

आयकर अपीलीय अधिकरण "SMC" न्यायपीठ मुंबई मे ।

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 1897/Mum/2018

(निर्धारण वर्ष / Assessment Year 2010-11)

Kumud Metal Foundry 211, Opp. Crystal Apt. Nr. Syndicate bank S.V. Road, Jogeshwari West, Mumbai- 400 102	Vs.	The Income Tax Officer Ward -31(2)(2), ROOM No. 709, C-11, 7 th Floor, Pratykshkar Bhavan, B.K.C Bandra East, Mumbai-400 051
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AAAPK5216E		

अपीलार्थी की ओर से / Appellant by : Shri Ramesh K. Shah, AR

प्रत्यर्थी की ओर से / Respondent by : Shri SK Bepari, DR

सुनवाई की तारीख / Date of hearing:	23.10.2018
घोषणा की तारीख / Date of pronouncement :	23.10.2018

आदेश / ORDER

महावीर सिंह, न्यायिक सदस्य/

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-42, Mumbai [in short CIT(A)], in appeal No. CIT(A)-42/IT-28/15-16, CIT(A)-42/IT-29/15-16, CIT(A)-42/IT-485/15-16 for vide dated 01.09.2017. The Assessment was framed by the Income Tax Officer, Ward-31(2)(2), Mumbai (in short 'ITO'/ AO) for the



A.Y. 2010-11 vide dated 07.03.2015 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of assessee is against the order of CIT(A) directing the AO to restrict the addition made by AO being estimating profit percentage at the rate of 12.5 % on bogus purchases. For this assessee has raised following ground: -

"1.01 The learned CIT(A)-42 erred in not considering the fact that the notice u/s 148 of the Income Tax Act 1961, issued by the Ld. ITO, ward 31(2)(2), did not fulfill the conditions necessary for issue of the notice in as much as, the Ld. ITO has not brought out any independent and reliable evidences against the Appellant as to how income had escaped the assessment. He had simply relied on the information received from Sales tax department, regarding alleged bogus/hawala purchases, without doing anything further to prove that such purchases in fact were bogus in case of the Appellant and that there is any material on record to prove that income in fact has escaped the assessment. The Ld. ITO based his belief only on presumptions, surmises and conjectures.

1.02 The Appellant-firm had requested the Ld. ITO to furnish it the certified copies of Statements, Affidavits, depositions of the parties from whom the alleged bogus purchases were made, on the basis of which the sale tax department alleged and which were relied upon



by the Ld. ITO, that the TN purchases were bogus/hawala. The certified copies of such statements asked for, was not provided to the Appellant, till the assessment was completed.

1.03 The rules of natural justice have not been observed by the Ld. ITO, though the Supreme Court in case of TIN BOX v/s CIT and Dhakeshwari Cotton Mills Ltd. v/s CIT (1954)26 ITR 775 (SC) observed that "an assessment made without giving the assesses an opportunity of setting out his case was liable to be set aside". The learned CIT(A)-42 has failed to consider this important matter which is binding on all the lower authorities.

1.04 The Ld. CIT (A)-42 erred in upholding addition of Rs. 61,037/- being 12.5% of the alleged bogus/hawala purchases amounting to Rs.5,08,642/-. Though the overall GP is 26.51%.

It is therefore prayed that learned ITO, Ward 31(2)(2), be directed to delete the addition of Rs. 61,037/- confirmed by CIT (A) -42."

3. Briefly stated facts are that the assessee engaged in the business of Mfg. and trading of non-ferrous castings. The AO received information from DGIT (Investigation), who in turn received information from Sales Tax Department, Mumbai that the assessee has made purchases from hawala parties, as listed in hawala dealers by the Maharashtra Sales Tax Department who are providing bogus bills of purchase amounting to Rs. 5,08,642/- as admitted by these hawala dealers in their deposition before the authorities. The same reads as under: -



“Sl. No.	Name of party	Amount
1.	M/s Vatika Trading Co.	2,109/-
2	M/s Dhruv Trading Co.	5,06,533/-
	Total	5,08,642/-

4. The AO issued noticed under section 133(6) to the parties which returned unserved and assessee failed to produce these parties. During the course of assessment proceedings and during appellate proceedings, the assessee submitted documentary evidences such as payment received against such sales, receipt of material purchases, account payee cheque. According to the AO, the assessee failed to establish the genuineness of the purchase and accordingly, he made addition of unproved purchase at 30% of ₹ 152593/- to the returned income of the assessee. Aggrieved, assessee preferred the appeal before CIT(A), who restricted the disallowance at 12.5% of the bogus purchases by observing in paras 8.3.23 & 8.3.24 by following the decision of Hon’ble Gujarat High court in the case of CIT vs. Smith P. Seth (2013) 356 ITR 451 (Guj) by observing as under: -

“8.3.23 The estimations of profit @ 125% to 25% of purchase price accounted through bogus invoices have been upheld as the fair profit embedded in accommodation entries of bogus purchases transactions by the Hon'ble Courts and Tribunals. The appellant company has traded in goods purchased from hàvala dealers and under identical facts, the Hon'ble ITAT, Bombay Tribunal (H) has upheld disallowance @12.5% of such purchases in the decision date 4th April. 2017 in the case of Ratnagiri Stainless Pvt. Ltd. vs. Income Tax Officer in ITA No.



4463/Mum/2016 as well as in Income Tax Officer 5(3) (1) vs. MIs RIBS Copper Products Pvt. Ltd. in ITA Nos. 1057 & 1058 dated 04/07/2017.

8.3.24 Therefore, in light of the above decisions, it will be reasonable to estimate the profit embedded in the accommodation entries of bogus purchases @ 12.5% of the purchase amount. The appellant has obtained accommodation bills amounting to Rs 15,36,390/- during the FY 2008-09 bills amounting to Rs. 5,08,642/- during the FY 2009-10 and accommodation bills amounting to Rs. 1,10,190/- during the FY 2010-11, from the stated havala dealers Accordingly, the addition made by the AO for At 2009-10. is restricted to Rs. 3,19,7181- i.e. 12.5% of the bogus purchase bills of Rs. 25,57,747/- for FY 2008-09; for AY 2010-11 addition made by the AO is restricted to Rs. 61,037/- i.e. 12.5% of the bogus purchase bills of Rs. 5,08,642/- for FY 2009-10 and for AY 2011-12, addition made by the AO is restricted to Rs. 13,774/- i.e. 12.5% of the bogus purchase bills of Rs. 1,10,190/- for FY 2010-11, as undisclosed profit embedded in the accommodation entries of' bogus purchases. The appellant gets a relief of 4,47,606/- for AY 2009-10, Rs. 91,556/- for AY 2010-11 and Rs. 19283/- for AY 2011-12.”

5. I find that this issue is squarely covered in assessee's own case for AYs 2009-10 & 2011-12 in ITAs no. 1896 & 1898/Mum/2018 order dated



03.10.2018 wherein Tribunal has estimated profit on bogus purchases at 3% by observing as under vide Para 4 as under: -

“4. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. The case of the assessee was reopened upon the information received from the Sales Tax Department in which it was conveyed that the assessee has taken the accommodation entry without actual delivery from 6 parties mentioned below: -

- (i) M/s. RJ Metal Industries Rs.839621/- (ii) M/s. Sivamani Traders P. Ltd. Rs.58848/- (iii) M/s. Vatika Trading Co. Rs.67445/- (iv) M/s. Sanyo Sales Corporation Rs.51147/- (v) M/s. Kalash Metal P. Ltd. Rs.554662/- (vi) M/s. Suyash Sales Corporation Rs.986024/-*

The Assessing Officer restricted the addition to the extent of 30% of the bogus purchase and in appeal the CIT(A) has restricted the addition of bogus purchases to the extent of 12.5%. The Ld. Representative of the assessee has argued that the GP ratio in the year in question in his business is @ 25%, therefore, assessing the profit ratio @ 12.5% by the CIT(A) is very high, therefore, the same is liable to be reduced in accordance with the business of the assessee. In support of this contention, the Ld. Representative of the assessee has placed reliance upon the law settled in CIT Vs. Simit P. Sheth (2013) 356 ITR 451 (Guj) (High Court) and the CIT Vs. Nikunj Eximpt Enterprises (P) Ltd. (2013) 216 216 Taxman 171 (Bom) and other cases & Dhakeshwari Cotton Mills Ltd. Vs. CIT (1954) 26 ITR 775 (SC). However, on the other hand, the Ld. Representative of the



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Department has strongly relied upon the order passed by the CIT (A) in question. In the instant case, no doubt after the receipt of the intimation from Sales Tax authorities, the AO issued the notices to the relevant parties which were not served to them. Assessee failed to produce the parties before the AO. The purchases were not verifiable. The sale is not disputed. In view of the law settled by the Hon'ble Gujarat High Court in case of CIT Vs. Simit P. Sheth (2013) 356 ITR 451 (Guj) (High Court), the profit ratio embedded to the bogus purchase is liable to be added to the income of the assessee. Keeping in view of the gross profit which is @ 25% in the year under consideration and in view of the nature of the business, we restrict the addition to the extent of 3% of the bogus purchase i.e. to the tune of Rs.25,57,747/- Accordingly, these issues are decided in favour of the assessee against the revenue.”

6. In view of the above, I direct the AO to recompute the profit on bogus purchases by estimating the profit rate at 3%. The appeal of assessee is partly allowed as indicated above.

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

Order pronounced in the open court on 23-10-2018.

आदेश की घोषणा खुले मे दिनांक 23-10-2018को की गई ।

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

Mumbai, Dated: 23-10-2018

Sudip Sarkar /Sr.PS



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Copy of the Order forwarded to:

1. The Appellant
 2. The Respondent.
 3. The CIT (A), Mumbai.
 4. CIT
 5. DR, ITAT, Mumbai
 6. Guard file.
- //True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI