

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'D', मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI

Before Shri Shamim Yahya, AM & Shri Shaktijit Dey, JM

ITA Nos.5352 & 5353/Mum/2015
Asst.Years 2010-2011 & 2011-2012

The Income Tax Officer Ward 3(5) Kalyan.	बनाम/ Vs.	M/s.Reliable Enterprises 6 Jai Gurupooja, Plot No.6 Gandhi Nagar, Dombivali (East) Pin – 421 201 PAN : AAHFR2045D.
(अपीलार्थी /Appellant)		(प्रत्यर्थी/Respondent)

Appellant by : Shri Purshottam Kumar

Respondent by : Shri Haresh R.Joshi

सुनवाई की तारीख / Date of Hearing : 21.08.2017	घोषणा की तारीख / Date of Pronouncement : 03.10.2017
---	--

आदेश / ORDER

Per Shamim Yahya, AM

These are appeals by the Revenue directed against common order of learned CIT(A) dated 27.08.2015 pertaining to assessment years 2010-2011 and 2012-2013.

2. The issue raised is that CIT(A) erred in sustaining disallowance of only 12.5% of bogus purchase as against 100% disallowance for bogus purchases made by the Assessing Officer, as under:-

<u>Assessment Year</u>	<u>Amount of disallowance</u>
2010-2011	Rs.53,90,260
2011-2012	Rs.66,23,720

3. In this case the assessee is engaged in the business of trading in electronic items under the name and style M/s. Reliable Enterprises. On the

basis of information received from Investigation Wing, the AO noticed that the assessee was a beneficiary of Hawala entry operators. The assessee had shown purchases amounting to Rs. 65,52,857/- from various parties, who were listed by the Sales Tax authorities as Hawala operators i.e. only providing bills without there being any actual transaction of purchases or sales. Therefore, AO issued notice u/s. 148 of the I.T. Act, to the assessee and re-opened the assessment proceedings. During the course of the assessment proceedings, the AO asked the assessee to establish the genuineness of the purchases shown from all such parties. The assessee filed copies of purchase bills and also stated that the payment to all the parties had been made through cheques. However, the assessee could not file copies of transport bills, delivery challans and octroi payments in respect of all such transactions. It was submitted that as the goods were hand delivered to the assessee, therefore, there were no such transport and octroi bills. The AO deputed his Inspector, who obtained information in respect of all such parties u/s. 133(6) of the I.T. Act and reported that no business activity was being carried out at any of the addresses mentioned in respect of all these parties. The AO asked the assessee to produce the parties before him for examination, which was not done. The AO therefore, after rejecting the books of accounts of the assessee u/s. 145(3) of the I.T. Act for not being complete and correct, added the amount of Rs. 65,52,857/- to the assessee 's income by treating all such purchases as bogus purchases.

4. Against the above order assessee appealed before the learned CIT(A). Learned CIT(A) referred to the fact that sales have not been doubted. He referred to some case laws and concluded by holding that

12.5% of the bogus purchase would meet the ends of justice. The learned CIT(A) held as under:-

“8. I have carefully considered the appellant's submissions, observations of the AO in the assessment order and the facts of the case. The appellant had shown purchases amounting to Rs, 65,52,857/- from various parties which appeared in the list of Sales-tax Department who had indulged in Hawala transactions i.e. providing only bills without there being any actual purchase or sale transaction. The AO conducted inquiries through his inspector, who reported that none of the parties existed at the given addresses and no business activity was being carried out at those addresses. The appellant could not produce the parties before the AO for his examination. The appellant also did not have any transport bills, delivery challans or octroi payment receipts in respect of these purchases. Therefore, the appellant had not been able to establish the genuineness of the purchases from such parties.

9. With regard to the appellant's reliance on various decisions it is seen that the facts of the appellant's case are different from the facts of the decisions relied upon by the appellant. In the case of Nikunj Exim (supra) the Hon'ble Bombay High Court held that the assessee in that case had filed confirmations from the suppliers, copy of bank account statement showing payment through check, stock reconciliation statement etc. Based on all this evidence the Tribunal's order holding that purchases were not bogus was held to be well reasoned. In the case of CIT vs. M.K. Brothers, it was held by the IT AT that there was no evidence that the parties had issued bogus vouchers and that the payment made by the assessee in that case through checks had been received back by the assessee. It was held that even though there were some doubtful features of the transactions but sufficient evidence was not there to hold the purchases as bogus. The Hon'ble Gujrat High Court upheld the order of the IT AT by observing that whether the said transactions were bogus or not was a question of fact. In the case of Rajeev Kalathil vs ITO it was held that AO

had made the addition as one of the supplier was declared a hawala dealer by the VAT Department. It was a good starting point for making further investigation and taking it to logical end. But the AO left the job at initial point itself, hi the appellant's case, the AO has carried out independent enquiries by issuing notices u/s 133(6) and also through the inspector of the Ward. On the basis of inquiries conducted by the AO, it was established that none of these parties existed at the addresses given by the appellant and no business activity was being carried out there. Therefore, the appellant has not been able to establish the genuineness of the purchases. However, it is seen that if the whole of the amount of bogus purchases is added to the income of the appellant then the net profit rate for the year under consideration will go up to 14% and for the Assessment year 2010-11 to 18% as can be seen from the chart below –

	A. Y. 2010-11	A. Y. 2011-12
Turnover	2,99,11,417/-	4,78,61,560/-
Net profit	29,240/-	70,864/-
NP%	0.10%	0.15%
Amount of bogus purchases	53,61,017/-	65,52,857/-
Net Profit after addition of bogus purchases	53,90,257/-	66,23,721/-
NP% after addition	18%	14%

10. *Such a net profit rate is too high and not practical in the appellant's line of business. Moreover, if the sales were there, purchases have to be there as well as held by the IT AT, Bombay Bench 'B' in the case of Balaji Textile Industries Pvt. Ltd. Therefore, the only inference that can be drawn in that case is the appellant had made purchases in the open market and had obtained bills from the Hawala operators. In this process the appellant saved on the sales-tax 7 VAT and enhanced his profit by inflating the purchases. In this regard it is seen that in the case of CIT vs Simit P. Sheth, 356 ITR 451, Hon'ble Gujrat High Court held as under –*

The assessee in this case was engaged in the business of trading in steel on wholesale basis. Assessing Officer noticed that some of the alleged suppliers of steel to the assessee had made their statements on oath to the effect that they had not supplied the steel to the assessee but had only provided sale bills. In turn, they were receiving a small commission. The AO during the course of the assessment proceedings noticed that there were no documents other than the delivery challans and sale invoices. There was no movement of goods. He, therefore, concluded that total purchases of Rs. 41,04,903/- cumulatively made from the said three parties were bogus. He thus, treated such purchases as bogus purchases and added the entire amount of Rs. 41,04,903/- to the gross profit of the assessee. The Commissioner (Appeals) though confirmed the view of the Assessing Officer that the purchases were not made by the said three parties viz. Bhavna Trading Co., M/s. Minaxi Enterprise and Arun Industrial Corporation but believed that the appellant assessee had made the purchases from other parties in the open market. Thereupon, he retained 30% of the purchase cost as the probable profit of the assessee. The Tribunal was of the opinion that twelve and half percent of the disputed purchases should be retained in the hands of the assessee as business profit.

In the present case, CIT believed that when as a trader in steel the assessee sold certain quantity of steel, he would have purchased the same quantity from some source. When the total sale is accepted by the Assessing Officer, he could not have questioned the very basis of the purchases. In essence therefore, the Commissioner (Appeals) believed assessee's theory that the purchases were not bogus but were made from the parties other than those mentioned in the books of accounts.

That being the position, not the entire purchase price but only profit element embedded in such purchases can be added to the income of the assessee. So much is clear by decision of this Court. In particular, Court has also taken a similar view in case of Commissioner of Income Tax-IV vs. Vijay M Mistry

Construction Ltd. vide order dated 10.01.2011 passed in Tax Appeal No. 1090 of 2009 and in case of Commissioner of Income Tax-I vs. Bholanath Poly Fab Pvt. Ltd. vide order dated 23.10.2012 passed in Tax Appeal No. 63 of 2012, The view taken by the Tribunal in case of Vijay Proteins Pvt. Ltd. Vs. CIT reported in 58 ITD 428 came to be approved.

This being the position, the only question that survives is what should be the fair profit rate out of the bogus purchases which should be added back to the income of the assessee. The Commissioner adopted ratio of 30% of such total sales. The Tribunal, however, scaled down to 12.5%. We may notice that in the immediately preceding year to the assessment year under consideration the assessee had declared gross profit @ 3.56% of the total turnover. If the yardstick of 30%, as adopted by the Commissioner, is accepted GP rate will be much higher. In essence, the Tribunal only estimated the possible profit out of purchases made through non-genuine parties. No question of law in such estimation would arise. The estimation of rate of profit return must necessarily vary with the nature of business and no uniform yardstick can be adopted.

11. The appellant is also engaged in the business of trading. Therefore, following the decision of the Hon'ble Gujarat High court in the case of CIT vs. Simith P. Sheth (supra) 12.5% of the amount of unproved purchases is disallowed to the appellant. Consequently, addition amounting to Rs. 8,19,107/- being 12.5% of Rs. 65,52,857/- is sustained for the AY 2011-12. This ground of appeal is therefore partly allowed.

12. As the facts of the appellant's case for AY 2010-11 are identical, addition for that year is also sustained to the extent of Rs. 6,70,127/- being 12.5% of the unproved purchase amount of Rs. 53,61,017/-."

5. Against the above order of learned CIT(A) assessee is in appeal before the ITAT.

6. We have heard both the Counsel and perused the records. We find that credible and cogent information was received in this case by the assessing officer that certain accommodation entry provider / bogus suppliers were being used by certain parties to obtained bogus bills. Assessee was found to have taken accommodation entry/bogus purchase bills during the concerned assessment year from different parties. Based upon this information assessment was reopened. The credibility of information relating to reopening remains un-assailed. In such factual scenario the assessing officer has made the necessary enquiry. The issue of notice to all the parties have returned unserved. Assessee has not been able to provide any confirmation from any of the party. Assessee has also not been able to produce any of the parties. Necessary evidence relating to transportation of the goods was also not on record. In this factual scenario it is amply clear that assessee has obtained bogus purchase bills. Mere preparation of documents for purchases cannot controvert overwhelming evidence that the provider of these bills are bogus and non-existent.

7. Learned Departmental Representative in this regard has referred to a couple of non-jurisdictional High Court decisions for the proposition that when purchases are found to be bogus, the entire amount should be disallowed.

8. Per contra, learned Counsel of the assessee relied upon the decision of the Hon'ble jurisdictional High Court in the case of Nikunj Eximp Enterprises in writ petition No.2860 of 2012 dated 18.06.2014 and Hon'ble Gujarat High Court decision in the case of Simit P. Sheth.

9. Upon careful consideration, we note that sales in these cases have not been doubted. We find that Hon'ble jurisdictional High Court in the case of Nikunj Eximp Enterprises has upheld 100% allowance for the purchases when the sales have not been doubted. However, the facts of the case were a little different. Furthermore, the sales in that case were basically go Government Departments. Hence the ratio from this decision is not fully applicable on the facts of the case. But the proposition that no sales are possible without purchases is settled.

10. However, the facts of the case indicate that assessee has operated and made purchases in the grey market. Making purchases from the grey market gives the assessee savings / benefits in the form of saving of taxes etc. at the expense of the Exchequer. In similar circumstances, Hon'ble Gujarat High Court in the case of Simit P.Sheth (ITA No.553 order dated 16.01.2013) has held that 12.5% disallowance out of the bogus purchases meets the end of justice. Hence, the background of aforesaid discussion and precedent's from the jurisdictional High Court and Hon'ble Gujarat High Court, we do not find any infirmity in the order of learned CIT(A). Accordingly, we uphold the order of learned CIT(A).

11. In the result, these appeals filed by the Revenue stand dismissed.

Order pronounced on this 3rd day of October, 2017.

Sd/-
(Shaktijit Dey)
JUDICIAL MEMBER

Sd/-
(Shamim Yahya)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 03.10.2017.
Devdas*

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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