

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.467/PUN/2017
निर्धारण वर्ष / Assessment Year : 2010-11

M/s. Aniket Trading Company,
8 & 9, Tip Top Plaza,
XLO Point, Ambad Link Road,
Nashik - 422 010
PAN : AAGFA0380D

.....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Circle-1,
Nashik

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sanket Joshi
Revenue by : Dr. Vivek Aggarwal

सुनवाई की तारीख / Date of Hearing : 12.06.2018
घोषणा की तारीख / Date of Pronouncement : 20.06.2018

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeals)-1, Nashik dated 01.12.2016 for the Assessment Year 2010-11.

2. Briefly stated relevant facts include that the assessee is a firm engaged in the business of Trading in Steel. Assessee filed the return of income u/s.139(1) of the Act on 20-09-2010. Assessment was summarily completed on 26-03-2015. On 07-11-2012, there was survey action u/s.133A by the Investigation Wing by the DDIT (Inv.)-1, Nashik which resulted in discovered facts relating to bogus purchases by the assessee. Assessee's statement u/s.131 was recorded whereby assessee

admitted the claim relating to bogus purchases. Subsequently, a notice u/s.147 of the Act was issued on 08-11-2013. Assessee did not file any return of income revising the income. Subsequently, the AO issued statutory notices u/s.142(1), 143(2) of the Act to the assessee and eventually completed the assessment u/s.143(3) r.w.s.147 of the Act. AO treated the entire bogus purchases amounting to Rs.28,24,410/- that involves two suppliers namely (1) Simandhar Trading Corporation and M/s. Adijin Enterprises. These names are mentioned in the list maintained by the Sales Tax Department of Maharashtra Government. In the First Appellate proceedings, the CIT(A) confirmed the entire bogus purchases.

3. Aggrieved with the order of CIT(A), the assessee filed the present appeal before the Tribunal with the following grounds :

“ On facts and in law,

1. *The learned CIT(A) erred in confirming the addition of Rs.28,24,410/- made by the A.O. by disallowing the entire purchases made from two alleged hawala parties on the basis of information received from Sales Tax Dept. without appreciating that no addition was warranted on facts of the case.*

2. *The learned CIT(A) erred in holding that the entire purchases made from two alleged hawala parties were to be treated as non-genuine on the ground that in the course of the survey proceedings, the assessee had admitted that the said purchases are not genuine and that the assessee was not able to produce these suppliers before the A.O/ CIT(A) and therefore, the entire purchases ought to be disallowed.*

3. *The learned CIT(A) failed to appreciate that the purchases made from the above parties were duly supported by tax invoices, transport bills/ weigh bridge receipts etc. and the assessee has also demonstrated that the corresponding sales to third parties would not have been possible in the absence of the above purchases and further, the entire payments have been made through banking channel and therefore, the disallowance made by the A.O. by ignoring the documentary evidences is not justified.*

4. *The learned CIT(A) erred in not appreciating that-*

a. *Before the A.O., the assessee had furnished written submissions along with documentary evidences to prove the genuineness of the impugned purchases and this fact has also been noted by the A.O. in the asst. order and hence, there was no reason to disallow the entire*

purchases made from the impugned parties by ignoring the documentary evidences furnished by the assessee.

b. The copy of the statement of the assessee recorded in the course of survey proceedings has not been provided to the assessee and to the best of the knowledge and belief of the assessee, he has not made any admission in respect of the impugned purchases in the said statement and therefore, the reliance placed upon the alleged admission made by the assessee in the survey statement is not justified without providing copy of the same to the assessee.

c. Assuming without admitting that in the survey statement, the assessee has admitted that the purchases made from the above parties are not genuine, still it is a settled law that statement recorded in the course of survey u/s.133A does not carry evidentiary value and when the facts stated in the statement are controverted by the assessee by furnishing documentary evidences subsequently, then addition cannot be made on the basis of the admission made in the statement.

5. The learned CIT(A) ought to have appreciated that the decision of Hon'ble ITAT, Pune in the case of Mukeshkumar P. Mittal relied upon by her is distinguishable on facts in as much as in that case, during the course of entire asst. proceedings and also at the initial stage of first appellate proceedings, the assessee had agreed that the purchases made from the alleged hawala parties are not genuine and also in that case, the assessee was not able to produce any evidences regarding movement of goods and actual utilization of impugned purchases at any stage whereas in the instant case, the assessee has filed written submissions before A.O. in support of the impugned purchases and the assessee has also furnished documentary showing movement of goods and sale to third parties and therefore, the reliance placed on the above decision is misplaced.

6. Without prejudice, the assessee submits that if at all, any addition is to be sustained, then only a reasonable gross profit ratio on the amount of the impugned purchases may be added and the entire purchases may not be disallowed.

7. The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”

4. Before me, Ld. Counsel for the assessee submitted that assessee filed various documents relating to purchases, invoices, bank statements, payments involving banking channels and related evidences to demonstrate the genuineness of the purchases and trail of goods purchased by the assessee. However, the CIT(A) did not allow the same. Otherwise, assessee recorded the Gross Profit of around 7.71% and the Net Profit around 7.42%. With the above stated facts, Ld. Counsel for the assessee drew my attention to the above grounds and submitted that

this is a case of genuine purchases from the said parties. Therefore, the additions made by the AO should be fully deleted. The fact that the assessee has been consistently calling the said purchases as genuine was highlighted before me. Facts relating to supporting documents, i.e. purchase invoices, transport bills, bank statements, weigh-bridge receipts were also not appreciated by the CIT(A) while confirming the addition. Finally, it is the argument of Ld. Counsel that it is a case of perfect documentation evidencing the trail of goods till they reach the premises of the assessee. Ld. Counsel for the assessee filed legal compilation of case laws for the proposition that disallowance of entire purchases made from alleged hawala suppliers cannot be sustained on the reasoning that the assessee suo moto declared additional income in source of survey action u/s.133A of the Act, reasoning of the recording of the statement u/s.131 of the Act, which does not have any evidentiary value without having any corroborative evidences, etc. The following decisions were relied upon by the Ld. Counsel for the assessee :

1. *Innovators Façade Systems Pvt. Ltd. Vs. ACIT – ITA Nos. 5450 to 5452/Mum/2015, dated 20.07.2016*
2. *Nihar Equipment Pvt. Ltd. Vs. DCIT – ITA Nos. 3020 to 3024/Mum/2015, dated 29-03-2017*

4.1 Further, Ld. Counsel for the assessee also placed reliance on the following decisions for the proposition that, only 10% of such alleged bogus purchases should be made as addition and not the entire amount of such bogus purchases :

1. *M/s. Chhabi Electricals Pvt. Ltd. and others Vs. DCIT in ITA No.795/PUN/2014, relating to assessment year 2010-11, order dated 28-04-2017.*
2. *Mr. Khan Afzalhussain Mohd Saie Vs. DCIT – ITA Nos. 2708 & 2709/PUN/2016, dated 23-03-2018*
3. *ITO Vs. M/s. Trinity Steel Profiles Pvt. Ltd. and Vice-versa – ITA No.2985/PUN/2016 and CO No.08/PUN/2017, dated 25-05-2018.*

4.2 Referring to the decision of Pune Bench of the Tribunal in the case of M/s. Chhabi Electricals Pvt. Ltd. (supra), Ld. Counsel for the assessee submitted that the assessee's case falls in clause (iv) of the classification given by the Tribunal in the said case.

5. Ld. DR for the Revenue relied on the orders of AO/CIT(A). He submitted that assessee falls in Clause (iii) of the classification given by the Tribunal in the case of M/s. Chhabi Electricals Pvt. Ltd. (supra).

