(2009) 01 DEL CK 0144

In the Delhi High Court

Case No : Income Tax Appeal No. 106 of 2007

Commissioner of Income Tax APPELLANT

Vs

JMD Computers and Communications (P.) Ltd. RESPONDENT

Date of Decision : 16-01-2009

Acts Referred:

Citation : (2009) 180 TAXMAN 485

Hon'ble Judges : Vikramajit Sen, J;Rajiv Shakdher, J

Bench : Division Bench

Advocate : R.D. Jolly, for the Appellant; Salil Aggarwal, for the Respondent

Judgement

1. The revenue has preferred an appeal against the judgment of the Income Tax Appellate Tribunal (hereinafter referred to as the ''Tribunal'') dated 21-4-2006 passed in ITA No. 141/Delhi/2003 pertaining to assessment year 1998-99. The revenue''s grievance in the appeal is that the Tribunal has upheld the order of the Commissioner of Income Tax (Appeals) [hereinafter referred to as ''CIT(A)''] deleting the addition of Rs. 54,50,276 made by the Assessing Officer on account of bogus purchases by the assessee.

2. Briefly the undisputed facts are that the assessee is engaged in the business of trading in computer parts. The Department had received information that the assessee had made bogus purchases from certain parties. The information was received from the Assessing Officer of one Sh. T.R. Chadda at whose premises the department had carried out a raid. The assessee''s case was picked up for scrutiny and during the assessment proceeding the assessee was asked to identify and produce confirmation of parties from whom purchases of Rs. 1 lakh and above had been made by the assessee during the relevant period. The Assessing Officer also deputed an inspector to conduct inquiries at the addresses provided by the assessee. Based on the inquiry carried out by the inspector the Assessing Officer made an addition of a sum of Rs. 54,50,276 on the ground that the assessee had made bogus purchases.

3. Being aggrieved the assessee preferred an appeal before the CIT(A). The CIT(A) by a detailed order deleted the disallowance of Rs. 54,50,276 made by the Assessing Officer. Against this the revenue went up in appeal to the Tribunal. The Tribunal by the impugned judgment sustained the order of the CIT(A).

4. Before us the learned Counsel for the revenue, Mr. R.D. Jolly has impugned the order of the Tribunal on the ground that the deletion of addition of Rs. 54,50,276 was perverse. The learned Counsel for the revenue primarily relied upon the assessment order, in particular, the observations made by the Assessing Officer that inquiries made by the inspector deputed by the Assessing Officer, revealed that: (i) the sales tax numbers quoted on the invoices of two out of the six suppliers investigated did not exist while the sales-taxes number of two other suppliers had been cancelled because they had ceased business; (ii) the telephone numbers of some of the suppliers quoted on the invoices were either non-existent or related to some other persons; (iii) the inquiries with the bankers of four of the six suppliers brought to light the fact that the bank accounts have been operated by one Sh. Ashok Kumar brother of Sh. T.R. Chadda or his employees.

5. In the impugned judgment the Tribunal meticulously went through the evidence on record and returned the following findings of fact:

(i) it is undisputed that the assessee was maintaining complete accounts including daily item-wise, stock register, purchase book, sales book, purchase bills and sales books;

(ii) the accounts of the assessee have been duly audited under the Income Tax Act as well as the Companies Act;

(iii) sales invoices of vendors were placed on record before the Assessing Officer. Insofar as purchases made by the assessee, were concerned they were entered in the item-wise stock register maintained by the assessee;

(iv) all payments for purchases have been made by cheques;

(v) a complete quantitative analysis between purchases made and corresponding sales were prepared and filed before the Assessing Officer. The quantitative analysis made has not been called into question by the Assessing Officer;

(vi) ledger accounts of the six suppliers showed substantial debit balances indicating that the assessee had made advance payments to the suppliers on several dates.

6. In view of this the Tribunal came to the conclusion that the deletion made by the CIT(A) had to be sustained. The Tribunal in particular, noted that the Department having accepted the purchases, it could not have been assumed that the assessee had inflated its purchase by introducing fictitious purchases. The Tribunal made a particular note of the fact that the statement of Sh. Ashok Kumar who is the brother of Sh. T.R. Chadda, the source from which the revenue

had received information about bogus purchases by the assessee had evidently made a statement on 26-2-2002 admitting therein that he was carrying on the business of issuing bogus accommodation bills on commission basis with the assessee; which was not put to the assessee, for rebuttal or cross-examination.

7. Before us the Learned Counsel for the revenue had laid great stress on the fact that the Department had carried out investigation which revealed that purchases have been made from non-existent parties and this was established by virtue of the fact that inquiries with the banks of the suppliers had revealed that they were operated by Sh. Ashok Kumar, who was the brother of Sh. T.R. Chadda or his employees. We note that this aspect of the matter was obviously not put to the assessee as this was not part of the report which the inspector had prepared for the perusal of the Assessing Officer. Therefore, this submission of the counsel for the revenue cannot in our view take his case any further.

8. As a matter of fact as noted in paragraph 1.5 of the C1T(A) orders the evidence regarding Sh. T.R. Chadda''s operation collected by the investigating wing was not even available with the Assessing Officer.

9. In view of the findings of fact returned by two authorities below which are not perverse, no question of law, much less a substantial question of law arises for our consideration. In the result the appeal is dismissed.

