismissed.

(DR. N. K. GOKHALE, J.) **(K. R. SHRIRAM, J.)**