6. I heard both the sides, perused the orders of the Revenue authorities as well as the paper book filed before us. I have also perused the decisions relied on by the assessee. On going through the facts of the case, I find this is a case where survey u/s.133A of the Act was conducted by the DDIT (Inv.)-1, Nashik based on the information received from Sales Tax Department of Maharashtra Govt. Assessee made purchases from various parties and out of them a couple of suppliers were alleged to have issued bogus bills. During the year under consideration, there was dispute about the purchases made from M/s. Simandhar Trading Corporation and M/s. Adijin Enterprises amounting to Rs.17,24,323/- and Rs.11,00,086/- respectively. In the assessment, AO made the entire addition of these purchases as bogus ones. CIT(A) confirmed the addition made by AO. In the instant case, I find the assessee filed the tax invoices, transportation bills, bank statements, payments through banking channels, delivery challans, weigh-bridge receipts etc., evidencing the fact of transportation of goods from the point of purchase of the goods till the delivery of goods to the assessee's premises. I also perused the decision of the Tribunal in the case of M/s. Chhabi Electricals Pvt. Ltd. (supra) and the classification of points given

by the Tribunal in the said order. I find the facts of the present case are similar to the facts in the said case. Therefore, I proceed to reproduce the said paragraphs here as under :

“40. In view of the above said ratios, the present issue of bogus purchases is to be decided on the basis of facts of each case. The first aspect is the information received by the Assessing Officer from the Sales Tax Department in respect of alleged hawala dealers. In many cases, the Assessing Officer has not even received the copy of statement recorded or any other evidence from the Sales Tax Department, except the list of hawala dealers and on the basis of the said list, the assessment proceedings have been completed in the hands of assessee, who had made the purchases from the said parties. In case, no such evidence has been received by the Assessing Officer before making addition, then there is no warrant in making aforesaid addition in the hands of assessee merely on the basis of so called list of hawala dealers. There are other cases, where the Assessing Officer had received the statement of the persons who were hawala dealers and who had admitted to have just issued bills of sale without delivery of goods. In such circumstances, there is evidence against the respective assessee that where the seller of the goods, has admitted not to have entered into real transaction of sale of goods. Against such non-transaction, there can be no delivery of goods, then it is case of passing of bills of sale and purchases, against which no VAT has been paid. Such bogus purchases are then to be added in the hands of assessee. Where the Assessing Officer had confronted the assessee with the information received, supplied copies of statements and where the persons have not been traced and no confirmation has been filed by the assessee in this regard, then the addition is to be made in the hands of assessee on account of such bogus purchases. In the facts and circumstances of some cases, the goods have been transferred by such hawala dealers to the respective purchasers, against which the assessee has to discharge onus of establishing the trail of goods which are transferred and further sold by them. Where the assessee is able to produce evidence of purchase of goods by way of weighment bridge receipts, transportation documents, payment of octroi and subsequent sale of goods to the respective parties and / or where the assessee has maintained complete quantitative details of purchase and sale of goods, then total bogus purchases cannot be added in the hands of assessee, but GP rate of 10% is to be applied on bogus purchases. Where the assessee does not establish its case, then the complete bogus purchases are to be added as hawala purchases. Further, in cases, where the statements are recorded and copies of which have been supplied to the assessee and assessee established the case of receipt of goods and its onward transmission by way of sale bills, then the factum of purchases by the assessee stands established in such circumstances. However, the benefit of purchases being made from grey market, needs estimation in the hands of assessee. The Tribunal has already held that the addition be made by estimating the same @ 10% of the alleged hawala purchases. Accordingly, it is so held. In view thereof, the issues which emerge are as under:-

- I. *In case no information is received by the Assessing Officer from the Sale Tax Department and no copy of statement recorded or any other evidence is received from the Sales Tax Department, then no addition is to be made on the basis of name of hawala dealer in the list prepared by the*

Sales Tax Department, where the assessee had asked for the said information during assessment proceedings.

- II. Where the Assessing Officer had received the statements of persons who had admitted to have just issued bills of sale without any delivery of goods. In view of such evidence, where the assessee had not entered into real transaction of purchase of goods and in the absence of any delivery of goods, the sales are bogus and the entire sales are to be added in the hands of assessee. Admittedly, the dealer had not even paid VAT against such passing of goods.

- III. The case where the Assessing Officer had confronted the information received from the Sales Tax Department and had supplied copies of statements recorded and had also issued notice under section 133(6) of the Act, where hawala dealer was not traceable and in the absence of the assessee failing to file any documentary evidence of delivery of goods, addition is to be upheld in the hands of assessee on account of such bogus purchases.

- IV. The next instance is the case of goods which have been **admittedly sold by the hawala dealer** and has been **received by the assessee**, who in turn had maintained quantitative details and also evidence of its movement **i.e. transportation details and quality control details of consumption of the said material or exact details of sale of the same** consignment through same transporter directly to the party, then the total purchases cannot be added in the hands of assessee. However, since the purchases are made from the grey market, some estimation needs to be made in the hands of assessee. The Tribunal in *M/s. Chetan Enterprises Vs. ACIT (supra)* has already held **that the addition be made by estimating the same @ 10% of the alleged hawala purchases, over and above the GP shown by the respective assessee.**

- V. Another set of cases where the statements recorded by the Sales Tax Department have been handed over to the assessee and the copies of same have been supplied to the assessee, then where the assessee established the case of receipt of goods and its onward transmission, then the factum of purchases by the assessee stands established in such circumstances. However, estimation is to be made in the hands of assessee because of purchases from the grey market and following the above said ratio, addition is to be made by estimating the same @ 10% of the alleged hawala purchases, over and above the net profit shown by the assessee.

41. Now, coming to the factual aspects of each of the appeal, which have already been referred to by the learned Authorized Representative for the assessee and also refer to the orders of authorities below, where none has appeared on behalf of the assessee.

42. The lead case is in the case of *M/s. Chhabi Electricals Pvt. Ltd.*, where the grievance of the assessee is that the Assessing Officer before making the addition has not even supplied the copy of statement or any other evidence recorded by the Sales Tax Department to establish that the purchases made by the assessee were bogus. I have already decided this issue in *M/s. Chetan Enterprises Vs. ACIT (supra)* and held that in cases

where the Assessing Officer has failed to supply such statement recorded by the Sales Tax Department or any other evidence justifying the addition, no addition is to be made in the hands of assessee. The grounds of appeal raised by the assessee are thus, allowed. The learned Authorized Representative for the assessee has further referred to various documents i.e. gate pass, GRN and issue pass establish its case of delivery of goods i.e. purchase from hawala dealer and its onwards consumption in the manufacturing process of the assessee. In such circumstances, where the assessee has established the trail of goods purchased to the final consumption, then there is no merit in the addition made by the Assessing Officer. Thus, the grounds of appeal raised by the assessee are allowed and appeal of the assessee is allowed.”

Considering the above points of classification in this kind of bogus purchases, I am of the opinion that the assessee should not fall in clause (iii) as argued by the Ld. DR qua the fall in clause (iv) of the classification by the Tribunal. In the above factual matrix, I am of the view that restricting the disallowance to 10% of the hawala purchases over the Gross Profit shown by the assessee to meet the ends of justice.

7. Further, I find that similar issue of bogus purchases has been decided by the Tribunal in series of decisions. 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.”

In view of the aforesaid deliberation on this particular issue, I direct the Assessing Officer to make addition in the hands of assessee by adopting GP rate at 10% of bogus purchases declared by the assessee. Thus, the order of the CIT(A) is set-aside. Accordingly, the grounds raised by the assessee are partly allowed.

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

Order pronounced on this 20th day of June, 2018.

Sd/-

(D.KARUNAKARA RAO)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 20th June, 2018.
Satisb

आदेश की प्रतिलिपि □ ग्रेषित/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 Pr.CIT-1, Nashik
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे “SMC”
/
DR ‘SMC’, ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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