

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI
BEFORE SHRI G.S.PANNU, AM AND SHRI RAVISH SOOD, JM**

ITA No.79/Mum/2016
(निर्धारण वर्ष / Assessment Year:2009-10)

Shri Abdul Sayeed Samane Rashmi Zavery & Co. Chartered Accountants, Arham, Gr. Floor, Plot 266, Sion (E), Mumbai- 400022	बनाम/ Vs.	Income Tax Officer-20(1)(1) Room No. 124, Lalbaug, Parel Mumbai-400012
स्थायी लेखा सं./जीआइआर सं./PAN No.		AVZPS0612G
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	None
प्रत्यर्थी की ओर से / Respondent by	:	Shri Rajesh Kumar Yadav, D.R

सुनवाई की तारीख / Date of Hearing	:	06.06.2018
घोषणा की तारीख / Date of Pronouncement	:	15.06.2018

आदेश / ORDER

PER RAVISH SOOD, JUDICIAL MEMBER:

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-32, Mumbai, dated 02.11.2015, which in itself arises from the order passed by the A.O under Sec.143(3) r.w.s. 147 of the Income Tax Act, 1961 (for short 'Act'), dated 18.02.2015 for A.Y 2009-10. The assessee assailing the order of the CIT(A) had raised before us the following grounds of appeal:-

- “1. Under the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) erred in confirming the additions made by the Assessing Officer to the extent of Rs. 5,97,167/- on account of alleged bogus purchases.
2. The Appellant prays that the addition on account of alleged bogus purchases made by the assessing officer and confirmed by the Commissioner of Income Tax (Appeals) to the extent of Rs. 5,97,167/- may be deleted.

3. *Your Appellant craves leave to add, alter, amend, or modify or delete any of the above grounds of appeal.”*

2. Briefly stated, the facts of the case are that the assessee who is engaged in the business of trading in iron and steel had filed his return of income for A.Y 2009-10 on 30.09.2009, declaring total income of Rs.2,27,570/-. The return of income filed by the assessee was processed as such under Sec. 143(1) of the Act. On the basis of information received by the A.O from the Maharashtra Sales Tax Department that the assessee had taken accommodation entries to the tune of Rs.1,26,25,095/- in the nature of bogus purchases, the case of the assessee was reopened under Sec.147 of the Act.

3. During the course of the assessment proceedings, the A.O in order to verify the veracity of the information received from the sales tax department, called upon the assessee to substantiate the purchases of Rs.1,26,25,095/-, which were claimed to have been made from the following parties:

Name of the party	Amount
Siddhivinayak Steel	13,35,693/-
Asian Steel	13,10,358/-
Rupani & Co.	1,13,152/-
Garima Steel Traders	2,08,032/-
Shiv Industries	45,98,956/-
Maruti Steel Traders	50,58,904/-
Total	1,26,25,095/-

However, despite sufficient opportunity the assessee failed to place on record documentary evidence viz. purchase register, delivery challans, lorry receipts, transportation details etc. which could prove to the hilt the genuineness and veracity of the purchase transactions. Rather, the assessee tried to impress upon the A.O that the authenticity of the purchase transactions could not be doubted for the reason that the payments to the said respective parties were made through banking channels. On the basis of the aforesaid facts, the A.O not being persuaded to subscribe to the claim of the assessee that it had made genuine purchases from the aforementioned parties, declined to accept the same. However, the A.O observing that the

assessee had actually purchased the goods under consideration, though not from the aforementioned parties, but from the open/grey market, thus did not dislodge the corresponding sales accounted for by the assessee in its books of account. The A.O was of the considered view that as the assessee had made the purchases of the goods not from the aforementioned hawala parties, but rather from the open/grey market, therefore, it must have benefited by way of saving on sales tax etc. On the basis of the aforementioned deliberations and taking support of various judicial pronouncements, the A.O concluded that the profit element embedded in making of such purchases by the assessee from the open/grey market could safely be taken at 12.5% of the aggregate value of the bogus purchases of Rs.1,26,25,095/-. In the backdrop of the aforesaid observations, the A.O made an addition of Rs.15,78,136/- in the hands of the assessee.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) after deliberating on the contentions advanced by the assessee, was however not persuaded to subscribe to his claim that as the genuineness of the purchase transactions was duly proved, hence the A.O had erred in characterising the same as bogus purchases. Rather, the CIT(A) after deliberating at length on the facts of the case was persuaded to be in agreement with the view taken by the A.O, that the assessee had failed to substantiate the genuineness and veracity of the purchases claimed to have been made from the aforementioned parties. However, the CIT(A) did find favour with the claim of the assessee that the addition in respect of the purchase transactions under consideration was liable to be restricted to the extent of the disclosed gross profit of 4.73% for the year under consideration. On the basis of his aforesaid deliberations the CIT(A) restricted the addition in the hands of the assessee to Rs.5,97,167/-.

5. The assessee being aggrieved with the order of the CIT(A) had carried the matter in appeal before us. We find that the assessee despite being intimated as regards the date of hearing of the appeal, had however neither put up an appearance before us nor any application seeking an adjournment has been filed by him. We thus, in the backdrop of the

aforesaid facts are constrained to proceed with the matter after hearing the respondent revenue and perusing the orders of the lower authorities. The Id. Departmental Representative (for short 'D.R') relied on the order passed by the CIT(A).

6. We have heard the Id. D.R. and perused the orders of the lower authorities. We find from a perusal of the orders of the lower authorities, that the fact that the assessee had merely obtained accommodation entries from the aforementioned six parties and had not made any genuine purchases from them stands proved to the hilt. We are of the considered view that now when it remains as a matter of fact that the assessee had made purchases of the goods under consideration, though not from the aforementioned hawala parties, but from the open/grey market, thus the fact that the assessee must had benefited from procuring such goods at a lower rate by way of saving on sales tax and such other benefits, cannot be ruled out. We find that though the A.O had estimated such monetary benefit in the hands of the assessee at the rate of 12.5% of the aggregate value of the such bogus purchases, however the same was restricted by the CIT(A) to the extent of the disclosed gross profit of 4.73% shown by the assessee during the year under consideration. We are of the considered view that as the CIT(A) had already adopted a reasonable approach and had restricted the disallowance in the hands of the assessee to 4.73% of the aggregate value of the bogus purchases, hence we do not find any reason to dislodge the same. We thus, finding no infirmity of the order of the CIT(A), uphold the addition of Rs.5,97,167/- as sustained by him. The **Grounds of appeal No. 1 and 2** are dismissed.

7. The appeal filed by the assessee is dismissed.

Order pronounced in the open court on 15.06.2018

Sd/-

(G.S.Pannu)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 15.06.2018

Ps. Rohit

Sd/-

(Ravish Sood)
JUDICIAL MEMBER

आदेश की 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.

सत्यापित प्रति //True Copy//

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