

**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH
MUMBAI**

**BEFORE SHRI M.BALAGANESH, AM
&
SHRI RAM LAL NEGI, JM**

**ITA No.3580/Mum/2019
(Assessment Year :2009-10)**

M/s. Realstone Exports Ltd., C-204, 2 nd Floor Vishal Apartments Taki road, Tulinj Nallasopara (E) Thane, Maharashtra – 401 209	Vs.	Income Tax Officer 11(1)(2), Aayakar Bhavan M.K.Road, Mumbai, Maharashtra – 400 020
PAN/GIR No. AACCR8504K		
(Appellant)	..	(Respondent)

Assessee by	Shri Neelkanth Khandelwal
Revenue by	Shri Rahul Raman
Date of Hearing	04/09/2019
Date of Pronouncement	04/10/2019

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.3580/Mum/2019 for A.Y.2009-10 preferred by the order against the revision order of the Id. Principal Commissioner of Income Tax-11, Mumbai u/s.263 of the Act dated 14/02/2019 for the A.Y.2009-10.

2. The only issue to be decided in this appeal is as to whether the Id. Administrative CIT (in short the Id. CIT) was justified in invoking

revisionary jurisdiction u/s.263 of the Act in the facts and circumstances of the case.

3. We have heard rival submissions and perused the materials available on record. We find that return of income for the A.Y.2009-10 was filed by the assessee company on 25/09/2009 declaring total income of Rs.14,45,050/- under normal provisions of the Act and Rs.14,33,547/- u/s.115JB of the Act. This return was processed u/s.143(1) of the Act. Later the assessment was sought to be reopened by issuance of notice u/s.148 of the Act. In the re-assessment proceedings, the Id. AO observed that the Sales Tax authorities, Maharashtra had conducted search operation in the case of assessee company and other group concerns wherein Shri Abhishek Morarka, Director of assessee company had given a statement on 06/01/2010 u/s.14 of the Maharashtra Value Added Tax Act, 2002. In the said statement, the said Director had categorically stated that no purchase or sales activities were actually carried out by his concern and that they are merely accommodation entries provided to various persons. The Id. AO based on the conduct of the assessee in the past i.e. A.Yrs 2006-07, 2007-08 and 2008-09 and also in the subsequent years i.e., A.Yrs 2011-12 and 2012-13 to reject the book results of the assessee u/s.145(3) of the Act and proceeded to treat the assessee as an accommodation entry provider and taxed the commission income alone on the total value of purchase and sale transactions at 1% thereon.

3.1. The Id. AO also observed that for the substantial volume of purchase and sales transactions to the tune of Rs.487.99 Crores, the essential and incidental business expenditure like 'transportation and handling charges' and 'freight charges' on sales were incurred only to the extent of Rs.30,027/- and nil respectively, which is very uncommon for

the substantial volume of transactions carried out by the assessee. The Id. AO vehemently placed reliance on the statement of Director of the company Shri Abhishek Morarka wherein he had categorically stated that his concerns had only issued tax invoices without carrying actual purchase and sale of goods. The Id. AO also proceeded to seek information u/s.133(6) of the Act from various suppliers and customers as detailed by the assessee, which got returned unserved by the postal authorities. The Id. AO also observed that even in the case of certain documents filed by the assessee such as tax invoice cum delivery challan, the total quantity of fabrics purchased or sold and its value alone were mentioned and other information like description of goods traded, place of delivery and other requisite details were not provided therein. None of the parties had even filed copies of transport receipts, octroi receipts, warehousing receipts etc., In these peculiar facts and circumstances, the Id. AO had no other option but to reject the books of accounts of the assessee and the book results of the assessee company u/s.145(3) and also considering the behaviour of the assessee in the past as well as in subsequent years and also by giving due credence to the statement recorded by the Maharashtra Sales Tax Authorities wherein it had been categorically stated that the assessee company was only involved in providing accommodation entries in the form of receiving and supplying bogus bills for purchase and sales, proceeded to treat the assessee as an accommodation entry provider and taxed commission income at 1% of total value of purchase and sale transactions. We find that this assessment order was framed by the Id. AO after thorough examination of the transactions. Considering the circumstances in which such decision was taken by the Id. AO, the Id. CIT had sought to revise the said assessment order by treating the same as erroneous and prejudicial to the interest of the revenue by invoking his revisionary jurisdiction u/s.263

of the Act for the limited purpose of examination of bogus purchases alone by placing reliance on certain decisions as under:-

- a. Hon'ble Delhi High court in the case of CIT vs. D.K.Garg reported in 404 ITR 757*
- b. Hon'ble Gujarat High Court in the case of N.K. Industries Ltd., vs. DCIT reported in 292 CTR 354*
- c. Hon'ble Gujarat High Court in the case of CIT vs. Simit P Sheth reported in 356 ITR 451.*

3.2. We also find the Id. CIT while setting aside the order passed by the Id. AO had observed that the Id. AO had failed to carry out proper investigation of the issue relating to bogus purchases, thereby causing revenue loss to the department.

3.3. We find that the Id. AO had made proper enquiry with regard to the status of the assessee to be an accommodation entry provider in the facts and circumstances of the instant case. For this purpose, the Id. AO had also placed reliance on the behavior of the assessee in the past as well as in the subsequent years as narrated hereinabove. We also find that the Id. CIT(A) for the A.Yrs 2006-07 and 2007-08 vide its order dated 25/01/2017 had recorded a categorical finding that assessee is indeed an accommodation entry provider and had processed to estimate net profit i.e. commission income at 0.15% of the total turnover as against 1% adopted by the Id. AO. Since a categorical finding is recorded by the Id. CIT(A) in assessee's own case in earlier years that assessee is merely an accommodation entry provider and that situation had admittedly not been

changed during the year under consideration before us, we hold that there is absolutely no need for the Id. CIT to take a divergent stand by directing the Id. AO to examine the veracity of bogus purchases alone. We also find that the case laws of Hon'ble Gujarat High Court relied upon by the Id. CIT supra were rendered in the case of beneficiaries of accommodation bills and hence the same are not applicable to the facts of the instant case. We hold that assessee herein is an accommodation entry provider. We find that the Hon'ble Delhi High Court decision relied upon by the Id. CIT in the case of CIT vs. D.K.Garg (supra) was in the case of an accommodation entry provider wherein the assessee therein had requested for adoption of peak credit theory in a situation where he could not explain the source of various deposits made in the bank account. In that context, the Hon'ble Delhi High Court rejected the peak credit theory and directed to tax the total deposits as unexplained cash credit u/s.68 of the Act. We hold that such decision is factually distinguishable with the instant case. It is not in dispute that in the instant case, the Director of the assessee company had indeed given statement before the Maharashtra Sales Tax authorities during the course of sales tax search and had also categorically stated that it is only engaged in providing accommodation entries and no actual purchase and sale activities were carried out by the assessee company. It is well settled that what is to be taxed ultimately is only the real income of the assessee company. Considering the totality of facts and circumstances of the

instant case and considering the behavior of the assessee in earlier and subsequent years which had also been approved by the Id. CIT(A) in certain years, we hold that commission income alone could be assessed as the real income of the assessee and not the value of transactions. We also find that under exactly similar circumstances, this Tribunal in the case of City base Multitrade Pvt. Ltd., vs. ITO in ITA No.3374/mum/2016 and 4131/Mum/2016 dated 21/10/2016 had treated the assessee to be an accommodation entry provider and only 0.10% profit on the entire turnover was sought to be added as income of that assessee. Hence, we find that the version of the Id. AO had also been subsequently approved by this Tribunal in another case falling under exactly similar circumstances as stated supra. In these circumstances, it cannot be said that the order passed by the Id. AO is erroneous. Now, the law is well settled that the order of the Id. AO should be both erroneous and as well as prejudicial to the interest of the revenue in order to enable the Id. CIT to invoke his revisionary jurisdiction u/s.263 of the Act. In the instant case, certainly one of the conditions is conspicuously absent. Moreover, the conscious decision has been taken by the Id. AO by considering the past and future behavior of the assessee while framing the assessment. Hence, it could be safely concluded that the Id. AO had indeed taken a possible view in the matter. Hence, on this ground also, the Id. CIT could not invoke revisionary jurisdiction u/s.263 of the Act. We find that the Id. CIT while coming to the conclusion that the order of the Id. AO was erroneous had

not even bothered to verify the past records of the assessee in order to understand the behavior of the assessee in toto before reaching to the conclusion.

3.4. In view of the aforesaid observations and respectfully following the judicial precedent relied upon hereinabove, we have no hesitation in quashing the revision order passed by the Id. CIT u/s.263 of the Act. Accordingly, the grounds raised by the assessee are allowed.

4. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this 04/10/2019

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Mumbai; Dated
KARUNA, *sr.ps*

04/10/2019

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai