

आयकर अपीलिय अधिकरण “SMC” न्यायपीठ मुंबई मे ।

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 7142/Mum/2017

(निर्धारण बर्ष / Assessment Year 2010-11)

Sanjay Lalchand Bathija 301, Sai Ashirwad Apartments, Opp. Dena Bank, Netaji Chowk, Ulhasnagar-421 005	Vs.	The Income Tax Officer, Ward 2(4), Kalyan 2 nd Floor, Mohan Plaza, Wayale Nagar, Khadakpada, Kalyan West,
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
PAN NO. AFHPB8596C		

Assessee by : Sailesh Parmar, AR

Revenue by : Virender Singh, DR

Date of hearing: 14-05-2018 Date of pronouncement : 14-05-2018

आदेश / ORDER

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-3, Mumbai [in short CIT(A)], in appeal No. 26-THN/14-15 dated 03-07-2017. The Assessment was framed by the Income Tax Officer, Mumbai Ward 2(4) Mumbai (in short 'ITO') for the A.Y. 2010-11 vide order dated 19.06.2014 under section 144 r.w.s 147 of the Income Tax Act, 1961 (hereinafter 'the Act').



ITA No. 7142/Mum/2017

2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in disallowing 100% bogus purchases amounting to ₹ 38,80,265/-. For this assessee has raised the following two grounds: -

“1. On the facts and circumstances of the Appellant's case and in law the Id. Commissioner of Income Tax (Appeals) erred in confirming the action of Id. AO that the assessee has entered into accommodation transactions of bogus purchase solely relying on the information received from the Sales Tax department without any material evidence on record.

2. On the facts and circumstances of the appellant' Commissioner of Income Tax (Appeals) erred in disallowing a sum being 100% of the alleged bogus purchases amounting to Rs.38,80,265/- in an arbitrary manner as per grounds stated in the order or otherwise.”

2. I have heard the rival contentions and gone through the facts and circumstances of the case. Briefly stated facts are that the assessee engaged in the business of wholesalers in surgical products. The AO received information from DGIT (Investigation), who in turn received information from Sales Tax Department, Mumbai that the assessee has made purchases from hawala parties, as listed in hawala dealers by the Maharashtra Sales Tax Department who are providing bogus bills of purchase amounting to ₹ 38,80,265/- as admitted by these hawala



ITA No. 7142/Mum/2017

dealers in their deposition before the authorities. The same reads as under: -

<i>"Sl No.</i>	<i>Name of party</i>	<i>Amount</i>
1.	<i>Lahree Impex</i>	<i>10,19,891</i>
2.	<i>Tulsiani Rading Pricate Ltd</i>	<i>8,49,999</i>
3.	<i>Niddhish Impex Pvt Ltd</i>	<i>7,44,750</i>
4.	<i>V3 Enterprises</i>	<i>12,65,625</i>
	<i>Total</i>	<i>38,80,265/-</i>

3. According to information received the name of this party was appearing in the list of hawala entry operators as supplied by sales Tax Department of Maharashtra. The hawala traders admitting before the sales tax authorities in their deposition that they were providing only accommodation purchase bills on commission basis without being actual purchase/ sale of goods. The AO during the course of scrutiny assessment proceedings required the assessee to file the details of purchase. The assessee filed copies of purchase bills from the above said parties, copies of ledger extract and copies of bank statements to prove the payments by cheque. The AO required the assessee to produce these parties for verification but assessee expressed his inability to do so. According to the AO, the assessee failed to establish the genuineness of the purchase and accordingly, he made addition of unproved purchase amounting to ₹ 38,80,265/- to the returned income of the assessee. Aggrieved, assessee preferred the appeal before CIT(A), who also confirmed the same at 100% of the bogus purchases by observing in para 5 and by following the decision of Hon'ble Superme Court in the case N. K. Proteins Ltd. vs. DCIT [2017] 84 taxmann.com 195 (SC) by observing as under: -



“5.....

Considering the totality of the facts of the case, I am of the considered opinion to disallow 100% as bogus/inflated purchases made from unverifiable /Hawala dealer. Accordingly, the book result of the appellant is rejected u/s.145 (3) of the Act. The disallowance @ 100% of unverifiable purchases from Hawala dealers had been upheld in the following cases:

(1) CIT vs. La Medica (2001) 250 ITR 575 (Del)

(2) Sri. Ganesh Rice Mills vs. CIT (2007) 294 ITR 316 (All)

(3) Khandelwal Trading Co. vs. ACT (1996) 55 TTJ (JP) 261

(4) Swetambar Steels Ltd. vs. ITO 707/1075/1262/1263/JD(2002)

ITAT (Ahd). Also upheld up to Supreme Court.

(5) Placed reliance in the case of Ruchi Developers, ITAT 'B' Bench Ahmedabad in ITA No. 3348/Ahd/2010 - A.Y.2007-08 & ITA No 1170/Ahd/2014 -A.Y.2007-08. Date of order: 05.06.2015 which held that the appellant failed to established the purchases with corroborative evidences in spite of umpteen opportunities given to it. The appellant has not maintained any quantitative detail! regarding purchases and consumption of various items used for construction.



ITA No. 7142/Mum/2017

(6) Indian Woolen Carpet Factory vs. ITAT & Ors. (2003) 260 ITP 658(Raj)(Supra) wherein on verification of whereabouts of many persons from whom the purchases were made, were not known, where the AO had issued summons u/s.131 of the Act to the parties and no person in the name of such party was found, then the Hon'ble High Court held that their latest addresses should have been supplied and the burden was upon the assessee claimed purchases were genuine.

(7) Shri.Mukeshkumar Pukhraj Mehta vs. ITO Ward 8(3) Pune in ITA No.2026/PN/2014 A.Y.2010-11 order dated 03.11.2015.

Recently, on similar issue of bogus purchases, the Hon'ble SC in the case N. K. Proteins Ltd. Vs. DCIT, ITR No. 242 /2003, order dated 16.01.2017 has dismissed the SLP of the assessee, confirming the order of the Hon'ble Gujrat High Court in the case of N K Proteins Ltd. vs. DCIT No. IT(SS) A No.15/Ahd/2002 dated 24.01.2003.

In view of the above stated facts, the addition of Rs.38,80,2651- made by the AO as bogus purchase is confirmed. Therefore, the appeal of the appellant on this ground is dismissed.”

3. I have considered the issue and gone through the facts and circumstances of the case. I find from the facts of the case and argument of both the sides, that the CIT(A) has applied 100% of unverifiable purchases. I have noticed from the assessment order and the order of CIT(A) that the sales are not at all doubted. Only purchases are not genuine but in regard to these purchases the assessee has made



ITA No. 7142/Mum/2017

payment by account payee cheque and also included the goods in the stock register. Only the assessee could not prove the movement of goods that is transportation of goods. Once, the sales are not doubted it is presumed that the assessee might have made purchases from grey market and obtained these bogus bills to save on account of VAT and purchases from grey market are made at a lower rate. Hence, I am in full agreement with the argument of the learned Counsel for the assessee and according to me a profit rate of 12.5% will meet the end of justice in view of the decision of Hon'ble Gujarat High Court in the case of CIT vs. Smith P. Seth (2013) 356 ITR 451 (Guj). The appeal of the assessee is partly allowed.

4. In the result, the appeal Assessee is partly allowed.

Order pronounced in the open court on 14-05-2018.

आदेश की घोषणा खुले मे दिनांक 14.05.2018 को की गई ।

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 14-05-2018
Sudip Sarkar /Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.
//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI