

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "ए" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA Nos.1363 to 1365/PUN/2016
निर्धारण वर्ष / Assessment Years : 2009-10 to 2011-12

Champ Energy Ventures Pvt. Ltd.,
Plot No.7, Gat No.399/1,2,3B,
Village Bhare, Taluka Mulshi,
Pune – 412115

.... अपीलार्थी/Appellant

PAN: AACCC7802R

Vs.

The Dy. Commissioner of Income Tax,
Circle 1(1), Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri C.H. Naniwadekar
प्रत्यर्थी की ओर से / Respondent by : Ms. Sabana Parveen

सुनवाई की तारीख / Date of Hearing : 25.09.2018	घोषणा की तारीख / Date of Pronouncement: 28.09.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

This bunch of three appeals filed by assessee are against separate orders of CIT(A)-1, Pune all dated 18.03.2016 relating to assessment years 2009-10 to 2011-12 against respective orders passed under section 143(3) r.w.s. 147 of the Income-tax Act, 1961 (in short 'the Act').

2. This bunch of appeals relating to same assessee on similar issue were heard together and are being disposed of by this consolidated order for the sake of convenience. First, we are referring to the facts in ITA No.1363/PUN/2016, relating to assessment year 2009-10 to decide the issues.

3. The assessee in ITA No.1363/PUN/2016, relating to assessment year 2009-10 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 records.*
2. *The learned CIT (A) erred on facts and in law in upholding addition of Rs.3,31,470 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.*
3. *The learned CIT (A) erred on facts and in law in upholding addition of entire purchases as against estimated gross profit thereon.*

4. The assessee is aggrieved by the addition made on account of entire purchases in the hands of assessee.

5. Briefly, in the facts of the case, the assessee was carrying on manufacturing of Champ LPG Generators. The assessee had furnished return of income declaring total income of ₹ 72,26,390/-. The Assessing Officer received information from Maharashtra Sales Tax Department of hawala dealers, who had issued bogus invoices and VAT collected was not paid to the Sales Tax Department. As per information, the assessee had claimed purchases of ₹ 3,44,750/- being made from one Ganesh Corporation whose name was in the list of hawala dealers. The Assessing Officer thus, recorded reasons for reopening the assessment and issued notice under section 148 of

the Act. The assessee in response, stated that original return of income filed should be treated as filed in response to notice issued under section 148 of the Act. The assessee requested for reasons recorded for reopening the assessment, which were handed over to him and speaking order was passed rejecting objections raised. The assessee claimed that it had purchased the material from the party to whom payments were made through banking channel. The assessee also pointed out that it was maintaining stock record and there was internal control over purchases and consumption of goods. Further, the assessee furnished information of goods having been utilized in various projects. The Assessing Officer noted that purchase invoices and vouchers were not supported with required documentary evidence i.e. transport of goods and also the assessee could not produce third party confirmation or documents to substantiate its claim of purchases. The plea of assessee in such circumstances was rejected and purchases made from hawala parties added in the hands of assessee, resulting in addition of ₹ 3,31,470/-.

6. The CIT(A) confirmed the addition made by Assessing Officer, against which the assessee is in appeal before us.

7. The learned Authorized Representative for the assessee pointed out that the assessee was engaged in manufacturing of Champ LPG Generators and had purchased copper wire, from the aforesaid alleged hawala party. The assessee had made local purchases and the material was consumed at site. He further pointed out that consumption statement was given to the Assessing Officer and balance was shown in stock in trade as on the close of the year. He also pointed out that payment was made to the said party after a period of approximately six months and that also through cheques. The learned

Authorized Representative for the assessee filed consumption sheet for the year under consideration, wherein out of quantity purchased of 964.850 Kg, consumption was of only 189.600 Kg. and balance quantity of 775.250 Kg. was shown as stock in trade. Here, the learned Authorized Representative for the assessee stressed that stock in trade declared by the assessee has not been disturbed. So, out of total purchases of ₹ 3,31,470/-, balance declared in stock in trade is value of ₹ 2,56,010/-. The learned Authorized Representative for the assessee pointed out that only part of purchases made during the year were consumed and balance was shown in stock in trade; however, the total purchases were disallowed by the Assessing Officer. The learned Authorized Representative for the assessee stressed that it was maintaining quantitative details of its stock and there was no merit in rejecting the same. With regard to objections raised by Assessing Officer of assessee not maintaining transport details, it was pointed out by the learned Authorized Representative for the assessee that local purchases were made of small quantity and some details of transport were not available. With regard to assessment year 2010-11, the learned Authorized Representative for the assessee pointed out that facts were same except that the total quantity purchased was 5069.320 Kg. and further sets of 5000 CLS (copper use) of 570 quantity was purchased and total consumption of copper was 2251.50 Kg. and number of sets of spoons of 498. He also filed tabulated details in this regard and pointed out that balance quantity of copper shown in stock in trade was 1732.180 Kg. In other words, the assessee had declared opening stock of 775.250 Kg. and purchases totaled 4294.070 Kg., out of which utilized / consumed was 3337.140 Kg. and balance closing stock was 1730.180 Kg. Similar details were filed even for assessment year 2011-12. He thus, pointed out that where the closing stock has not been disturbed, then entire purchases could not be added in the hands

