

आयकर अपीलीय अधिकरण पुणे न्यायपीठ एक-सदस्य मामला पुणे में

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

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No.2357/PUN/2016

निर्धारण वर्ष / Assessment Year : 2011-12

Shri Bechan Surajbali Kumbhar,
Plot No.G-81, MIDC, Ambad,
Nashik – 422010

.... अपीलार्थी/Appellant

PAN: AKYPK8877B

Vs.

The Income Tax Officer,
Ward 1(3), Nashik

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Sanket Joshi
प्रत्यर्थी की ओर से / Respondent by : Shri Ajay Modi

सुनवाई की तारीख / Date of Hearing : 22.02.2018	घोषणा की तारीख / Date of Pronouncement: 07.03.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by the assessee is against the order of CIT(A)-1, Nashik, dated 15.07.2016 relating to assessment year 2011-12 against order passed under section 143(3) r.w.s. 147 of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following grounds of appeal:-
 1. *Without considering the fact and circumstances of the case, the Assessing Officer has erred in making disallowance under the pretext of bogus purchases and the learned Commissioner of Income Tax (Appeals)-1, Nashik has erred in confirming the disallowance to the extent of 25%.*
 2. *Without considering facts and circumstances of the case and the law obtaining the learned Commissioner of Income Tax (Appeals)-1, Nashik has erred in confirming the disallowance to the extent of 25% which is without any basis and is on a higher side.*
3. The only issue raised in the present appeal is against the addition made on account of bogus purchases.
4. Briefly, in the facts of the case, the assessee was engaged in the business of manufacturing of steel products. The Assessing Officer received information from Sales Tax Department, Govt. of Maharashtra that certain persons were involved in providing bogus purchase bills to the beneficiaries. The assessee was one of such beneficiaries and the total purchases made by the assessee were to the extent of ₹ 10,00,142/-. The case of assessee was reopened under section 148 of the Act. The Assessing Officer in view of information received under section 133(6) of the Act, held the assessee to have accepted bogus accommodation bills of purchases and entire purchases of ₹ 20,00,492/-, (original hawala of ₹ 10,00,142/- and new hawala of ₹ 10,00,142/-) were added in the hands of assessee.
5. The CIT(A) applied GP rate of 25% on the aforesaid purchases and reduced the addition to ₹ 5,00,123/-.
6. The assessee is in appeal against the same.
7. The learned Authorized Representative for the assessee pointed out that no addition is warranted on account of hawala purchases since the copy of

statement which was recorded by the authorities on which reliance was placed, was not confronted to the assessee. In this regard, he placed reliance on the ratio laid down by Pune Bench of Tribunal in bunch of appeal with lead order in ACIT Vs. M/s. Chetan Enterprises in ITA No.302/PUN/2016, relating to assessment year 2009-10, order dated 05.05.2017 and in bunch of appeals with lead order in M/s. Chhabi Electricals Pvt. Ltd. Vs. DCIT in ITA No.795/PUN/2014, relating to assessment year 2010-11, order dated 28.04.2017.

8. The learned Departmental Representative for the Revenue on the other hand, pointed out that it is case of manufacturing, wherein no proof of expenses was filed by the assessee. Further, the CIT(A) has observed that in the absence of any wastage being established, he restricted addition to 25%.

9. On perusal of record and after hearing both the learned Authorized Representatives, it transpires that the assessee as an individual was engaged in the trading of steel products. The Assessing Officer received information from the Sales Tax Department, Govt. of Maharashtra of bogus bills being issued by different parties and the assessee was recipient of such goods. The Assessing Officer on the basis of information received from the Sales Tax Department, had reopened the assessment proceedings under section 148 of the Act. The Assessing Officer also in order to verify the genuineness of transactions had issued notice under section 133(6) of the Act. In reply, the claim of assessee was that all the purchases intimated by the Sales Tax Department were genuine. No reply was received to the information sought under section 133(6) of the Act from the party who had made the said bogus sales to the assessee. The notices were returned unserved from the addresses furnished as per PAN by the assessee. In the absence of

information being received, the Assessing Officer held the total purchases to be bogus and made addition of ₹ 20,00,492/-. The CIT(A) was of the view that in the absence of production of parties, the issued purchases made from the said parties could not be verified. The CIT(A) observed that consumption detail was no testimony to the fact that the purchases were not inflated and parties were not bogus and hence, he restricted the disallowance to 25% of total purchases; against which the assessee is in appeal.

10. The case of assessee before us is that in order to establish the genuineness of purchases, it had supplied ledger accounts of suppliers - copies of bills of purchases, movement of goods received, purchase orders, bank statements showing payments made through bank to supplier, purchase register and production flow chart with drawing and quantity used statement. The assessee also sought copy of statement which was recorded, on the basis of which the said person was called as hawala dealer. The assessee also sought an opportunity to cross-examine the alleged hawala dealer. The assessee regarding the fact that the letters were received back with a remark that 'parties were not traceable' pointed out that the purchase bills and proof of payments through bank established the case of purchase of goods from the said parties. In view of above said evidences being filed by the assessee which establishes the movement of goods and where the CIT(A) has also noted the consumption details filed by the assessee and where the assessee had sought copies of statements recorded which were not supplied to the assessee, then under such circumstances, no addition is warranted in the hands of assessee in respect of aforesaid alleged purchases from the said parties. In this regard, we find support from the ratio laid down by Pune Bench of Tribunal in M/s. Chhabi Electricals Pvt. Ltd. Vs. DCIT (supra) and also in ACIT Vs. M/s. Chetan

Enterprises (supra). The relevant findings of Tribunal in ACIT Vs. M/s. Chetan

Enterprises (supra) are as under:-

“11. We find that similar issue of addition on account of purchases made from the hawala parties arose before the Tribunal in assessee’s own case (supra) and the Tribunal vide order dated 31.08.2016 has held as under:-

“9. On perusal of record and after hearing both the learned Authorized Representatives, the issue which needs adjudication in the present appeal is in relation to the purchases made by the assessee. The assessee claims that the purchases were made in the regular course of carrying on the business from parties who were registered with the Sales Tax Department and had VAT number. However, the Sales Tax Department had declared them to be hawala dealers i.e. parties who were registered with the Sales Tax Department but had not paid the requisite VAT. Information in respect of aforesaid hawala dealers were sent to the Assessing Officer since the assessee had made purchases from six of the parties who were in the list of hawala dealers. The said dealers had collected VAT from the customers including the assessee but had not paid the same to the State Treasury. The Assessing Officer on receiving the aforesaid information had reopened the assessment in the case of assessee and had confronted the assessee with the aforesaid information. The Assessing Officer also issued summons under section 133(6) of the Act to the said six parties from whom purchases were made but the said notices were returned unserved since none of the parties were available on the given addresses. The assessee in this regard was asked to produce the said parties and confirm the transactions. The assessee in reply, claims that it had submitted purchase bills, consequent sale bills, weighbridge receipts and transportation receipts in order to establish that the transaction of purchases was genuine. The assessee further claims that the payments against these purchases were made through banking channel and the copy of bank statement was furnished in this regard. The assessee further claims that no case has been made by the Assessing Officer against the said payments made by the assessee to the said persons that cash had been withdrawn and handed over to the assessee. Another aspect which the assessee points out is that when he came to know that the VAT collected by the said dealers has not been deposited with the Sales Tax Department, he voluntarily revised his return under MVAT Act by withdrawing the set off of claim in the earlier return and paid the taxes with interest. Another exercise carried out by the assessee with regard to purchases and sales was that the same quantity of goods received were sold to their customers, wherein the quantity of goods purchased from so-called hawala dealers tallied with the supplies made by the assessee to its customers. The transportation expenditure in respect of goods purchased from the said parties was incurred by the assessee through account payee cheques. The bills of transportation including Octroi were made available by the assessee. In this regard, the assessee claims that the purchases made by it were genuine. The Assessing Officer had show caused the assessee to explain the purchases from six parties on the basis of information received from the Sales Tax Department. The list of parties totaling Rs.31,98,665/- is as under:-

Name of the Party	Amount
1) Sandoz Steel	10,79,483
2) Adijin Enterprises	2,39,460
3) Hiten Enterprises	2,30,583

4) Bhavani Trade Link	3,42,417
5) Mercury Enterprises	3,76,239
6) Amar Enterprises	9,30,483
Total	31,98,665

10. However, the Assessing Officer except for providing the statements of three parties i.e. proprietor of Hiten Enterprises, proprietor of Mercury Enterprises and proprietor of Bhavani Trade Link, wherein the purchases totaled to Rs.9,49,240/-. No documents or papers in respect of purchases from Amar Enterprises of Rs.9,30,483/-, Sandoz Steel of Rs.10,79,483/- and Adijin Enterprises of Rs.2,39,460/- has been confronted to the assessee. In the first instance, the basic principle of natural justice demand that in case any document is to be used against the assessee, then the same should be confronted to the assessee before it can be relied upon. The assessee admittedly, had asked for statements and / or any other documents which have not been supplied to the assessee. The learned Authorized Representative for the assessee before the Tribunal pointed out that the Assessing Officer had provided statements of three parties from whom the purchases totaling Rs.9,49,240/- were made and no statements of other parties totaling purchases Rs.22,49,425/- were made available to the assessee. However, the perusal of list of the companies filed before the CIT(A), copy of which is filed along with Appeal Memo reflects that there is difference in the figures of purchases though the total is shown at Rs.31,98,665/-. Further, the assessee claims in the statement of facts that the Assessing Officer had not supplied any evidence in respect of purchases of Rs.13,18,943/- to prove that the same were non-genuine. It is further stated that in respect of remaining purchases of Rs.18,79,722/-, the Assessing Officer has relied on statements of four suppliers, whose bills were supplied to the Tribunal. In the Paper Book, the assessee has filed the copies of statements of three parties at pages 106 to 122 but in the statement of facts, the assessee admits to have received the statement of four suppliers. Before the CIT(A) also, the claim of assessee was that no statements or evidence in respect of impugned purchases to the extent of Rs.14,32,856/- has been provided. This aspect came to the knowledge of Tribunal only while deciding the present appeal and in view thereof, the matter needs to be set aside to the file of Assessing Officer for verifying the copies of statements supplied to the assessee and thus, the total amount of purchases in this regard. In case the basic documents are not available with the Assessing Officer, then merely on the basis of allegation of impugned purchases from hawala dealers, no addition is warranted in the hands of assessee. However, in case the Assessing Officer has copies of statements, the same needs to be supplied to the assessee in order to give chance to the assessee to prove his case. In case any of the statements are not available with the Assessing Officer, no addition to the extent of purchases made from the said parties is warranted in the hands of assessee, in the absence of any evidence.

11. Now, coming to the claim of assessee vis-à-vis the impugned purchases, where the said purchases are backed by purchase bills and the assessee is able to establish the transportation of goods by way of weighbridge bills, copies of transportation bills and further, where the assessee has also made available the evidence of sale of said goods which were purchased from six parties, then prima facie the assessee has established its case. Another aspect to be kept in mind is that the assessee has also on its own motion not claimed the benefit of VAT which has not been deposited by hawala dealers and has revised its return of income filed under MVAT Act. The factum of purchases being

made by the assessee stands established in view of such circumstances. However, the benefit of purchases being made from grey market, needs estimation in the hands of assessee. In this regard, the order of CIT(A) is confirmed in estimating the addition @ 10% of alleged hawala purchases. The quantum of hawala purchases would be worked out by the Assessing Officer after giving reasonable opportunity of hearing to the assessee, in line with the directions hereinabove.

12. Now, coming to the ratio laid down by the Tribunal in *Kolte Patil Developers Ltd. Vs. DCIT (supra)*, wherein the statements of hawala suppliers were recorded by the Assessing Officer and were confronted to the assessee and the opportunity of cross-examination is also granted. However, the assessee did not avail the same. Further, transportation receipts could not be furnished in respect of any of the suppliers and in this view, the purchases made from the said parties were added as income of the assessee. Another proposition which has been laid down by the Tribunal in the case of *ITO Vs. Shri Purushottam Shankar Kulkarni* in ITA No.991/PN/2012, relating to assessment year 2009-10, order dated 07.04.2016, wherein the Assessing Officer has noted the payments in respect of alleged bogus purchases were outstanding even as on the date of completion of assessment. Further, the assessee was not able to furnish any evidence relating to transportation of goods. Further, in the case of *Mukeshkumar Pushkaraj Mehta Vs. ITO (supra)*, the assessee himself admitted before the Assessing Officer that the purchases made from the impugned hawala dealers was treated as bogus and added to its income. In this regard, there was no question of granting opportunity to cross-examine and the plea of assessee regarding genuineness of sales was not made before the Assessing Officer and further, no evidence in the form of delivery challans furnished by the assessee and hence, the purchases were added in the hands of assessee.

13. The facts of the present case as pointed out in the paras hereinabove are at slight variance. The first aspect was the said parties are hawala dealers and the assessee has made purchases from such hawala dealers, who though collected VAT but had not deposited in the Government Treasury, is common in respect of the cases. However, in the present case before the Tribunal, the assessee claims that it had made available the evidence proving the genuineness of purchases made by it by way of copies of transportation receipts, weighbridge receipts and also the bills of transportation. Another aspect which is at variance from the other cases is that the payment in the case has been made by cheque. In view of the above said circumstances, where the assessee can establish its case of delivery of goods and its onward transmission by way of sale bills of nearly the same quantity, the entire purchases cannot be disregarded. In the paras hereinabove, the addition to the extent of 10% of the quantum of hawala purchases has been added in the hands of assessee and the said addition would meet the ends of justice, as the purchases are admittedly made from hawala parties. The Assessing Officer is directed to compute the quantum in respect of evidences furnished by him to the assessee in the form of statements recorded of the other persons. Where no such statements or any other evidence in respect of any person is made available to the assessee, then such quantum is not to be included in the hands of assessee for computing addition on this count. The grounds of appeal raised by the assessee in both the appeals are allowed as indicated above.

12. *In the facts of the present case before us where the assessee had sought copies of statements recorded or any other evidence in respect of such hawala parties, which were not supplied to the assessee, then no addition is warranted in the hands of assessee in respect of said purchases from the said parties. The Assessing Officer had failed to provide the statements or evidence in respect of purchases to the extent of Rs.41,54,454/-. Accordingly, we hold that no addition is to be made in this regard. However, in respect of the impugned purchases to the extent of Rs.14,59,082/-, where the copies of statements were provided to the assessee, then addition is to be restricted by applying GP rate of 10% on the said purchases over and above the GP rate shown by the assessee. Accordingly, appeal filed by the assessee is partly allowed and the appeal filed by the Revenue is dismissed."*

11. The issue arising before us is similar and following the same parity of reasoning, we hold that no addition is warranted in the hands of assessee. Accordingly, the addition made by the CIT(A) is deleted.

12. In the result, appeal of assessee is allowed.

Order pronounced on this 7th day of March, 2018.

Sd/-
(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(SUSHMA CHOWLA)

न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 7th March, 2018.

GCVSR

आदेश की प्रतिलिपि अद्येषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-1, Nashik;
4. The Pr.CIT-1, Nashik;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे, एक-सदस्य मामला / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune