

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI

BEFORE SHRI SHAMIM YAHYA, AM AND SHRI PAWAN SINGH, JM

I.T.A. No.1128/Mum/2018
(Assessment Year: 2010-11)

Shri Rajeshkumar P. Trivedi 301, Amrut Nagar, Near Jain Mandir Road, Virar (W), Thane, Mumbai-401 303	Vs.	ITO – 19(3)(1) Matru Mandir, Tardeo Road, Mumbai-400 007
PAN/GIR No. ACGPT 6044 H		
(Appellant)	:	(Respondent)

Appellant by	:	None
Respondent by	:	Shri S. K. Bepari

Date of Hearing	:	03.10.2018
Date of Pronouncement	:	04.10.2018

ORDER

Per Shamim Yahya, A. M.:

This appeal by the assessee is directed against the order by the learned Commissioner of Income Tax (Appeals)-33, Mumbai (‘ld.CIT(A) for short) dated 15.12.2017 and pertains to the assessment year (A.Y.) 2010-11.

2. The issue raised is that the ld.CIT(A) erred in sustaining disallowance of 12.5% of bogus purchase amounting to Rs.9,80,196/-.

3. The grounds of appeal read as under:

1. The ld. Commissioner of Income Tax (Appeals) [hereinafter referred to as “Ld. CIT(A)”] has erred in upholding the order of the Ld. Assessing Officer and disallowing the purchase to the extent of 12.5% of Rs.78,41,571 amounting to Rs.9,80,196 on account of purchase from non genuine purchase parties.

4. In this case, the Assessing Officer (A.O. for short) had received information regarding party's indulging in issuing bogus sales bills without supplying any goods. Such parties from whom the appellant has shown purchases during the year is tabulated hereunder:

Sr. No.	Name of the hawala parties	F.Y.	Amount (Rs.)
1	Henil Sales Agency	2009-10	4,73,132/-
2	Avinash Enterprises	2009-10	10,70,343/-
3	Rajeshwari metal Industries	2009-10	27,94,773/-
4	Konica Tubes Industries	2009-10	35,03,323/-
		Total	78,41,571/-

In the assessment proceedings, the A.O. asked the assessee to establish the genuineness of purchases from these parties. Notice issued u/s. 133(6) of the Income Tax Act, 1961 to these parties at the address provided by the assessee was returned by the Postal Authorities. Thus, these parties could not be traced. The assessee could not produce these parties before the A.O. nor produce supporting documents such as delivery challan, transport receipts, etc. applying the ratio of the decision of the Hon'ble Gujarat High Court in the case of CIT vs Simit P. Sheth [2013] 356 ITR 451 (Guj.). The A.O. disallowed 12.5% of the impugned purchases.

5. Against the above order, the assessee appealed before the ld. CIT(A).
6. The ld. CIT(A) confirmed the action of the assessing officer in making addition of 12.5% of the bogus purchase.
7. Against above order of ld. CIT(A), the assessee is in appeal before the ITAT.

8. We have heard the Id. Departmental Representative. None appeared on behalf of the assessee despite notice. The notice has returned unserved. In our considered opinion, the issues raised can be adjudicated by hearing the Id. Departmental Representative and perusing the records.

9. We find that credible and cogent information was received in this case by the assessing officer that certain accommodation entry provider/bogus suppliers were being used by certain parties to obtain bogus bills. The assessee was found to have taken accommodation entry/bogus purchase bills during the concerned assessment year from different parties. Based upon this information assessment was reopened. The credibility of information relating to reopening remained un-assailed before the Id. CIT(A). In such factual scenario, the assessing officer has made the necessary enquiry. The issue of notice to all the parties have returned unserved. Assessee has not been able to provide any confirmation from any of the party. Assessee has also not been able to produce any of the parties. Necessary evidence relating to transportation of the goods was also not on record. In this factual scenario, it is amply clear that the assessee has obtained bogus purchase bills. Mere preparation of documents for purchases cannot controvert overwhelming evidence that the provider of these bills is bogus and non-existent.

10. The Sales Tax Department in its enquiry has found the parties to be providing bogus accommodation entries. The assessing officer also issued notices to these

parties at the addresses provided by the assessee. All these notices have returned unserved. Assessee has not been able to produce any of the parties. Neither the assessee has been able to produce any confirmation from these parties. In such circumstances, there is no doubt that these parties are non-existent. We find it further strange that assessee wants the Revenue to produce assessee's own vendors, whom the assessee could not produce. The purchase bills from these non-existent/bogus parties cannot be taken as cogent evidence of purchases. In light of the overwhelming evidence, the Revenue authorities cannot put upon blinkers and accept these purchases as genuine. This proposition is duly supported by Hon'ble Apex Court decision in the case of *Sumati Dayal vs. CIT* [1995] 214 ITR 801 (SC) and *CIT vs. Durga Prasad More* [1971] 82 ITR 540 (SC). In the present case, the assessee wants that the unassailable fact that the suppliers are non-existent and, thus, bogus should be ignored and only the documents being produced should be considered. This proposition is totally unsustainable in light of Hon'ble Apex Court decisions.

11. We further find that Hon'ble jurisdictional High Court in the case of *Nikunj Eximp Enterprises* (in Writ petition no 2860, order dt. 18.6.2014) has upheld 100% allowance for the purchases said to be bogus when the sales have not been doubted. However, the facts of that case were different. Furthermore, the sales in that case were basically to government departments. Hence, the ratio from this decision is not fully applicable on the facts of the case.

12. In these circumstances, the learned Departmental Representative has referred to Hon'ble Gujarat High Court decision in the case of Tax Appeal No. 240 of 2003 in the case of *N K Industries vs. Dy. CIT* vide order dated 20.06.2016, wherein 100% of the bogus purchases was held to be added in the hands of the assessee and tribunals restriction of the addition to 25% of the bogus purchases was set aside. It was expounded that when purchase bills have been found to be bogus, 100% disallowance was required. The special leave petition against this order along with others has been dismissed by the Hon'ble Apex Court vide order dated 16.1.2017.

13. However, we note that this is not an appeal by the Revenue. Hence, it will not be appropriate to consider and take away the relief already granted by the Assessing Officer and Id. Commissioner of Income Tax (Appeals) to the assessee. As held by the Hon'ble jurisdictional High Court when sales are not doubted 100% disallowance for bogus purchase is not disallowable. Hence, we confirm the order of Id. CIT(A).

14. Since the above order has been passed following the Hon'ble Apex Court and Hon'ble High Court decision, the decisions of tribunal referred by the Ld. Counsel of the assessee are not relevant.

15. In the result, this appeal filed by the assessee stands dismissed.

Order pronounced in the open court on 04.10.2018

Sd/-
(Pawan Singh)
Judicial Member

Sd/-
(Shamim Yahya)
Accountant Member

Mumbai; Dated : 04.10.2018

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai