

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI

Before Shri Mahavir Singh(JUDICIAL MEMBER)

AND

Shri G Manjunatha (ACCOUNTANT MEMBER)

I.T.A No.5499/Mum/2017
(Assessment year: 2008-109)

Rita Bhanwarlal Jain Gala No.12, 1 st Floor, Neminath Industrial, 4, Navghar, Vasai PAN : AEFPJ6412G	vs	ITO, Wd.4(3), Thane
APPELLANT		RESPONDENT

Appellant by	Shri Rahul Sarda
Respondent by	Shri Ram Tiwari

Date of hearing	23-05-2018
Date of pronouncement	20 -06-2018

ORDER

Per G Manjunatha, AM :

This appeal filed by the assessee is directed against the order of the CIT(A)-3, Thane dated 30-06-2017 and it pertains to AY 2007-08.

The assessee has raised the following grounds of appeal:-

I. On the facts and circumstances of the case, the entire reassessment proceedings initiated u/s 147 and notice issued u/s 148 of the Income Tax Act, 1961 [the Act] by the learned Assessing Office are invalid. Therefore, the entire reassessment proceedings be quashed.

II. On the facts and circumstances of the case, the addition made by the AO of Rs. 44,94,655 on account of purchases from alleged non genuine supplier is bad in equity and totally unwarranted.

III. On the facts and circumstances of the case and in law, the learned AO erred in levying interest under Section 234B, 234C, 234D of the Act.”

2. The brief facts of the case are that the assessee, proprietor of M/s Khushi Technologies engaged in the business of resale of chemicals, surgical, filter paper and general items, filed her return of income for AY 2007-08 on 20-10-2007 declaring total income of Rs.6,14,290. Subsequently, the case has been reopened on the basis of information received from DGIT (Inv), Mumbai that the assessee had obtained bogus purchase bills from suspicious dealers listed in the list of hawala operators prepared by Sales-tax department. Accordingly, notice u/s 148 was issued on 27-03-2014 calling for return of income. In response to notice, the assessee, vide letter dated 21-04-2007 submitted that the return filed on 20-10-2007 may be treated as return filed in response to notice u/s 148 of the Act. Further, the assessee has requested for reasons for reopening of assessment. The AO, in response to assessee's request furnished copies of reasons recorded for reopening of assessment. The case has been selected for scrutiny and notices u/s 143(2) and 142(1) of the Act alongwith questionnaire were issued. In response to notice, authorized representative of the assessee appeared from time to time and furnished the details, as called for. During the course of scrutiny assessment proceedings, the assessee was asked to file details in respect of purchases made from M/s Om Navkar

Enterprises and N.P. Chemie, in the backdrop of information received from Investigation Wing that the said parties were involved in providing accommodation entries without actual delivery of goods. In response, the assessee, vide letter dated 16-01-2015 submitted that since she had closed down her business on health ground and family matters and for want of peace of mind subject to non levy of penalty was ready to accept gross profit of 15% on the transaction effected through the above two firms. However, later on, on 09-02-2015, the assessee has filed another letter objecting to the reopening of the assessment.

3. The AO, after considering relevant submissions of the assessee and also taking into account information received from sales-tax department, opined that purchases made from above two firms is non genuine as the assessee failed to furnish any evidence to support purchases made from above two concerns. The AO further observed that though the assessee has filed certain evidences including purchase bills and payment proof to prove purchases, failed to file further evidences in the backdrop of clear findings of the DGIT (Inv) that the said parties are hawala operators involved in issuing bogus purchase bills without actual delivery of goods. Accordingly made addition of Rs.46,66,879 to the returned income.

4. Aggrieved by the assessment order, assessee preferred appeal

before the CIT(A). Before the CIT(A), assessee has challenged reopening of assessment on the ground that the AO has formed reasonable belief of escapement of income only on the basis of information received from third party sources without there being any tangible material which suggests escapement of income. Insofar as addition made towards purchases from M/s N.P. Chemie and M/s Om Navkar Enterprises, the AO has made addition towards purchases from above parties without giving proper opportunity of cross examining the alleged non genuine suppliers, whose statements were relied upon by the AO. The assessee further submitted that the AO made addition towards purchase from above parties merely on the basis of statements of third parties ignoring all evidences filed during the course of assessment proceedings including purchase bills, payment proof and details of purchase and sales. Assessee has furnished complete details of sales and purchases and the AO has not doubted sales declared in the year. In the absence of any findings as to the incorrectness of books of account, purchases made from the above parties cannot be considered as bogus, that too, without allowing cross examination of the persons, who gave statements.

