

IN THE INCOME-TAX APPELLATE TRIBUNAL "A" BENCH MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER &
SHRI N.K. PRADHAN, ACCOUNTANT MEMBER
ITA No.6162/Mum/2017 (Assessment Year 2010-11)

Shri Anil Dadarao Garad Prop. M/s Shivjeet Chemicals/Shivani Chemicals, W-34, Morival, MIDC, Ambernath-421501. PAN: AAZPG8732G	Vs.	ITO Ward 2(1), 1 st Floor, Mohan Plaza, Wayle Nagar, Khadakpada, Kalyan-421301.
Appellant		Respondent

ITA No.6015/Mum/2017 (Assessment Year 2010-11)

ITO Ward 2(1), 1 st Floor, Mohan Plaza, Wayle Nagar, Khadakpada, Kalyan-421301.	Vs.	Shri Anil Dadarao Garad Prop. M/s Shivjeet Chemicals/Shivani Chemicals, W-34, Morival, MIDC, Ambernath-421501. PAN: AAZPG8732G
Appellant		Respondent

Appellant by : Shri S.M. Makhija (AR)
Respondent by : Shri Rajesh Kumar Yadav (DR)
Date of Hearing : 24.07.2018
Date of Pronouncement : 24.07.2018

ORDER UNDER SECTION 254(1) OF INCOME TAX ACT

PER PAWAN SINGH, JUDICIAL MEMBER;

1. These cross appeal are directed against the order of ld. Commissioner of Income-tax (Appeals)-3, Thane [ld. CIT(A)] dated 13.07.2007 for Assessment Year 2010-11. The assessee has raised the following grounds of appeal:

The Ld CIT (Appeals) has seriously erred in confirming the action of Assessing Officer in reopening validity completed assessment.

I) Only on the basis of information received from sales tax department to the effect that assessee had taken hawala bills from some parties instead of actually purchasing goods.

II) Without making any independent inquiries/ due application of mind.

III) In violation of principles of natural justice by neither providing the copy of statement recorded/affidavit filed before sales tax department of the alleged hawala dealer.

2. Without Prejudice to the above appellant submits that Ld CIT (appeals) has seriously erred in confirming the addition @ 15% of the alleged bogus purchases without appreciating that

i) As decided by various judicial forums under situations alike of the assessee what is to be added is the profit element embedded in the transaction which in assessee's case is 3.8% only.

ii) That assessee has paid VAT on alleged bogus purchase to the Maharashtra VAT Authorities @12.5%, deduction for which has to be allowed while making addition.

iii) Assessee has already declared Gross Profit on all the purchase recorded including alleged bogus purchases @ 15.49% which sum also is requested to be reduced out of the estimated addition @15% proposed to be added as has been held by various Judicial authorities.

3. The appellant craves leave to add, amend, alter and/or any of the grounds at the time of or before the hearing of appeal.

4. The appellant therefore prays that initiation of reassessment proceedings may please be held as illegal, order passed in pursuance thereto may be quashed or alternatively addition made/confirmed may be suitably reduced.

2. The Revenue in its cross appeal has raised the following grounds of appeal:

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A)-3, Thane erred in deleting the addition of Rs. 1,53,98,087/- out of the total addition of Rs. 1,81,15,397/- made on account of bogus purchases, despite holding that the purchases were not genuine and the assessee failed to prove genuineness of the transactions.

2. On the facts and in the circumstances of the case and in law, Ld. CIT(A)-3, Thane erred in deleting the above addition despite the fact that the assessee failed to discharge his onus of proving the genuineness of purchases.

3. The appellant prays that the order of the Ld. CIT(A)-3, Thane, may be set-aside and that of the Assessing Officer be restored.

3. Brief facts of the case are that the assessee is a Prop. of M/s Shivjeet Chemicals & Shivani Chemicals, trading in Dyes and Chemicals, filed his return of income for Assessment Year 2010-11 on 04.10.2010 declaring

total income at Rs. 9,64,580/-. The assessment was processed under section 143(1). Subsequently, the assessment was re-opened under section 147. The notice under section 148 dated 16.10.2014 was served upon the assessee. The assessment was re-opened on the basis of information received from Sales Tax Department, Government of Maharashtra that assessee has received bogus purchase bill from the parties whose name are listed in the name of hawala dealers. The assessee has shown the purchases of Rs. 1,81,15,397/- from such hawala dealers. During the re-assessment proceeding, the assessee was asked to prove the genuineness of the purchases and to produce the parties. The assessee failed to produce the parties and to prove the delivery challan of the material, therefore, the Assessing Officer made the addition of aggregate of purchases of Rs. 1,81,15,397/-. The Assessing Officer made the 100% addition from the purchases shown through 18 parties whose names were listed in the list of hawala dealers. On appeal before the Id. CIT(A), the addition was restricted to 15% of such impugned purchases from dealers. Therefore, further aggrieved by the order of Id. CIT(A) both the parties have filed their respective appeal. The Revenue in its appeal has challenged the validity of deleting the 85% of addition on account of bogus purchases. Similarly, the assessee has challenged the addition restricted to 15% of the purchases. Since the grounds of appeal in both the appeals are interconnected,

therefore, the grounds of appeal raised in both the appeals are considered and adjudicated together.

4. We have heard the submissions of the Id. Departmental Representative (DR) for the Revenue and Id. Authorized Representative (AR) of the assessee and perused the material available on record. At the outset of hearing, the Id. AR of the assessee submits that similar addition was made against the assessee for Assessment Year 2009-10 and on appeal before the Tribunal; the addition was restricted to 8% of the total bogus purchases. The Id. AR of the assessee submits that the issue raised in the present appeal is identical as raised in appeal for Assessment Year 2009-10; therefore, the addition may be restricted to 8% of the disputed/alleged bogus purchases. On the other hand, the Id. DR for the Revenue submits that the Tribunal in case of Soman Sun Citi vs. JCIT in ITA No. 2960/Mum/2016 dated 23.07.2017 sustained the 100% of the addition made on account of similar bogus purchases.
5. We have considered the rival submission of the parties and have gone through the orders of authorities below and the order passed by co-ordinate bench in assessee's own case for Assessment Year 2009-10 in ITA No. 6161/Mum/2017 dated 12.01.2018. We have noted that for the assessment year under consideration, the Assessing Officer made the 100% addition on account of alleged bogus purchases. The Assessing Officer relied upon the report of Sales Tax Department, Government of Maharashtra. During

the assesment the assessee filed copy of bills, bank statement to prove the genuineness of the purchases. The Assessing Officer on his observation that assessee failed to prove the parties for verification made addition of 100% of the purchases. The assessing officer has not disputed the sales of the assessee. The statement of accounts was not rejected by assessing officer. The assessee is trader; the sale is not possible in absence of purchases. The Id. CIT(A) after considering the fact of the case and considering the gross profit ratio for Assessment Year 2008-09, 2009-10 & 2010-11 which was shown at 11.01%, 14.91% and 15.49% respectively. And considering the facts that the Assessing Officer has not doubted the genuineness of sale and made the addition of entire amount which would lead to abnormal profit which would be 87.33% (GP). The Id. CIT(A) restricted the addition to 15% of purchases from unverifiable/hawala dealers on the basis of decision of various Tribunals.

6. We have further noted that on identical facts, the co-ordinate bench of Tribunal in assessee's own case for Assessment Year 2009-10 restricted the addition @ 8% of the alleged bogus purchases. Considering the fact of the present case, the assessee has already shown GP @ 15.49% for Assessment Year under consideration. Therefore, respectively following the decision of Tribunal in assessee's own case for Assessment Year 2009-10, we direct the Assessing Officer to restrict the disallowance on account of bogus purchases to 8% of the alleged bogus/tainted purchases. The ratio of case

law relied by Id. DR is not applicable on the fact of the present case. The assessee in Soman Sun Citi (supra) is a builder/in the business of construction. The assessee in that case was required to prove the consumption of material, which they failed to prove. However, the assessee in case in hand is Trader and his sale is not disputed. Moreover, the decision in assessee's own case for earlier or subsequent year on identical facts and on identical grounds of appeal are binding precedent unless otherwise a contrary material is brought on record. Therefore, we have no hesitation to except the ratio of disallowance restricted by Tribunal in assessee's own case for earlier Assessment Year.

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

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8. As we have restricted the addition @ 8% of alleged bogus purchases, therefore, the grounds of appeal raised by Revenue in its appeal have become infructuous.

9. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 24 .07.2018.

Sd/-
N.K. PRADHAN
ACCOUNTANT MEMBER
Mumbai, Date: 24 .07.2018

Sd/-
PAWAN SINGH
JUDICIAL MEMBER

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Copy of the Order forwarded to :

1. Assessee
2. Respondent
3. The concerned CIT(A)

4. The concerned CIT
5. DR "A" Bench, ITAT, Mumbai
6. Guard File

**BY ORDER,
Dy./Asst. Registrar
ITAT, Mumbai**