

आयकर अपीलीय अधिकरण "H" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 2501/Mum/2017

(निर्धारण वर्ष / Assessment Year : 2011-12)

Income-tax Officer 20(3)(1) 6 th Floor, R.No. 622 Piramal Chambers Lalbaug , Parel , Mumbai	बनाम/ v.	Shri Rajesh P Mehta Flat No. 9, Building No. 63 Navjeevan CHS Limited Lamington Road , Mumbai-400008
स्थायी लेखा सं./PAN : AFPPM3920D		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:		Shri. T A Khan
Assessee by :		None

सुनवाई की तारीख / **Date of Hearing** : 23-10-2017

घोषणा की तारीख / **Date of Pronouncement** : 23-10-2017

आदेश / O R D E R

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the Revenue, being ITA No. 2501/Mum/2017, is directed against the appellate order dated 27-01-2017 passed by learned Commissioner of Income Tax (Appeals)-32, Mumbai (hereinafter called "the CIT(A)"), for assessment year 2011-12, appellate proceedings had arisen before learned CIT(A) from the assessment order dated 09-02-2016 passed by learned Assessing Officer (hereinafter called "the AO") u/s 144 r.w.s. 147 of the Income-tax Act, 1961 (hereinafter called "the Act").

2. The dispute in this appeal is in narrow compass. The AO received information from office of DGIT(Inv.), Mumbai that the assessee is engaged in bogus purchase activities from hawala operator wherein the assessee is beneficiary of these alleged hawala entries of purchases to the tune of Rs.1,53,98,333/-. The assessee has made purchases to the tune of Rs. 1,53,98,333/- from the following four parties who were allegedly hawala entry operator engaged in issuing bills without supplying any material :

S.No.	Name of the party	Amount (In Rs.)
1.	Akshar Distributor Private Limited	37,13,459/-
2.	Darshat Tradin Private Limited	46,82,031/-
3.	Hiten Enterprises	26,50,624/-
4.	Nirmal Trading Company	43,52,219/-
	Total	153,98,333/-

The AO observed that the afore-said dealers from whom the assessee purchased the material to the tune of Rs.1,53,98,333/- were listed as hawala dealers in Maharashtra Sales Tax departments web site and on investigation, the Maharashtra sales tax department has come to the conclusion that these dealers are allegedly hawala operators wherein bogus bills were issued by these dealers without delivery of goods. This led to reopening of the assessment u/s 147 , wherein notice u/s 148 was issued to the assessee on 3-11-2014 which was duly served on the assessee. The AO also issued notices u/ 142(1) to the assessee as well email were also sent to the assessee but the assessee did not responded to the notices issued by the AO which led to the additions of the entire alleged bogus purchase to the tune of Rs.1,53,98,333/- to the income of the assessee vide best judgment assessment order dated 09-02-2016 passed by the AO u/s 144 r.w.s. 147 of the 1961 Act .

3. The assessee filed first appeal with learned CIT(A) being aggrieved by the ex-parte assessment order passed by the AO. The assessee submitted that the assessee made total purchases to the tune of Rs. 1.67 crores and out of these purchases to the tune of Rs. 1,53,98,333/- were from alleged hawala dealers. It was submitted that the assessee was not allowed cross examination of these alleged hawala dealers as there statement were recorded at the back of the assessee. The assessee submitted that the AO did not provided statement of the said dealers to the assessee. The assessee also justified that these four dealers are genuine parties who were duly registered with VAT department. The assessee produced copies of purchase invoices, bank statements , corresponding sales invoices against these purchases . The assessee also submitted that stock register is also maintained by the

assessee. The assessee also quantitative reconciled the stock before learned CIT(A) . The assessee also cited certain case laws before learned CIT(A). The learned CIT(A) observed that the AO did not made any efforts to make additions. The learned CIT(A) accepted that additional evidences filed by the assessee before him establishes that there can be no sales without purchases and purchase , sales bills, bank statements are produced before him. The learned CIT(A) did not called for remand report from the AO and restricted the additions by estimating profits @ 2.36% of alleged bogus purchases , by appellate order dated 27-01-2017 passed by learned CIT(A).

4. Aggrieved by appellate order dated 27-01-2017 , Revenue is in appeal before the tribunal.

5. None appeared for assessee when appeal was called for hearing while learned DR strongly supported assessment order passed by the AO.

6. We have considered contentions of learned DR and perused the material on record. We have observed that the AO received information from office of DGIT(Inv.), Mumbai in respect of the assessee that the assessee is engaged in bogus purchase activities from hawala operator wherein the assessee is beneficiary of these alleged hawala entries of purchases to the tune of Rs.1,53,98,333/-. The assessee has made purchases to the tune of Rs. 1,53,98,333/- from the following four parties who were allegedly hawala entry operator engaged in issuing bills without supplying any material :

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The said dealers from whom the assessee purchased the material to the tune of Rs.1,53,98,333/- were listed as hawala dealers in Maharashtra Sales Tax departments web site and on investigation, the Maharashtra sales tax department has come to the conclusion that these dealers are allegedly hawala operators wherein bogus bills were issued by these dealers without

delivery of goods. This led to reopening of the assessment u/s 147 , wherein notice u/s 148 was issued by the AO to the assessee on 3-11-2014 which was duly served on the assessee. The AO also issued notices u/ 142(1) to the assessee as well email were also sent to the assessee but the assessee did not responded to all these notices issued by the AO as the assessee did not appear before the AO nor any reply was filed by the assessee before the AO which led to the additions of the entire alleged bogus purchase to the tune of Rs.1,53,98,333/- to the income of the assessee vide best judgment ex-parte assessment order dated 09-02-2016 passed by the AO u/s 144 r.w.s. 147 of the 1961 Act . During appellate proceedings before learned CIT(A), the assessee furnished additional evidences which were admitted by learned CIT(A) and additions were restricted by learned CIT(A) by estimating profits to the tune of 2.36% of the alleged bogus purchases. Further, these additional evidences filed by the assessee before learned CIT(A) were not forwarded by learned CIT(A) to the A.O. for giving an AO an opportunity of examination, verification , enquiry as to these additional evidences filed by the assessee for the first time before learned CIT(A) and seeking AO's comments as no remand report was called by the learned CIT(A) as contemplated u/r 46A(3) of Income-tax Rules,1962. It is in the background that the assessee did not attended proceedings before the AO during assessment proceedings conducted by the AO which led to an ex-parte assessment order. The learned CIT(A) is required u/r 46A(3) of Income-tax Rules, 1962 to forward these additional evidences to the AO for his examination and seek remand report from the AO on these additional evidences filed before him for the first time in appellate proceedings prior to adjudicating first appeal on merits, which has not been done in the instant case by learned CIT(A) . In our considered view, since these additional evidences filed by the assessee for the first time before learned CIT(A) during the course of appellate proceedings goes to the root of the matter for deciding issue under appeal on merits , these additional evidences need to be admitted in the interest of substantial justice but these additional evidences needs to be confronted to the A.O. for his examination and comments in compliance of Rule 46A(3) of Income-tax Rules, 1962. These statutory Rules of 1962 cannot be given a simple go-bye and when the law contemplates a thing to be done in a particular manner , the same need to be done in that manner or otherwise it is not be done at all. Rule 46A of the 1962 Rules is

not merely an empty formality. It is in the background that the assessee did not attend proceedings before the AO during assessment proceedings conducted by the AO. Under these circumstances and factual matrix of the matter as discussed by us above, we are inclined to set aside and restore the issues covered by this appeal back to the file of the AO who will de-novo decide the issues on merits in accordance with law. The learned AO shall grant opportunity of being heard to the assessee in accordance with principles of natural justice in accordance with law before de-novo adjudicating the issues on merit. Since, the assessee did not co-operate during assessment proceedings, we would like to clarify that this is an open remand. We order accordingly

7. In the result appeal of the Revenue in ITA No.2501/Mum/2017 for assessment year 2011-12 is allowed for statistical purposes.

Order pronounced in the open court on 23.10.2017

आदेश की घोषणा खुले न्यायालय में दिनांक: 23.10.2017 को की गई।

Sd/-

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER

(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Mumbai, dated: 23.10.2017

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench, E
6. Master File

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BY ORDER
DY/ASSTT. REGISTRAR
ITAT, MUMBAI