

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHAN, HON'BLE ACCOUNTANT MEMBER**

ITA.No.911/MUM/2016 (A.Y: 2009-10)

**ITA.No.1805 & 3057/MUM/2017
(A.Ys: 2010-11 & 2011-12)**

Shri Prithviraj G. Jain
Room No.3, 2nd Floor, Bordi Bangla,
C.P. Tank Road,
Mumbai – 400 004

v. Income Tax Officer,
Ward -19(2)(5)
Room No. 210, 2nd Floor,
Matru Mandir, Tardeo Road,
Mumbai – 400 007

PAN NO. AAJPJ 4227 F

(Appellant)

(Respondent)

**Assessee by : Shri Rajiv Khandelwal
Shri Neelkanth Khandelwal**

Revenue by : Shri M.V. Rajguru

Date of Hearing : 12.10.2017

Date of Pronouncement : 03.11.2017

ORDER

PER C.N. PRASAD (JM)

1. These appeals are filed by the assessee for the Assessment Years 2009-10 to 2011-12 against the various orders of the Learned Commissioner of Income Tax (Appeals) in sustaining the disallowance

made by the Assessing Officer on account of suspicious purchases. Assessee also challenged the order of the Ld.CIT(A) in sustaining the reopening of assessments u/s. 147 of the Act.

2. In so far as sustaining the reopening of assessment under Section 147 of the Act in all these appeals. The Ld. Counsel for the Assessee submits, the reopening of assessments in all these cases is bad in law. The DR supports the orders of the CIT (Appeals) in sustaining the reopening of assessment.

3. On hearing both the parties, we are of the considered view that the assessments were reopened based on the information received from the Sales Tax department and therefore, we are of the view that there is tangible material came on record after passing intimation u/s 143(1) or after completion of assessments u/s 143(3). In the circumstances, we hold that since the assessments were reopened based on tangible materials and information coming into the possession of the Assessing Officer at later stage, we hold that the reopening of assessments u/s 147 of the Act for all these years is valid, hence the grounds raised by the Assessee against reopening of assessments are dismissed.

4. Coming to the merits of the case, briefly stated the facts are that the assessee is into the trading of steel goods. The assessments for the Assessment Years 2009-10 to 2011-12 were reopened u/s. 147 based on the information received from the Sales Tax Department that some of the dealers are proving only accommodation entries of non-genuine purchases from those parties. In the course of re-assessment proceedings, the assessee was required to show the purchases made from the parties referred to in Page No. 1 of the Assessment Order is genuine. Assessing Officer also issued notice u/s. 133(6) and the notices returned unserved in respect of the parties mentioned in the Page No.1 of the Assessment Order with an endorsement by the Postal Authorities that non known. The submissions of the assessee were rejected by the Assessing Officer observing that assessee made purchases in grey market and obtained only accommodation bills from those parties based on the statements recorded by the Sales Tax Department that the suppliers have given only accommodation bills without any supply of goods. It is observed by the Assessing Officer that the assessee except providing the ledger account and cheque payment details no other documents such as lorry receipts, transportation details were produced in the course of the Assessment Proceedings. Therefore, he rejected the Books of Accounts by invoking provisions of section 145(3) of the I.T Act

as according to the Assessing Officer the entries and the Books of Accounts cannot be relied on. He estimated the profit element in the purchases at 12.5% of the said purchases from those parties and was treated as suspicious purchases and added to the income of the assessee.

5. The assessee before the Ld.CIT(A) contended that in the course of the Assessment Proceedings assessee was asked to prove the genuineness of the purchases and the assessee filed its reply by letter dated 27.09.2014 by filing copies of purchase bills, delivery challans, ledger accounts of the parties, confirmation obtained from such suppliers at the year end and also demonstrated through bank statement that all the payments are made by account payee crossed cheques. Wherein the names of the parties are mentioned. It was contended that the primary onus on the assessee to establish the genuineness of the purchases has been discharged by filling all important pieces of evidences. However, the Ld.CIT(A) sustained the disallowance made by the Assessing Officer at 12.5% of the purchases for the Assessment Year 2009-10 is concerned and in respect of the Assessment Years 2010-11 and 2011-12 are concerned though the action of the Assessing Officer in estimating the Gross Profit at 12.5% of alleged bogus purchases are confirmed he

directed Assessing Officer to deduct the gross profit already declared by the assessee. However, no such direction is given for the Assessment Year 2009-10 is concerned.

6. Before us Learned Counsel for the assessee submits that without appreciating 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 various parties 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 2009-10 to 2011-12 stood at 5.31%, 6.00% and 5.06% respectively and the Gross Profit rate estimated by the Assessing Officer at 12.5% 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)*

7. Before us Learned Counsel for the assessee submitted that the Assessing Officer disallowed the purchases made from the parties referred to in Page 1 of the Assessment Order only based on the information received from Sales Tax Department that those parties have provided only accommodation entries. The parties said to have been deposed before the Sales Tax Authorities that they are providing only accommodation entries without supply of goods. Learned Counsel for the assessee submits that this information is not parted to the assessee. Except issue of notice u/s. 133(6) to the parties no other independent enquiries were carried by the Assessing Officer. It is submitted that all the necessary documents correlating the quantity purchases and sale which are supporting to the transaction, proving authenticity of the transaction was furnished before Assessing Officer. Learned Counsel for the assessee submits that principles of natural justice not adhered to in this case by providing cross examination of the parties who have said to have been deposed that they have provided only the accommodation entries. He placed reliance on the decision of the Coordinate Bench in the case of

M/s. Fancy Wear v. Income Tax Officer in ITA.No.1596 & 1597/MUM/2016 dated 20.09.2017 and submits that the Coordinate Bench observing that violation of principles of natural justice alone the order can be held to be invalid. Therefore, he prayed that the addition made by the Assessing Officer be deleted.

8. Ld.DR vehemently supported the orders of the authorities below.

9. 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.

10. 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.”

11. 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].

12. However, at the same time keeping in view the nature of business of the assessee and the fact that the assessee is making some local purchases without any transportation bills, lorry receipts etc, the possibility

of making purchases in gray market on cash cannot be ruled out. Therefore, keeping in view the average net profit rate shown by the assessee at 5.46% for the Assessment Years 2009-10 to 2011-12 and the totality of facts and circumstances into consideration we direct the Assessing Officer to restrict the disallowance to 2% of the above purchases to meet the anomalies and could cover up the leakages of Revenue.

13. In the result, appeals of the assessee are partly allowed.

Order pronounced in the open court on the 03rd November, 2017.

Sd/-
(G. MANJUNATHAN)
ACCOUNTANT MEMBER

Mumbai /Dated 03/11/2017
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