

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JM**

ITA No.7320/Mum/2016

(A.Y:2009-10)

Devang S. Mehta 42/48 Chintamani Bldg, 4 th Floor, R. No. Cavel X Lane, No.1, Ram Wadi Mumbai-02 PAN No. AJZPM6262A	Vs.	Income Tax Officer Ward No. 18(1)(3) 203, Earnest House, Nariman Point, Mumbai-400021
Appellant	..	Respondent
Assessee by	..	None
Revenue by	..	Shri Purushottam Kumar, DR
Date of hearing	..	24-05-2017
Date of pronouncement	..	02-06-2017

ORDER

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of CIT(A)-29, Mumbai, in appeal No. CIT(A)-29/IT-332/ITO-18(1)(3)/15-16 dated 24-10-2016. The Assessment was framed by ITO Ward -18(1)(3) Mumbai for the A.Y. 2009-10 vide order dated Nil u/s 144 read with section 147 of the Income Tax Act, 1961 (hereinafter ‘the Act’).

2. The first issue in this appeal of assessee is as regards to the reopening of assessment. For this assessee has raised following ground No. 1:

“1. In the fact and in the circumstances of the case and in Law, the learned CIT(A) erred in confirming the Re-opening the assessment under section 147 of the Income Tax.”

3. I have heard the learned Sr. DR and gone through the facts and circumstances of the case. I find that the assessee has not filed any return of income and department received information from DGIT investigation, who in turn received information from Sales Tax Department that the assessee has made purchases from hawala entry providers, who merely is providing invoices and not actually delivery of goods. The assessee has made following bogus

purchases: -

TIN	Name of the Party	Amount (Rs.)
27310540795V	Om Corporation	77,02,115/-
27870543397V	Rumpgeet Enterprises	66,09,960/-
	Total	1,43,12,075/-

On the basis of information, the AO issued notice under section 148 and CIT(A) also confirmed the same on the same premises by observing in Para 3.3.2-

“In this case, there is no question of change of opinion as the appellant has never filed the return of income. The return of income for AY 2009-10 was due in September, 2009 whereas the appellant has filed the return of income on 23/03/2015 i.e. after the issue of notice u/s 148 dated 24/03/2014, subsequent repeated notices U/s 142(1) and summons u/s 131 dated 16/03/2015. Therefore, the re-opening proceedings u/s 147 are perfectly valid and legal and are-upheld. This ground of appeal is dismissed.”

Aggrieved assessee is now preferred the appeal before Tribunal.

4. I have gone through the facts and circumstances and find that there is no change of opinion and even the assessee has not filed original return of income and no assessment has taken place and this is within 4 years from the end of relevant assessment year. Accordingly, the reopening is confirmed.

5. The next issue in this appeal of assessee is against the order of CIT(A) confirming the addition of bogus purchase by estimating the profit rate at 12.5% of Rs. 1,43,23,075/- and making addition of Rs. 17,89,009/-. For this assessee has raised following ground No. 3: -

“3. In the fact and in the circumstances of the case and in law, the ld. CIT(A) erred in confirming the addition of Rs. 17,89,009/- on Account of alleged

purchase from Hawala operations. estimating profit
@ 12.5% on Rs. 1,43,12,075/-”

6. I have heard the learned Sr. DR and gone through the facts and circumstances of the case. I find that CIT(A) has just confirmed the action of the AO in applying the profit rate at 12.5% and reduced 1% of GP on the basis of already estimated these purchases by observing in Para 5.2 as under -

“5.2. The submissions of the learned counsel have been carefully considered but cannot be accepted. The learned counsel submits that the books of account are maintained and all the purchases are recorded in the books but sadly nothing has been produced during the assessment proceedings or during the appellate proceedings. Therefore, his statement cannot be relied upon. He placed heavy reliance on the audit report which has been furnished during the proceedings. But as already mentioned above, the GP percentage has also been wrongly given, in the audit report and therefore the audit report cannot be relied upon at all. He also stated that all details and documents in their possession have been provided to the AG but the fact remains that whatever was material to prove the genuineness of the purchases could not be produced by the appellant either at the assessment stage or at the appellate stage. The case laws relied upon by the learned Counsel for the appellant also are not of any help to him as the facts in those cases and the facts of the assessee's case are totally different. Those are the cases where assessee have submitted certain evidences regarding the purchases like the purchase invoices, the delivery challans and the bank statements. But in this case nothing could be produced, in fact, the assessee expressed his inability to produce even the books of account. Another noteworthy point is that the assessee has not even

filed his return of income for the relevant AY. As already discussed at para 3, though the due date of filing the return of income was 30th September, 2009 he has not furnished the return till 23/03/22015, that too after repeated notices and summons by the AO. Therefore, it can be concluded that the assessee has done nothing to prove the genuineness and in fact he has tried to defy law by not filing the return of income and not producing the books of account or any bills and vouchers Therefore, the addition made by the AO of 12.5% GP of the alleged bogus purchases is upheld. However, the GP of 1% which has already been estimate on these purchases has to be reduced from the estimated GP of 12.50/o. This ground of appeal is dismissed.”

7. I find that the assessee claimed before lower authorities that books of account are maintained and all the purchases are recorded in the books but nothing has been produced during the assessment proceedings or during the appellate proceedings before CIT(A). Even now before me also the assessee has done nothing to prove the genuineness and did not produce the books of account or any bills and vouchers. Hence, I find no infirmity in the order of CIT(A) and hence, the orders of lower authorities are confirmed and the appeal of the assessee is dismissed.

8. **In the result, the appeal of assessee is dismissed.**

Order pronounced in the open court on 02-06-2017.

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 02-06-2017
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.

BY ORDER,
Assistant Registrar
ITAT, MUMBAI