

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.1263/PUN/2017
निर्धारण वर्ष / Assessment Year : 2009-10

M/s. Marcus Water Treatment
India Pvt. Ltd.,
W-194, B-MIDC, S-Block,
Bhosari, Pune - 26
PAN : AACFM0333A

.....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Circle-9,
Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Dhiraj Dandagaval
Revenue by : Shri Mukesh Jha

सुनवाई की तारीख / Date of Hearing : 14.06.2018
घोषणा की तारीख / Date of Pronouncement : 22.06.2018

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeals)-6, Pune dated 01.09.2016 for the Assessment Year 2009-10. Addition on account of bogus purchases is the issue in this appeal

2. Briefly stated relevant facts include that the assessee is a company which is engaged in the business of Trading in & assembling of water treatment plants, water purifiers and related components. Assessee filed the return of income on 24-09-2009 declaring total income of Rs.29,16,952/-. Assessee's case was reopened based on the information that the assessee indulged in bogus purchases from three suppliers

namely (1) Krishna Steel Industries – Rs.9,74,611/-; (2) Prima Steel Impact – Rs.5,59,813/-; and (3) Asian Metal Industries – Rs.4,93,023/- totalling to Rs.20,27,447/-. Notice u/s.143(2) was issued to the assessee. In response, confirming the trail of goods, the assessee submitted party-wise details, delivery challans, bank statements, ledger statement etc. However, the AO rejected the same reasoning that the TIN numbers of the said parties were cancelled by the Sales Tax Department of Maharashtra, delivery challans are handmade and handwriting on all the delivery challans is suspicious, delivery challans do not bear the signature of the receiver of goods etc.. Eventually, the AO treated the said purchases, i.e. Rs.20,27,447/- as non-genuine purchases and assessed the income of the assessee at Rs.26,08,450/- u/s.143(3) r.w.s. 147 of the Act. In the First Appellate proceedings, the CIT(A) confirmed the entire amount of bogus purchases made by the assessee as held by the AO.

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

“ On the facts and in the circumstances of case and in law

1. *The Ld.CIT(A) has erred in confirming the action of AO disallowing purchases to the tune of Rs.20,27,447/- from three parties listed as hawala parties in the list of Sales Tax Department by treating the same as bogus. The party-wise details of alleged bogus purchases are as follows :*

<i>Krishna Steel Industries –</i>	<i>Rs.9,74,611/-</i>
<i>Prime Steel Impact –</i>	<i>Rs.5,59,813/-</i>
<i>Asian Metal Industries –</i>	<i>Rs.4,93,023/-</i>
<i>Total -</i>	<i>Rs.20,27,447/-</i>

2. *The Ld.CIT(A) has erred in confirming the action of AO of not following the principles of natural justice.”*

4. Before me, Ld. Counsel for the assessee submitted that assessee filed documents relating to purchase invoices, delivery channels, bank

statements showing the payments involving banking channels and related evidences to demonstrate the genuineness of the purchases. However, the CIT(A) did not allow the same. 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 and therefore, the additions made by the AO should be fully deleted.

4.1 Further, Ld. Counsel for the assessee submitted that the Pune Bench of the Tribunal, in the cases of bogus purchases, has delivered various decisions restricting the addition to 10% of the bogus purchases. In support of his case, he relied on the decision of Pune Bench 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. 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 and 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 assessee's case reopened based on the information from the ITO. Assessee made purchases from three parties and the AO found the said suppliers were alleged to have issued bogus bills. 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 purchase invoices, payment through account payee cheques, delivery challans, bank statements, ledger extracts 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 finding 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 manner of classification of taxpayers engaged in the bogus purchases, I am of the opinion that the assessee should not fall in clause (iii) as argued by the Ld. DR. Further, considering the fulfillment of conditions prescribed in other clause (IV), I am of the opinion that the class (iv) of the said classification by the Tribunal apply to the present case. 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, i.e. Rs.2,02,745/-. Thus, the orders of the AO/CIT(A) stand altered to that extent on this issue. 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 22nd day of June, 2018.

Sd/-

(D.KARUNAKARA RAO)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 22nd June, 2018.
Satish

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)-6, Pune
4. आयकर आयुक्त / The Pr.CIT-5, Pune
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