

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री अनिल चतुर्वेदी, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI ANIL CHATURVEDI, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA Nos. 1969 to 1971/PUN/2016
निर्धारण वर्ष / Assessment Years : 2009-10 to 2011-12

Income Tax Officer,
Ward – 2(1), Nashik

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Somnath Deokisan Boob,
4, Palsekar Building, Subhash Road,
Nashik Road – 422101

PAN : AAMFS9591C

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sanket Joshi
Revenue by : Dr. Vivek Aggarwal

सुनवाई की तारीख / Date of Hearing : 02.07.2018
घोषणा की तारीख / Date of Pronouncement : 28.09.2018

आदेश / ORDER

PER VIKAS AWASTHY, JM :

These three appeals by Revenue are directed against the order of Commissioner of Income Tax (Appeal)-2, Nashik common for the assessment years 2009-10 to 2011-12, whereby the addition made by the Assessing Officer on account of bogus purchases from Hawala dealers has been deleted by the Commissioner of Income Tax (Appeal) in toto.

2. Since, the issues involved in all the three appeals are similar and are arising from same set of facts, these appeals are taken up together for adjudication and are disposed of vide this common order.

3. The brief facts of the case as emanating from records are: The assessee is a partnership firm engaged in the business of sale of petroleum products, kerosene and lubricant oils etc. The assessee filed its return of income for the impugned assessment years which were processed u/s.143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). On the basis of information received from Sales Tax Department, Maharashtra through Director General of Income Tax (Investigation) that the assessee has indulged in transaction of bogus purchases from Hawala dealers, assessments of the assessee for assessment years 2009-10 to 2011-12 were reopened. In re-assessment proceedings, the Assessing Officer held that assessee has made bogus purchases from following dealers:

- i) M/s. Laxmi Trading Company
- ii) Dev Enterprises
- iii) M/s. Sthapana Trade Impex Pvt. Ltd.
- iv) Shree Amaaya Enterprises
- v) M/s. Rumeet Enterprises.

4. Aggrieved by the assessment orders passed u/s. 143(3) r.w.s. 147 of the Act for the respective assessment years, the assessee filed appeals before the Commissioner of Income Tax (Appeal). The Commissioner of Income Tax (Appeals) on the basis of documents on record and submissions of assessee deleted the entire addition made by the Assessing Officer on account of bogus purchases.

5. Against the findings of Commissioner of Income Tax (Appeals), the Revenue is in second appeal before the Tribunal.

6. Dr. Vivek Aggarwal representing the Department vehemently defending the assessment orders submitted that assessee has failed to produce the parties from whom assessee had made purchases. The Assessing Officer vide notice u/s.133(6) of the Act dated 24.07.2013 asked the assessee to furnish various documents such as bills for purchasing goods from suspicious dealers, purchase order, delivery invoice, transportation bills, octrai receipts, details of payments made, complete postal address of the dealers from whom purchases were made, etc. However, the assessee failed to furnish all the documents as sought by the Assessing Officer. Notice sent to M/s. Sthapana Trade Impex Pvt. Ltd., M/s.Laxmi Trading Company and M/s. Rumeet Enterprises were received back undelivered with remarks 'Unclaimed', 'refused' and 'not-known' respectively. The notice to the other two suppliers i.e. Shree Amaaya Enterprises and M/s.Dev Enterprises was duly served. However, they failed to respond. The assessee further failed to furnish confirmations from any of the parties mentioned above. The assessee is one of the beneficiaries of the bogus purchases. Bogus purchases bills and entries were provided by the Hawala dealers. The Assessing Officer after analysing the facts and documents on record made additions on account of bogus purchases in the impugned assessment years as under:

<i>Assessment Year</i>	<i>Bogus purchases as determined by the Assessing Officer</i>
<i>2009-10</i>	<i>Rs.85,47,019/-</i>
<i>2010-11</i>	<i>Rs.1,32,96,599/-</i>

2011-12	Rs.1,45,80,248/-
---------	------------------

6.1 In First Appellate proceedings, the Commissioner of Income Tax (Appeals) while deleting additions has erred in observing that Assessing Officer has simply relied on the information supplied by the Sales Tax Department. The Commissioner of Income Tax (Appeals) has failed to consider the fact that notice sent to the parties on the addresses furnished by the assessee, were received back Undelivered. Thus, the whereabouts of the dealers from whom the assessee had made purchases were not known. Therefore, it can be safely construed that purchases made by the assessee from suspicious dealers were bogus and have been rightly disallowed by the Assessing Officer. The ld. DR placed reliance on the decision of Pune Bench of the Tribunal in the case of Chhabi Electricals Pvt. Ltd. Vs. DCIT, in ITA No.795/PUN/2014 for assessment year 2010-11 decided on 28-04-2017 and submitted that the case of the assessee falls in Clause -II and Clause-III of Para 40 of the said order. The ld. DR prayed for setting aside the order of Commissioner of Income Tax(Appeals) and restoring the findings of Assessing Officer.

7. On the other hand, Shri Sanket Joshi appearing on behalf of the assessee vehemently supported the findings of Commissioner of Income Tax (Appeals) in deleting the additions and prayed for dismissing the appeals of the Revenue. The ld. AR submitted that in response to notice dated 24.07.2013 u/s.133(6) of the Act, the assessee furnished requisite documents vide letter 06.08.2011. The ld. AR referred to the said communication at page 11 to 14 of the paper book. The ld. AR contended that the Commissioner of Income Tax (Appeals) after appreciating the facts of the case and documents on record has deleted the additions.

7.1 The ld. AR contended that no opportunity was given to the assessee to cross examine the persons whose statement were used to reopen the assessment and for making the addition. The assessment has been completed by violating the principles of natural justice. To support his submissions, the ld. AR placed reliance on the following decisions:

- i) M/s.Joto Abrasives Pvt. Ltd. Vs. DCIT, ITA No.2902/PUN/2016 for the assessment year 2009-10, decided on 28.03.2018.
- ii) ACIT Vs. M/s. Mahalaxmi Electricals, ITA No.301/PUN/2016 for the assessment year 2009-10, decided on 26.04.2018.
- iii) Anita Sanjay Agrawal Vs. ITO (being lead case), ITA Nos.2622 to 2624/PUN/2016 for the assessment years 2009-10 to 2011-12, decided on 28.03.2018

8. The ld. DR controverting the submissions of AR submitted that the assessee was supplied with the statement of hawala dealers. The assessee never asked for cross examination. Therefore, it is wrong to say that opportunity of cross examination was not given to the assessee.

9. We have heard the submissions made by representatives of rival sides and have perused the orders of Authorities below. The Revenue in appeal for the assessment years 2009-10 to 2011-12 has assailed the order of Commissioner of Income Tax (Appeals) in deleting the additions made by the Assessing Officer on account of bogus purchases from Hawala Operators. According to the Revenue, assessee has made bogus purchases during the impugned assessment years from following suspicious dealers:

<i>Name of the supplier</i>	<i>A.Y 2009-10</i>	<i>A.Y 2010-11</i>	<i>A.Y 2011-12</i>
<i>M/s. Laxmi Trading Company</i>	<i>3,32,663/-</i>		

<i>M/s. Dev Enterprises</i>	78,54,356/-	23,10,470/-	23,28,717/-
<i>M/s. Sthapana Trade Impex Pvt. Ltd.</i>	3,60,000/-		
<i>Shree Amaaya Enterprises</i>		13,50,338/-	62,80,562/-
<i>M/s. Rumeet Enterprises</i>		96,35,791/-	59,70,969/-
Total	85,47,019/-	1,32,96,599/-	1,45,80,248/-

During the course of reassessment proceedings, the assessee submitted various documents before the Assessing Officer including Stock Register, tax invoice, purchase bills, purchased summery, sales summery, confirmations from the purchases to whom sales were made. The Assessing Officer did not find any fault with the documents furnished by assessee to substantiate purchases/sales transactions. The accounts of the assessee were not rejected by the Assessing Officer. The Assessing Officer raised no suspicion on the sales made by the assessee. It is a well settled law that if no doubt has been raised on the sales, purchases cannot be doubted. Merely for the reason that the supplier did not respond/notice is not served to the supplier, genuineness of the purchases cannot be doubted.

10. Before the Commissioner of Income Tax (Appeal), the assessee also filed quarterly stock record from the Office of Collector, Nashik which includes alleged Hawala purchases, copies of the ledger extract of the alleged Hawala dealers, purchase invoice, way bill receipts, proof of transportation and copies of bank statements showing payment to the supplier by account payee cheque/demand draft. It is not the case of Revenue that the money paid by the assessee through banking channels has flown back to the assessee. The assessee has been able to show trail of goods purchased. In view of the

undisputed facts of the case as discussed above, no cloud of suspicion should be raised with respect to the purchase of goods.

11. A perusal of the impugned order shows that the assessee has given working of gross profit percentage in the normal course of business as well as after adding the alleged bogus purchases. The gross profit ratio after making additions of the entire bogus purchases has resulted in absurd figures of gross profit. After taking into consideration entire vital facts, we are of opinion that assessee has been able to establish trail of goods. The assessee has furnished before the Authorities below original purchase invoice, proof of transportation, way bill receipts, details of payments made to suppliers through banking channels, receipt of goods and recording of the same in Stock Register coupled with the facts that no suspicion has been raised by Assessing Officer on the sale of goods, we do not find any infirmity in the order of Commissioner of Income Tax (Appeal). Accordingly, the impugned order is upheld and appeals of the Revenue are dismissed being devoid of any merit.

12. In the result, appeals of the Revenue for assessment years 2009-10 to 2011-12 are dismissed.

Order pronounced on Friday, the 28th day of September, 2018.

Sd/-

(अनिल चतुर्वेदी / Anil Chaturvedi)
लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(विकास अवस्थी / Vikas Awasthy)
न्यायिक सदस्य / JUDICIAL MEMBER

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

SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-2, Nashik
4. प्रधान आयकर आयुक्त / The Pr. CIT-2, Nashik
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “बी” बेंच, पुणे / DR, ITAT, “B” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

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