

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "J", MUMBAI**

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

ITA NO. 6852/MUM/2016 : (A.Y : 2009-10)

M/s. Spectrum Scan Pvt. Ltd.,
173, A2, Shah and Nahar Industrial
Estate, Lower Parel, Mumbai 400 013.
PAN : AACCS0837Q (Appellant)

Vs. ACIT-7(2),
Mumbai (Respondent)

Appellant by : Shri Rajeev Waglay
Respondents by : Shri Aarju Garodia

Date of Hearing : 17/04/2018

Date of Pronouncement : 27/04/2018

ORDER

PER G.S. PANNU, AM :

The captioned appeal by the assessee is directed against the order of CIT(A)-14, Mumbai dated 29.09.2016 pertaining to the Assessment Year 2009-10, which in turn has arisen from the order passed by the Assessing Officer, Mumbai dated 30.10.2014 u/s 143(3) r.w.s 147 of the Income Tax Act, 1961 (in short 'the Act').

2. In this appeal, the only issue is with regard to the addition of Rs.14,86,450/- made to the returned income on account of bogus purchases.

3. A perusal of the orders of the authorities below reveal that the only ground taken by the income-tax authorities to treat the purchases of Rs.14,86,450/- as bogus is the information received from Sales Tax Department of Maharashtra that such purchases were effected from one, M/s. Amar Enterprise whose name appeared in the list of *hawala* dealers, meaning that such parties were only issuing accommodation invoices but not actually transacting.

4. At the time of hearing before us, the learned representative for the assessee pointed out that in similar situation, the different Benches of the Tribunal are following the ratio of the judgment of Hon'ble High Court in the case of *Simit P. Sheth, 356 ITR 451 (Guj.)* and only a part representing the profit element embedded in the unsubstantiated purchases is added to the returned income. Support has also been drawn from the judgements of the Hon'ble Gujarat High Court in the case of *CIT vs Bholanath Poly Fab. (P.) Ltd., 355 ITR 290 (Guj.)* and *CIT vs Vijay M. Mistry Construction Ltd., 355 ITR 498 (Guj.)*.

5. On the other hand, the Id. DR has defended the orders of the authorities below and pointed out that when assessee was afforded an opportunity to produce the party, it was not done and, therefore, the entire amount has been rightly added by the Assessing Officer as bogus purchases.

6. We have carefully considered the rival submissions. The orders of the authorities below reveal that assessee is engaged in offset plate processing and it was canvassed that material purchased from M/s. Amar Enterprise of Rs.14,86,450/- has been used for the purpose of business. It is also observed

that assessee filed the basic details of the purchases inasmuch as copies of the purchase bills, etc. was filed. The only reason which prevailed with the income-tax authorities was the information from the Sales Tax Department of Maharashtra that the said concern, M/s. Amar Enterprise figures in the list of *hawala* dealers, i.e. parties who were merely issuing bills but not actually transacting in the goods stated therein. While the orders of the authorities below reveal that the purchases amounting to Rs.14,86,450/- were not properly substantiated by the assessee, but it also reflects the plea of the assessee that the material corresponding to such invoices has been used by the assessee for business. It is also noteworthy that the corresponding sales of the products have not been doubted. Under these circumstances, the ratio of the judgment of the Hon'ble Gujarat High Court in the case of *Simit P. Sheth (supra)* comes into play whereby it has been inferred that under such circumstances, the reasonable inference is that assessee had indeed effected the purchases, but not from the stated concern. In this case, assessee had canvassed that the impugned purchases was of essential raw materials which was consumed in the business of offset and plate processing. Under these circumstances, the Hon'ble Gujarat High Court observed that what is required to be added to the returned income is the savings effected by the assessee by making such purchases not from the stated concern, but from undeclared source in the grey market. Considering these aspects, in our view, it would be in the fitness of things that 12.5% of the impugned purchases be considered as an addition required to be made to the returned income in order to plug the leakage of revenue. Thus, we set-aside the order of CIT(A) and direct the Assessing Officer to restrict the addition to 12.5% of the impugned purchases and delete the balance.

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

Order pronounced in the open court on 27th April, 2018.

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Date : 27th April, 2018

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "J" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai