

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

I.T.A. No. 6935/Mum/2017 (Assessment Year 2009-10)  
I.T.A. No. 6936/Mum/2017 (Assessment Year 2010-11)  
I.T.A. No. 6938/Mum/2017 (Assessment Year 2012-13)

Shri Nadeem Yusuf Sara Flat No. 101, Nighahe Karam CHS Ltd. S.V. Savarkar Marg Mahim, Mumbai. PAN : BLFPS0265L (Appellant)	Vs.	ITO, Ward 21(2)(4) 1 <sup>st</sup> Floor Piramal Chambers Parel, Lalbaug Mumbai-400 012. (Respondent)
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Assessee by	Mrs. Ruchi M. Rathod
Department by	Ms. Arju Garodia
Date of Hearing	22.2.2018
Date of Pronouncement	26.3.2018

ORDER

All three appeals filed by the assessee are directed against a common order dated 12.9.2017 passed by the learned CIT(A)-33, Mumbai and they relate to A.Ys. 2009-10, 2010-11 & 2012-13. Since issues urged in these appeals are identical in nature, they were heard together and are being disposed of by this common order, for the sake of convenience.

2. The assessee is engaged in the business of trading in timber and plywood under name and style of M/s. N.Y. Timbers. The Revenue received information from Sales tax department of Government of Maharashtra that certain dealers are indulging in providing accommodation bills, without actually supplying the material. From the information furnished by the Sales tax department, it was noticed that the assessee herein has purchased goods from some of such dealers during the three years under consideration as detailed below :-

Assessment year	Amount
2009-10	1,87,44,685
2010-11	1,22,12,828
2012-13	1,16,58,941

Hence the AO reopened the assessments of the above said three years. Since the assessee did not furnish confirmation letters from the dealers and since notice issued by the Assessing Officer under section 133(6) of the Act was not responded, the Assessing Officer treated the above said purchases as bogus. Since the assessee has sold goods, the Assessing Officer opined that the assessee might have purchased goods from some other parties and would have made profit by purchasing goods at lower rate. Accordingly, the Assessing Officer estimated the profit from the above said purchases @ 12.5% by fooling the decision rendered by Hon'ble Gujarat High Court in the case of CIT Vs. Simit P. Sheth (38 taxamn.com 385).

3. In A.Ys. 2010-11 & 2012-13, the Assessing Officer also noticed that the assessee has maintained an account with HDFC bank but did not disclose the same in its return of income. Accordingly, the Assessing Officer assessed aggregate amount found credited in the bank account in the each of the above said two years as income of the assessee in the respective year. Accordingly, the Assessing Officer assessed a sum of ₹ 29.62 lakhs in A.Y. 2010-11 and ₹ 17.75 lakhs in A.Y. 2012-13.

4. The assessee challenged the assessment orders of all the three years, referred above, by filing appeals before the learned CIT(A), but could not win in those appeals. Accordingly, the assessee has filed these appeals before the Tribunal.

5. The first issue relates to the addition made by the Assessing Officer on account of bogus purchases. I noticed that the assessee has placed reliance on the purchase invoices available with it and payments made to the parties. The assessee could not obtain the confirmation letters from those suppliers nor could it produce the suppliers before the Assessing Officer. The Assessing

Officer has noticed that the Sales tax department has considered them to be hawala dealers, i.e., they did not supply any material on the strength of bills given by them. However, the assessee appears to have reconciled the purchases made from the above said suppliers with sales. Under these set of facts, the Assessing Officer has taken the view that the assessee might have purchased goods from some other sources and could have obtain bills from these parties. The AO also took the view that the assessee might have made profits by way of savings in VAT tax and lower rates. Accordingly he estimated the profit from these purchases @ 12.50%.

6. Learned AR submitted that the VAT rate applicable to the products purchased from these dealers stood at 4% and 12.5%. Accordingly she submitted that the Assessing Officer was not justified in adopting a common rate of 12.5% on all purchases made by the assessee. She further submitted that the assessee has reconciled purchases and sales and hence no addition should have been made merely for the reason that the assessee could not produce the parties.

7. On the contrary, learned DR submitted that the responsibility to prove the genuineness of purchases is placed upon the assessee and in the instant case, the assessee has failed to prove the genuineness of purchases by obtaining confirmation letters from them or by producing them before the Assessing Officer.

8. I have heard the rival contentions and perused the record. Admittedly, the assessee could not conclusively prove the purchases by furnishing confirmation letters obtained from the impugned suppliers. The notices issued by the AO to the suppliers have not been responded by them. These facts show that the identity of the suppliers has not been established by the assessee. Under these set of facts, I am of the view that the Assessing Officer was justified in presuming that the assessee might have purchased goods from some other sources. When purchases are made from the grey market, normally

applicable VAT will be saved and there is a possibility that the assessee might have purchased goods at a lower rate also. Under these set of facts, I am of the view that the Assessing Officer was justified in estimating the profit from purchases. However, I noticed that the vat rate applicable to the goods purchased by the assessee was 4% and 12.5%. Profit that might have been made by the assessee by way of lower rates should also be considered. Hence, it may not be proper to apply rate of 12.5% on all purchases. Accordingly, I modify the order passed by the learned CIT(A) on this issue and direct the Assessing Officer to estimate the profit from impugned bogus purchases @ 10% on the alleged bogus purchases, which will take care of revenue leakages, if any. We order accordingly.

9. The next issue contested by the assessee in A.Ys. 2010-11 & 2012-13 relate to addition of deposits found in HDFC bank account of the assessee.

10. I have heard the parties on this issue and perused the record. Admittedly, the assessee did not disclose this bank account in its books of account as well as in the return of income filed before the Assessing Officer. Before the Tribunal, the assessee claimed that it has borrowed money from certain persons and repaid the same during the same year under consideration. However, in my view, filing of confirmation letter obtained from so called creditors would not meet the requirements of section 68 of the Act. Under section 68 of the Act, initial onus to prove the cash credit is placed upon the assessee i.e. the assessee is required to prove three main ingredients viz (i) identity of creditor, (ii) creditworthiness of the creditor and (iii) genuineness of the transaction. Admittedly, filing mere confirmation letter obtained from the creditor would not discharge the onus placed upon the assessee u/s. 68 of the Act. Since, the assessee failed to discharge the onus placed upon him, I have no other option but to confirm the order passed by Ld CIT(A) in both the years under consideration, wherein he has confirmed addition made by the Assessing Officer.

11. In the result, all the three appeals are partly allowed.

Order has been pronounced in the Court on 26.3.2018.

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

Mumbai; Dated : 26/3/2018

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,  
(Senior Private Secretary)  
ITAT, Mumbai