

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य एवं
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष।
[BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER]

आयकर अपील सं./I.T.A. Nos.309, 310 & 311/CHNY/2017.

निर्धारण वर्ष /Assessment years : 2009-10, 2010-11 & 2011-2012.

Mr. Syed Mubarak Ali,
No.5, New Street,
Nungambakkam,
Chennai 600 034.

Vs. The Assistant Commissioner of
Income Tax,
Non Corporate Circle 3,
Chennai.

[PAN ALQPS 2781M]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri. L. Natarajan, C.A. &
Shri. Quadir Hoseyn, Advocate

प्रत्यर्थी की ओर से /Respondent by

: Shri. Marudhu Pandian, Addl. CIT.

सुनवाई की तारीख/Date of Hearing

: 10-09-2018

घोषणा की तारीख /Date of Pronouncement

: 12-09-2018

आदेश / O R D E R

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

These are appeals filed by the assessee directed against an orders dated 26.10.2016 and 24.10.2016 of Id. Commissioner of Income Tax (Appeals)-4, Chennai.

2. Grounds taken by the assessee for the above years assails addition made for purchases which were considered by the Id. Assessing

Officer as bogus, based on certain information received from Maharashtra VAT Department, apart from a challenge to the reopening done for the impugned assessment years.

3. Facts apropos are that assessee running a proprietorship concern called "M/s. Bharath Trading Company" in plastic granules, had filed returns for assessment year 2009-2010 declaring income of ₹17,00,060/-, for assessment year 2010-2011 declaring income of ₹25,83,966/- and for assessment year 2011-12 declaring income of ₹15,48,695/-. These returns were originally processed u/s.143(1) of the Income Tax Act, 1961 (in short "the Act"). However, thereafter the assessments for the impugned assessment years were reopened citing a reason that some of the purchases claimed by the assessee were bogus. Though the assessee objected to the reopening, it seems such objections were rejected. Ld. Assessing Officer based on a report forwarded by DGIT (Investigation, Mumbai) which in turn had it's moorings on certain details obtained from Maharashtra VAT Department, required the assessee to explain why the following purchases claimed by it should not be considered bogus.

Sl. No	Hawala name	Hawala TIN	Hawala Pan	Particulars of transactions					
				08-09	Amount	09-10	Amount	10-11	Amount
1	Naman enterprises	27450524228V	AQEPK5024G		20,24,880				
2	Krish corporation	27890606533V	AWAPS3678L		21,72,560				
3	Sagar enterprises	27920363580V	ACTPS9740C		27,67,908				
4	K C enterprises	27220658554V	AJWPD9140R				77,48,341		
5	R K enterprises	27980667157V	AGVPS7835C				30,23,020		
6	Global Trade Impex	27400628967V	AMRPB2286L				21,03,140		
7	Shree enterprise	27760618778V	AARPU1851E				29,08,360		
8	Hiten enterprises	27880265244V	AABPP2740H				13,89,232		
9	Shubbam enterprises	27790690881V	AJAPM6393F				55,30,714		
10	Amees enterprise	27270692331V	AZPPP4568E				3,55,01,784		37,16,265
11	Nirmal Trading Co	27740692331V	AAJHM4684H				39,70,148		40,54,260
12	Rajshree enterprises	27360671572V	AQGPB7825G				55,51,962		33,95,920
13	R K enterprises	27980667157V	AGVPS7835C						36,71,200
14	Darshat Trading Pvt. Ltd	27020712790V	AADCC1270D						1,28,18,400
			TOTAL		69,65,348		6,77,26,701		2,76,56,045

Assessee thereupon submitted these bills for the purchases. However, it seems assessee could not furnish the details on the transportation of the goods. Ld. Assessing Officer thereupon issued notices u/s.133(6) of the Act to the above parties, but all such notices were returned unserved. Ld.

Assessing Officer came to a conclusion that the above purchases were bogus and completed the assessment for the impugned assessment years making additions of ₹69,65,348/-, ₹6,77,26,701/- and ₹2,76,56,045/- respectively.

4. Aggrieved, assessee moved in appeal before Id. Commissioner of Income Tax (Appeals) for all the impugned assessment years. Argument of assessee before Id. Commissioner of Income Tax (Appeals) was that these purchases were all genuine and supported by invoices, delivery challans and VAT payments. According to the assessee, payments for all these purchases were made through banking channels and the goods so purchased were subsequently sold. As per the assessee, the stock was properly accounted. Contention of the assessee before Id. Commissioner of Income Tax (Appeals) was that sales having not been disbelieved or questioned, purchases alone could not have been ignored. Apart from the merits of the disallowances, assessee also assailed the reopening done for these assessment years. For assessment year 2010-2011, assessee had one other ground stating that actual purchase amount from M/s.Amee enterprises was ₹35,50,178/- and not ₹3,55,01,784/-.

5. However, Id. Commissioner of Income Tax (Appeals) was not fully impressed by the above arguments. According to him, the original

assessments having been done u/s.143(1) of the Act, reopening done for the impugned assessment years were in accordance with law. On the question of purchase being considered bogus, conclusion of the Id. Commissioner of Income Tax (Appeals) was that these were only accommodation entries. According to him, the fact of making payments through account payee cheques, would not be sufficient to claim the transactions as genuine. Id. Commissioner of Income Tax (Appeals), was of the opinion that assessee could not produce necessary evidence for substantiating the purchases.

6. Vis-à-vis the claim of the assessee that sales also should be reduced if purchases were disbelieved, Id. Commissioner of Income Tax (Appeals) was of the opinion that assessee was accounting its unaccounted money as sales and such claim could not be entertained. Id. Commissioner of Income Tax (Appeals) relied on the judgment of Hon'ble Gujarat High Court in the case of *CIT vs. Simit P. Sheth (2013) 356 ITR 451* and that of Hon'ble Apex Court in the case of *Mc Dowell and Co. Ltd vs. Commercial Tax Officer, 154 ITR 148*, while confirming the disallowances made for all the impugned assessment years. Nevertheless, for assessment year 2010-11, Id. Commissioner of Income Tax (Appeals) directed the Id. Assessing Officer to verify the claim of the assessee that

purchase from M/s.Amee enterprises was erroneously considered as ₹3,55,01,784/- against the actual figure of ₹35,50,178/-.

7. Now before us, Id. Authorised Representative strongly assailing the orders of the lower authorities submitted that assessee had effected payments for these purchases only through bank. According to the Id. Authorised Representative, all the vendors had VAT registration and the audit report issued u/s.61 of the Maharashtra Value Added Tax Act, 2002 clearly indicated this position. Relying on paper book pages No.115 to 133, Id. Authorised Representative submitted that tax Audit report in form 3CD, clearly gave the stock particulars. According to him, if purchases were disbelieved assessee's sales should also be reduced correspondingly. As per the Id. Authorised Representative, the purchases were genuine. Relying on a decision of Mumbai Tribunal in the case of *M/s. Imperial Imp & Exp vs. ITO (2016) 46 CCH 0358*, Id. Authorised Representative submitted that when sales were accepted, purchases could not have been rejected. Reliance was also placed on the judgment of Hon'ble Bombay High Court in the case of *CIT vs. Nikunj Eximp Enterprises Pvt. Ltd, (2015) 372 ITR 619*. Id. Authorised Representative also submitted that Id. Assessing Officer had passed a rectification order for A.Y. 2010-2011, reducing the disallowance to ₹3,57,75,095/- from the original amount of

₹6,77,26,701/-, considering the error in the purchase from M/s.Amee enterprises.

8. Per contra, Id. Departmental Representative strongly supporting the orders of the lower authorities submitted that assessee miserably failed to provide any records for purchase of plastic granules. According to him, there were no details about the goods purchased and mode of transportation. Notices u/s.133(6) of the Act were all returned unserved. Thus, according to him, purchases were bogus. As per the Id. Departmental Representative, assessee was bringing in his unaccounted money as sales and the disallowances were therefore justified.

9. We have considered the rival contentions and perused the orders of the authorities below. It is not disputed that assessee had produced bills for purchases. However, these purchases were disbelieved for a reason that notices issued u/s.133(6) of the Act to these parties were returned unserved. Id. Commissioner of Income Tax (Appeals) also states that assessee had failed to bring in sufficient evidence to prove the purchases. Nevertheless what we find from the assessment orders for the impugned assessment years is that Id. Assessing Officer had not found any defects in the books of accounts produced by the assessee, nor rejected it. Assessments were completed u/s.143(3) of the Act after verifying the books of accounts produced by the assessee. In the tax

Audit report for the impugned assessment years filed by the assessee in Form 3CD, quantitative details have been given at Sl. No. 28(a) as under:-

Assessment year 2009-10 :

<i>(a) In the case of a trading concern, give quantitative details of principal items of goods traded</i>	<i>Plastic Granules & Oil (Qty in Kg)</i>
<i>(i) Opening Stock</i>	<i>: 113370.000</i>
<i>(ii) Purchases during the previous year</i>	<i>: 4967237.000</i>
<i>(iii) Sales during the previous year</i>	<i>: 4609134.000</i>
<i>(iv) Closing Stock</i>	<i>: 471473.000</i>
<i>(v) Shortage/excess, if any</i>	<i>: 0.000</i>

Assessment year 2010-11 :

<i>(a) In the case of a trading concern, give quantitative details of principal items of goods traded</i>	<i>Plastic Granules & Oil (Qty in Kg)</i>
<i>(i) Opening Stock</i>	<i>: 471473.000</i>
<i>(ii) Purchases during the previous year</i>	<i>: 2615725.920</i>
<i>(iii) Sales during the previous year</i>	<i>: 2710986.000</i>
<i>(iv) Closing Stock</i>	<i>: 376212.920</i>
<i>(v) Shortage/excess, if any</i>	<i>: 0.000</i>

Assessment year 2011-12:-

<i>(a) In the case of a trading concern, give quantitative details of principal items of goods traded</i>	<i>Plastic Granules & Oil (Qty in Kg)</i>
<i>(i) Opening Stock</i>	<i>: 376212.920</i>
<i>3(ii) Purchases during the previous year</i>	<i>: 1972992.000</i>
<i>(iii) Sales during the previous year</i>	<i>: 1983006.000</i>
<i>(iv) Closing Stock</i>	<i>: 366198.920</i>
<i>(v) Shortage/excess, if any</i>	<i>: 0.000</i>

The above quantity particulars were not found to be incorrect by Id. Assessing Officer. It is clear from the above, that assessee had maintained records which gave the quantity of granules in stock , its purchases and its sales. As mentioned by the Id. Authorised Representative, the sales made by the assessee were never disbelieved. In our opinion, assessee could not have effected the sales without corresponding purchases. If the Revenue disbelieved the purchases the corresponding quantity ought have been reduced from the sales also. In our opinion, the Id. Assessing Officer fell in error in disbelieving the purchases while accepting the quantity of plastic granules sold by the assessee, that too without rejecting the books of the assessee. It is not disputed that assessee had

produced the bills for all purchases and these were paid through banking channel. Just because the notices to vendors of the assessee came back unserved, the purchases could not have been disbelieved. A businessman who purchases goods in the normal course of his business is not expected to keep a track of the address of all the vendors who supplied goods to him. There is nothing on record to substantiate the inference drawn by the lower authorities that part of the sales accounted by the assessee was only to bring in his unaccounted income to the main stream. The existence of unaccounted income was not evidenced by any record. In a similar situation where a part of the purchases were disbelieved, the Mumbai Bench of the Tribunal in the case of *M/s. Imperial Imp & Exp (supra)* had held as under at para 5 & 6 of its orders.

“5. On the other hand, the Ld. Departmental Representative supported the orders of the authorities below by pointing out that the addition has been made on account of the enquiries conducted by the Sales Tax Department of the Government of Maharashtra and no effort has been made by the assessee to controvert such information.

6. We have carefully considered the rival submissions. The entire discussion in the assessment order reveals that purchases from four parties namely Dhruv sales Corporation - Rs.13,67,640/-; Subhlaxmi Sales Corp. - Rs.20,20,800/-; Dharshan Sales Corporation - Rs.9,64,656/-; and Paras (India)- Rs.33,98,400, totalling to Rs.77,51,496/- have been treated to be bogus based on the purported enquiries conducted by the Sales Tax Department of the Government of Maharashtra. Ostensibly, the Assessing Officer ought to have brought on record material which is relevant to the transactions of the assessee with the aforesaid four parties instead of making a general observation about the information received from the Sales

Tax Department of the Government of Maharashtra. Quite clearly, the Assessing Officer as well as CIT(Appeals) have taken note of the fact that no sales could have been effected by the assessee without purchases. In the present case, assessee has explained that all its sales are by way of exports. The books of account maintained by the assessee show payment for effecting such purchases by account payee cheques and also the vouchers for sale and purchase of goods, etc. Notably, no independent enquiries have been conducted by the Assessing Officer. Under identical circumstances, our Co-ordinate Benches in the cases of Deepak Popatwala Gal (supra), Shri Rajeev G. Kalathil(supra)and Ramesh Kumar and Co.(supra) have held that the Assessing Officer was not justified in making additions merely on the basis of information obtained from the Sales Tax Department of the Government of Maharashtra without conducting any independent enquiries. Before the CIT(Appeals), one of the points raised by the assessee was with respect to an opportunity to cross examine the four parties, but we find that no such opportunity have been allowed. Considering the entirety of facts and circumstances of the case and the aforesaid precedents, which have been rendered under identical circumstances, in our view, the CIT(Appeals) erred in sustaining the addition to the extent of Rs.4,19,356/- instead of deleting the entire addition of Rs.9,68,937/- made by the Assessing Officer. We direct accordingly''.

Considering the facts and circumstances of the case, we are of the opinion that purchases could not have been considered as bogus. Disallowances made for the impugned assessment years stand deleted. Related grounds are allowed.

10. Ld. Counsel for the assessee did not press any of the grounds assailing the reopening. Related grounds are dismissed as not pressed.

11. In the result, the appeals of the assessee for all the years are partly allowed.

Order pronounced on Wednesday, the 12th day of September, 2018, at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated:12th September, 2018.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

3. आयकर आयुक्त (अपील)/CIT(A)

5. विभागीय प्रतिनिधि/DR

2. प्रत्यर्थी/Respondent

4. आयकर आयुक्त/CIT

6. गार्ड फाईल/GF