

**IN THE INCOME TAX APPELLATE TRIBUNAL "B"
BENCH, MUMBAI**

**BEFORE SHRI G. S. PANNU, AM &
SHRI SANDEEP GOSAIN, JM**

आयकरअपीलसं./ I.T.A. No. 3707/Mum/2017,
(निर्धारणवर्ष / Assessment Year: 2010-11)

Jet Chemicals Pvt. Ltd. 3/2 Mile Stone, KalyanMurbad Rd, ShahadKalyan, Kalyan- 421103.	बनाम/ Vs.	ACIT Cir -1 1 st floor, Mohan Plaza Wayale Nagar, Khadakpada, Kalyan(W)-421301
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No.		AAACJ4203H
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Sh. Haresh P. Shah
प्रत्यर्थीकीओरसे/Respondentby	:	Sh. Suman Kumar

सुनवाईकीतारीख/ Date of Hearing	:	10/01/2018
घोषणाकीतारीख / Date of Pronouncement	:	28/02/2018

आदेश / ORDER

Per Sandeep Gosain, Judicial Member:

The present Appeal filed by the assessee is against the order of Commissioner of Income Tax (Appeals)-1, Mumbai

dated 22.02.17 for AY 2010-11 on the ground mentioned herein below:-

(1) On the facts & circumstances and in law the learned CIT(A) - 1, Aurangabad [CIT(A)] erred in confirming the total addition of Rs.84,18,995/- as unsubstantiated purchases from MIs. Shreeji Commercial of Rs. 20,96,640/-, M/s. Dev Enterprises of Rs. 46,80,000/- and M/s. Shreekrupa Enterprises of Rs. 16,42,355/- merely on the basis of suspicion, surmises or conjecture.

(2) On the facts and circumstances and in law and in the interest of justice, the learned CIT(A) erred in confirming the alleged addition in absence of any independent finding and merely on the basis of some affidavits of the alleged suppliers given to the Sales Tax Department that too, without providing the relevant material and without giving any opportunity to confront the alleged hawala dealers.

(3) On the facts and circumstances your Appellant prays that the alleged addition may be deleted.

(4) Your Appellant craves leave to add, amend, alter and/or delete any of the above grounds of appeal.

2. As per the facts of the present case, the assessee filed its return of income for the year under consideration on 15.10.10 declaring total income at Rs. 45,26,910/-. The return was processed u/s 143(1) of the I.T. Act, 1961. Subsequently, information was received by the AO from DGIT(Inv.), Mumbai related to bogus purchase entries received from the Sales Tax Department, Maharashtra. The AO had information that some of the parties from whom the assessee had made purchases were bogus and they are engaged in the business of providing bills without actual delivery of goods. The AO carried out investigations and after seeking reply from the assessee, disallowed the claim of purchase as bogus purchases and added the same to the total income of the assessee.

Aggrieved by the order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the case of both the parties dismissed the appeal of the assessee.

Now before us, the assessee has preferred the present appeal by raising the above grounds.

Ground No. 1& 2

3. Since both the ground raised by the assessee are inter related and inter connected and relates to challenging the order of Ld. CIT(A) in upholding the additions made by AO on account of bogus purchases made from three parties, therefore we thought it fit to dispose of the same through this common order.

4. At the very outset, Ld. AR appearing on behalf of the assessee reiterated the same arguments before us which were raised before Ld. CIT(A) and submitted that assessee is engaged in the business of manufacturing of Fine chemicals and during the relevant assessment year, the assessee filed its return of income of Rs. 45,26,910/-. It was further submitted that the case was reopened and the AO rejected the transactions of purchases of raw-material from Shreeji Commercial, Dev Enterprises and Shreekrupa Enterprises of Rs. 20,96,640, 46,80,000 and 16,42,355/- respectively and added the said amount to the

income of the assessee. Ld AR argued that assessee had purchased the raw material from the above three parties and paid to the suppliers by account payee cheques and consumed the material in assessee's production of goods for Local Sales and Exports. It was further submitted that as a prudent business man, assessee has taken all precautions like identity of suppliers, collected invoices which were registered under Maharashtra Value Added Tax. It was further submitted that once the assessee received good quality of material as required by the assessee, then it would be presumed that the same was used in the manufacturing activities of the assessee without bothering about their whereabouts.

