

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JM AND SRI ASHWANI TANEJA, AM**

ITA No.1196/Mum/2015

(A.Y:2010-11)

Magnum Steels 3 rd Floor, Snt Tukaram RD, Iron Market, Mumbai-400 009	Vs.	Asst. Commissioner of Income Tax, Rom No.117, 1 st Floor, Aayakar Bhavan Mumbai-20
Appellant	..	Respondent
PAN No. AAPFM9078F		
Assessee by	..	Shri R. S. Sharma, AR
Revenue by	..	Shri Suman Kumar, DR
Date of hearing	..	28-02-2017
Date of pronouncement	..	28-02-2017

ORDER

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of CIT(A)-28, Mumbai, in appeal No. CIT(A)-23/ACIT-12(1)/IT-119/2013-14 dated 30-12-2014. The Assessment was framed by ACIT Circle 12(1), Mumbai for the A.Y. 2010-11 vide order dated 20-03-2013 u/s 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of assessee is against the order of CIT(A) against restricting the disallowance of 12.50% of bogus purchases being estimated profit rate. For this assessee has raised following 2 grounds: -

“1. IST appellate authority erred in disallowing 12.50% of the purchases made from the parties whose names are appearing in the list of suspicious dealers on the website of the Maharashtra Sales Tax Department.

2. IST appellate authority erred in applying the case laws of Sanket Steel Traders of the Ahmedabad Tribunal without considering the fact that recently Mumbai Income Tax Appellate Tribunal has in the case law of Ganpatraj A Snaghavi V/s ACIT and DOT V/s Rajeev G. Kalathil

has decided that purchases made from the parties whose names are appearing in the list of the suspicious dealers on the website of the Maharashtra Sales Tax Department cannot be disallowed.

Honourable Mumbai High Court in the case of CIT. V/s Nikunj Eximp Enterprises (P.) Ltd. (2013) has also decided Purchases made from these parties cannot be doubted. All these three case laws were decided after the case law of the Sanket Steel Traders V/s ITO- 5(a), Vadodara, ITA No.201/Ahd/2008. Accordingly, decisions of honourable Mumbai High court and Mumbai, ITAT supersede the case law based on which CIT (A) has passed the order.”

3. Briefly stated facts are that the assessee is engaged in the business of trading in iron and steel and declaring total purchase at Rs.97,16,75,822/-. The AO received information from sale tax department regarding purchase made from the dealers of hawala parties by the assessee to the extent of Rs. 3,48,41,491/- According to information of Sales Tax Department these bogus parties who are engaged in profiting accommodation entries without doing any business and without delivery of goods as follows: -

S.No.	Name of the purchase party	TIN	Amount
(1)	Mercury enterprises	27450698246V	3,44,999
(2)	Navkar corporation	27810662837V	5,00,007
(3)	Deep enterprises	27750595164V	20,34,997
(4)	Niddhish Impex pvt ltd	27600648257V	19,43,385
(5)	Diamond traders	27550698385V	5,75,005
(6)	Hitech Impex	27370682867V	3,34,999
(7)	Max enterprises	27310714328V	6,92,134
(8)	Khodiyar enterprises	27310549428V	41,34,931
(9)	Jai krishna enterprises	27140347810V	2,18,91,310
(10)	Ghatalia steels / Divine enterprises	27950092109V	3,55,999
(11)	Tulsiani Rading private ltd	27440688212V	20,33,725
	TOTAL		3,48,41,491

4. Before the AO as well as CIT(A) assessee produced the details of purchases, sales and also submitted details of octroi payments and payments of

transportation charges for all these materials. The assessee also produced purchase bills, sale bills, challans and stated that in this **line** of trade i.e. iron and steel the profit margin is only 1 to 2%. The AO made enquiries with the relevant parties but there was no party available from whom the assessee made purchase or even the transporters were not available. Hence, he treated these bogus purchases of Rs. 3,48,41,491/- as bogus purchases and made disallowance of 25% of these bogus