5. The CIT(A), after considering relevant submissions of the assessee and also relying upon certain judicial precedents rejected ground raised

by the assessee challenging reopening of the assessment by holding that the AO has received information from DGIT(Inv) which constitutes a tangible material for formation of reasonable belief of escapement of income, therefore, there is no merit in the arguments of the assessee that the AO has formed reasonable belief without there being any tangible materials. Insofar as addition made towards disallowance of purchases, the CIT(A) observed that it is evident from the fact that during the course of assessment proceedings she had admitted estimation of net profit of 15% on the transaction effected through above said two firms. Therefore, opined that the AO was right in making addition towards purchase from above two parties and accordingly, confirmed addition made by the AO. Aggrieved by the order of CIT(A), assessee is in appeal before us.

6. The Ld.AR for the assessee, at the time of hearing submitted that the issue is almost settled by the decisions of co-ordinate benches of ITAT in a number of cases, where the ITAT has taken consistent view in the case of bogus purchases and depending upon the facts of each case has directed the AO to estimate net profit of 12.5%. The Ld.AR further submitted that in case a similar view is taken in this case, he did not want to press the ground taken to challenge the reopening of assessment. Insofar as addition made by the AO towards disallowance

of purchases, the Ld.AR for the assessee submitted that the assessee has filed enormous details to prove purchases, however, the AO has ignored all evidences only on the basis of information received from DGIT(Inv) without allowing assessee to cross examine the persons, who gave statements before the sales-tax department. The Ld.AR further submitted tht the AO is incorrect in making addition towards purchases from above two parties only on the basis of statement of third parties ignoring all evidences filed by the assessee.

7. On the other hand, the Ld.DR submitted that the lower authorities have brought out clear facts and stated that the assessee has not proved purchases from above two parties with necessary evidences except filing purchase bills and payment proof. The AO has brought out clear fact to the effect that the parties are involved in providing accommodation entries without any actual business which has been confirmed during the course of investigation proceedings in statement recorded. Therefore, there is no merit in the argument of the assessee that the purchases from above parties are supported by valid evidence.

8. We have heard both the parties and perused the material available on record. There is no dispute with regard to the fact that the assessee has effected purchases from M/s Om Navkar Enterprises and M/s N.P. Chemie which appeared in the list of hawala dealers prepared by sales-

tax department. The information received from Investigation Wing clearly shows that the said parties are engaged in providing accommodation entries and this fact has been confirmed in their statements given before the sales-tax authorities. Based on the above information, the AO reached to the conclusion that purchases from above two parties are bogus in nature and hence made addition towards total purchases from above two parties. It is also an admitted fact that the assessee has filed certain basic evidences including purchase bills and payment proof for the purchases. This fact has not been disputed by the AO. It is also an admitted fact that the assessee has maintained books of account. The AO has not pointed out any inconsistencies or irregularities in the books of account. The AO also not disputed sales declared by the assessee. Under these facts, it is difficult to accept the findings of the AO that purchases from the above two parties are totally bogus and also it is not supported by valid evidence. Although the assessee has filed certain basic evidence, but, failed to furnish further evidence in the backdrop of findings of Investigation department of sales-tax department. Therefore, we are of the considered view that there is no merit in the argument of the assessee that purchases from above two parties are genuine and supported by valid evidence.

9. Having said so, let us examine what is the addition to be made in

these kinds of cases. The co-ordinate bench of ITAT has taken consistent view in case of bogus purchase and depending upon facts of each case, has directed to estimate net profit at 12.5% to 15%. The Hon'ble Gujarat High Court in the case of Vijay Proteins Ltd vs CIT 2017-TIOL-23-SG-IT has held that addition cannot be made to total purchases made from bogus suppliers, but what needs to be taxed is only the profit element embedded in such purchases. In yet another case, the Hon'ble Gujarat High Court in the case of CIT vs Simit P Sheth 2013 (10) TMI 1028 observed that no uniform yardstick could be adopted for estimation of profit on bogus purchases. Therefore, we are of the considered view that in case of bogus purchases, only profit element embedded in such purchases needs to be taxed but not total purchases that too, when assessee has filed certain evidence to justify such purchases and also where the AO has not doubted sales declared by the assessee and not pointed out any mistakes in books of account maintained for the financial year.

10. In this view of the matter and consistent with the view taken by the co-ordinate bench in number of cases, we direct the AO to estimate net profit of 12.5% on total alleged bogus purchases from above two parties.

11. The next issue that came up for our consideration from assessee's appeal is validity of reopening of assessment u/s 147 of the Act. The

Ld.AR for the assessee, at the time of hearing submitted that if a reasonable net profit is estimated on alleged bogus purchases, he would not want to press the ground taken for reopening of assessment. Since we have already taken a decision to estimate profit element embedded in bogus purchases and directed the AO to estimate net profit of 12.5% as agreed by the Ld.AR for the assessee, we dismiss ground taken against reopening of assessment.

12. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 20th June, 2018.

Sd/-

sd/-

(Mahavir Singh)	(G Manjunatha)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 20th June, 2018

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

/True copy/

By order

Sr.PS, ITAT, Mumbai