

## **No sec. 69C additions if sum towards purchase of paintings was paid through proper banking channel**

**Summary – The Mumbai ITAT in a recent case of ACG Arts & Properties (P.) Ltd., (the Assessee) held that where addition under section 69C was made on account of bogus purchases in respect of paintings, since existence of transaction between assessee and suppliers/sellers could not be doubted and payments were made to suppliers through banking channels and paintings were in possession of assessee and were duly reflected as a part of closing stock, impugned addition was unjustified**

### **Facts**

- During search conducted upon a group of concerns which included assessee-company it was revealed that the assessee and one of other entities of the group were indulged in accepting bogus purchase bills in respect of paintings and sculptures possessed by them and that such bills were obtained from persons who were engaged in providing accommodation entries.
- The Assessing Officer noted that the aspect of effecting bogus purchase of paintings came to light in the course of search and the subsequent investigation carried out by the Investigation Wing. In particular, the Assessing Officer had referred to the statements recorded of the stated suppliers of the paintings by the Investigation Wing. The gist of the statements of the suppliers was that the said persons denied having supplied any paintings to the assessee-company. However, the persons admitted having received payments through account payee cheques drawn by the assessee and deposited in their bank account. The persons uniformly deposed that money was withdrawn after clearing of cheques and after retaining their commission, the balance of the cash was given back to the person, who gave them the cheque. The Assessing Officer had based his stand primarily on the statement recorded from the issuers of purchase bills. The summons under section 131 were issued to such suppliers. In response to summons, only one RS appeared and confirmed that he had indeed sold the paintings. The said statement of RS was not given any credence by the Assessing Officer on the ground that he did not furnish his bank statement when asked for; and, secondly, for the reason that in an earlier deposition before the Investigation Wing the said person had denied having sold any paintings to the assessee and refused to accept that the relevant bills were issued by him. For all the said reasons, the Assessing Officer treated the entire amount of purchase as unexplained.
- On appeal, the Commissioner (Appeals) also upheld the additions made by the Assessing Officer.
- On second appeal:

### **Held**

- The case made out by the Assessing Officer is that the purchase of paintings by the assessee is unproved. Factually speaking, the existence of the paintings and the same being in the possession of the assessee, was not in dispute, in as much as, all the paintings in question, except one (which has been sold during the year) are available as a part of the closing stock. In fact, the crux of the dispute is with regard to the point of purchase of the paintings. The depositions of the stated

suppliers/sellers have been relied upon by the Revenue to contend that no such paintings were indeed sold/supplied by them to the assessee. Notably, assessee demonstrated before the lower authorities that the consideration paid to such sellers/suppliers was through account payee cheques, which stood ultimately credited in the accounts of such suppliers/sellers. The Co-ordinate Bench in the case of *ACG Associated Capsules (P.) Ltd. v. Asstt. CIT* [IT Appeal Nos. 2829 & 2830 (Mum.) of 2014, dated 25-2-2015] in similar circumstances held that 'there is no merit for adding the amount of paintings in the assessee's income when the source of funds for making such purchase was not in dispute, nor the physical form of paintings.' In the case of *Mrs. Kavita Singh (Pro. Of Reflections) v. Dy. CIT* [IT Appeal Nos. 1240 & 1241 (Mum.) of 2012, dated 28-10-2015] also similar situation prevailed and the addition made on account of unproved purchases was deleted. In coming to such decision, the Bench noted that 'the right of cross-examination which was prayed for by the assessee was also not allowed to her. If this opportunity would have been given, the picture would probably much more clear.'

- Now, one may briefly touch upon the statement of the suppliers/sellers relied upon by the revenue. The case made out is that the stated suppliers/sellers of paintings of the assessee received cheques and after clearance withdrew the cash and after deducting their commission, balance of cash was handed over to the person who came with the cheques and suppliers also stated that they were in the business of bill discounting and adjustment transactions. It has also been pointed out that the stated suppliers/sellers are not in the business of paintings and therefore, the transaction of purchase as canvassed by the assessee is not proved. In this context, there is not enough material with the revenue to establish that the purchase of paintings is *per se* bogus, as the subsequent discussion would show. Pertinently, existence of the transaction between assessee and the stated suppliers/sellers could not be doubted, inasmuch as, the consideration had flown from the assessee to such parties by account payee cheques, which stand cleared to the credit of the bank account of such suppliers. While one agrees with the reasoning of the department that payment by account payee cheques by itself does not prove genuineness of the transaction but in the instant case more is required to prove that the transaction was bogus. The reason that in the present case, the existence of paintings in the possession of the assessee, of-course, except one which has been sold, was not in dispute. The statement of the stated suppliers/sellers did not prove that the consideration going out of the assessee's bank account had come back to the assessee in the form of cash. Quite clearly, even the statement given by the stated suppliers/sellers only say that cash was returned by them to the person who gave them the cheques; there was uniformity in the statements on the aforesaid aspect. At this point, it is to be emphasized that it was for the revenue to establish the link, if any, between the person who is stated to have received back the cash from the stated suppliers/sellers and the assessee. It is in this background, one has to appreciate the reasoning given by Co-ordinate Bench in the case of *Mrs. Kavita Singh (Pro. of Reflections) (supra)* that right of cross-examination of the suppliers ought to have been allowed. If the aforesaid exercise would have been done, the complete picture would have emerged. Otherwise, the only prudent

inference that can be drawn is that the paintings in question existed in the possession of the assessee; and, at best the purchases had been effected from some other parties and not the stated suppliers/sellers. In fact, as per the given state of verification, it can also be a probability that stated suppliers/sellers have acted for and on behalf of the actual sellers of paintings to the assessee and if that be so then no fault can be found with the transaction carried out by the assessee. Therefore, for all these reasons, and there was not enough material with the revenue to treat the purchase transaction as bogus or not proved. Be that as it may, there is no justifiable reason to depart from the conclusion drawn by co-ordinate Benches in the cases of *Mrs. Kavita Singh (Pro. of Reflections)* (*supra*) and *ACG Capsules (P.) Ltd. (supra)*, wherein also similar stand of the revenue, *qua* purchase of paintings found in the search, has been found to be unsustainable.

- In fact, with regard to one of the transaction, wherein one painting had been sold and profit thereof was credited in the profit & loss Account, there was no doubt about the sale made. The assessee is quite justified in invoking the ratio laid down by the Bombay High Court in the case of *Nikunj Eximp Enterprises (P.) Ltd. (supra)*, in such a situation, to canvass that where sale of purchased goods is not doubted, the corresponding purchases could not be construed as bogus.
- For all the above reasons, it is fit and proper to set aside the order of Commissioner (Appeals) and direct the Assessing Officer to delete the impugned addition.