

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 के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM

आयकर अपील सं. / ITA No.2941/PUN/2016
निर्धारण वर्ष / Assessment Year : 2010-11

M/s. Taloja Warehouse,
Plot No.486,
Near Panvel Tiles,
Market Yard,
Panvel – 410206

.... अपीलार्थी/Appellant

PAN: AACFT2240H

Vs.

The Income Tax Officer,
Ward 2, Panvel

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri C.H. Naniwadekar
प्रत्यर्थी की ओर से / Respondent by : Shri Mukesh Jha

सुनवाई की तारीख / Date of Hearing : 18.04.2018	घोषणा की तारीख / Date of Pronouncement: 25.04.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by the assessee is against the order of CIT(A)-2, Thane, dated 24.11.2016 relating to assessment year 2010-11 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. *On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals)-II, Thane erred in confirming the addition of Rs.21,28,445/- being made on estimated basis in treating the genuine purchases of Rs.1,70,27,565/- as non-genuine/bogus purchases from the parties on the basis of information has been received from Sales Tax Department that such parties are “**Suspicious Dealers**”*

Provisions of the Act ought to have been properly construed and regard being had to facts of the case no such additions to be made. Reasons assigned by him are wrong and insufficient to justify the additions.

2. *The order made under section 143(3) r.w.s. 147 of the Act by the learned Assessing Officer is bad-in-law, ultra virus and without appreciating the facts, submission made and law in their proper perspective and is liable to be annulled.*

3. The issue raised in the present appeal is against addition made on account of alleged bogus purchases. The addition has been confirmed at ₹ 21,28,445/-. The assessee is aggrieved by the orders of authorities below in treating genuine purchases of ₹ 1.70 crores as non-genuine / bogus purchases from the parties on the basis of information received from Sales Tax Department.

4. Briefly, in the facts of the case, the assessee was trader of Iron Steel scrap. The assessee had made purchases from one M/s. Haitvi Steel Traders Pvt. Ltd. The total purchases made from the said party were ₹ 1.70 crores. The Sales Tax Department, Maharashtra had conducted certain investigations and had unearthed fraudulent racket of certain parties issuing bogus bills without actual delivery of goods and non-payment of VAT. The said parties were listed as hawala dealers. Further, information was also collected in respect of persons who had availed the services of alleged hawala dealers. Information was passed on to the Income Tax Department, which in turn, initiated proceedings under section 147/148 of the Act against beneficiaries of purchases made from hawala dealers. The assessee was alleged to have

obtained bogus purchase bills from entry provider Haitvi Steel Traders Pvt. Ltd. The assessment proceedings in the hands of assessee were initiated under section 147/148 of the Act and the assessee was confronted with the information. The assessee explained that purchases were made from various parties and the goods were sold in the ordinary course of business, against which profit was offered. The turnover for the year under consideration was ₹ 177.97 lakhs. The assessee explained that purchases made by it were genuine and the amounts were paid through banking channel. The Assessing Officer noted that the assessee had failed to provide any delivery challans, lorry receipts, transportation details, etc. and since the parties from whom purchases were made had admitted to have made bogus sales; hence, the purchases made by the assessee were also held to be bogus. The Assessing Officer applied GP rate of 12.5% on the alleged bogus purchases of ₹ 1.70 crores and made addition of ₹ 21,28,445/-.

5. The CIT(A) has upheld the aforesaid addition in the hands of assessee. The CIT(A) also upheld re-assessment proceedings initiated under section 147/148 of the Act.

6. The assessee is in appeal against both the counts.

7. The first issue raised by the assessee is against merits of addition. Second ground of appeal raised by the assessee is against initiation of re-assessment proceedings. The learned Authorized Representative for the assessee during the course of hearing did not press the ground of appeal No.2. In respect of issue on merits, it was pointed out that the assessee had maintained stock statement, wherein purchases were made from one concern

and were also sold to one concern only. He further pointed out that the party from whom purchases were made was genuine party as in the earlier years, VAT return was filed and has been accepted. He further pointed out that goods were purchased in the month of January, but the payments were made to the said concern in the month of February, after sale proceeds were received. He also pointed out that there was default in VAT, which was made good by the assessee.

8. The learned Departmental Representative for the Revenue on the other hand, placing reliance on the orders of authorities below, placed special reliance on para 4.5 of assessment order and pointed out that the assessee has failed to file delivery challans, lorry receipts, etc.

9. On perusal of record and after hearing both the learned Authorized Representatives, the issue which arises in the present appeal is against the addition made on account of purchases made by the assessee. The Assessing Officer had received information from the Sales Tax Department in respect of alleged hawala dealers, who had sold the goods without delivery of said goods. The Assessing Officer on the basis of said information received from the Sales Tax Department, asked the assessee to explain purchases of ₹ 1.70 crores. The explanation of assessee in this regard was that it had made said purchases from the said party in the month of January, 2010 and had sold the goods to one party itself i.e. B. Vrajlal & Co. in the month of February, 2010. The assessee has furnished before the Tribunal the reconciliation of goods, quantitative purchases and quantity sold and has pointed out that sales made by the assessee have been accepted. The second plea of learned Authorized Representative for the assessee was that payment to M/s. Haitvi Steel Traders Pvt. Ltd. was made only on the receipt of payment from the person to whom

goods were sold. In respect of M/s. Haitvi Steel Traders Pvt. Ltd., the learned Authorized Representative for the assessee has pointed out that the said parties were genuine since in earlier years VAT return was filed by the said party and on such basis, no addition is warranted in the hands of assessee. The assessee had paid VAT on the value of goods purchased. In the entirety of the above said facts and circumstances, where the assessee has maintained and furnished the quantity details of goods purchased and sold by it, then the trail of goods stands established and another feature to be noted is that total purchases made by the assessee from alleged hawala dealer had been sold to one person only. The Assessing Officer has not made any enquiries from the purchaser of goods and in the absence of the same, there is no merit in the orders of authorities below in holding that the purchases made by assessee are bogus purchases. Reversing the order of CIT(A), the Assessing Officer is directed to delete the addition of ₹ 21,28,445/- made on account of GP rate on the alleged bogus purchases. The ground of appeal No.1 is thus, allowed.

10. The ground of appeal No.2 raised by the assessee is not pressed and hence, the same is dismissed as not pressed.

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

Order pronounced on this 25th day of April, 2018.

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

पुणे / Pune; दिनांक Dated : 25th April, 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)-2, Thane;
4. The Pr.CIT-2, Thane;
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