

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 Nos.47 & 48/PUN/2017
निर्धारण वर्ष / Assessment Years : 2009-10 & 2010-11

Smt. Shreya Jayant Joshi,
M/s. Sourya Engineering,
Shrikrishna Gears Pvt. Ltd.,
Malegaon Stand,
Near Victoria Bridge,
Panchavati, Nashik – 422 003
PAN : AIEPJ5830M

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO, Ward-1(3),
Nashik

.....प्रत्यर्थी / Respondent

Assessee by : Smt. Deepa Khare
Revenue by : Shri Mukesh Jha

सुनवाई की तारीख / Date of Hearing : 14.06.2018
घोषणा की तारीख / Date of Pronouncement : 20.06.2018

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

There are 2 appeals filed by the assessee under consideration against the order of Commissioner of Income Tax (Appeals)-1, Nashik dated 20-09-2016 for the Assessment Years 2009-10 & 2010-11. Grounds raised by the assessee in these two appeals are identical.

We shall first take up the appeal for A.Y. 2009-10.

ITA No.47/PUN/2017
A.Y. 2009-10

2. Briefly stated, relevant facts for the A.Y. 2009-10, include that the assessee is an individual – proprietor of M/s. Sourya Engineering,

Shrikrishna Gears Pvt. Ltd., Nashik and is engaged in the business of manufacturing/trading in hardware goods. Assessee filed the original return of income on 29-09-2009 declaring total income of Rs.6,19,921/-. Based on the information received from Sales Tax Department relating to providing of the bogus purchase bills, AO issued notice u/s.148 of the Act. AO noticed that assessee purchased the goods from P.K. Trading Company (whose name is listed in the bogus dealers) amounting to Rs.6,55,644/-. Notice u/s.133(6) was issued to the assessee as well as to P.K. Trading Company to verify the genuineness of the transactions. The assessee filed letter dated 18-11-2013 and filed certain details claiming the said purchases as genuine. The notice sent to the party was returned back unserved. Eventually, the AO made addition of Rs.6,55,644/- treating the same as bogus purchases and assessed the income of the assessee at Rs.12,75,570/-.

3. In the First Appellate Proceedings, the CIT(A) confirmed the addition made by the AO. While doing so, the CIT(A) noted the fact that the payment for the said purchases is still unpaid and the assessee failed to offer explanation for taxation of the same u/s.41(1) of the Act. Eventually, the CIT(A) relying on the decision of Pune Bench of the Tribunal in the case of Shri Mukeshkumar Pukhraj Mehta in ITA No.2026/PN/2014, dated 03-11-2015 and in the case of ITO Vs. Shri Purushottam Shankar Kulkarni in ITA No.991/PN/2012, dated 07-04-2016 sustained the addition made by the AO.

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

“1. On the facts and circumstances of the case, the re-assessment proceedings u/s.147 being initiated in absence of material showing escapement of income in the hands of the appellant is void and may

kindly be cancelled. The material based for reopening is vague and has no live link with escapement of income in the hands of the appellant.

2. *The Ld.CIT(A) erred in law and on facts in confirming addition of Rs.6,55,644/- on account of inflated purchased alleged to be from bogus parties.*

3. *The Ld.CIT(A) erred in law and on facts in confirming the addition inspite of holding that the Ld.AO has not brought on record any evidence to prove that the purchases were bogus and further ignoring the evidence produced in support of the purchases.*

4. *The appellant craves to add, alter, modify or substitute any ground of appeal at the time of hearing.”*

5. **Condonation of delay :** Before me, at the outset, Ld. Counsel for the assessee referred to the affidavit of the assessee dated 15-05-2018 and submitted that there is delay of 32 days in filing the appeals under consideration before the Tribunal. It was stated that the said delay was due to differences between the regular tax consultant Mr. Mehul Popat and change of new consultant. The contents of Para No.3 of the said affidavit are relevant and therefore, the same are extracted here as under:

“3. That Shri Mehul Popat, Advocate, was my regular consultant. There have been some differences with my consultant which compelled me to change my consultant. The process of seeking further advice as also the change of hangs between the consultants required some time and delay has caused. There delay has been caused for genuine reason and there was no reason to delay the process on any deliberate ground.”

6. On hearing the parties and on perusing the contents of the affidavit, I am of the opinion that there was reasonable cause for the assessee in filing the appeals with the delay of 32 days. Therefore, the delay in filing of the appeals is condoned and the appeals are admitted for adjudication.

7. Before me, Ld. Counsel for the assessee submitted that assessee filed copies of the purchase bills from the party with whom the assessee made the purchases. However, the AO/CIT(A) did not accept the said bills. 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. Further, Ld. Counsel for the assessee also placed reliance on the decision of Pune Bench of the Tribunal in the case of 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 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. 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. Alternatively, Ld. Counsel made a prayer for remanding the issue to the file of CIT(A) for one more round of proceedings for submitting the relevant details before him to substantiate the claim of the assessee.

8. 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).

9. I heard both the sides and perused the orders of the Revenue authorities. 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

assessee's case was reopened u/s.147/148 of the Act based on the information received from Sales Tax Department of Maharashtra Govt. Assessee made purchases from various parties and out of them, the purchases made from P.K. Trading Company was alleged to have held to be bogus ones. In the assessment, AO made the entire addition of these purchases as bogus one. CIT(A) confirmed the addition made by AO. In the instant case, I find the assessee filed purchase bills, and the assessee could not establish the evidence regarding trail 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 weightment

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.”*

10. Considering the above points of classification in this kind of bogus purchases, I am of the opinion that there is need for classifying this case between clause (iii) or clause (iv) mentioned above. For this purpose, considering the argument of the Ld. Counsel for the assessee for remanding the issue to the file of CIT(A), I am of the opinion that the issue needs to revisit to the file of CIT(A) for considering the decision of the Pune Bench of the Tribunal in the case of M/s. Chhabi Electricals Pvt. Ltd. (supra). Needless to say, the CIT(A) shall give reasonable opportunity of being heard to the assessee in accordance with the set principles of natural justice. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

11. In the result, the appeal of the assessee is allowed for statistical purposes.

ITA No.48/PUN/2017
A.Y. 2010-11

12. The facts, issues, grounds, orders of the AO/CIT(A) and the arguments of the parties are same. Therefore, the decision given in the appeal No.47/PUN/2017 for the A.Y. 2009-10 remanding the issues to the file of CIT(A) and considering the decision of Pune Bench of the Tribunal in the case of M/s. Chhabi Electricals Pvt. Ltd. (supra) shall apply to this appeal too. Thus, the grounds raised by the assessee are allowed for statistical purposes.

13. In the result, the appeal of the assessee is allowed for statistical purposes.

14. To sum up, both the appeals of the assessee are allowed for statistical purposes.

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

Sd/-

(D.KARUNAKARA RAO)
लेखा सदस्य / ACCOUNTANT MEMBER

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

आदेश की प्रतिलिपि ढ 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