

Only profits embedded in purchases made from grey market are taxable in hands of assessee

Summary – The High Court of Gujarat in a recent case of Sathyanarayan P. Rathi, (the Assessee) held that where though purchase of raw material was not made from party from whom assessee claimed but such material was purchased from open market by incurring cash payment, only profit element of such purchases and not entire purchases was to be added to income of assessee.

The Revenue filed an appeal against the judgment of the Tribunal. Following question was raised for consideration:

“Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in restricting the disallowance to the extent of 12.5% of the addition on account of bogus purchase, without appreciating the factual aspect and by ignoring the manifest evidence relied upon by the Assessing Officer and overlooking the ratio laid down by the Hon’ble High Court in the case of Pawanraj B. Bokadia in Tax Appeal No. 3245 of 2009 dated 29/09/2011.”

The Issue pertains to bogus trade made by the respondent-assessee. Assessee is in the business of trading in iron and steel. For the Assessment Year 2003-2004, during the reassessment proceedings, it was found that the purchases worth Rs. 61.40Lacs (rounded off) were not supported by sufficient evidence. The assessee's claim of having purchased such goods from various suppliers was verified, but was not found genuine. It was found that such parties had never supplied the goods as named by the assessee.

On such basis, the Assessing Officer made addition of entire amount of purchase of Rs. 61.40 Lacs (rounded off). The assessee carried the matter in appeal and CIT (Appeals) partly allowed the appeal. It was found that though the purchases were not made from the parties from whom the assessee claimed, there was complete quantitative tally of material purchased and sold. In that view of the matter, CIT (Appeals) was of the view that such materials were purchased from the open market incurring cash payment and bills were procured from various sources. Resultantly, Commissioner (Appeals) added only profit element and not the entire amount of the said purchase.

Assessee carried the issue in further appeal before the Tribunal and the Tribunal gave further relief to the assessee and refused addition to the level of 12½% in pursuance of the various purchases. Revenue' appeal was dismissed.

From the record, the HC noticed that the Commissioner (Appeals) as well as the Tribunal found that the purchase of raw-material, in which the assessee was trading, were only made, but not from the disclosed sources. In other words, the case against the assessee was that the purchases were made in

the grey market through cash payment and some entries were obtained from certain suppliers who had not sold such goods.

The present case, thus, being one of only purchase but not from disclosed sources, it would be only profit element embodied in such purchase which could be added in the income of the assessee and thus, rightly so done by the Commissioner (Appeals) and the Tribunal.

In the result, the Tax Appeal was dismissed by the HC.