

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "SMC", MUMBAI**

BEFORE SHRI R.C. SHARMA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 1864/MUM/2018
Assessment Year: 2009-10
&
ITA No. 1865/MUM/2018
Assessment Year: 2011-12**

M/s Manmal Metal Syndicate, Shop No. 18, Balkrishna Niwas, 54, 3 rd Panjrapole Lane, Mumbai - 400004 PAN: AAPFM3218B	Vs.	The Income Tax Officer-19(2)(3), Matru Mandir Bldg., R. No. 218, 2 nd Floor, Tardeo, Mumbai - 400004
(Appellant)		(Respondent)

Assessee by : Shri Piyush Chhajer (AR)
Revenue by : Ms. N. Hemalatha (DR)

Date of Hearing: 05/06/2018
Date of Pronouncement: 20/06/2018

ORDER

PER RAM LAL NEGI, JM

These appeals have been filed by the assessee against the two orders dated 18.12.2017 passed by the Commissioner of Income Tax (Appeals) (for short 'the CIT (A)')-52, Mumbai, pertaining to the assessment years 2009-10 and 2011-12 respectively, whereby the Ld. CIT (A) has partly allowed the appeals filed by the assessee against assessment orders passed u/s 143 (3) read with section 147 of the Income Tax Act, 1961 (for short 'the Act') pertaining to the aforesaid assessment years. Since, both the appeals pertain to the same assessee, the same were clubbed, heard together and are being disposed of by this common and consolidated order for the sake of convenience.

ITA No. 1864/MUM/2018 (Assessment Year: 2009-10)

2. Brief facts of the case are that the assessee engaged in the business of trading in Ferrous and non Ferrous metal, filed its return of income for the assessment year under consideration declaring the total income of Rs. 1,45,474/-. The return was processed u/s 143 (1) of the Act. Subsequently, on the basis of information received from the Sales Tax Department of Maharashtra through DGIT (Inv.), Mumbai to the effect that some of the dealers under MVAT 2002 had been providing accommodation entries in the form of issuing bogus sales, purchase bills, without supplying any goods and issue such bogus bills to the assessee including the present assessee. As per the information, the assessee during the financial year relevant to the assessment year under consideration obtained bogus purchase bills from the Divya Enterprises amounting to Rs. 22,04,969/- and from Kamal Traders amounting to Rs. 32,77,170/-. Accordingly, the assessment was re-opened u/s 147 after issuing notice u/s 148 of the Act. In response to the notice u/s 148, the authorized representative of the assessee requested to treat the return of income originally filed by the assessee as return of income filed in response to notice u/s 148 of the Act. The AO after providing reasons recorded, issued notices u/s 143 (2) and 142 (1) and asked the assessee to furnish supporting evidence in respect of the purchases made from the above entities. Accordingly, the assessee furnished the details of the parties from whom the purchases were allegedly made and the parties to whom goods were sold. The AO also issued notice u/s 133 (6) of the Act, however, the same were received back unserved from the postal department with the remarks 'not known' or 'no such address' or 'left' etc. The assessee was further asked to furnish the details such as purchase details invoice/bills, copies of account details of transportation of goods i.e. Lorry receipts and other documentary evidence reflecting the relevant entries of having receipt such goods in the premises of the assessee and having

consumes such goods, details of payment made to these parties etc. In response thereof the AR submitted purchase invoices, copies of bank statements, chart showing the details, purchase of the alleged parties, quantitative tally in respect of entire purchase from the aforesaid parties and the corresponding sales. After examining the details furnished by the assessee, the AO held the purchases shown from the aforesaid parties are not genuine and relying on the judgment of the Hon'ble Gujarat High Court in CIT vs. Simit P. Seth ITA No. 553 of 2012 dated 16.01.2013 made addition of 12.5% of the total amount of bogus purchases made by the assessee from the aforesaid two parties.

3. The assessee challenged the assessment order before the Ld. CIT (A). The Ld. CIT (A) affirmed the findings of the Ld. CIT (A) holding that the purchases in question are not genuine. However, after taking into consideration the nature of business and sale applicable during the relevant year restricted the addition to 9% of the total amount of the bogus purchases determining by the AO. Still aggrieved, the assessee is in appeal before the Tribunal.

