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

INCOME TAX APPEAL NO.496 OF 2018

Pr.Commissioner of Income Tax-26 ..... Appellant

Vs.

Yog Oil Traders ..... Respondent

Ms.Sushma Nagaraj a/w Ms.Kinjal Patel, Ms.Shreya Singhi and Ms.Sakshi Kapadia for the appellant

Mr.Vipul Joshi a/w Ms.Simoni Chouhan for the Respondent

CORAM: K.R. SHRIRAM, J &
FIRDOSH P. POONIWALLA, J.

DATED : 5TH JULY 2023

P.C.

1. Appeal impugns an order dated 17th February 2017 passed by the Income Tax Appellate Tribunal (ITAT) by which the ITAT deleted the addition made by CIT(A) and allowed the Appeal filed by the Assessee.

2. Assessee was engaged in the business of importing oil in bulk, packing the same in different packs in its premises and selling the same. Assessee had filed its return of income on 24th September 2010 for Assessment Year 2010-2011 declaring total income of Rs.7,14,506/-. Assessee's case was selected for scrutiny and notices,

under section 143(2) and 142(1) of the Income Tax Act, 1961 (the Act), were issued. A survey was also conducted in the premises of assessee following information that assessee had made bogus purchases of packaging materials to the tune of Rs.4,67,30,577/- from eight parties.

3. During the course of the survey, a partner in the assessee firm allegedly admitted bogus purchase of Rs.4.67 crores out of Rs.5.60 crores purchased from eight parties. But that statement was retracted later.

4. During the assessment proceeding, the Assessing Officer (AO) added the amount of Rs.4.67 crores to the income of the assessee on the basis of the statement made by the partner which statement, as noted earlier had been retracted. There was no further corroborative material or incriminating material found by the survey team. The books of accounts were also duly maintained by assessee with all records in the form of stock register, consumption register etc. The AO has also confirmed the purchases and consumption of material in packing of oil in the assessment report.

5. CIT (A) after hearing the parties deleted the addition made by AO by factually finding that there was no question of any purchase made by assessee that could be termed as bogus. CIT (A) has also come to a factual finding that confirmation of the availability of

packaging materials by the AO has been made and the AO has verified the consumption of the packaging material *vis-a-vis* the sales and gave categorical finding that there was no discrepancy in the consumption pattern of the packaging material and that the packaging material was used by assessee through out the year. But by deleting the addition made, CIT (A) strangely stated that a part of the purchase of packaging material have to be disallowed and disallowed 7% of the purchases. Paragraph 53 and 54 of order of CIT(A) read as under:

> *"53. Once the sales of the appellant firm, which cannot be made without the packaging materials, are not questioned by the AO and are accepted as genuine, then there is no question of any purchases made by the appellant being termed as bogus. The purchases of packaging materials have been made to effect the sales of about 144 crores by the appellant for the year under consideration.*
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> *54. From the facts stated in the preceding para, it is established that the genuineness of the purchases made by the appellant firm are not in doubt. What is in doubt at this stage, is the purchase price shown on the invoices issued by the above parties. As stated above, since the bills have been arranged and the parties who have issued these bills are not available for verification, the purchase price shown on the invoice issued by the parties in question cannot be accepted in the absence of verification. It may be the case that the purchases are made by the appellant from the grey market and such purchases can be over-invoiced to reduce the profits resulting in lowering down of the gross profits. Since the appellant firm is not trading in the packaging materials, therefore, no gross profits rate theory can be applied to the purchase of such packaging materials. In such a situation the only way left would be to disallow part of such purchases of packaging materials. It would be fair*

> *and just, if out of the total the packaging materials of Rs.4.67 crores treated as bogus. 7% of the purchases are disallowed. Accordingly 7% of the purchases out of the alleged bogus purchases amounting to Rs.4.67 crores, is disallowed and added back to the income of the appellant firm for the period under consideration. Therefore, out of the total addition for bogus purchases of packaging materials made by the AO amounting to Rs.4,67,30,577/- the additions to the extent of Rs.32,71,140/- is upheld and the balance addition made is deleted. This will also take care of the excess wastage of packaging materials shown by the appellant firm during the period under consideration."*

6. ITAT has therefore, come to a conclusion that there was no material whatsoever before CIT(A) as to why 7% on the total purchase of packing material from 8 parties should be disallowed. Even we find the decision of the CIT(A) rather strange because in paragraph 53 of the order concluded above, he says there is no question of any purchase made by the appellant being termed as bogus.

7. In the circumstances, in our view ITAT was correct to delete the addition of Rs.32,71,140/- made by CIT(A).

8. Appeal dismissed.

(FIRDOSH P.POONIWALLA, J.) **(K.R. SHRIRAM, J.)**