

आयकर अपीलीय अधिकरण पुणे न्यायपीठ “एक सदस्य” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA No.2530/PUN/2016
निर्धारण वर्ष / Assessment Year : 2009-10

M/s. Deluxe Tube Traders and
Scrap Centre,
Plot No.63, Gat No.19,
Sanjeev Nagar, Satpur,
Ambad Link Road,
Nashik – 422 010
PAN : AAefd4440M

.... अपीलार्थी/Appellant

Vs.

DCIT, Circle-1,
Nashik

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos.2197 & 2198/PUN/2016
निर्धारण वर्ष / Assessment Years : 2010-11 & 2011-12

ITO, Ward-1(5),
Nashik

.... अपीलार्थी/Appellant

Vs.

M/s. Deluxe Tube Traders and
Scrap Centre,
Plot No.63, Gat No.19,
Sanjeev Nagar,
Satpur Ambad Link Road,
Nashik – 422 010
PAN : AAefd4440M

.... प्रत्यर्थी / Respondent

C.O.Nos.37 and 38/PUN/2016
(Arising out of ITA Nos. 2197 & 2198/PUN/2016
(A.Yrs. 2010-11 & 2011-12

M/s. Deluxe Tube Traders and
Scrap Centre,
Plot No.63, Gat No.19,
Sanjeev Nagar, Satpur,
Ambad Link Road,
Nashik – 422 010
PAN : AAefd4440M

.... Cross Objector

Vs.

ITO, Ward-1(5),
Nashik

.... Appellant in the
Appeal

अपीलार्थी की ओर से / Appellant by : Shri Pramod Shingte
 प्रत्यर्थी की ओर से / Respondent by : Dr. Vivek Aggarwal

सुनवाई की तारीख / Date of Hearing : 21.03.2018	घोषणा की तारीख / Date of Pronouncement: 27.03.2018
----------------------------------------------------------	--------------------------------------------------------------

आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

There are five appeals under consideration filed by the Assessee and the Revenue involving assessment years 2009-10 to 2011-12. ITA No.2530/PUN/2016 is filed by the assessee against the order of CIT(A)-I, Nashik, dated 13-07-2016 for the A.Y. 2009-10. ITA Nos. 2197 & 2198/PUN/2016 are filed by the Revenue against the common order of CIT(A)-I, Nashik, dated 13-07-2016 for the A.Yrs. 2010-11 & 2011-12. Assessee has also filed Cross Objections against the appeals filed by the Revenue for the A.Yrs. 2010-11 and 2011-12 vide C.O.Nos. 37 and 38/PUN/2016. There is no cross appeal by the Revenue for the A.Y. 2009-10.

Since there are common issues involved in all these appeals they are clubbed together and are taken up for adjudication in this composite order for the sake of convenience.

We shall first take up the assessee's appeal for A.Y. 2009-10.

**ITA No.2530/PUN/2016
 Assessment Year : 2009-10 – By Assessee**

2. Grounds raised by the assessee read as under :

“1. On the facts and in the circumstances of the case and in law, the lower authorities have erred in **initiating the reassessment proceedings u/s.147** in absence of any material showing any live link with the reason to believe that income has escaped the assessment.

2. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in estimating the **Gross Profit on alleged bogus purchases @25%** of the purchases especially in view of the fact that in

principle he has accepted that the purchases are genuine under such circumstances there is no need of any estimation of Gross Profit on alleged bogus purchases. Entire addition needs to be deleted.

3. From the grounds above, the assessee is in appeal (1) against the initiation of re-assessment proceedings u/s.147 of the Act and (2) against the 25% addition made on account of alleged bogus purchases. Revenue has not filed appeal for the A.Y. 2009-10 against the relief granted by the CIT(A).

4. Briefly stated relevant facts of the case are that the assessee is a firm and is engaged in the business of Trading in Tubes and Scrapes. Assessee filed the return of income on 30-09-2009 declaring total income of Rs.2,54,800/-. During the course of assessment proceedings, AO noticed that the assessee made purchases of Rs.18,50,403/- from M/s. Shiv Industries whose name is listed in the list of bogus dealers by the Sales Tax Department of Maharashtra Government. Eventually, the AO vide order u/s.143(3) r.w.s. 144 of the Act, made the entire addition of bogus purchases amounting to Rs.18,50,403/- to the total income of the assessee and determined the income at Rs.21,05,200/-.

5. In the First Appellate Proceedings, the assessee questioned the addition of entire bogus purchases made by the assessee for the assessment years under consideration. Assessee also raised the issue relating to validity of the reassessment u/s.147 of the Act qua the availability of tangible material for invoking the said provisions. CIT(A) dismissed the validity of the re-assessment proceedings linked objections raised by the assessee and relied heavily on the judgment ACIT Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. reported in 291 ITR 500 and others. Contents of Para No.4 to 4.13 of the order of CIT(A) contains the discussion of CIT(A) in holding the reassessment proceedings as valid. CIT(A) relied on

the information gathered from the Sales Tax department in this regard. On merits, CIT(A) after considering series of decisions eventually restricted the addition to 25% of the purchases made by the assessee by observing as under :

“5.89 Thus, in my opinion the facts on record demonstrate that this is not a case of bogus purchases but a case of inflated purchases and at best from bogus parties. The AO is directed to restrict the disallowance to 25% of purchases of Rs.18,50,403/-, i.e. (Rs.4,62,000/-).

6. Aggrieved with the order of CIT(A), the assessee is in appeal before us with the grounds extracted above.

7. Before us, Ld. Counsel for the assessee submitted that adopting 25% of the purchases made by the assessee for the year under consideration is not based on facts and the same is unsustainable when the books of accounts are not formally rejected u/s.145(3) of the Act. Further, he submitted for restricting the addition to 10% of the alleged bogus purchases. For this proposition, he relied on the decision of Pune Bench of the Tribunal in the case of M/s. Chhabi Electricals Pvt. Ltd. Vs. DCIT and others in ITA No.795/PUN/2014 and connected appeals, dated 28-04-2017 for the A.Y. 2010-11.

8. Ld. DR for the Revenue relied on the order of CIT(A) dutifully.

9. We heard both the sides on the limited issue under consideration and perused the orders of the Revenue and the decision of the Pune Bench of the Tribunal in the case of M/s. Chhabi Electricals Pvt. Ltd. (supra) relied on by the Ld. Counsel for the assessee. We have also examined the applicability of the judgment in the case of ACIT Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. (supra).

Regarding the issue relating to re-assessment and its validity, we find on similar circumstances, the Coordinate Bench of the Tribunal dismissed the arguments of the Ld Counsel for the assessee by relying on the decision of Coordinate Bench of the Tribunal in the case of Mr. Khan Afzalhussain Mohd. Saie Vs. DCIT – ITA Nos. 2708 and 2709/PUN/2016, dated 23-03-2018. For the sake of completeness, we proceed to extract the relevant para of the order of Tribunal and the same is extracted as under :

“9. The first issue raised by the assessee is against re-assessment proceedings initiated under section 147/148 of the Act. We find that the said issue is squarely covered against the assessee by the ratio laid down by Hon’ble Supreme Court in ACIT Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. (supra) and referring to paras 4 and 5 of the appellate order, we uphold the same and dismiss the ground of appeal No.1 raised by the assessee.

Following the same parity of reasoning, the ground of appeal No.1 raised by the assessee on this issue is dismissed.

Regarding the issue of confirming of addition to 25% of bogus purchases by the CIT(A), we find that similar issue of bogus purchases has been decided by the Tribunal in series of decisions. We find the Coordinate Bench of the Tribunal in the case of Mr. Khan Afzalhussain Mohd. Saie (supra) has restricted the addition to 10% of such alleged bogus purchases. We therefore find it to relevant to extract the findings given by the Tribunal in Para No.11 of order of Tribunal here as under :

“11. Now, coming to the merits of addition. The issue raised in the present appeal is against bogus purchases. We have already adjudicated similar issue in series of decisions 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. The assessee in the first year i.e. assessment year 2009-10 has maintained quantitative details. In other words, it has the evidence of purchasing goods and its sales. In such circumstances, at best, higher gross profit rate can be applied. Following our decision in earlier orders, we hold that GP rate of 10% over and above GP declared by the assessee in its books of account, be applied to work out the additional income in the hands of assessee. The ground of appeal No.3 raised by the assessee is thus, partly allowed.”

Considering the same, we direct the Assessing Officer to make addition in the hands of assessee by adopting GP rate at 10% of bogus purchases declared by the assessee. Accordingly, Ground No. 2 raised by the assessee is partly allowed. Thus, the grounds raised by the assessee are partly allowed.

10. In the result, appeal of the assessee is partly allowed.

Now we shall take up the appeals of the Revenue and the Cross Objections for the A.Yrs. 2010-11 and 2011-12.

**ITA Nos.2197 & 2198/PUN/2016
Assessment Years : 2010-11 & 2011-12 – By Revenue**

**C.O.Nos.37 and 38/PUN/2016 – By Assessee
(Arising out of ITA Nos. 2197 & 2198/PUN/2016)
Assessment Years : 2010-11 & 2011-12**

11. Grounds raised by the Revenue in both the assessment years and the Cross Objections raised by the assessee are similar. Therefore, we extract the grounds raised by the Revenue and the Cross-Objections raised by the assessee for the A.Y. 2010-11 as under :

Grounds by Revenue :

“1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A)-1, Nashik was justified in deleting the addition of Rs. 20,48,964/- for A.Y. 2010-11 on account of alleged bogus purchases from Hawala dealers / parties?

2. Whether on the facts and circumstances of the case the CIT(A) was justified in deleting the purchases treated as bogus when the appellant had not been able to produce the certain parties from whom purchases were made when letters sent to the parties were returned undelivered or the parties did not respond?

3. Whether the Ld. CIT(A) should have considered the fact that the onus was on the assessee to get the purchases verified when required to do so especially when such purchases were very substantial in amount, in some years roughly about 50% of the total purchases?

4. Whether the Ld CIT(A) erred in assuming that the purchases were only inflated when it was clear from the conduct of the assessee, the parties found missing and results of the investigation of another Govt. Department (Sales

Tax), that the purchases could not be proved as genuine and therefore the disallowance by the AO was justified?

5. Whether the Ld CIT(A) erred in presuming that simply because no addition was made in case of Sales, it was accepted as genuine and further assuming that thereby purchases should be genuine?

6. Whether the Ld. CIT(A) erred in accepting the affidavits from suppliers without any explanation from the assessee why the suppliers could not appear before the AO when they were called for examination, subsequently and details such as copies of accounts, bank transactions were not produced?

7. The appellant prays that the order of the Ld. CIT(A)-I, Nashik may please be cancelled and the order of Assessing office may please be restored.

8. The appellant prays to adduce such further evidence to substantiate his case.

9. The appellant prays leave to add, alter, clarify, amend and or withdraw any grounds of appeal as and when the occasion demands.

Cross Objections by Assessee :

“1. On the facts and in the circumstances of the case and in law, the lower authorities have erred in **initiating the reassessment proceedings u/s.147** in absence of any material showing any live link with the reason to believe that income has escaped the assessment.

2. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in estimating the Gross Profit on **alleged bogus purchases @ 25% of the purchases** especially in view of the fact that in principle he has accepted that the purchases are genuine under such circumstances there is no need of any estimation of Gross Profit on alleged bogus purchases. Entire addition needs to be deleted.

12. Briefly stated relevant facts for the A.Y. 2010-11 are that the assessee filed the return of income on 01-10-2010 declaring total income of Rs.1,87,060/-. Based on the information given by Sales Tax Department, AO noticed that assessee made purchases from 3 suppliers who are suspected as bogus dealers amounting to Rs.20,48,964/-. At the end of the assessment proceedings u/s.143(3) r.w.s. 147 of the Act, AO made addition of alleged bogus purchases to the total income of the assessee and determined the income at Rs.22,36,030/- for the A.Y. 2010-11.

Similar is the case for A.Y. 2011-12. AO made entire addition of alleged bogus purchases Rs.36,24,007/- to the total income of the assessee.

13. In the First Appellate proceedings, assessee raised a legal issue relating to the validity of reassessment proceedings as well as on merits. In reply, CIT(A) vide his common order dated 13-07-2017 dismissed the issue relating to validity of reassessment proceedings relying on the decision of Apex Court judgment in the case of ACIT Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. and others and restricted the disallowance on merits to 25% of the purchases, i.e. Rs.5,12,241/- and Rs.9,06,000/- for the A.Yrs. 2010-11 & 2011-12 respectively.

14. Aggrieved with the order of CIT(A), the Revenue is in appeal before us with the grounds extracted above. Further, aggrieved with the part relief granted by the CIT(A), assessee has also filed Cross Objections for both the assessment years.

15. Ld. DR for the Revenue relied on the order of AO dutifully.

16. Per Contra, Ld. Counsel for the assessee relied on his arguments made in the appeal ITA No.2530/PUN/2016 for A.Y. 2009-10.

17. After hearing both the sides, we find the issues raised by the Revenue and the Cross Objections are identical stand covered by our adjudication in Para No.9 of this order in the context of the appeal for A.Y. 2009-10. While deciding the appeal of the assessee for A.Y. 2009-10, we have already held that the re-assessment proceedings initiated by the AO are valid and dismissed the relevant ground raised by the Assessee. Further, regarding the confirming of addition to 25% by the CIT(A) we have decided the issue and held that the addition should be restricted to 10% as against the 25%

adopted by the CIT(A). Following the same reasoning, the grounds raised by the Revenue are dismissed and the Cross Objections raised by the assessee are partly allowed.

18. In the result, both the appeals of the Revenue are dismissed and the Cross Objections of the assessee are partly allowed.

19. To sum up, appeal of the assessee for A.Yrs. 2009-10 to 2011-12 are partly allowed and the appeals of the Revenue are dismissed.

Order pronounced on this 27th day of March, 2018.

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(D.KARUNAKARA RAO)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 27th March, 2018.
Satisb

आदेश की प्रतिलिपि अग्रेषित/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. आयकर आयुक्त / The CIT-1, Nashik
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "एक सदस्य" / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

//True Copy//

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune