

आयकर अपीलिय अधिकरण पुणे न्यायपीठ "SMC" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA No.2970/PUN/2016
निर्धारण वर्ष / Assessment Year : 2011-12

Mohemadmustafa A. Khan,
Prop. S.K. Electrical Stamping,
Bharat Electrical Stamping,
Plot No.12, Gat No.20,
Abdul Hamid Nagar,
Near Noor Masjid, Ambad,
Satpur Link Road, Nashik – 422 010
PAN : AHBPK7647M

.... अपीलार्थी/Appellant

Vs.

ITO, Ward-1(3),
Nashik

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Sanket Joshi
प्रत्यर्थी की ओर से / Respondent by : Shri Pankaj Garg

सुनवाई की तारीख / Date of Hearing : 17.05.2018	घोषणा की तारीख / Date of Pronouncement: 25.05.2018
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This is the appeal filed by the assessee against the order of CIT(A)-1, Nashik, dated 22.09.2016 for the Assessment Year 2011-12.

2. Grounds raised by the assessee are as under:

"The following grounds are taken without prejudice to each other -

On facts and in law,

1] *The learned CIT(A) erred in confirming the disallowance of Rs.4,60,581/- out of the total disallowance of Rs.18,42,323/- made by the A.O. in respect of purchases made from alleged hawala parties on the basis of information obtained from Maharashtra Sales Tax Dept.*

2] *The learned CIT(A) erred in holding that 25% of the purchases made from the alleged hawala parties were to be disallowed by presuming that the assessee may have made the impugned purchases of goods from certain other parties at a lower cost and hence, the purchases shown from the above parties as recorded in the books of accounts are inflated.*

3] *The learned CIT(A) failed to appreciate that-*

- a. *The purchases made by the assessee from the above party were supported by tax invoices and the assessee has also maintained quantitative stock record in respect of the said purchases and hence, there was no reason to doubt the genuineness of the said purchases merely on the basis of uncorroborated statement of such supplier.*
- b. *The payments to the said party were made through banking channel and the A.O. had not brought any evidence on record to show that the payments made by the assessee to the said party was withdrawn by it and returned to the assessee in cash and hence, in the absence of any contrary evidence, there was no reason to doubt the genuineness of the payments made to the said party.*
- c. *The assessee had provided details regarding the impugned suppliers from the site of sales tax dept. and ministry of corporate affairs to prove that the said parties were existing at the time of making purchases from them and the said parties were duly registered with the sales tax dept. and the assessee had also produced certificate from his bank to prove that the payments were credited to the bank account of these suppliers and hence, in view of the above evidences when the parties had issued proper tax invoices in respect of the said purchases, there was no reason to doubt the genuineness of such purchases merely on the basis of uncorroborated statements of these parties.*

4] *The learned CIT(A) ought to have appreciated that -*

- a. *The impugned suppliers had evaded VAT and hence, it may have denied any actual sales before the Sales Tax Dept. solely to absolve itself from VAT liability, however, there was no corroborative evidence whatsoever on record to support its statement and hence, such unsubstantiated statement could not be relied upon by ignoring the documentary evidences furnished by the assessee.*
- b. *After considering the same statement of the alleged hawala supplier, the Sales Tax Dept. had not disputed the fact that there has been actual transfer of goods between the assessee and the supplier and hence, the assessee has been made liable to pay VAT on such transfer of goods which has not been deposited by the supplier and therefore, the Income Tax Dept. is not justified in raising additional income tax liability on the assessee in respect of these purchases by adopting a contrary interpretation of the same statement to the effect that there has been no actual transfer of goods.*
- c. *The A.O. had himself admitted in the asst. order that he was not able to locate the above alleged hawala parties and thus, the A.O. was in no position to grant the opportunity of cross examination of this party to the assessee and hence, in view of the ratio laid down by Hon'ble Supreme Court in the case of Andaman Timber Industries v. CCE [Civil Appeal No.4228/2006 dated 02.09.2015], the addition made solely on the basis of statement of such supplier recorded at the back of the assessee was not justified at all.*

5] *Without prejudice, the assessee submits that the disallowance made @ 25% of the amount of purchases is very high and the same may be restricted to a reasonable level considering the facts of the case.*

6] *The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal."*

3. Briefly stated relevant facts are that assessee is an individual and is engaged in the business of manufacturing/trading of transformer components, parts and reseller of scrap etc. Assessee filed the return of income on 13-08-2011 declaring total income of Rs.5,68,600/- for the assessment year under consideration. On the basis of information received from the Investigation Wing of Sales Tax Department, AO issued notice u/s.148 of the Act to the assessee. AO found that assessee made purchases from four suppliers namely, (1) Kripa Multitrade Private Ltd. (2) Globe Impex India (3) Meridian Trading Company and (4) Waksons Enterprises totalling to Rs.18,42,323/-. Eventually, at the end of assessment proceedings u/s.143(3) r.w.s. 147 of the Act, the AO made addition of entire sum of Rs.18,43,323/- and held that the assessee has failed to prove the genuineness of the purchases made from the above parties. As such, there is no request by the assessee for cross examination of the suppliers and assessee furnished requisite documentation in support of trail of goods purchased by the assessee.

4. In the First Appellate proceedings, the CIT(A) restricted the addition made by the AO to 25% of the purchases as per the discussion given in Para No.6.13 of his order and the same reads as under :

*"6.13 Thus, in my opinion the facts on record demonstrate that this is not a case of bogus purchase but a case of inflated purchases and at best from bogus parties. The appellant has purchased goods of Rs.2,17,199/- and Rs.18,42,323/- for A.Yrs. 2009-10 and 2010-11 respectively. Considering the facts and circumstances of the case, the AO is directed to restrict the **disallowance to 25% of purchases**, i.e. Rs.54,300/- and Rs.4,60,581/- for A.Yrs. 2010-11 and 2011-12 respectively.*

5. Aggrieved with the part relief given by the CIT(A), assessee preferred the present appeal before the Tribunal with the grounds extracted above.

6. At the outset, referring to Ground No.5 of the appeal, Ld. Counsel for the assessee submitted that confirming 25% of the purchases for the assessment

year under consideration is on higher side and unsustainable, when the assessee has established the trail of goods and the payments are made through banking channels. Further, Ld. Counsel submitted that in view of the plethora of decisions of the Pune Bench of the Tribunal, the addition may be restricted to 10% of the bogus purchases. In support of the same, Ld. Counsel for the assessee also filed a copy of the order of Tribunal in ITA No.1732/PUN/2015 and CO No.46/PUN/2017, dated 13-10-2017 where the Tribunal restricted the disallowance to the Gross Profit rate of 5% of bogus purchase.

7. Ld. DR for the Revenue relied on the order of CIT(A).

8. I heard both the sides on the solitary issue of confirming 25% of the purchases by the CIT(A) and perused the orders of the Revenue and the decisions relied on by the Ld. Counsel for the assessee. I find that similar issue of bogus purchases has been decided by the Tribunal in series of decisions. Further, it is not the case of the Revenue that something is wrong with the invoices, payments, trail of goods purchased etc. I find the Coordinate Bench of the Tribunal in the case of Mr. Khan Afzalhussain Mohd. Saie Vs. DCIT – ITA Nos. 2708 and 2709/PUN/2016, dated 23-03-2018 confirming the addition to only 10% of such alleged bogus purchases apply to the facts of this case. I therefore find it to relevant to extract the findings given by the Tribunal in Para No.11 of order of Tribunal here as under :

*"11. Now, coming to the merits of addition. The issue raised in the present appeal is against bogus purchases. We have already adjudicated similar issue in series of decisions with lead order in M/s. Chhabi Electricals Pvt. Ltd. Vs. DCIT in ITA No.795/PUN/2014, relating to assessment year 2010-11, order dated 28.04.2017. The assessee in the first year i.e. assessment year 2009-10 has maintained quantitative details. In other words, it has the evidence of purchasing goods and its sales. In such circumstances, at best, higher gross profit rate can be applied. Following our decision in earlier orders, **we hold that GP rate of 10% over and above GP declared by the assessee in its books of account, be applied to work out the additional income in the hands of assessee.** The ground of appeal No.3 raised by the assessee is thus, partly allowed."*

On perusal of the relevant fact, I find the assessee successfully furnished the requisite documentation relating to purchase of goods and the payment details too. Considering the same, I direct the Assessing Officer to make addition in the hands of assessee by adopting GP rate at 10% of bogus purchases made by the assessee. The argument relating to failure in matter of cross examination, I find there is no specific request for the same from the assessee. Hence, the ratio of judgment of Hon'ble Supreme Court in the case of Andaman Timber Industries Vs. CIT - Civil Appeal No. 4228/2006, dated 02-09-2015 has no application. Accordingly, the grounds raised by the assessee are partly allowed.

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

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

Sd/-

(D.KARUNAKARA RAO)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 25th May, 2018.

Satish

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-1, Nashik
4. आयकर आयुक्त / The CIT-1, Nashik
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "SMC" / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,स

सत्यापित प्रति //True Copy//

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune