

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ 'बी', मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH MUMBAI
BEFORE SHRI R.C.SHARMA, AM
&
SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./ITA No.7584 to 7588/Mum/2014

(निर्धारण वर्ष / Assessment Year :2007-08 to 2011-2012)

M/s Mercury International, 207, Sant Tukaram Road, Opp.Sita Hotel, Iron Market, Mumbai-400009 And M/s Kagalwala & Associates	Vs.	CIT(A)-24, Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAFM 6318 D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Dr. K.Shivram&Ms.Neelam Jadhav
राजस्व की ओर से /Revenue by :Shri Randhir Gupta
सुनवाई की तारीख / **Date of Hearing** : **26/07/2016**
घोषणा की तारीख/**Date of Pronouncement** **24/08/2016**

आदेश / O R D E R

PER R.C.SHARMA (A.M):

These are the appeals filed by the assessee against the order of CIT(A), Mumbai, for the assessment years 2007-2008 to 2011-2012, in the matter of order passed u/s.143(3) r.w.s.147 of the I.T.Act.

2. Common grounds have been taken by the assessee in all the years under consideration, which relates to validity of reopening as well as merit of the addition made on account of bogus purchase.

3. Rival contentions have been heard and record perused. As the facts and circumstances in all the years under consideration are same, as a lead cease, we shall take the appeal for the assessment year 2007-08.

Facts in brief are that The assessee is a partnership firm engaged in the business of ship chandlers, general merchants and suppliers of marine

stores since 1978. The firm was managed by two families namely Gilitwalas and Tehsildars. The assessee has been supplying stores products varying in the range of 1500 products useC\in the Marine Industry and major customers are PSUs namely Shipping Corporation of India Ltd. (SCI), ONGC, Mazgaon Docks Ltd and Coast Guards Region (West), which constitutes almost 98% of total sales revenue. The assessee had filed the return of income on 07/11/2007 declaring total income at Rs. 29,58,970/-. Assessment u/s 143(3) was completed on 22/12/2008 (as mentioned in the computation of total income in the assessment order) assessing total income of Rs. 30,44,247/-. The information was received from the office of the DDIT (Inv) Unlt-II (1) that the assessee had shown bogus/suspicious purchases from various vendors who are listed in the web site of sales tax department and which are presumed as hawala dealers by the sales tax Department. accordingly an open enquiry was conducted by the investigation wing and during the course of the said enquiry certain incriminating documents/material were impounded. The Dy. Comm. of Income Tax - 13(1), Mumbai, reopened the assessment on the ground of information received from the office of the DDIT (Inv) Unit II-1, that the assessee had shown bogus/suspicious purchases from various vendors, who were listed in the web site of sales tax department as hawala dealers by the Sales Tax Department. Copy of Reasons recorded for Re-opening of Assessment was also given to the assessee. During the year assessee had made purchases from bogus suppliers amounting to Rs.4,62,96,530/-

The Assessing Officer made an addition of Rs. 46,29,653/- on the ground that the assessee would have made an additional margin @ 10% on the said bogus purchases.

4. Against the above order, the assessee reached to the CIT(A), who upheld the validity of reopening. However, after discussing the issue in great detail and applying various proposition of law to the facts of the instant case, upheld the addition of 6% of alleged bogus purchases. Against the above order of CIT(A), revenue is not in appeal before us. However, assessee has approached us for balance addition of Rs.6% as upheld by the CIT(A).

5. We have considered rival contentions and found from record that after examining in great detail, the CIT(A) has upheld the addition of 6% on the said disputed purchases.

6. It was contended by Id. AR that all the documents were submitted in support of the disputed purchases before the AO which include partywise sales summary, product wise sales summary, partywise TIN details and ledger/accounts confirmation/bank statements.

7. Our attention was also invited to the statement of Mr. Gilitwala (Partner) under oath that to his knowledge all purchases were genuine and to the fact that all payments or purchases were made by account payee cheque. It was also alleged by Id. AR that opportunity to cross examine alleged Hawala dealers were requested but neither the statement nor an opportunity was given. As per Id. AR the assessee has net margin before partner's remuneration & taxes @5.8% only and

almost 98% of sales revenue comes from competitive tender sales to PSU's where the margins are low.

8. On the other hand Id. DR relied on the orders of lower authorities

9. We have considered rival contentions and carefully gone through the orders of authorities below and also deliberated on the judicial pronouncements referred by lower authorities in their respective orders as well as judicial pronouncements cited by Id. AR during the course of hearing before us, in the context of factual matrix of the instant case.

10. So far as validity of reopening is concerned, we found that on the basis of information by the sales tax department regarding bogus suppliers and also keeping in view the reasons recorded by AO for reopening, we do not find any infirmity in the action of AO for reopening of the completed assessment.

11. From the record we found that the assessee being a trading concern merely sells purchased items at a small mark up to its purchases without any further processing. We also found that the AO has not questioned sales made by the assessee. We also found that most of the sales were made to a government entity. The AO has not doubted sales undertaken by the assessee nor rejected books of accounts. However, no comparative chart was placed on record by assessee to substantiate the contention that assessee had earned same margin of profit out of sales of goods purchased from hawala dealers vis-a-vis other regular dealers. Under these circumstances and keeping in view the GP rate and net profit rate shown by the assessee in earlier years vis-a-vis profit rate generally

shown by other assessee engaged in similar trade, and also keeping in view the advantage obtained by assessee through purchases from hawala dealer and the totality of facts and circumstances of the case, we modify the orders passed by lower authorities and restrict the addition to the extent of 3% of the alleged bogus purchases in place of 10% upheld by AO and 6% upheld by the CIT(A).

12. As the facts and circumstances in all the other years are exactly same, following the reasoning given hereinabove, we direct the AO to restrict the addition to the extent of 3% of the disputed purchases.

13. In the result, all appeals of the assessee are allowed in part.

Order pronounced in the open court on this 24/08/2016.

**Sd/-
(SANDEEP GOSAIN)**

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated 24/08/2016

प्र.कु.मि/pkm, नि.स/ PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A), Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

**Sd/-
(R.C.SHARMA)**

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार
(Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai