

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "SMC", MUMBAI**

BEFORE SHRI G.S. PANNU (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 7425/MUM/2017
Assessment Year: 2012-13**

M/s Royal Aircon Pvt. Ltd., A-304, Silver Brich, Vasant Garden, Mulund (West), Mumbai - 400082 PAN: AAECR0058A (Appellant)	Vs.	The ITO, Ward 15(3)(1), Mumbai (Respondent)
--	------------	---

Assessee by : Shri Devendra Jain (AR)

Revenue by : Ms. N. Hemalatha (Sr. DR)

Date of Hearing: 11/04/2018

Date of Pronouncement: 27/04/2018

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against the order dated 28.08.2017 passed by the Ld. Commissioner of Income Tax (Appeals)-24, Mumbai, for the assessment year 2012-13, whereby the Ld. CIT (A) has dismissed the appeal filed by the assessee against assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that the assessee engaged in manufacturing of engineering goods, parts of which are used in air conditioning machines, filed its return of income for the assessment year under consideration declaring the total income of Rs. 12,77,660/-. Since, the case was selected for scrutiny notice u/s 143 (2) and 142 (1) were issued and served on the assessee. In response thereof the authorized representative of the assessee attended the proceedings from time to time and furnished the details and explanations called for by the AO. It was noticed that the assessee had debited purchases amounting to Rs. 28,52,427/- from Shivalik Trading Company. As per the

information received from Sales Tax Department, the assessee company obtained bogus purchase bills amounting to Rs. 28,52,427/- from bogus entities which used to issue bogus bills without actually supplying any goods. Accordingly, the assessee was asked to justify the purchases made during the relevant year. The assessee was further asked to furnish complete details of purchases made, delivery challans of the goods received and the details of mode of transport of goods receipt. The authorized representative furnished party wise details of purchase and sale. On going through the same it was noticed that the assessee company had shown purchases amounting to Rs. 28,52,427/- from M/s Swastik Trading Co. and as per the information received from sales tax department, the said company issued bogus bills to the assessee company. Since the assessee company failed to produce the party and the relevant documentary evidence in the form of goods receipt, details of transportation of goods and relevant entries of having received such goods during the year relevant to the assessment year under consideration, the AO estimated the gross profit on the questioned purchases @15% and made an addition of Rs. 4,27,900/-.

3. In the first appeal, the Ld. CIT (A) after hearing the assessee confirmed the addition made by the AO @ 15% of the total amount of bogus purchases. The assessee has preferred the present appeal against the impugned order passed by the Ld. CIT (A).

4. The assessee has challenged the impugned order passed by the Ld. CIT (A) on the following effective grounds:-

1. *“Without prejudice to the above, in the facts and in the circumstances of the case and in law, the learned CIT (A) has erred in confirming the action of the Assessing Officer of completing the assessment u/s 143 (30 on the basis of statement of third party without providing any opportunity of cross examination of the witnesses or documents relied upon by the Assessing Officer and thus violating the law laid down by Honorable Supreme Court in the case of*

Kishanchand Chellaram v. CIT (1980) 125 ITR 713 and Andaman Timber Industries v. Commissioner of Central Excise (Civil Appeal No. 4228 of 2006).

2. *Without prejudice to ground no. 1, in the facts and in the circumstances of the case and in law, the Learned CIT (A) has erred in upholding disallowance of 15% of purchases from M/s Swastik Trading Company, which is not a hawala dealer.*
3. *Without prejudice to ground no. 1 and 2, in the facts and in the circumstances of the case and in law, the Learned CIT (A) has erred in upholding the disallowance of 15% of alleged bogus purchases of Rs. 28,52,427/-."*

5. Before us, the Ld. counsel for the assessee submitted that the Ld.CIT (A) has wrongly confirmed the addition made by the AO on the basis of the statement of third party without providing any opportunity of cross examination of the witnesses. The Ld. counsel further contended that since the assessee has produced tax invoice and delivery challans from M/s Swastik Trading Company amounting to Rs. 28,52,427/-, copy of ledger account and tax invoice of the said party, the assessee has discharged the onus of proving the genuineness of the transaction. The materials purchased from the said supplier were used for manufacturing of goods and the purchases and sale transactions have been duly accounted in the books of account of the assessee. Since, the supplier defaulted in making payment under MVAT the assessee was liable to pay MVAT on the purchases made from the supplier, therefore the reversal of input credit by the department of Sales Tax should not be considered as bogus purchases. Without prejudice, the Ld. counsel relying on the decision of the Mumbai Bench of the Tribunal rendered in the case of Shri Sameer Patel vs. ACIT, ITA No 691& 692/Mum/2015, submitted that in the identical circumstances, the Tribunal has restricted the addition to 8% of the alleged bogus purchases taking into consideration the GP ratio.

6. On the other hand, the Ld. Departmental Representative (DR) relying on the order passed by the Ld. CIT (A) submitted that since the assessee has failed to rebut the evidence on record, which established that M/s Swastik Trading Company was a bogus entity which issued accommodation bills to the present assessee during the previous year, the Ld. CIT (A) has rightly confirmed the addition made by the AO. Moreover, the AO has made addition of 15% of the total amount of bogus purchases in accordance with the various decisions of the Income Tax Appellate Tribunal, hence, there is no infirmity in the order of the Ld. CIT (A) to interfere with.

7. We have heard the rival submissions and also perused the material on record in the light of their respective contentions. The assessee has challenged the impugned order on the ground that the AO has framed the assessment order on the basis of statement of third party without providing any opportunity of cross examination of the witnesses relied upon by the AO, therefore the Ld. CIT(A) ought to have deleted the addition of 15% made on estimation basis. We notice that the authorities below has not based their findings only on the information received from the sales tax department received through the Director General of the Income Tax but the concurrent findings are based on the other evidence on record. We further notice that the assessee has failed to establish that the material/goods were supplied to the assessee. In our considered view, the evidence on record is not sufficient to hold the questioned purchases genuine. So, the authorities below have rightly held the questioned purchases are bogus.

8. Now the only question remains as to whether the authorities below have rightly estimated the profit of 15% on the questioned purchase or the same is excess in the light of the submissions of the Ld. counsel that since the assessee has already shown the gross profit of 27.94%, the estimate of 15% is excess? The Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth 356 ITR 451 (Guj) has held that in the case of bogus purchases it is necessary to

ascertain the fact as to whether purchases were not made at all or purchases were made but from grey market. Once it is established that the purchases were actually made then only profit embedded in the same could be added in the income of the assessee. The Hon'ble High Court accordingly upheld the decision of the Tribunal and sustained the addition 12.5% of the total bogus purchases keeping in view the profit element.

9. In the case of Shri Sameer Patel vs. ACIT (supra) the coordinate Bench has reduced the addition to 8% by following earlier order passed by the ITAT Bench in the assessee's own case. The Bench restricted the addition keeping in view the gross profit ratio of 18% shown by the assessee. In the present case the assessee has shown the gross profit ratio of 27.94% in the assessment year under consideration which is higher than the ratio during the A.Y. 2011-12. Hence, in the light of the principles of law laid down by the Hon'ble Gujarat High Court in the aforesaid case and the decision of the coordinate Bench discussed above, we modify the order of the Ld. CIT(A) and restrict the addition to 8% and direct the AO to make addition of 8% of the total amount of bogus purchases determined in the assessment order.

In the result, appeal filed by the assessee for assessment year 2012-2013 is partly allowed.

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

Sd/-

(G.S. PANNU)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 27/04/2018

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

आदेश प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai