

THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" Bench, Mumbai  
Before Shri B.R. Baskaran (AM)

I.T.A. No. 6872/Mum/2017 (Assessment Year 2010-11)  
I.T.A. No. 6873/Mum/2017 (Assessment Year 2011-12)

Late Shri Sushilkumar Dwarkanath Ghai (Through Legal Heir Shri Rakesh Sushilkumar Ghai) C-43/160, Shiv Colony Near Chopda Court Ulhasnagar, Thane-421 003. PAN AABPG6690D (Appellant)	Vs.	ITO Ward 2(4) Khadkpada Kalyan  (Respondent)
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Assessee by	None
Department by	Ms. Arju Goradia
Date of Hearing	21.2.2018
Date of Pronouncement	21.2.2018

ORDER

The assessee has filed these appeals challenging the orders passed by Ld CIT(A)-3, Thane, wherein he has confirmed the addition relating to alleged bogus purchases made in AY 2010-11 and 2011-12.

2. I heard the parties and perused the record. The assessee is a trader in foam tapes, foam rods, self adhesive tapes, silicon sealant etc. Consequent to the information received from the Sales tax department, it came to the notice of the revenue that the assessee has made purchases to the tune of Rs.73,888/- and Rs.1,11,038/- during the years relevant to the assessment years 2010-11 and 2011-12 respectively from the parties, who were listed out by the Sales tax department as hawala dealers, i.e., they have provided only accommodation bills without actually supplying the material. During the course of assessment proceedings, the AO issued notices u/s 133(6) of the Act, but they were returned back un-served. Hence the AO asked the assessee to produce the

suppliers, but the assessee failed. Hence the AO treated the above said purchases as bogus in nature and added the above said amounts in the respective years.

3. Before Ld CIT(A), the assessee pleaded for deletion of the disallowance of purchases. In the alternative, the assessee also pleaded that the profit element involved in the above said purchases may be sustained. The Ld CIT(A) noticed that the G.P Rate declared by the assessee in these two years have declined substantially when compared to the earlier years. Accordingly he sustained the addition made by the AO in both the years. Aggrieved, the assessee has filed these appeals.

4. None appeared on behalf of the assessee even though the notice of hearing was despatched to the assessee by registered post. Hence I proceed to dispose of the appeal ex-parte, without the presence of the assessee.

5. I heard Ld D.R and perused the record. I notice that there is substantiate decline in the G.P Rate in the two years under consideration. During the years ending on 31.3.2007 to 31.3.2009, the G.P rate was shown at around 30%. However during the years under consideration, the G.P rate was shown 18.94% and 16.16% respectively for asst. Years 2010-11 and 2011-12. This fact has led the Ld CIT(A) to confirm the additions made by the AO in both the years. However I notice that the assessee has declared turnover at Rs.53.23 lakhs and 94.93 lakhs respectively for the year ending 31.3.2010 and 31.3.2011. The value of alleged bogus purchases was only Rs.73,888/- and Rs.1,11,038/- during the years relevant to the assessment years 2010-11 and 2011-12 respectively. So even if the above said purchases were disallowed, the G.P rate would not be anywhere near to the G.P rate declared in the earlier years, meaning thereby,

the G.P rate has declined in these two years for some other reasons also and not merely on account of booking of alleged bogus purchases.

6. Since the assessee has failed to produce the suppliers and offer credible explanations, in my view, the entire additions cannot be deleted. However, I find merit in the alternative contentions raised before Ld CIT(A) that the addition may be sustained to the extent of profit element embedded in the impugned purchases. Considering the G.P rate declared by the assessee, I am of the view that the profit rate may be estimated at 20% of the value of alleged purchases. Accordingly I set aside the order passed by Ld CIT(A) in both the years under consideration on this issue and direct the AO to sustain addition to the extent of 20% of the value of alleged bogus purchases in both the years under consideration.

7. In the result, both the appeals filed by the assessee are partly allowed.

Order has been pronounced in the Court on 21.2.2018.

Sd/-  
(B.R.BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 21/2/2018

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

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BY ORDER,  
(Sr. Private Secretary)  
ITAT, Mumbai