



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"D" BENCH, MUMBAI**  
**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI NABIN KUMAR PRADHAN, ACCOUNTANT MEMBER**

ITA no.6014/Mum./2014  
(Assessment Year : 2010-11)

M/s. Reliable Automotive P. Ltd.  
Plot no.29, Sector no.1  
Shirwgaon, Nerul, Navi Mumbai 400 020  
PAN – AAACA9737D

..... Appellant

v/s

Dy. Commissioner of Income Tax  
Circle-10(3), Mumbai

..... Respondent

Assessee by : Shri S.M. Makhija  
Revenue by : Shri B.S. Bist

Date of Hearing – 04.08.2016

Date of Order – 24.08.2016

**ORDER**

**PER SAKTIJIT DEY, J.M.**

Instant appeal by the assessee is directed against the order dated 27<sup>th</sup> August 2014, passed by the learned Commissioner (Appeals)-22, Mumbai, for the assessment year 2010-11.

2. The grounds raised by the assessee in the present appeal pertains to the issue relating to addition of ₹ 15,01,141, made by the Assessing Officer and confirmed by the learned Commissioner (Appeals) on account of bogus purchases.

3. Brief facts are, assessee a company is authorised dealer of Tata Motors Light Commercial vehicles and its spares and service. Assessee basically purchases truck chasis of Tata Motors and sells them to the customer. For the assessment year under consideration, assessee filed its return of income on 29<sup>th</sup> September 2010, declaring total income of ₹ 1,65,21,390. During the assessment proceedings[, on the basis of information received from Investigation Wing of the Department, it was found by the Assessing Officer that the assessee has obtained bogus purchase bills amounted to ₹ 15,01,141 from three entities as under:–

<i>Mahavir Enterprises</i>	<i>₹ 7,81,691</i>
<i>Krsna Enterprises</i>	<i>₹ 2,13,750</i>
<i>Jain Corporation</i>	<i>₹ 5,05,700</i>

4. On the basis of information received from Investigation Wing of the Department, Assessing Officer issued a notice under section 142(1) to the assessee on 31<sup>st</sup> December 2012, seeking his explanation on the issue of bogus purchases. As observed by the Assessing Officer in response to the said notice, assessee in its reply dated 22<sup>nd</sup> January 2013, disputed the allegation of bogus purchases by stating that they are genuine purchase from existing parties and payment have been made through account payee cheques. The assessee also submitted the purchase invoices containing invoice number, date, challan number, quantity of goods, rates, etc. It was

also submitted that all the parties are having valid registration under Maharashtra VAT Act on the date of transaction. The assessee also submitted the ledger account of the concerned parties in assessee's books, copies of bank statement reflecting the payment. The Assessing Officer, however, was not convinced with the explanation of the assessee. On the basis of information received from Investigation Wing, he noted that the Sales Tax authorities had carried out investigation in case of parties involved in default of VAT set-off credit. He noted, during the investigation conducted by the Sales Tax authorities, they found that certain parties were engaged in issuing bills as per the requirement of customer without transacting in goods. He noted, on examination of the concerned parties by the Sales Tax authorities they agreed that they had not supplied any material to their customer and have issued bills as per requirement of customers. As the list of such parties supplied by the Sales Tax Department to the Investigation Wing also contained name of three of the parties from whom assessee had purchased goods. The Assessing Officer observed, purchases made by the assessee from these parties were not supported by stock registers, purchase orders, receipts, or transporters' bills. He, therefore, finally concluded that on the basis of detail investigation carried out by the Sales Tax Department, Mumbai, in the course of which, the concerned parties have stated that they were issuing bogus bills, the purchases made amounting to ₹

15,01,141 being bogus purchases cannot be accepted. Accordingly, he added back the amount to the income of the assessee. Being aggrieved of the addition made, assessee preferred appeal before the learned Commissioner (Appeals).

5. The learned Commissioner (Appeals) after considering the submissions of the assessee in the light of material on record found that the assessee claimed to have purchased double bed sheets, curtains, etc., from Jain Corporation, however, the invoice as well as delivery challan did not indicate the mode of transport, vehicle number, etc. The stock register and transport bill was also not filed. He also noted that assessee's claim of purchase of screws, angles, polish, fevicol, etc., for putting up hoardings at different sites cannot be accepted in the absence of required bills submitted by the assessee. As far as the allegation of assessee that the Assessing Officer did not confront or supply the statement of the suppliers, learned Commissioner (Appeals) observed that as the Assessing Officer has not used those statement against the assessee, there is no need for providing copies of those statement to the assessee or allowing him to cross examine them. Accordingly, he confirmed the addition made by him.

6. Learned Authorised Representative submitted before us, though, in the notice issued under section 142(1), the Assessing Officer called

upon the assessee to explain the genuineness of the purchases in view of the information obtained from the Investigation Wing of the Department and statement of hawala operators who allegedly confirmed of having given bogus bills, however, no such details / statements was supplied to the assessee, except, the name of the parties with their TIN/PAN. In this context, he placed before the Bench copy of notice under section 142(1) dated 31<sup>st</sup> December 2012, along with its enclosure. Learned Authorised Representative submitted, in response to the said notice, though the assessee in its reply dated 22<sup>nd</sup> January 2012, had specifically requested the Assessing Officer to provide the copies of the statement of concerned parties and other materials forwarded by the Investigation Wing, however, the Assessing Officer completed the assessment without supplying the copies of the statements of the concerned parties and without affording an opportunity to the assessee to cross examine them. Learned Authorised Representative submitted, the purchases made by the assessee are genuine. He submitted as the assessee sells truck chesis to customers, for benefit of divers who for the delivery of chesis to customers travel long distance the assessee purchases bed sheets, curtain, etc. He submitted, for putting up hoarding for advertisement, the assessee also purchases some materials like screws, angles, fevicol, etc. He submitted, in support of purchases made, assessee has submitted the purchase invoice, ledger copies and all other relevant

details including bank account, copies reflecting payment made in cheques. He submitted, as against such evidence submitted by the assessee, the Assessing Officer has not conducted any independent enquiry on his own and has simply relied upon the information obtained from the Sales Tax department as forwarded by the Investigation Wing without confronting them to the assessee. He, therefore submitted the Assessing Officer having utilised statements of third parties, without affording opportunity to the assessee to cross examine them while treating the purchase made as bogus, the addition made cannot be sustained. In this context, he relied upon the decision of the Hon'ble Supreme Court in *Andaman Timber Industries v/s Commissioner of Central Excise*, in Civil Appeal no.4228/2006, vide judgment dated 2<sup>nd</sup> Sept. 2015. He also relied upon a number of other decisions of the Hon'ble High Court as well as the Tribunal as under:–

- i) *H.R. Mehta v/s ACIT, ITA no.58 of 2001;*
- ii) *M/s. R.W. Promotions P. Ltd. v/s ACIT, ITA no.1489 of 2013;*
- iii) *Andaman Timber Industries v/s CIT, Civil Appeal no.4228 of 2008;*
- iv) *DCIT v/s Shri Rajeev Kalathil, ITA no.6727/Mum./2015;*
- v) *K ishinchand Chellaram v/s CIT, 125 ITR 713;*
- vi) *ACIT v/s Tarla R. Shah, ITA no.5295/Mum./2013;*
- vii) *Balaji Textile Ind. P. Ltd. v/s ITO, 49 ITD 177;*
- viii) *Hiralal Chunnilal Jain v/s ITO, ITA no.4547/Mum./2014, etc.;*
- ix) *Ramesh Kumar & Co. v/s ACIT, ITA no.2959/Mum./2014*
- x) *Rajeev Kalathil, ITA no.6727/Mum./2012, etc.;*
- xi) *Rajesh P. Soni v/s ACIT, 100 TTJ 892; and*
- xii) *Diagnostic v/s CIT & Anr., 334 ITR 11.*

7. Learned Departmental Representative, however, relying upon the observations of the Assessing Officer / learned Commissioner (Appeals) submitted, the assessee had not furnished the required details like transport bill, mode of transport, stock register, etc., to prove the genuineness of purchases. Alternatively, he submitted, if the assessee was not supplied the statement of third parties or not given opportunity to cross examine them, the matter can be restored back to the file of the Assessing Officer.