of assessee. The learned Authorized Representative for the assessee relied on the decision of Pune Bench of Tribunal in bunch of cases with lead order in M/s. Chhabi Electricals Pvt. Ltd. Vs. DCIT in ITA No.795/PUN/2014, relating to assessment year 2010-11, order dated 28.04.2017.

8. The learned Departmental Representative for the Revenue on the other hand, placing reliance on the orders of authorities below with special reference to para 5 of assessment order, pointed out that the issue may be set aside to the file of Assessing Officer to make necessary enquiries.

9. We have heard the rival contentions and perused the record. The issue arising before us is in respect of alleged hawala purchases made by assessee. The Assessing Officer had received certain information from the Sales Tax Department of alleged hawala dealers who were only engaged in providing bogus bills and no goods were supplied to the persons who claimed to have made the aforesaid purchases. The said hawala dealers had also not deposited VAT against goods sold by them. In such circumstances, they were held to be bogus parties by the Sales Tax Department. The Assessing Officer received information in this regard vis-à-vis purchases made by the assessee from year to year. In assessment year 2009-10, the assessee had made purchases from one Ganesh Corporation of ₹ 3,44,750/- and the name of said dealer featured in the list of hawala parties. The assessee was asked as to why the said purchases shown by it should not be dis-believed being bogus. The assessee explained that it was maintaining complete stock in trade and items purchased by it were partly consumed and the balance were shown in closing stock. The assessee from year to year furnished the requisite details in this regard. In the first year i.e. assessment year 2009-10, total purchases

which have been held to be bogus in the hands of assessee are to the tune of ₹ 3,31,470/-, wherein the assessee had purchased 964.850 Kg. of copper from the said party, out of which it had consumed 189.600 Kg. and the balance copper of 775.250 Kg. was shown as stock in trade. In quality-wise, out of total purchases of ₹ 3,31,470/-, balance stock in trade declared by the assessee at the year-end was for ₹ 2,56,010/-. The assessee has also pointed out that said purchases were made at site and were consumed at site and hence, there is no merit in disallowing total purchases made by the assessee from the said party. We find merit in the plea of assessee especially in the facts and circumstances of the case, where stock in trade shown by the assessee has not been disturbed. In case the total purchases made by assessee are held to be bogus in the hands of assessee and where only part of the same has been consumed by the assessee, then balance stock in trade declared by assessee having not been disturbed, merits no addition in the hands of assessee on account of aforesaid purchases. The Revenue Department has failed to controvert the claim of assessee of having included the balance in stock in trade. In such circumstances, we find no merit in the addition made by Assessing Officer and total addition made in the hands of assessee is thus, deleted. There is also no merit in plea of the learned Departmental Representative for the Revenue for setting aside the issue back to file of Assessing Officer.

10. Similarly, the addition made in other years on similar facts and circumstances is also deleted. In this regard, we find support from the order of Pune Bench of Tribunal in M/s. Chhabi Electricals Pvt. Ltd. Vs. DCIT (supra), which has been applied by us in several decisions.

11. The learned Authorized Representative for the assessee has not raised any submissions with regard to reopening of assessment, hence the same is dismissed. The grounds of appeal raised by assessee in all the appeals are thus, partly allowed.

12. In the result, all the appeals of assessee are partly allowed.

Order pronounced on this 28th day of September, 2018.

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य / **ACCOUNTANT MEMBER**

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / **JUDICIAL MEMBER**

पुणे / Pune; दिनांक Dated : 28th September, 2018.

GCVSR

आदेश की प्रतिलिपि अद्येषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-1, Pune;
4. The CIT-1, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune