

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER**

ITA.No.2213/MUM/2016 (A.Y: 2010-11)

Shalimar Wire Agency
C/o D.C.Bothra & Co. (CA)
297, Tardeo Road, 1st Floor,
Willie Mansion,
Opp. Bank of India,
Nana Chowk, Mumbai – 400 007

v. Dy.C.I.T. Central Circle 2(3)
8th Floor, Old CGO Annexe,
M.K.Road, Mumbai – 400 020

PAN NO.AAGFS 8923 G

(Appellant)

(Respondent)

Assessee by : Shri Nimisha L. Bothra
Revenue by : Shri M.C. Omi Ningshen

Date of Hearing : 05.10.2017

Date of Pronouncement : 27.10.2017

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-48, Mumbai dated 22.01.2016 for the Assessment Year 2010-11.

2. The only issue in the appeal of the assessee is in respect of sustaining the disallowance made by the Assessing Officer towards bogus purchases.

3. Briefly stated the facts are that, the Assessing Officer in the course of Assessment Proceedings noticed that assessee made the purchases of ₹.86,89,450/- from M/s. Ronak Industries, and the assessee was asked to produce the documentary evidences i.e. invoices, ledger account, stock register, lorry receipt, delivery challans, details of parties to whom stock has been sold etc. In response to the same assessee furnished certain details before the Assessing Officer vide letter dated 18.02.2013. Assessing Officer also issued notice u/s. 133(6) to the party M/s. Ronak Industries. However, the notice returned unserved. Assessing Officer also issued summons u/s. 131 of the Act to the said party but the same returned unserved. The assessee did not produce the party before the Assessing Officer. Since no proper satisfactory details and explanation was furnished by the assessee the Assessing Officer concluded that the assessee availed only accommodation entries without purchasing of goods from M/s. Ronak Industries. Therefore, he treated the purchases made by the assessee as non-genuine. Assessing Officer further observed that one Mr.Ramesh Bhurachand Bohra of M/s. Ronak Industries has also given statement before the Sales Tax Department,

Government of Maharashtra that M/s. Ronak Industries is indulged only in providing the accommodation entries. Since the assessee could not produce the party nor confirmations were furnished, Assessing Officer treated the Books of Accounts as non-genuine/not complete and the same were rejected invoking provisions of section 145(3) of the Act. Having rejected the Books of Accounts the Assessing Officer estimated the Gross Profit at 13.76% and treated addition of ₹.86,89,450/- as income of the assessee which the Ld.CIT(A) sustained.

4. Before us the Learned Counsel for the assessee submits that assessee is into trading business of Ferrous and Non-ferrous metals. Learned Counsel for the assessee submits that in the course of Assessment Proceedings various details, documents requisitioned by the Assessing Officer in respect of purchases from M/s. Ronak Industries have been furnished from time to time and such documents are: -

- (i) Copy of purchases invoices containing the required details under VAT law i.e. name, complete address, Telephone No., TIN/CIN no. Of supplier, date, quality, quantity, rate and value of goods/material purchased.
- (ii) Copy of challans through which physical delivery of goods purchased have been received.
- (iii) Extract of stork register evidencing the inward and outward movement of respective goods received and sold exactly.

(iv) Ledger extract of party containing transaction of the entire year.

(v) Copies of bank statements highlighting the payments made through normal banking channels by account payee cheques.

5. Learned Counsel for the assessee submits that without appreciating with the evidences furnished, Assessing Officer merely on the basis of information received from Sales Tax Department and since notices issued u/s. 133(6) were unserved, erroneously concluded that the purchases made from M/s. Ronak Industries are non-genuine and that too without providing the information relied upon and framed the Assessment Order in violation of principle of natural justice. Learned Counsel for the assessee further submits that the Gross Profit margin of the assessee for the Assessment Years 2008-09 to 2010-11 stood at 3.85%, 3.98% and 3.29% respectively and the Gross Profit rate estimated by the Assessing Officer at 13.76% is erroneous and misleading. Learned Counsel for the assessee submits that there is no much variation in Gross Profit rate shown by the assessee in all these three Assessment Years. Learned Counsel for the assessee further submits that the Assessing Officer having accepted the sales, the entire purchases cannot be treated as bogus purchases. He also Placed reliance on the following decisions in its support: -

(i) *CIT v. Simit P. Seth, (2013) 356 ITR 451 (GUJ)*

- (ii) *CIT v. Bholanath Polyfab Pvt. Ltd. (2013) 355 ITR 290 (Guj)*
- (iii) *CIT v. Satyanarayan P. Rathi (2013) 355 ITR 150 (GUJ)*
- (iv) *ITO v. Sunsteel (2005) 92 TTJ (Ahd) 1126*
- (v) *Shri Ghevarchand B. Jain (Appeal No. CIT(A) 27/16(3)/180/13-14) (order dated 01.04.2014 of Hon'ble CIT(A) – 27, Mumbai for A.Y.2010-11)*

6. We have heard the rival submissions, perused the orders of the authorities below and the material available on record. It is very much apparent from the assessment order that the basis for treating the purchases made by the Assessee from certain parties as mentioned in the assessment orders is only the information obtained by the Assessing Officer from Sales Tax department. We find that this information was not parted to the Assessee by the Assessing Officer. It is also not known as to what kind of information Assessing Officer has got from the Sales Tax department relating to the present Assessee before us. Solely based on this information obtained from Sales Tax department, Assessing Officer made addition. Thus, it is apparent that sole basis of addition is only the information obtained from the Sales Tax department by the Assessing Officer. The Assessee for whatever reason might not have produced the parties for verification may be due to lapse of time or may be due to the dealers shifting from their business premises etc., but he has produced the copies of bank statements, where the payments were made through cheques and the ledger copies of the books of the Assessee of the parties etc. to prove the genuineness of the purchases. The Assessing Officer

never doubted the sales made by the Assessee for such purchases, in fact, he has accepted the sales. Without there being any purchases, there could not be any sales. It is also not proved by the Assessing Officer that the amounts paid by the Assessee to the dealers were returned back to the Assessee and the purchase bills issued are only accommodation entries. Simply because the Assessee could not produce the dealers, the entire purchases cannot be treated as bogus purchases. The Assessing Officer could have made further investigations to ascertain the genuineness of the transactions.

7. We find that on identical situation and facts, the Coordinate Bench of the Tribunal in the case of ITO Vs. Sanjay V Dhruv in ITA No.5089/2014, dated 29.02.2016 held that the purchases cannot be treated as bogus purchases and addition cannot be sustained under Section 69C observing as under :

“We have considered the submissions of the parties and perused the material available on record. It is evident from the assessment order that on the basis of information obtained from the Sales Tax Department, Assessing Officer issued notices under section 133(6) to three parties out of which two notices were returned unserved by the postal authorities and in case of one of the parties through notice was served, there was no response. Therefore, he called upon the assessee to produce the concerned parties. As the assessee failed to produce the concerned parties, the Assessing Officer, therefore, primarily relying upon the information obtained from the Sales Tax Department, held the purchases to be bogus and made addition under section 69C of the Act. Though, it may be a fact that assessee

was not able to produce the concerned parties before the Assessing Officer, for whatever may be the reason, fact remains during assessment proceedings itself the assessee had produced confirmed ledger copies of concerned parties, bank account statement, purchase bills, delivery challans, etc., to prove the genuineness of the purchases. It is also a fact on record that the Assessing Officer has not doubted the sales effected by the assessee. Thus, it is logical to conclude that without corresponding purchases being effected the assessee could not have made the sales. Moreover, the Assessing Officer has not brought any material on record to conclusively establish the fact that purchases are bogus. Merely relying upon the information from the Sales Tax Department or the fact that parties were not produced the Assessing Officer could not have treated the purchases as bogus and made addition. If the Assessing Officer had any doubt with regard to purchases made, it was incumbent upon him to make further investigation to ascertain the genuineness of the transactions. Without making any enquiry or investigation the Assessing Officer cannot sit back and make the addition by simply relying upon the information obtained from the Sales Tax Department and issuing notices under section 133(6) of the Act. As the Assessing Officer has failed to make any enquiry or investigation to prove the fact that the purchase transactions are not genuine whereas the assessee has brought documentary evidences on record to prove genuineness of such transactions which are not found to be fabricated or non-genuine, the action of the Assessing Officer in ignoring them cannot be accepted. Moreover, as rightly observed by the learned Commissioner (Appeals), when the payment to the concerned parties are through proper banking channel and there is no evidence before the Assessing Officer that the payments made were again routed back to the assessee, the addition made under section 69C cannot be sustained. Moreover, the decisions relied upon by the learned A.R. on careful analysis were found to be squarely applicable to the facts of the present appeal. Therefore, finding no infirmity in the order of the first appellate authority, we uphold the same by dismissing the grounds raised by the Department.”

8. Further, the Hon'ble Gujarat High Court in the case of Bholanath Polyfab Pvt. Ltd [355 ITR 290] held that when the assessee made purchases and sold the finished goods as a natural corollary not the entire amount covered under such purchases would be subject to tax but only the profit element embedded therein. Similar view has been taken by the Hon'ble Gujarat High Court in the case of CIT v. Simit P. Seth [38 taxman.com 385]. Simply because the parties were not produced the entire purchases cannot be added as held by the Bombay High Court in the case of CIT v. Nikunj Eximp [216 Taxman.com 171]. Thus, following the above decision of the Hon'ble Gujarat High Court in the case of Bholanath Polyfab Pvt. Ltd (supra), We direct the Assessing Officer to restrict the disallowance to 12.5% of the purchases treated as non-genuine by estimating profit element in such bogus purchases.

9. In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on the 27th October, 2017.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Mumbai / Dated 27/10/2017
VSSGB, SPS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

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,

(Asstt. Registrar)
ITAT, Mum