4. The assessee has preferred this appeal before the Tribunal on the following effective grounds:-

1. *“On the facts and circumstances of the case, the ld. Commissioner of Income Tax (Appeals) erred in upholding the Re-opening of assessment u/s 147 of the Income Tax Act for A.Y. 2009-10 on the basis of List uploaded on the website of the MVAT Department without any corroborative evidences as required for information of belief for escapement of Income u/s 147 of the Income Tax Act.*
2. *On the facts and circumstances of the case, the ld. Commissioner of Income Tax (Appeals) erred in not providing adequate opportunity to verify the documents and statements based on evidences if any available with the ld. Assessing Officer and thereby the process of natural justice was denied and in view of the same the reopening is bad in law.*

3. *On the facts and circumstances of the case, the ld. Commissioner of Income Tax (Appeals) erred in upholding the listed suppliers as ingenuine without appreciating that the said parties had even responded to notices U/s 133 (6) and therefore there was no evidence/basis for treating them ingenuine.*
4. *On the facts and circumstances of the case, the ld. Commissioner of Income Tax (Appeals) erred in upholding the disallowance to the extent of 9% of the Purchases considering the same to be inflated without appreciating the fact that the Purchases were genuine purchases beyond doubt and supported by sufficient materials, full quantitative stock records have been maintained, all the goods purchases from these parties have been backed by corresponding sales which are accepted to be genuine, nothing has been brought on record by the AO that money has been exchanged in the hands in lieu of payment made for these purchases by account payee cheque by the Appellant Firm.”*

5. Before us, the Ld. counsel for the assessee submitted that the Ld. CIT(A) has erred in upholding the re opening of assessment u/s 147 of the Act on the basis of information received from sales tax department through DGIT(Inv) without any corroboration as required for formation of belief that income has escaped. The Ld. counsel further submitted that since the findings of the AO are not based on the evidence on record, the Ld. CIT(A) has wrongly upheld the action of the AO. So far as the addition is concerned, the Ld. counsel submitted that the authorities below have wrongly mentioned that the parties did not respond to the notice issued u/s 133 (6) of the Act. The Ld. counsel further invited our attention to page 44 and 45 of the paper book which are the copies of letter dated 13.08.2014 addressed to ITO concerned by one of the parties Divya Enterprise confirming sale of goods worth Rs 22,04,969/- and copy of letter dated 13.08.2014 addressed to the concerned ITO by Kamal Traders the

second party confirming sale of goods worth Rs 32,77,170/- during the financial year 2008-09. The Ld. counsel further pointed out that both the parties have filed the return of income for the assessment year under consideration and subsequent years. Therefore, the findings of the authorities below, that the parties were not found available are factually incorrect. The Ld. counsel further contended that during the assessment proceedings all the details including quantitative tally were also furnished. Therefore, the assessee had discharged the onus of proving the genuineness of transaction. Since, no material was brought on record by the AO or pointed out any cogent evidence to conclude that the purchases in question are bogus, the addition made by the AO and the addition sustained by the Ld. CIT (A) is bad in law, therefore the same is liable to be set aside.

6. On the other hand, the Ld. Departmental Representative (DR) submitted that since the Income Tax Department has made thorough enquiry on the basis of information received from Sales Tax Department the AO has rightly reopened the assessment, and assessee could not file the vital documents such as delivery challan transport receipt octroi receipt from payment of octroi duty, goods inward register, the authorities below have rightly treated the sales as bogus. Therefore, the Ld. CIT (A) has rightly confirmed the addition of 9% of the total amount of bogus purchases.

7. We have heard the rival submissions and also gone through the material on record. So far as the first issue raised by the assessee's concerned, under section 147 of the Act the AO can reopen the assessment if he has reason to believe that any income has escaped. So the term reason to believe connotes satisfaction of the AO on the basis of information or the material available with him. In the present case since the AP from his belief on the basis of information received from investigation wing of the department, it cannot be said that the

AO has exceeded his jurisdiction. In *ITO vs. Purushotam Das and Another*, 224 ITR 362, the Hon'ble Supreme Court has justified the action of AO in reopening the assessment u/s 147(b) of the Act on the basis of letter written by DDI (Inv) to jurisdictional IAC containing relevant facts and information without any further information. In view of the aforesaid judgment of the Hon'ble Supreme Court we do not find any merit in the contention of the assessee that the reopening of the assessment is bad in law. We therefore dismiss this ground of appeal of the assessee.

8. Vide ground No 2 and 3 of the appeal the assessee has challenged the reassessment proceedings contending that adequate opportunity was not provided to verify the documents and statements available with the AO. The Ld. counsel further contended that the authorities below has wrongly held that the parties did not respond to the notices issued u/s 133(6) of the Act. As per the settled law when the assessee claims the expenditure and debits the trading profit and loss account, the onus is upon the assessee to establish the genuineness of the claim. In the present case the assessee has failed to prove that the goods were actually delivered to it by the aforesaid parties by producing details of transportation of goods i.e., lorry receipts, record reflecting entries of having received goods supplied by the so called dealers in the premises of the assessee despite sufficient opportunity afforded by the AO. So far as response to the notice issued to the parties u/s 133(6) of the Act is concerned, though the AO has specifically mentioned that the same were received back un-served, yet on the basis of the confirmations of the so called dealers, placed on record by the assessee, if it is assumed that the said dealers have submitted the confirmations, the said confirmations do not *ipso facto* establish the genuineness of the transaction. The direct and the circumstantial evidence on record are sufficient to safely conclude that the so called suppliers were bogus and they have not supplied any goods to the present assessee.

Hence, we do not find any merit in the contentions of the assessee. We therefore dismiss ground No 2 and 3 of the appeal.

9. Vide ground No 4 the assessee has challenged the action of the Ld. CIT(A) in sustaining addition of 9% of the total amount of bogus purchases determined by the AO. We notice that the AO has not rejected the sales made by the assessee during the previous year. It means the assessee had made sales during the relevant year as per the entries in the books of account. However, since we have held that the assessee has not purchased any material from the aforesaid parties and only obtained the accommodation, inference can be drawn that the assessee made purchases in grey market to evade the applicable tax. Under these circumstances the Ld. CIT(A) has rightly sustained the addition of 9% of the total amount of bogus purchases by following the various decisions including the decision of the Hon'ble Gujarat High Court rendered in the case of *CIT vs. Simit P. Sheth* 356 ITR 451. In the said case, the Hon'ble High Court has upheld the decision of the Tribunal and sustained the addition 12.5% of the total bogus purchases holding that only profit element embedded in such purchases can be added to income of the assessee. Since, the Ld. CIT(A) has sustained the addition by following the principles law laid down by the Hon'ble Gujarat, High Court, we do not find any reason to interfere with the findings of the Ld. CIT(A). We accordingly uphold the findings of the Ld CIT(A) and dismiss this ground of appeal of the assessee.

ITA No. 1865/MUM/2018 (Assessment Year: 2011-12)

The assessee has preferred this appeal before the Tribunal on the following effective grounds:-

1. *“On the facts and circumstances of the case, the ld. Commissioner of Income Tax (Appeals) erred in upholding*

the Re-opening of assessment u/s 147 of the Income Tax Act for A.Y. 2011-12 on the basis of List uploaded on the website of the MVAT Department without any corroborative evidences as required for information of belief for escapement of Income u/s 147 of the Income Tax Act.

2. *On the facts and circumstances of the case, the ld. Commissioner of Income Tax (Appeals) erred in not providing adequate opportunity to verify the documents and statements based on evidences if any available with the ld. Assessing Officer and thereby the process of natural justice was denied and in view of the same the reopening is bad in law.*
3. *On the facts and circumstances of the case, the ld. Commissioner of Income Tax (Appeals) erred in upholding the listed suppliers as ingenuine without appreciating that the said parties had even responded to notices U/s 133 (6) and therefore there was no evidence/basis for treating them ingenuine.*
4. *On the facts and circumstances of the case, the ld. Commissioner of Income Tax (Appeals) erred in upholding the disallowance to the extent of 9% of the Purchases considering the same to be inflated without appreciating the fact that the Purchases were genuine purchases beyond doubt and supported by sufficient materials, full quantitative stock records have been maintained, all the goods purchases from these parties have been backed by corresponding sales which are accepted to be genuine, nothing has been brought on record by the AO that money has been exchanged in the hands in lieu of payment made for these purchases by account payee cheque by the Appellant Firm.”*

2. The facts and the issues involved in the present case are identical to the facts and the issues involved in the assessee's own case for the assessment year 2009-10 discussed above except the total amount of bogus purchases

determined by the AO. Since we have dismissed the appeal of the assessee for the assessment year 2009-10, consistent with our findings, we dismiss the present appeal of the assessee for the same reasons.

In the result, both the appeals filed by the assessee for assessment years 2009-10 and 2011-2012 are dismissed.

Order pronounced in the open court on 20th June, 2018.

Sd/-

(R.C. SHARMA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 20/06/2018

Alindra, PS

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

आदेश 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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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