

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

**BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.433/M/2017
Assessment Year: 2011-12**

Mrs. Tarla R. Shah, 1202 Aditya Tower CHSL, Chandavarkar Road Borivali (West), Mumbai - 400 092 PAN: AMOPS 3922M	Vs.	DCIT 32(3), Bandra Kurla Complex, Mumbai - 400 051
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Bhupendra Shah, A.R.
Revenue by : Shri V. Justin, D.R.

Date of Hearing : 26.06.2018
Date of Pronouncement : 24.07.2018

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 26.12.2016 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2011-12.

2. The grounds raised by the assessee are as under:

"1. On the facts and circumstances of the case and in law, the authorities below have erred in sustaining/making an addition of Rs.14,50,560/- of two parties treating them bogus purchases u/s 69C and the reasons assigned for doing so were wholly wrong, not in accordance with the facts of the case and provisions of the Income Tax Act, 1961 and rules made there under.

2. On the facts and circumstances of the case and in law, the authorities below have erred not adjudicating/allowing the additional ground of appeal wherein a sum of Rs.2,52,403/- was added to the income of the appellant, when the appellant had not claimed/incurred any expenses to earn

dividend income of Rs.1,26,901/- u/s 14A r.w.r 8D of the IT Act and rules made there under.

3. The appellant craves leave to add, alter, modify and delete all or any of the aforesaid grounds of appeals on or before the date of hearing.”

3. The issue raised in ground No.1 is against the sustaining of addition of Rs.14,15,560/- by Ld. CIT(A) as made by the AO towards bogus purchases from two parties under section 69C of the Act.

4. The facts in brief are that the assessee is engaged in the business of civil contractor. The AO during the course of assessment proceedings found that the assessee has availed entries of bogus purchases from two parties namely M/s. Jinal Enterprises of Rs.13,90,830/- and M/s. Saj Enterprises of Rs.59,730/- aggregating to Rs.14,50,560/-. The AO issued notice u/s 133(6) of the Act to both the parties but returned unserved. The AO also noted that the purchases from these parties were offered to income in the revised return filed by the assessee offering amount of bogus as additional income in A.Y. 2010-11. On the same lines the AO treated the purchases from these parties as income by adding the same to the income of the assessee.

5. In the appellate proceedings, the Ld. CIT(A) affirmed the order of AO on this ground by observing and holding as under:

“3.3 I have carefully gone through the assessment order as well as the written submission of the appellant. I have also perused the details filed by the appellant. The relevant facts are like this. There was a search and seizure operation under section 132 of the Income tax Act in the case of M/S Neev Infrastructure Private Limited. In connection with the search a person named Shri Mafatlal Shah was also covered under section 133A of the IT Act. During the course of survey proceedings, it was stated by Shri Mafatlal Shah that he was

providing accommodation entries to various parties. It was stated that the appellant is one of such parties. It is seen from the facts of the case that based on evidences discovered during the course of survey the appellant revised her income upwards for assessment years 2010-11, 2011- 12 & 2012-13. For the assessment year 2010-11 the appellant had accepted that she had shown purchases from M/s Jinal Enterprises and M/s Saj enterprises. The additional income offered by the appellant was on account of such unproved purchases only. However, the purchases from the same parties are claimed to be genuine during the assessment proceedings for the assessment year 2011-12. Thus, the appellant is clearly taking a contradictory stand here. When the parties have been accepted by the appellant herself as bogus during the immediately previous assessment year it seems highly unlikely that for the impugned assessment year 2011-12 the parties concerned will suddenly become genuine and above board. After considering the totality of facts I have come to a conclusion that the AO has rightly made the addition. The same is confirmed. The grounds of appeal number 1 is dismissed.”

6. The Ld. A.R. vehemently submitted before us that both the parties from whom the assessee has made purchases were genuine and thus AO has added the bogus purchases to the tune of Rs.14,50,560/- to the income of the assessee by not appreciating the facts in correct perspective. The Ld. A.R. contended that M/s. Saj Enterprises is not a bogus hawala operator but a labour contractor. The Ld. A.R. drew our attention to the page No.84 of the paper book wherein the bill of the said party are attached in which the billing has been made for raw cutting, labour contract and therefore the same should be excluded from the disallowance on the ground that the said party is a labour contractor and not a hawala operator. As regards the second party Jinal Enterprises, the Ld. A.R. drew attention to the page No.60 to 84 of the paper book and submitted that all the bills were duly supplied by the said party mentioning the quantity, nature of material, challan number, lorry number, measurement and rate etc. The Ld. A.R. further referred to the bank statement of the assessee

filed at page No.85 to 96 and also the copies of accounts of the said party filed at page No.97 to 100. The Ld. A.R. also referred to the confirmation letter, IT return, bank statement, VAT returns and affidavit of Jinal Enterprises as filed from page No.102 to 106 and the said party is also not a hawala operator and has in fact supplied the material. Finally, the Ld. A.R. submitted that since all the details were filed before the authorities below and also the fact that the said parties are not appearing on the website of the Sales Tax Department and also that Saj Enterprises was not covered by the VAT provisions and therefore the addition so made on account of bogus purchases should be deleted.

7. The Ld. D.R., on the other hand, relied on the order of authorities below and submitted that the letter issued under section 133(6) was returned back and therefore the order of Ld. CIT(A) should be affirmed or set aside at the most as the assessee could not produce these parties or produce the necessary evidences before the AO.

8. After hearing both the parties and after taking material into account, we find that the AO has made the addition to the tune of Rs.14,50,560/- on account of bogus purchases from two parties namely M/s. Jinal Enterprises and M/s. Saj Enterprises of Rs.59,730/- and Rs.13,90,830/- aggregating to Rs.14,50,560/-. As regards the first party, we find that the said party is not a supplier of goods but a labour contractor and supplies machines on hire which is quite apparent from the perusal of the bill of the said party as filed at page No.84

and also that the said party is not subject to VAT and there is no question of said party appearing on the list of hawala traders. Accordingly, the same is ordered to be deleted.

8.1 As regards the second party M/s. Jinal Enterprises, we find that the assessee has duly filed before the AO all the evidences in the form of invoices, bank statement, IT returns, confirmations and affidavit from the said party as the said party belongs to a person who is family friend of the assessee. We also find from the perusal of invoices that all lorry receipts, challan numbers were duly mentioned by the suppliers on the invoices and therefore the assessee has discharged all the initial onus cast on it to prove the genuineness of the purchases as the assessee has filed all the necessary evidences in the form of invoices, bank statement, IT returns, confirmations and affidavit of the supplier confirming the goods to have been supplied to the assessee. Under these circumstances, we are not in concurrence with the finding of the Ld. CIT(A) upholding the order of AO and therefore we set aside the order of Ld. CIT(A) on this issue and direct the AO to delete the addition.

9. Resultantly, ground No.1 is allowed in favour of the assessee.

10. The issue raised in 2nd ground of appeal is as regards non adjudication of additional ground of appeal wherein a sum of Rs.2,52,403/- was added to the income of the assessee under section 14A read with Rule 8D of the Act.

11. The facts in brief are that the assessee has received exempt income by way of dividend to the tune of Rs.1,26,901/- while no disallowance was made towards earning of said income. The AO required the assessee to submit the working of disallowance in terms of section 14A read with Rule 8D of the Act which was submitted by the assessee vide letter dated 26.08.13 and is reproduced in para 5.1 of the assessment order and thereafter the AO disallowed Rs.2,52,403/- and added the same to the income of the assessee.

12. In the appellate proceedings, the Ld. CIT(A) did not adjudicate the additional ground filed by the assessee on 13.12.2016 on the ground that assessee has not given any reason for filing the additional grounds of appeal and could not explain the reason why the same was not incorporated in the original ground of appeal filed by the assessee and accordingly additional ground was not admitted and adjudicated.

13. The Ld. A.R. submitted before us that the AO has not recorded any satisfaction in the assessment order by referring to the relevant paras of the assessment order which is essential requirement of law as per the provisions of section 14A(2) of the Act. Alternatively, without prejudice to the first submission, the Ld. A.R. submitted that the exempt income during the year is only to the tune of Rs.1,26,901/- and therefore in no case the disallowance could exceed the exempt income.

14. The Ld. D.R., on the other hand, relied on the order of authorities below so far as the disallowance under section 14A read with Rule 8D of the Act is concerned.

15. Having heard both the parties and after perusal of the records, we find that the AO has mechanically made the addition without recording any satisfaction with reference to the books of account of the assessee. The Ld. CIT(A) simply did not admit the additional ground for the reason that the assessee could not explain the reason as to why it was not included in the grounds of appeals. In our opinion, the recording of satisfaction is mandatory as per the provision of section 14A(2) of the Act in absence of which any disallowance made by the AO has to be deleted. The said view is supported by the decision of the Apex Court in the case of "Godrej & Boyce Manufacturing Co. Ltd. Vs. DCIT [(2010) 328 ITR 81 (Bom)]". We, therefore, without going into the second plea of the counsel, decide the issue in favour of the assessee by setting aside the order of Ld. CIT(A) and directing the AO to delete the addition.

16. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 24.07.2018.

**Sd/-
(C.N. Prasad)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 24.07.2018.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.