Ld. AR challenged the order of revenue authorities on the ground that the transaction of purchases by way of regular sale bills and subsequent payments proved that the assessee had discharged the onus with regard to the genuineness of purchases. It was also argued that the payment through banking channel was the essence of transaction so as to decide the genuineness. It was further submitted that the purchases in the hands of the assessee could not at all be doubted, in view of the decision of the

Hon'ble Gujrat High Court in the case of **CIT Vrs. M. K. Brothers (163 ITR 249)**, wherein the Hon'ble Gujrat High Court stated that the purchases could not be disallowed if the payments were made through cheques even when the sellers were held to be bogus by the Sales Tax Authorities. Ld. AR further submitted that merely because of parties from whom the material was purchased was not available, did not warrant additions. In this respect, Ld. AR relied upon the case of Deepak Popatlal Gala (TS 168 ITAT 2015) wherein the Hon'ble ITAT Mumbai bench had upheld the order of Ld. CIT(A) and deleted the addition u/s 69C for unexplained purchases. It was submitted that merely the AO had relied on inquiries conducted by Sales Tax Department without conducting any further investigation, therefore in such circumstances, no additions were warranted. Ld. AR further submitted that the information from the Sales Tax Department might be a good reason for making further investigation, but the AO in the present case did not make any further investigation and merely completed the assessment on suspicion, therefore it could be said from the above that just on the basis of information from the Sales Tax Department and on the statement of any party,

without actually verification and putting on the record and without giving an opportunity of cross examination, the purchases from such suspected parties could not be disallowed by the Income Tax Department. Ld. AR further submitted that the third party information or evidence could not be the sole basis for the conclusion of the matter.

Ld. AR lastly relied upon the decision of the Coordinate Bench of Hon'ble ITAT in the case of Shri HemendraTrikambhai Shah Vrs. DCIT in ITA No. 1658/Mum/16 and submitted that the additions made by AO and upheld by Ld. CIT(A) may kindly be deleted.

5. On the other hand, Ld. DR relied upon the order passed by revenue authorities.

6. We have heard the counsels for both the parties and we have also perused the material placed on record as well as the orders passed by revenue authorities. The crux of the matter as per the facts of the present case and the point for determination before us is as to whether any material was purchased by the

assessee for its manufacturing activities and if the consumption of the alleged purchased material could be proved by the assessee or if the assessee proved that such quantity of stock could not be traded or such quantity of stock could not be manufactured in the absence of purchased material then in that eventuality, the purchases could not be treated as bogus.

Before we decide the merits of the case, it is necessary to evaluate the orders passed by Ld. CIT(A). The Ld. CIT(A) has dealt with the above grounds raised by the revenue in para no. 3 to 7 of its detailed order. The operative portion of the order of Ld. CIT(A) is contained in para no. 5 and 5.1 of its order and the same is reproduced below:-

5. I have duly considered the submissions of the appellant. The AO had noted on pages 2 to 4 of the re-assessment order that the appellant company had made purchases of Rs.84,18,995/- from M/s. Shreeji Commercial Corporation, Dev Enterprises & Shreekrupa Enterprises which were in the nature of hawala transactions or accommodation entries. The Sales Tax Department had conducted enquiries in respect of the various entry providers and it came to

light that impugned purchases of Rs.84,18,995/- made by the assessee from MIS. Shreeji Commercial Corporation, Dev Enterprises & Shreekrupa Enterprises were found to be in the nature of accommodation bifis/Hawala transactions. The said suppliers had also filed affidavits wherein they also admitted that no real business was conducted by them and no physical delivery of goods was ever given. After receipts of cheques, equivalent cash was given back after deducting commissieAO then directed the assessee company to substantiate these purchases but in vain. The AO also directed the assessee company to substantiate the alleged purchases with documentary evidences such as the confirmatory letter, lorry receipts, octroi receipts, toll tax receipts etc. but the assessee failed to produce these details/documents. The AO accordingly held that the purchases of Rs.84,18,995/- from the alleged three suppliers were not verifiable and therefore he disallowed the entire unverifiable purchases and made the impugned addition. Even during the present appellate proceedings, the appellant company has failed to submit the confirmatory letters from the alleged suppliers namely M/s. Shreeji Commercial Corporation, Dev Enterprises & Shreekrupa Enterprises. It was held by Honourable Delhi High

Court in the case of CIT Vs Motor General Finance Ltd (254 ITR 449) that since the assessee, despite several opportunities granted, did not produce the relevant documents, an adverse inference had to be drawn against it. The relevant factors to be taken into consideration from the assessment order of AO are as under:

i.) The enquiries conducted by the Sales Tax Department revealed that M/s. Shreeji Commercial Corporation, Dev Enterprises & Shreekrupa Enterprises were only providing accommodation bills. It was also admitted in their affidavits that no real business was conducted and no physical delivery of goods was ever given. After receipts of cheques, equivalent cash was given back after deducting small amount of commission. They also admitted that they had given blank invoices and blank signed cheques to the alleged beneficiaries.

ii.) The AO directed the assessee company to substantiate these purchases but in vain. The assessee also failed to produce the above suppliers before the AO. The AO also issued notices U/s 133(6) to the above suppliers but these were returned un-served.

iii.) The AO also directed the assessee to substantiate the alleged purchases with documentary

evidences such as the confirmatory letter, lorry receipts, octroi receipts, toll tax receipts, other records in support of transportation of material but the assessee failed to produce these documents.

iv.) Mere payment by banking channels was not sacrosanct.

The purchase bills of M/s. Shreeji Commercial Corporation, Dev Enterprises & Shreekrupa Enterprises were also perused and it was noticed that there were no columns pertaining to "Lorry Receipt No." and "dispatch through". The alleged delivery challans furnished by the appellant show that the column pertaining to "Truck No." & "bare weight" were left blank. In these circumstances, these documents do not inspire any confidence. The bills of alleged transporters were also not furnished. Accordingly the movement of goods was in doubt. The relevant information from the Sales Tax Department and non availability of the lorry receipts, bills of transporters, octroi receipts & quantitative details itself speak about the genuineness of the transactions in question. It is well settled law that strict rules of evidence do not apply to income-tax proceedings and conclusive proof is also not necessary to arrive at any conclusion or to establish a fact. The AU is entitled to

arrive at a conclusion on appreciation of a number of facts, the cumulative effect whereof may be considered to judge the soundness of the conclusion. It was conceivable that a mere denial by the assessee was not sufficient to rebut the circumstantial evidence which considered alongwith the conduct of the assessee had led to the inescapable conclusion that the assessee company had taken accommodation entries and alleged purchases were not genuine.

5.1 it is a settled law that Income Tax authorities are entitled to look into the surrounding circumstances to find out the reality of the recitals made in documents. It is the duty of the court to go behind the smoke-screen and discover the true state of affairs. The court is not to be satisfied with the form but with the substance of the transactions. Though the transactions in the present case were through banking channel but these were ultimately settled in cash. Merely because a paper trail had been created, that would not by itself make the transaction genuine. It was held by Honourable Punjab & Haryana High Court in the case of Mittal Belting and Machinery Stores Vs. CIT (253 ITR 341) that if on the examination of the evidence, it is found that there was no genuine transaction between the parties, a pure paper transaction could not have entitled the assessee to claim benefit under the law.

Similarly the Hon'ble Mumbai Tribunal held in the case of Balaji Textiles Industries Pvt Ltd Vs. ITO (49 ITD 177) that issue of bills by the alleged supplier was not a conclusive proof. In the case of CIT Vs. Goicha Properties (Pvt.) Ltd. (227 ITR 391) (Rajasthan HC), it was held that the genuineness of transaction, could be decided on the basis of primary facts on records. The department is not required to lead a clinching evidence to prove that purchases are bogus. There are number of decisions by the various courts where 100% disallowance of bogus purchases, has been upheld. Some of these are enumerated as under:

100% disallowance of bogus / unverifiable purchases was upheld, in following cases:

- i) Sri Ganesh Rice Mills Vs. CIT (2007) 294 ITR 316 (All)*
- (ii) Khandelwal Trading Co. Vs. ACIT (1996) 55 TTJ (JP) 261*
- (iii) Swetambar Steels Ltd. Vs. ITO 707/1075/1262/1263/JD (2002) ITAT (Alid)*

In the case of Swetambar Steels Ltd., the Hon'ble ITAT, Ahmedabad had confirmed the disallowance of the bogus purchases in entirety stating that the purchases shown from the respective parties were

found in-genuine. It was not a matter to be looked into whether the assessee had made purchases from different parties other than the alleged ones. It was also worth mentioning that the appeal against the decision of Hon'ble ITAT was not admitted by the Hon'ble Gujarat High Court and the assessee had also lost before the Hon'ble Supreme Court. So, the decision over the issue had become final. There were judicial decisions where the whole amount of bogus purchases was disallowed and the order was confirmed by High Courts. It was held that after invocation of provisions of section 145(3), the Assessing Officer acquired the mandate even to add the whole amount of purchases found as bogus to the total income of the assessee. One such case was Sri Ganesh Rice Mills Vs. CIT 294 ITR 316 (All) where the entire amount of bogus purchases, from 5 parties, was disallowed and same was upheld. The relevant portion of the order of the Tribunal as confirmed by High Court of Allahabad is reproduced, here as under:

"Once it is found that the purchases were bogus, addition has to be made to the extent of the purchases found to be fictitious. The consideration that the gross profit disclosed by the assessee compares favourably as compared to the earlier years is wholly irrelevant. To

neutralize the effect of inflation in purchases, the only course open to the Income-tax Officer is to add back that amount to the income irrespective of the fact whether the rate of gross profit goes up and whether the resultant gross profit is higher than the gross profit normally shown in the earlier years."

After having gone through the facts of the present case, submissions of both the parties as well as judgment cited by both the parties and the orders passed by revenue authorities, we find that in the present case, the assessee alleges to have made purchases from the above three parties i.e. M/s. Shreeji Commercial Corporation, Dev Enterprises & Shreekrupa Enterprises. However the Sales Tax Department on inquiry, found that the purchases made by the assessee from the above three parties were found to be in the nature of accommodation bills /Hawala transactions.

Therefore, after getting all the information from the Sales Tax Department, the AO had directed the assessee to substantiate these purchases. In this respect, the assessee placed on record the

documents in respect of purchasing the raw material from the above parties and making payment to the suppliers by account payee cheques. The Ld. AR submitted before us that assessee as a prudent businessman, had taken all precautions like identity of suppliers, collected invoices which were registered under Maharashtra Value Added Tax. Once the assessee had received good quality of material as required by the assessee, it was not bothered about their whereabouts. Ld. AR further submitted that the transaction of purchases by way of regular sale bills and subsequent payments etc. discharged the onus that lay on the assessee company as regards the genuineness of purchases.

We are also of the view that the rules regarding onus of proof as laid down in the statute are quite flexible and the payment through banking channel is the essence of transaction so as to decide the genuineness while deciding upon the question of onus of proof. In this case, the purchase in the hands of the assessee could not be doubted, in view of the decision of the Hon'ble Gujarat High Court in the case of **CIT Vs. M.K. Brothers (163 ITR 249)**, *wherein the Hon'ble Gujarat High Court stated that the purchase could not be disallowed if the*

payments were made through cheques even when the sellers were held to be bogus by the Sales Tax Authorities. It was well settled proposition of law that if there were no purchases, then how there could be any sale or closing stock and since, the Revenue always accepted the sales and the closing stock, non-acceptance of the purchases, which were duly accounted for in the books, could not be justified and the credit for such purchase had to be given.

The aforesaid view was also supported by latest judgment of Bombay High Court in case of **Nikunj Eximp Enterprises Pvt. Ltd. Vs. CIT**. The other decision in the case of **YEC projects Pvt. Ltd. Vs. DCIT (46 DTR 496) (Delhi) (Tribunal)** also supported the above view. In the above mentioned cases, it was held that *the AO was not justified in making disallowance of purchases merely due to non filing of confirmation from suppliers especially when the assessee had filed certificate from bank indicating that the cheques issued by it were cleared and no defects in the books of account were pointed out.*

In the case of **Hi Lux Automotive Pvt. Ltd. Vs. DCIT (183 Taxman 260) (Delhi HC)**, *the assessee had produced*

sufficient material, furnished bank statement, payment was made by account payee cheque, confirmations and quantitative tally had been filed. Merely because parties were not available when notices were sent to them did not warrant addition.

