

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

INCOME TAX APPEAL NO.413 OF 2017

Principal Commissioner of Income Tax,
Central - 4 ... Appellant
versus
M/s. Paramshakti Distributors Pvt. Ltd. ... Respondent

Mr. Shyam Walve, for Appellant.

**CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.**

DATE : 15th JULY, 2019

P.C.:

1. The Revenue has filed this Appeal to challenge the Judgment of the Income Tax Appellate Tribunal (“the Tribunal” for short). The following questions are presented for our consideration :

(i) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in reducing the addition from Rs.23.16 Lakhs to Rs.2,21,600/- under Section 68 of the Income Tax Act in respect of the purchases made from M/s. Chevron Metal Products Pvt. Ltd., in spite of the fact that the Director of the said Company had admitted that the transactions were merely accommodation entries ?

(ii) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in deleting the enhancement of GP made by the Ld.

CIT(A) from 2.59% to 6.00% of the turnover of Rs.151 crores, thereby giving undue relief of Rs.4.92 Crores to the assessee ?

2. The first question pertains to restricting the addition of Rs.23.16 Lakhs to Rs.2,21,600/- by the Tribunal. The Assessing Officer had made the said addition on the ground that the assessee's purchases were found to be bogus. The entire purchase amount was therefore, added to the assessee's income. The Tribunal, however, restricted to the said sum of Rs.2,21,600/-. The Tribunal recorded that the Assessing Officer has not rejected either the purchases or the sales made out of the said purchases. The Tribunal therefore, was of the opinion that the addition should be restricted to 10% of the total purchases. The Revenue strongly disputes this proposition.

3. Without elaboration, what the Tribunal by the impugned Judgment held is that the Department had not rejected the instance of the purchases since the sales out of purchase of such raw material was accounted for and accepted. With above position, the Tribunal applied the principle of taxing the profit embedded in such purchases covered by the bogus bills, instead of disallowing the entire expenditure. We do not find any error in the view of the Tribunal. No question of law arises.

4. The second issue pertains to addition at the hands of the Assessee made by the CIT (Appeals). It appears that the Assessee had disclosed profit at GP rate 2.59%. The Assessing Officer had not tinkered with this disclosure. However, in Appeal, the

Commissioner (Appeals) after putting the Assessee to notice, enhanced the profit @ 6% GP. The Tribunal by the impugned Judgment deleted such addition and allowed the Assessee's Appeal. The Tribunal noted that there was no material to discard the Assessee's book results. No incriminating material or evidence of the Assessee's transactions outside the books have been brought on record. It was under these circumstance, the Tribunal deleted the addition made by the CIT (Appeals). We do not find any error in the view of the Tribunal. There was no evidence on record to disturb the Assessee's book results. No question of law arises. The Income Tax Appeal is dismissed.

(S.J.KATHAWALLA, J.)

(AKIL KURESHI, J.)