5. Purchases as profit amounting to Rs.87,10,372/-. Aggrieved assessee preferred the appeal before CIT(A), who following the case law of Ahmedabad Bench ITAT decision in the case of Vijay proteins Ltd. 58 LTD 428 (Ahd Trib) restricting disallowance at 12.5% of the bogus purchases as against estimated by the AO at 25% by observing as under: -

“In the case of Sanket Steel Traders vs. ITO -5(1), Vadodra, ITA No.2801/Ahd/2008 for the A.Y. 2004-05 dated 20th May, 2011, the facts of the case were that the assessee derived income from trading in iron, angles, plates etc. During the course of investigation, it was found by the AO that the purchases claimed to have been made by the assessee from M/s Girnar

Sdies Lorporatlon and Shiv Metal Corporation were bogus. The total purchases made from the two parties during the year were as under:

<i>M/s.Girnar Sales Corporation</i>	<i>Rs. 5,31,496/-</i>
<i>fi) M/s.Shiv Metal Corporation</i>	<i>Rs. 10,48,897/-</i>
	<i>Rs.1 5,82,393/-</i>

The payment made'to these parties duringthe year under consideration was as under:

<i>M/s.Girnar Sates Corporation</i>	<i>Rs.21,18,369/ii)</i>
<i>M/s.Shiv Metal Corporation</i>	<i>Rs. 5,58,190/</i>
	<i>Rs.26,76,559</i>

The AO disallowed the purchase as bogus purchases and also made the addition for payment made to these parties as unexplained paymeriL. Accordingly, the total addition made by him was Rs.42,58,952/- (Rs.15,82,393 plus Rs.26,76,559/-). On appeal, the CIT(A) following the decision of the STAT in the case of Vijay Proteins and Others, 'disaLlowed 30% of the total addition i.e. Rs.42,58,952/-. Both the assessee as well as the ITO aggrieved with the order of the Ld.CIT(A) filed an appeal before the Hon'ble ITAT. While the addition of Rs.26,76,559/- was deleted by the Hon'ble ITAT, with regard to the disallowance of 30% of the total addition by the Ld. CIT(A) following the decision of the Hon'ble Tribunal in the case of Vijay Proteins, the Hon'ble ITAT held as follows :-

"9. So for as the bogus purchase is concerned, we find that the Assessing Officer recorded the detailed finding so as to establish that the purchases claimed to have been made from Girnar Sales Corporation and Shiv Metal Corporation was bogus. The learned counsel for the assessee was unable to controvert the factual finding recorded by the AO in this regard. However, there is no dispute that the assessee is only a trader in the it-on and steel and it has maintained quantitative details. The statement made by the learned counsel that the purchases claimed to have bee made by the assessee from Girnar Sales Corporation and Shiv Metal Corporation is duly recorded in the books of the assessee and has been reflected either in the sales or in the closing stock, is not controverted. On these facts, the decision in the case of Kulubi Steel (supra) would be squarely wherein the ITAT held as under:

"8. From the above, it is evident that the assessee did not make any effort to controvert the finding

recorded by the DDIT (investigation) and it made no efforts to produce the seller parties on the other hand it claimed that it is not his responsibility to produce the seller. It is a settled law that onus is on the assessee to establish the genuineness of the purchase. The assessee has produced various evidence with regard to the receipt of the goods Dy J, i.e. stock register, receipt of weigh-bridge for weighing of goods purchased by the assessee, octroi receipt for the payment of octroi duty etc. After considering the entire material, we are of the opinion that the assessee did not purchase the goods from the parties mentioned in the sales bill. At the same time, it did purchase the goods from some other suppliers, may be without bill. Therefore, purchase rate as mentioned in the alleged sales bill cannot be accepted. Any person indulging in the practice of purchasing goods from the grey market and obtaining bogus bills of some other parties, would do so for getting some benefit. But what would be the magnitude of the benefit would depend upon facts of each case. In the case of Vijay Proteins) /TAT held that such benefit to be 25% and therefore sustained the disallowance for bogus purchase at 25%. In the case of Sunsteel (supra), the ITAT deemed it fit to sustain the disallowance for a lumpsum amount of Rs.50,0001-. However, we find that in the case of Shri Anubhai Shivial (supra) the /TAT has considered both the decisions in L.,ecase of Vijay Proteins and Surteel (supra) and thereafter sustained the disallowance at 12.5%. Relevant findings of the ITAT in the case of Anubhai Shivalal reads are under:

3. At the time of hearing before us, it is submitted by the learned counsel that the addition sustained is excessive. In support of this contention he referred to

the decision of the Tribunal in the case of /TO Vs. Sun Steel 92 TTJ (Ahd) 1126 wherein the Tribunal has sustained the addition of rs.50,0001- on account of bogus purchases. However, we find that the facts in the above case were different. In the above case, the assessee has shown purchases of Rs.27,39,4101-, sale of Rs.28,17,2071- and GP at Rs.94,7401-. The Assessing Officer made the addition of Rs.27,39,4071- for bogus purchases. If the above sum is added to the GP, the GP works out Rs.28,34,12471- which was more than the sale itself. The Tribunal held that it is impossible that the GP is more than the sale itself. The Tribunal also found that the assessee has maintained the quantitative details in respect of materials purchased and sold. Considering peculiar facts of that case, the Tribunal arrived at the conclusion that it would be fair and reasonable to estimate the addition at Rs.50,0001- as against the addition of Rs.27,39,4071- made by the Assessing Officer. However, the learned Commissioner of Income Tax (Appeals) considering the facts of the assessee's case, has sustained the addition at 12.5%. While doing so, he has also relied upon the decision of the Tribunal in the case of M/s.Vijay Proteins Ltd., 55 7TJ (Ahd) 76. In the case of MIs. Vijay Proteins Ltd., the Tribunal has sustained the addition of 25% of the bogus purchases. However, considering the facts of the assessee's case the C!T(A) restricted the disallowance to 12.5% as against 25% made in the case of MIs. Vijay Proteins Ltd. From these facts it is evident that the CIT(A) has sustained the addition at 12.5% of the non-genuine purchases considering the facts of the assessee's case. We, therefore, do not find

any justification to interfere with the order of the CIT(A) in this regard. The same is sustained."

After considering the facts and the arguments of both the sides, we are of the opinion that it would meet ends of justice, if the disallowance is sustained at 12.5% of the purchase from these two parties. The Assessing Officer is directed to work out the disallowance accordingly.

Since the facts of the assessee's case are identical, we respectfully following the above decision of the ITAT, direct the Assessing Officer to disallow 12.5% of the purchases made during the year under consideration.

2.12 Considering the totality of the facts and circumstances; as also the decision of the Hon'ble Tribunal in the case of Sanket Steel Traders (supra) which is also in the business of trading in steel items, in my opinion disallowance of 12.5% of the purchase price in respect of the goods purchased from the parties in question would be reasonable. The total disallowance and, the consequent addition to the total income would, therefore, work out to Rs.43,55,186/- as against the addition of Rs.87,10,372/- made by the Assessing Officer. The addition to the extent of Rs.43,55,186/- is, therefore, upheld. The ground of appeal filed by the assessee is partly allowed." "

Aggrieved, now assessee is in second appeal before Tribunal.

6. We have heard all rival contentions and gone through the facts and circumstances of the case. We find that admittedly the assessee has made sales but could not produce the parties before the AO or before CIT(A) from whom the purchases were made. Even during an inquiry the Revenue could not trace these parties i.e. either the transporters or the sellers. Admittedly these parties

from whom the assessee has made bogus purchases are hawala dealers declared by sale tax department of Maharashtra. In such circumstances we are of the view that the CIT(A) has reasonably estimated profit rate on bogus purchases and rightly estimated at 12.5% of the bogus purchase. We confirm the order of CIT(A) and appeal of assessee is dismissed.

7. In the result, the appeal of assessee is dismissed.

Order pronounced in the open court on 28-02-2017.

Sd/-
(ASHWANI TANEJA)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 28-02-2017

Sudip Sarkar /Sr.PS

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,
Assistant Registrar
ITAT, MUMBAI