

IN THE INCOME TAX APPELLATE TRIBUNAL
"I" Bench, Mumbai
Before Shri B.R. Baskaran (AM)& Shri Pawan Singh (JM)

I.T.A. No. 5785/Mum/2016 (Assessment Year 2009-10)
I.T.A. No. 5786/Mum/2016 (Assessment Year 2010-11)
I.T.A. No. 5787/Mum/2016 (Assessment Year 2011-12)

M/s. Sanjay Tracon Pvt. Ltd. Kamala Bhawan Sahar Road, Opp. Garware Andheri West Mumbai-400 069.	Vs.	DCIT 13(2)(1) Mumbai
(Appellant)		(Respondent)

Assessee by	Shri Mani Jain
Department by	Shri V. Justin
Date of Hearing	8.03.2018
Date of Pronouncement	16.05.2018

ORDER

Per Bench:-

All the three appeals filed by the assessee are directed against the orders passed by Ld CIT(A)-21, Mumbai and they relate to the assessment years 2009-10 to 2011-12.

2. The appeal relating to AY 2009-10 was originally disposed of by the Tribunal, vide its order dated 06-09-2017. Subsequently the order was recalled by the Tribunal, vide its order dated 05-01-2018 passed in the Miscellaneous application M.A.No.847/Mum/2017.

3. Since the issue urged in these three appeals is identical in nature and arises out of common set of facts, these three appeals were consolidated and were heard together. Accordingly these appeals are being disposed of by this common order, for the sake of convenience.

4. In all the three appeals, the assessee is challenging the order passed by Ld CIT(A) in confirming the addition relating to alleged bogus purchases made by the assessing officer.

5. We heard the parties and perused the record. The assessee is engaged in the business of trading in construction materials and also undertaking sub-contract works from the Contractors registered with BMC. The revenue received information from the Sales tax department of Government of Maharashtra that certain dealers are indulging in providing only accommodation bills without actually supplying materials. Those dealers were loosely classified as "Hawala dealers". It was noticed that the assessee has purchased goods from some of such dealers. Accordingly a survey operation was conducted at the business premises of the assessee on 07-12-2012. During the course of survey, the Director of the assessee company Shri Manoj Jain declared additional income of Rs.3.00 crores for the following assessment years as detailed below:-

Assessment year	Additional income
2009-10	1,85,00,000
2010-11	75,00,000
2011-12	40,00,000

Accordingly the assessments of the all the three years under consideration were re-opened by the AO by issuing notices u/s 148 of the Act. In the returns of income filed in response to the notices, the assessee did not offer the additional income offered by it in survey proceedings.

6. In the assessment proceedings, the AO examined the issue relating to the claim of purchases made from Hawala dealers. The AO asked the assessee to substantiate the claim of purchases made from the hawala dealers. The assessee submitted that it has traded in the goods purchased from the impugned dealers and reconciled the purchases with the corresponding sales. It was submitted that it could not have made the sales without actually purchasing the goods. It was also submitted that the G.P rate declared by the assessee are reasonable and comparable. The assessee also furnished copies of bills, payment detail and reconciliation of purchases with sales. Accordingly it was submitted that it has discharged the initial onus of proving purchases.

Alternatively, it was submitted that the profit element involved in the impugned purchases can alone be added.

7. The AO expressed the view that the initial onus to prove the purchases will always lie upon the assessee. Since the impugned dealers have been declared as hawala dealers, the AO observed that the assessee has not purchased goods from those dealers but from some other dealers. It is pertinent to note that the assessing officer has accepted the fact that the goods have entered into the hands of the assessee, but not from the impugned dealers. Accordingly he took the view that a portion of purchases should be disallowed as not proved. The AO determined the disallowance @ 25.98% of the value of bogus purchases in AY 2009-10, which worked out to Rs.1,85,00,000/-, being the additional income offered by the assessee in the statement taken during the course of survey operations.

8. In AY 2010-11, the AO adopted G.P rate of 23.09% on the value of bogus purchases, which worked out to Rs.40,00,000/-, being additional income offered for that year during the course of survey operations. Similarly, in AY 2011-12, the AO adopted G.P rate of 27.87% on the value of bogus purchases, which worked out Rs.75,00,000/-, being the additional income offered by the assessee in the statement taken during the course of survey operations.

9. The Ld CIT(A) upheld the additions in all the three years, since
- (a) the assessee had surrendered the additional income during the course of survey operations and the statement has not been retracted.
 - (b) the assessee did not produce the suppliers either before the AO or him.
 - (c) the Tax audit report of the assessee states that it did not maintain stock register.

10. The Ld A.R submitted that the assessee has demonstrated that the entire purchases made from the impugned parties have been sold, by producing relevant purchase invoices and sales invoices. He further submitted

that the assessing officer has accepted the fact that the goods have entered the premises of the assessee and hence the assessee could make the sales. He submitted that the AO, after having accepted the above said fact, has actually estimated the profit element involved in the purchases. However he has adopted unreasonable rate of gross profit for estimating the profit element. He submitted that the most of the goods purchased from the alleged hawala dealers was having VAT rate of 4% only. He submitted that the Gross profit rate declared by the assessee in AY 2007-08 and 2008-09 was 4.49% and 5.82% respectively. However during the years under consideration, the G.P rate has gone up, i.e., G.P rate declared in AY 2009-10 to 2011-12 was 7.26%, 6.52% and 11.95% respectively. Had these purchases been at inflated prices, the G.P would have actually gone down. Accordingly the Ld A.R contended that there is no reason to make any addition.

11. On the contrary, the ld D.R supported the orders passed by Ld CIT(A).

12. Having heard rival contentions, we are of the view that there is merit in the contentions of the assessee. We notice that the AO has adopted different rates of rates in the three years under consideration for making disallowance and the objective of the AO appears to be to make addition to the extent of additional income surrendered by the assessee during the course of survey operations. Once it is accepted that the goods have entered the premises of the assessee and once it is shown that the said goods have been sold, then the profit element, if any, involved in such purchases alone can be brought to tax.

13. We notice that the Ld CIT(A) has sustained the addition, inter alia, for the reason that the assessee has surrendered the income during the course of survey operation. It is an established proposition of law that the statement taken during the course of survey operations does not have evidentiary value, meaning thereby, the income, if any, surrendered in the statement taken during the course of survey operation, has to be corroborated with any other credible evidence. Admittedly, the survey operation has taken place on

account of information received from the sales tax department. The information was that the hawala dealers have not supplied the goods, but only given the bills. Hence the assessee appears to have been asked to surrender additional income. In the instant cases, we notice that the assessing officer has accepted that the goods have entered the premises of the assessee. The assessee has also shown that the goods have actually been sold. Hence the very basis, on which, the additional income was surrendered fails in these cases. Hence we are of the view that the Ld CIT(A) was not justified in taking support of surrender made in the statement taken during the course of survey operations.

14. We notice that the AO has, in effect, estimated the Gross profit on alleged bogus purchases in all the three years under consideration under the garb of disallowing a portion of the alleged bogus purchases. We have noticed that the assessee was declaring G.P in the range of 4.49% to 11.95% over the years. We have noticed that the AO has adopted G.P rate at around 25%. Considering the facts available in record, we are of the view that the G.P rate adopted by the AO is unreasonable.

15. It is an undisputed fact that the primary responsibility to prove the expenditure is placed upon the shoulders of the assessee. Since the assessee has failed to obtain confirmation letters from the suppliers and since the suppliers also could not be produced before the AO, we are of the view that the assessee cannot be said to have proved the genuineness of purchases from the impugned hawala dealers conclusively. Since the goods have entered the premises of the assessee, the possible view is that the assessee might have procured the materials from some other sources and might have obtained bills from the impugned hawala dealers. In that kind of situation, the assessee might have saved money on account of VAT tax and discount, which constitutes profit element involved in the impugned purchases. In our view, the said profit element involved in the purchases made from alleged bogus purchases is required to be assessed as income of the assessee in all the three

years under consideration. We have noticed that the G.P rate of the three years under consideration has gone up when compared to the G.P rate declared in the earlier two years. Considering this aspect and considering the VAT rate, we are of the view that the profit element involved in the alleged bogus purchases made in all the three years under consideration may be estimated at 5% and the same, in our view, would meet the ends of justice. Accordingly we set aside the orders passed by Ld CIT(A) on this issue in all the three years under consideration and direct the AO to sustain addition by estimating the profit from alleged bogus purchases at 5% of the value of bogus purchases in all the three years under consideration.

16. In the result, all the three appeals of the assessee are partly allowed.

Order has been pronounced in the Court on 16.05.2018.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

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

Mumbai; Dated : 16/05/2018

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//

BY ORDER,

Senior Private Secretary
ITAT, Mumbai

PS