

आयकर अपीलीय अधिकरण “एक-सदस्य मामला” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI

श्री शमीम याहया, लेखा सदस्य के समक्ष ।
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. Nos.5482 & 5483/Mum/2017
(निर्धारण वर्ष / Assessment Years: 2010-11 & 2011-12)

M/s. Parth Tradelinks Pvt. Ltd. B-1602, Kailash Tower, M. G. Road, Kandivali (W), Mumbai-400 067	बनाम/ Vs.	The Income Tax Officer – 13(1)(3) Aaykar Bhawan, M. K. Road, Mumbai-400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAACF 6609 H		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	None
प्रत्यर्थी की ओर से/Respondent by	:	Smt. N. Hemlatha
सुनवाई की तारीख / Date of Hearing	:	28.11.2017
घोषणा की तारीख / Date of Pronouncement	:	05.02.2018

आदेश / ORDER

Per Shamim Yahya, A. M.:

These appeals by the assessee are directed against the respective order of the Commissioner of Income Tax (Appeals) for assessment years 2010-11 and 2011-12 respectively.

2. The common issue raised is that the Id. Commissioner of Income Tax (Appeals) erred in sustaining the disallowance of 6% respectively of bogus purchase.

3. Since the facts are identical, facts and figures from assessment year 2010-11 are being referred here.

4. In this case the Assessing Officer noted that the purchases from the hawala parties were as follows:

Sr. No.	Name of the purchase party	PAN	F.Y.	Amount of transaction
1	Raj Traders	AIJPD9848G	2009-10	6233269
2	Sthapna Trade Impex Pvt. Ltd.	AAKCS6555K	2009-10	1687920
3	Ritesh Corporation	AZEPK3051K	2009-10	2080000
4	Mihir Sales Pvt. Ltd.	AAF6M6408C	2009-10	3087084
5	Shubham Enterprise	AYVPS0870R	2009-10	8339135

5. Notices u/s. 133(6) were issued but no reply was received. The Assessing Officer asked the assessee to establish the genuineness of the purchases claimed from these parties. In the course of assessment proceedings the assessee agreed that addition of Rs.12,85,644/- as profit represented or embedded in the non genuine purchases booked during the year be made as per the order sheet noting the Id. Counsel of the assessee had accepted the disallowance @ 6% of the total purchases from these parties. The Assessing Officer for the reasons mentioned in para 4.5 held that the profits to the tune of Rs.12,85,644/- being 6% of non genuine purchases of Rs.2,14,27,408/- was suppressed. Accordingly, the addition was made.

6. Against the above order, the assessee appealed before the Id. Commissioner of Income Tax (Appeals). The Id. Commissioner of Income Tax (Appeals) confirmed the

action of the assessing officer in making addition of 6% of the bogus purchase by observing as under:

6. I have considered the submissions of the Ld. AR. Contrary to the appellant's submission that no notices u/s 133(6) were issued, I find that in Para 4.5(b) the assessing officer has recorded that the notices u/s 133(6) were issued but was returned unserved since the parties were not available at the stated address. The assessee was informed regarding this vide order sheet entry dated 17.12.2015. The appellant was unable to produce these parties and could not even provide any new address at which summons u/s 131 could be issued. Even in the course of the appellate proceedings, despite opportunity granted, the appellant could not produce the impugned hawala parties. The appellant is a dealer in chemicals and solvents. Purchases of Rs 14.14 crores is shown during the year. The assessing officer has not disallowed the entire purchases. He has instead disallowed only 6% of the purchases by considering the profit element embedded in the impugned sales. The appellant had accepted the disallowance in the assessment proceedings voluntarily. The purchases claimed from these two parties are quite large and it is inconceivable that if the suppliers were genuine, they would be untraceable. Same issue came up in AY 2009-10 wherein the appeal was dismissed in the appeal before me. The appellant's own appeal against that appellate order before the Hon'ble ITAT in ITA 4928/Mum/2016 has been also dismissed vide order dated 07.04.2017.
7. Against the above order of Id. Commissioner of Income Tax (Appeals), the assessee is in appeal before the ITAT.
8. I have heard the Id. Departmental Representative and perused the records. None appeared on behalf of the assessee. I 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. The 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 the assessee has obtained bogus purchase bills. Mere preparation of documents for purchases cannot controvert overwhelming evidence that the provider of these bills is bogus and non-existent.

9. The Sales Tax Department in its enquiry has found the parties to be providing bogus accommodation entries. The assessing officer also issued notices to these parties at the addresses provided by the assessee. All these notices have returned unserved. Assessee has not been able to produce any of the parties. Neither the assessee has been able to produce any confirmation from these parties. In such circumstances, there is no doubt that these parties are non-existent. I find it further strange that assessee wants the Revenue to produce assessee's own vendors, whom the assessee could not produce. The purchase bills from these non-existent/bogus parties cannot be taken as cogent evidence of purchases. In light of the overwhelming evidence, the Revenue authorities cannot put upon blinkers and accept these purchases

as genuine. This proposition is duly supported by Hon'ble Apex Court decision in the case of *Sumati Dayal vs. CIT* [1995] 214 ITR 801 (SC) and *CIT vs. Durga Prasad More* [1971] 82 ITR 540 (SC). In the present case, the assessee wants that the unassailable fact that the suppliers are non-existent and, thus, bogus should be ignored and only the documents being produced should be considered. This proposition is totally unsustainable in light of Hon'ble Apex Court decisions.

10. I further find that Hon'ble jurisdictional High Court in the case of *Nikunj Eximp Enterprises* (in Writ petition no 2860, order dt. 18.6.2014) has upheld 100% allowance for the purchases said to be bogus when the sales have not been doubted. However, the facts of that case were different. Furthermore, the sales in that case were basically to government departments. Hence, the ratio from this decision is not fully applicable on the facts of the case.

11. In these circumstances, the learned Departmental Representative has referred to Hon'ble Gujarat High Court decision in the case of Tax Appeal No. 240 of 2003 in the case of *N K Industries vs. Dy. CIT* vide order dated 20.06.2016, wherein 100% of the bogus purchases was held to be added in the hands of the assessee and tribunals restriction of the addition to 25% of the bogus purchases was set aside. It was expounded that when purchase bills have been found to be bogus, 100% disallowance was required. The special leave petition against this order along with others has been dismissed by the Hon'ble Apex Court vide order dated 16.1.2017.

12. I further note that Hon'ble Rajasthan high court has similarly taken note of decisions of the apex court on the issue of bogus purchases in the case of CIT Jaipur vs Shruti Gems in ITA No. 658 of 2009. The Hon'ble High Court has referred to the decision of CIT Jaipur vs. Aditya Gems, D. B. in ITA No. 234 of 2008 dated 02.11.2016, wherein the Hon'ble Court had *inter alia* held as under:

"Considering the law declared by the Supreme Court in the case of Vijay Proteins Ltd. Vs. Commissioner of Income Tax, Special Leave to Appeal (C) No.8956/2015 decided on 06.04.2015 whereby the Supreme Court has dismissed the SLP confirmed the order dated 09.12.2014 passed by the Gujarat High Court and other decisions of the High Court of Gujarat in the case of Sanjay Oilcake Industries Vs. Commissioner of Income Tax (2009) 316 ITR 274 (Guj) and N.K. Industries Ltd. Vs. Dy. C.I.T., Tax Appeal No.240/2003 decided on 20.06.2016, the parties are bound by the principle of law pronounced in the aforesaid three judgments.

13. Upon careful consideration I note that this is not an appeal by the Revenue. Hence, it will not be appropriate to consider and take away the relief already granted by the Assessing Officer and the Id. Commissioner of Income Tax (Appeals) to the assessee. As held by the Hon'ble jurisdictional High Court when sales are not doubted 100% disallowance for bogus purchase is not disallowable. Hence, I confirm the order of Id. CIT(A).

15. In light of the above High Court and Hon'ble Apex Court decision, the decisions of tribunal referred by the Id. Ld. Counsel of the assessee are not being dealt with.

16. In the result, these appeals filed by the assessee stand dismissed.

Order pronounced in the open court on 05.02.2018

Sd/-

(Shamim Yahya)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 05.02.2018

व.नि.स./Roshani, Sr. PS

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

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai