

(2012) 10 GUJ CK 0066
In the Gujarat High Court
Case No : Tax Appeal No. 63 of 2012

Commissioner of Income Tax

APPELLANT

Vs

Bholanath Poly Fab Pvt. Ltd.

RESPONDENT

Date of Decision : 23-10-2012

Acts Referred:

Citation : (2013) 355 ITR 290

Hon'ble Judges : Harsha Devani, J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Manav A. Mehta, for the Appellant;

Final Decision : Dismissed

Judgement

Akil Kureshi, J.—The Revenue is in appeal against the judgment of the income tax Appellate Tribunal dated July 26, 2011, raising the following questions for our consideration:

(i) Whether the income tax Appellate Tribunal erred in law by not appreciating the fact that the assessee had not kept day-to-day stock register, in the absence of which production of finished goods received, the shortage arrived, goods sent for processing, goods received from processing, etc., on a particular day could not be verified?

(ii) Whether the income tax Appellate Tribunal erred in law by not appreciating the fact that in the absence of day-to-day stock register, in the absence of which production of finished goods received, the shortage arrived, goods sent for processing, goods received from processing, etc., could not be verified and thus cannot be considered as evidence for purchase of goods?

(iii) Whether the income tax Appellate Tribunal had erred in law by not appreciating the fact that the purchase made as claimed by the assessee, was not substantiated by any circumstantial evidence?

(iv) Whether the income tax Appellate Tribunal had erred in law by not

appreciating the fact that the parties from which purchases were made, as claimed by the assessee, could not be found out by the Department and that the burden was on the assessee to prove the genuineness of the parties?

Though the questions per se do not bring out the real controversy, having perused the orders on record with the assistance of the learned counsel for the Revenue, we find the following facts emerging from the record.

2. The respondent-assessee is engaged in the business of trading in finished fabrics. For the assessment year 2005-06, the Assessing Officer held that the purchases worth Rs. 40,69,546 were unexplained. He, therefore, disallowed such expenditure claimed by the assessee and computed the total income of Rs. 41,10,187.

3. The issue was carried in appeal by the assessee before the Commissioner. The Commissioner rejected the appeal, upon which the assessee went in further appeal before the Tribunal. The Tribunal, substantially allowed the assessee's appeal. In so far as the question of bogus purchase is concerned, the Tribunal concurred with the Revenue's views that such purchases were made from bogus parties. The Tribunal noted that the Assessing Officer had issued notice to all parties from whom such purchases were allegedly made. Such notices were returned unserved by the postal authorities with the remark that the address was incomplete. The inspector deputed by the income tax Department also could not find any of the parties available at the given addresses. The assessee was unable to produce any confirmation from any of the parties. Though the assessee had claimed to have made payment by account payee cheques, upon verification, it was found that the cheques were encashed by some other parties and not by the supposed sellers.

4. Having come to such a conclusion, however, the Tribunal was of the opinion that the purchases may have been made from bogus parties, nevertheless, the purchases themselves were not bogus. The Tribunal adverted to the facts and data on record and came to the conclusion that the entire quantity of opening stock, purchases and the quantity manufactured during the year under consideration were sold by the assessee. Therefore, the purchases of the entire 1,02,514 metres of cloth were sold during the year under consideration. The Tribunal, therefore, accepted the assessee's contention that the finished goods were purchased by the assessee, may be not from the parties shown in the accounts, but from other sources. In that view of the matter, the Tribunal was of the opinion that not the entire amount, but the profit margin embedded in such amount would be subjected to tax. The Tribunal relied on its earlier decision in the case of *Sanket Steel Traders* and also made reference to the Tribunal's decision in the case of (1996) 58 ITD 428 . We are of the opinion that the Tribunal committed no error. Whether the purchases themselves were bogus or whether the parties from whom such purchases were allegedly made were bogus is essentially a question of fact. The Tribunal having examined the evidence on record came to the conclusion that the assessee did purchase the cloth and sell

the finished goods. In that view of the matter, as natural corollary, not the entire amount covered under such purchase, but the profit element embedded therein would be subject to tax. This was the view of this court in the case of Sanjay Oilcake Industries Vs. Commissioner of Income Tax, . Such decision is also followed by this court in a judgment dated August 16, 2011, in Tax Appeal No. 679 of 2010 in the case of CIT v. Kishor Amrutlal Patel In the result, tax appeal is dismissed.