

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

BEFORE SHRI D.T. GARASIA, JUDICIAL MEMBER

**ITA No.7555/M/2016
Assessment Year: 2009-10**

Chandramohan Malhotra Prop. of Malhotra Steels, Shop No.9 & 10, Shankleshwar Complex, Madhavi Compound, Near Kotak Bank, Village Rehnal, Bhiwandi-421 302 PAN: AHHPM 6409P	Vs.	Income Tax Officer, Ward 3(2), Kalyan
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Miss N. Hemalatha, D.R.

Date of Hearing : 31.07.2017
Date of Pronouncement : 24.08.2017

ORDER

Per D.T. Garasia, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 19.09.2016 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10.

2. The short facts of the case are that the assessee is engaged in the business in reselling iron and steel in wholesale as well as in retail. The information has been received by the Sales Tax Department that assessee was one of the beneficiaries of transactions with hawala dealers. The assessee had shown purchases amounting to Rs.27,73,057/- from the following parties.

Sr. No.	Tin of Hawala dealer	Name of Hawala dealer	PAN of Hawala dealer	Asstt. Year	Amount in Rs.
1.	27460624763V	Shraddha	AOTPM8042B	2009-10	3,35,088/-

		Trading Co.			
2.	27580551753V	Sun Enterprises	BFLPS504IC	2009-10	3,91,643/-
3.	27710551730V	M.R. Corporation	BFLPS4883N	2009-10	4,21,371/-
4.	27900588728V	Balaji Trading	AIOPD3209N	2009-10	11,24,955/-
			Total		27,73,057/-

The names of these parties were appearing in the list of hawala dealers as supplied by the Sales-tax Department of Maharashtra. The hawala dealers had admitted before the Sales- tax authorities in their statement / affidavit that they were providing only accommodation bills without there being any actual purchase / sale of goods. Though the payment was received by the said parties from their customers through banking channels, however, after clearing of the cheques cash was withdrawn and handed over to the customers after deduction of nominal commission charges. The Assessing Officer (hereinafter referred to as the AO) issued notice under section 148 of the Act dated 15.05.2013 to the assessee for re-opening of the assessment proceedings. The assessee has challenged the reopening of the assessment on the ground that his case was reopened on vague and general information.

The AO has made the addition of Rs.27,73,057/- under section 69C of the Act.

3. Matter carried to the Ld. CIT(A) and the Ld. CIT(A) has restricted the addition of 15%.

4. None appeared on behalf of the assessee. I have heard the Ld. D.R. and the Ld. D.R. relied upon the decision of the Tribunal, Ahmedabad Bench in the cases of Shwetambar Steels vs. ITO Ahmedabad and Ganesh Rice Mills vs. CIT (294 ITR 316). The facts in the present case show that assessee could not produce the parties from whom goods are stated to have been purchased. The suppliers were found to be engaged in providing bogus bill without actual dealing of goods. In this regard, the assessee has stated that they had submitted

quantitative details of stock with respect of the sales with purchases from the parties during the assessment proceedings. The assessee has submitted the detail of corresponding sales in respect of the purchase from the said parties. As mentioned above the AO has never disputed or examined the aspect of sales receipts. Since the sales made by the assessee was not doubted or disputed by the AO and he has accepted the sales receipts of the assessee as it is, therefore, the AO cannot deny that purchases were not made by the assessee and the material was not used for its sales. What is under dispute is the purchases from the parties from whom bills have been taken and cheques have been issued to them. Purchases are not in dispute but the parties from whom purchase are shown to have been made are disputed and suspicious. The AO had made the addition as some of the suppliers were declared hawala dealers by the VAT Department. This may be a good reason for making further investigation but the AO did not make any further investigation and merely completed the assessment on suspicion. Once the assessee has brought on record the details of payments by account payee cheque, it was incumbent on the AO to have verified the payment details from the bank of the assessee and also from the bank of the suppliers to verify whether there was any immediate cash withdrawal from their account. No such exercise has been done or findings recorded, There was no detailed investigation made by the AO himself. It is also found that the payments have been made by account payee cheque which are duly reflected in the bank statement of the assessee. There is no evidence to show that the assessee has received cash book from the suppliers. Merely because the suppliers did not appear before the AO or some confirmation letters were not furnished, one cannot conclude that the purchases were not made by the assessee. This view is supported by the decision of Nikunj Eximp Enterprises vs. CIT 216 Taxman 171 (Bom). To this extent, I am of the view that if the assessee has fulfilled its onus of making the payment by cheque and has supplied the addresses of the sellers then it cannot be presumed that supplier were bogus simply because the sellers were not found at the given

address. There is a considerable time gap between the period of purchase transaction and period of scrutiny proceedings. The AO has not brought any material on record to show that there is suppression of sales. It is basic rule of accountancy as well as of taxation laws that profit from business cannot be ascertained without deducting cost of purchase from sales. I held that the Ld. CIT(A) has estimated 15% is on higher side. Therefore, I restrict the addition from 15% to 12.5%. AO is directed to make the disallowance at the rate of 12.5% of the bogus purchases of Rs.27,73,057/-.

5. In the result, assessee's appeal is partly allowed.

Order pronounced in the open court on 24.08.2017.

**Sd/-
(D.T. Garasia)
JUDICIAL MEMBER**

Mumbai, Dated: 24.08.2017.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.