In the case of **Deepak Popatlal Gala (TS 168 ITAT 2015)** the Mumbai ITAT upheld CIT(A)'s order and deleted addition U/s 69C for unexplained purchases. *It was observed that the AO merely relied on inquiries conducted by Sales Tax Department without conducting any other investigation.* It also upheld CIT(A)'s reliance on Gujarat High Court ruling in the case of **M. K. Brothers** and Jodhpur ITAT ruling in **Premanand.** Besides above reliance was also placed on Coordinate Bench ruling in the cases of **Ramesh Kumar and Co., Rajeev G. Kalathil and Ganpatraj A. Sanghavi** to hold that *AO was not justified in making addition merely on the basis of statements given by the third parties before the Sales Tax Department. It was held that information from Sales Tax Department might be a good reason for making further investigation but the AO did not make any further investigation and merely completed the assessment on suspicion. Therefore it*

could be said from the above that just on the basis of information from the Sales Tax Department and on the statement of any party, without actually verification & putting on the record and without giving an opportunity of cross examination, the purchases from such suspected parties could not be disallowed by the Income Tax Department.

The crux of the matter was that the third party information or evidence could not be the sole basis for the conclusion of the matter. If consumption could be proved and if it could be proved that such quantity of stock could not be traded or such quantity of stock could not be manufactured then the purchase could not be treated as bogus i.e. by submitting stock wise details for trading concern or consumption of stocks in a manufacturing concern notwithstanding the fact that the Input Tax credit had been disallowed by the MVAT department.

It is an undisputed fact that the assessee is into the business of manufacturing and it was not possible to manufacture without the material purchased as indicated above. Admittedly the payment to the suppliers was made by the assessee through account payee cheques and the AO could not brought on record

any evidence that cash was received back by the assessee from the alleged suppliers. The AO on the basis of suspicion has made additions whereas the law of law is that suspicion cannot take place of evidence. In this respect, we placed reliance in the case **DCIT Vrs. Rajeev G. Kalathil, (Mum Trib.) (ITA No. 6727/Mum/12 dated 20.08.14 and K.P. Varghese Vrs. ITO (1981) 131 ITR 579 (SC).**

Apart from above, we have further noticed that the AO had relied on third party information without affording the assessee to cross examination. Reliance is placed on **Kishan Chand Chella Ram Vrs. CIT (1980) 125 ITR 713 (SC)** and the observation of third party cannot be the basis of addition. In this respect, we placed reliance in the case of **ITO Vrs. Permanand (2008) 25 SOT 11.**

In the case of **Mather & Platt (India) Ltd Vrs. CIT 168 ITR 493 Cal.** wherein it was held that if the payments were made by account payee cheques then this fact would overshadow all other shortcomings.

Be that as it may, while relying upon the following judgments:- **1) CIT vs Bholanath Poly Fab Ltd. (2013) 355 ITR 290 (Guj). (HC), 2. CIT v Simit D, Sheth (2013) 356 ITR 451 (Guj)-(HC) and 3. CIT vs. Sanjay Oil Cake Industries (2009) 316 ITR 274 (Guj) (1C)** and taking into consideration the facts of the present case, and to account for the profit element embedded in these purchase transactions to factorize profit earned by assessee against purchase of material in the *grey market* and undue benefit of VAT against bogus purchases, we are of the considered view that the ends of justice would be met in case the additions are restricted @ 12.5% of the bogus purchases. Consequently orders passed by Ld. CIT(A) are set aside and AO is directed to restrict the additions accordingly. Hence these grounds raised by the assessee are **partly allowed**.

Ground No. 3 & 4

7. These grounds are general in nature, thus requires no specific adjudication.

8. In the net result, the appeal filed by the assessee is **partly allowed.**

Order pronounced in the open court on 28th Feb, 2018.

Sd/-

Sd/-

(G. S. Pannu)

Sandeep Gosain)

लेखासदस्य / Accountant Member

न्यायिकसदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated : 28.02.2018

Sr.PS. Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार

(Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai