

IN THE INCOME-TAX APPELLATE TRIBUNAL "SMC" BENCH MUMBAI  
BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND  
SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No.4531/Mum/2018 (Assessment Year 2009-10)

Bhaven Anilbhai Shah M/s Unnati Ispat, 101, RH-54, Shreeram Plaza, Behind Model College, MIDC, Dombivali (E), Mumbai-421203. <b>PAN: AKOPS0050L</b>	Vs.	ITO Ward-(3(1)) 2 <sup>nd</sup> Floor, Rani Mansion, Murbad Road, Kalyan (W), 421301.
Appellant		Respondent

ITA No.4532/Mum/2018 (Assessment Year 2010-11)

Bhaven Anilbhai Shah M/s Unnati Ispat, 101, RH-54, Shreeram Plaza, Behind Model College, MIDC, Dombivali (E), Mumbai-421203. <b>PAN: AKOPS0050L</b>	Vs.	ITO Ward-(3(1)) 2 <sup>nd</sup> Floor, Rani Mansion, Murbad Road, Kalyan (W), 421301.
Appellant		Respondent

Appellant by : Ms. Neha Paranjpe (AR)  
Respondent by : Shri S.K. Bepair (Sr. DR)  
Date of Hearing : 08.08.2018  
Date of Pronouncement : 08.08.2018

**ORDER UNDER SECTION 254(1) OF INCOME TAX ACT**  
**PER PAWAN SINGH, JUDICIAL MEMBER;**

1. These two appeal by assessee are directed against the order of Id. Commissioner of Income-tax (Appeals)-1, Thane [Id. CIT(A)] dated 17.05.2018 for Assessment Year 2009-10 & 2010-11. For Assessment Year 2009-10, the assessee has raised the following grounds of appeal:

1. The learned CIT(A) erred on facts and in law in upholding the decision of the AO for reopening the assessment u/s 148 of the Act without any proper reasons and/or without having additional cogent evidence on record.

2. The Id. CIT(A) erred on facts and in law in upholding addition of Rs. 3,46,448/- on account of alleged bogus purchases by the assessee. The learned CIT(A) failed to appreciate the facts and evidences submitted before the learned AO as well as learned CIT(A). The learned CIT(A) further erred in upholding rejection of books of accounts and treating genuine transactions as hawala transactions.

2. Brief facts of the case are that the assessee is a Wholesaler in Iron & Steel items, filed its return of income for Assessment Year 2009-10 on 22.09.2009 declaring total income of Rs. 6,39,400/-. The assessment for the year under consideration was processed under section 143(1) of the Act. Subsequently, on the basis of information received from DGIT (Investigation). The assessment was re-opened. The assessing officer received the information that the assessee is one of the beneficiaries, who has availed bogus entry from hawala trader. On the basis of information from Sales Tax Department the assessment was re-opened. During the re-assessment proceedings the Assessing Officer noted that the assessee has shown purchases of Rs. 13,85,791/- from 4 such hawala dealers. The re-assessment was completed on 30.06.2014. The Assessing Officer while passing the assessment order made the addition of entire purchases on account of non-genuine purchases as profit element embedded in such tainted purchase. On appeal before the Id. CIT(A), the re-opening was sustained, however, the disallowance under section 69C on account of bogus purchases was restricted to 25%. Therefore, further aggrieved by the order of Id. CIT(A), the assessee has filed the present appeal before us.

3. We have heard the Id. Authorized Representative (AR) of the assessee and Id. Departmental Representative (DR) for the Revenue and perused the material available on record. Ground No.1 relates to the validity of re-opening. The Id. Ld. AR of the assessee submits that she is not pressing the ground no.1. Considering the submission of Id. AR, ground no. 1 of the appeal is treated as not pressed and consequently dismissed.
4. Ground No.2 relates to upholding the addition of Rs. 3,46,448/- i.e. 25% of the bogus purchases. The Id. AR of the assessee submits that all purchases of the assessee are genuine one. The assessee has proved by sufficient evidence, the genuinity of purchases. The Id. AR of the assessee further submits that the disallowance restricted by Id. CIT(A) is on excessive side. The Id. AR further submits that to avoid the litigation, the disallowance may be restricted on reasonable basis. Considering the nature and business activities of assessee wherein the margin is not more than 5-6% of the transactions.
5. On the other hand, the Id. DR for the revenue supported the order of authorities below. The DR further submits that the Sales Tax Department, Govt. of Maharashtra and the Investigation Wing of Income tax Department made full-fledged enquiry with regard to hawala dealers who were indulging in providing accommodation enteritis without delivery of goods. The assessee has shown purchases from such parties whose names appeared in the list of hawala dealers. The assessee merely obtained accommodation

bills only to inflate expenses and bring out the profitability in order to avoid tax. The Id. DR further submits that AO has already given sufficient relief to the assessee.

6. We have considered the submission of the parties and have gone through the orders of authorities below. We have noted that assessee has shown the total purchases the steel items worth of Rs. 13,85,792/- from 4 parties. The names of all ten parties were shown in the list of bogus hawala dealers. During the re-assessment, the Assessing Officer asked the assessee to substantiate the genuineness of purchases and corresponding sales of the goods/material. The assessee filed his written submission dated 11.1.2013. Along with written submission, the assessee furnished complete details of purchases which consist of sales bill, voucher, stock register and register and entry and exit. The reply of the assessee was not accepted by Assessing Officer after considering the submission of the assessee and disallowed the entire purchases. We have noted that Assessing Officer has not given any finding over the documentary evidence furnished by the assessee in respect of purchases and corresponding sales. The Assessing Officer has not discussed anything about the contention as well as evidences furnished by assessee. The Assessing Officer has not examined the Gross Profit declared by assessee in earlier year or in subsequent Assessment Year.
7. The Id. CIT(A) sustained the addition/disallowance of non-genuine purchases @ 25% by referring the decision of Hon'ble Supreme Court in

case of Vijay Proteins/Sanjay Oil Cake Mills. We have noted that the Assessing Officer has not made the independent enquiry before making 100% disallowance of purchases. The addition was made on the basis of third party information. Statement of account of assessee was not rejected. Sale of the assessee was not disputed.

8. After considering the facts of the case and the submission of parties, we are of the considered opinion that under Income Tax Act only real income can be taxed by the Revenue. We may further conclude that even if the transaction is not verifiable, the only taxable is the taxable income component and not the entire transaction. In our view, the disallowance sustained by Id. CIT(A) is on the higher side, we are of the view, that in order to fulfil the gap of revenue leakage the disallowance of reasonable percentage of alleged purchases would meet the end of justice. Therefore, considering the nature of business of assessee, the disallowance is restricted to 12.5% of the total impugned (disputed) purchases. Therefore, we direct the Assessing Officer to restrict the disallowance on account of bogus purchases @ 12.5%.

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

**ITA No. 4532/Mum/2018 for AY 2010-11**

10. The assessee has raised the identical ground of appeal and facts as raised in ITA No. 4531/Mum/2018 for AY 2000-10, which we have partly allowed.

Considering the similarities of facts and issues, this appeal is also allowed *mutatis mutandis* with similar direction.

11. In the result, the appeal of the assessee is also partly allowed.

Order pronounced in the open court on 08.08.2018.

**Sd/-**  
**G.S. PANNU**  
**ACCOUNTANT MEMBER**  
Mumbai, Date: 08.08.2018  
SK

**Sd/-**  
**PAWAN SINGH**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to :**

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT(A)
5. DR "SMC" Bench, ITAT, Mumbai
6. Guard File

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