8. We have considered the submissions of the parties and perused the material available on record. As is evident, the addition made on the allegation of bogus purchases is on the basis of information forwarded by the investigation wing of the Department which in turn obtained information from sales tax authorities at Mumbai. It is alleged that the sales tax department while investigating VAT credit set-off default have found that certain parties are providing bogus purchase bills to the customers without actual transactions in goods. It is alleged, in the course of such investigation, sales tax authorities have interrogated the concerned parties who in the statement recorded from them have admitted of having issued bogus purchase bills. On a perusal of the notice issued under section 142(1) by the Assessing Officer on 31<sup>st</sup> December 2012, it is observed, he has sought

explanation of the assessee on the alleged bogus purchases on the basis of information obtained from sales tax authorities revealing nothing except the name of the entities with their PAN / TIN numbers and the amount of purchase. Coupled with the aforesaid facts, when we examine the assessment order, it is noticed that except the information forwarded by the Investigation Wing along with materials obtained from the Sales Tax Department, there is no other information available with the Assessing Officer to prove the purchases as bogus nor he has conducted any independent enquiry on his own to establish that purchases are bogus. It is also relevant to observe that the assessee in its explanation dated 22<sup>nd</sup> January 2013, has not only submitted the purchase details, copy of ledger account, copy of bank statement to prove the purchases made but has also specifically requested the Assessing Officer to supply him the adverse material collected from the Sales Tax Department such as statement recorded from parties, etc., and allow cross examination of the concerned parties. However, assessee's request has not been heeded to. The Assessing Officer by making some vague and general allegation that assessee has not produced stock registers, transport details, etc., has treated the purchases bogus solely relying upon the information obtained Sales Tax Department and forwarded by the Investigation Unit. Thus, there is not a figment of doubt that the entire addition made by the Assessing Officer treating the purchases as bogus is on

the basis of adverse material obtained from the Sales Tax Department, which are nothing but statement recorded from third parties. These materials were utilised for the purpose of making addition without supplying them to the assessee or allowing an opportunity to assessee to cross examine the concerned parties. Therefore, addition made on the basis of such untested material is in gross violation of rules of natural justice. It is salutary principle of law when any adverse material in the nature of statement recorded from a third party is going to be utilised in detriment to the interest of the assessee, he must be afforded an opportunity of cross examining the concerned party. Hon'ble Supreme Court in Andaman Timber Industries (supra) while laying down the aforesaid principle observed that any assessment made on the basis of statement recorded from a third party without allowing an opportunity to the aggrieved person to cross examine such party is in violation of rules of natural justice, hence, the assessment will not stand the scrutiny of law, therefore, has to be declared as invalid. Applying the principle laid down by the Hon'ble Supreme Court as above, the addition made by treating the purchases made as bogus relying upon the statement of the third parties and other adverse material without confronting the same to the assessee and without allowing him an opportunity to cross examine them is in violation of the principles of natural justice, hence, the addition made cannot be sustained. Further, we have noted that the Assessing Officer

on the basis of information obtained from the Sales Tax authorities has made the addition without making any independent enquiry on his own to establish on record that the purchases are bogus. That being the case, the addition made by treating the purchases as bogus cannot be sustained. The decision relied upon by the learned Authorised Representative support this view. In the aforesaid view of the matter, we delete the addition made by the Assessing Officer and sustained by the learned Commissioner (Appeals).

9. In the result, assessee's appeal stands allowed.

Order pronounced in the open Court on 24.08.2016

**Sd/-**  
**NABIN KUMAR PRADHAN**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 24.08.2016**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

(Dy./Asstt. Registrar)  
ITAT, Mumbai