

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. 216/Mum/2018

(निर्धारण वर्ष / Assessment Year 2007-08)

आयकर अपील सं./ ITA No. 217/Mum/2018

(निर्धारण वर्ष / Assessment Year 2008-09)

India Diamond Tools 1 st Floor, Shiv Darshan Building, Mumbai Pune Road, Opp. Shiv Sena Sakha, Mumbai-400 612	Vs.	Income Tax Officer Ward 1(4), Room No. 11, Ashar IT Park, 6 th Floor, Road No. 16Z, Wagle Industrial Estate, Thane 400 604
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AABFI2532A		

अपीलार्थी की ओर से / Appellant by : Shri Hariom Tulsyan, 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:

These two appeals by the assessee are arising out of the order of Commissioner of Income Tax (Appeals)-3, Mumbai [in short CIT(A)], in appeal No. 590/17-18/NSK (old 297/15-16/THN), 591/17-18/NSK (old



10153/16-17/THN) vide dated 18.10.2017. The Assessments were framed by the Income Tax Officer, Ward-1(4), Thane (in short 'ITO'/ AO) for the A.Y. 2007-08 & 2008-09 vide dated 31.03.2015, 31.03.2016 under section 143(3) read with section 147 of the Income Tax Act, 1961 (hereinafter 'the Act').

2. ITA No. 216/Mum/2018 for AY 2007-08. The only issue in this appeal of assessee is against the order of CIT(A) confirming the disallowance made by AO as non-genuine and bogus. For this assessee has following grounds: -

"1. On the facts and in the circumstances of the case and in law, the Ld. AO and the Id. CIT(A) 3 erred in determining the income of the appellant at ₹ 61,578/- as against the income declared in the return of income at ₹ NIL.

2. The Id. CIT(A) erred in calculating additions on 12.50% which cannot be proved. Additions have raised the Gross Profit on these Purchases to unrealistic figures."

3. Briefly stated facts are that the assessee engaged in the business of manufacturing & trading in industrial tools. 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. 4,92,627/- as admitted by these hawala dealers in their deposition before the authorities. The same reads as under:-

Name of party	Amount
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Avi Exports (Prop. Rajendra Jain)	2,68,985
Maulimani Impex P Ltd. (prop. Rajendra Jain)	1,01,836
Vitrag Jewels (Prop. Mudit Karnawat)	1,21,806
	4,92,627

4. The AO issued noticed under section 133(6) to the parties which returned back with the remark as “left” 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 12.5% of ₹ 61,578/- to the returned income of the assessee. Aggrieved, assessee preferred the appeal before CIT(A), who confirmed the addition made by the AO by observing in para 8 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. I have carefully considered the appellant's submissions, observations of the AO in the assessment order and the facts of the case. The appellant had shown purchases amounting to Rs. 4,92,627/- from various parties which appeared in the list of Sales-tax Department who had indulged in Hawala transactions i.e. providing on ii5i1Iilhout1wuaiiçafflu5tual purchase or sale transaction. The AO was required to examine the veracity of such purchases and to see a) whether the purchases have actually been made or not, b) the end use of such purchases and c) the



genuineness of the parties from whom the purchases are made. In assessment proceedings, the assessee submitted copies of the bills, bank statements showing that he had made the purchases and payments are made by cheques. The assessee had also submitted the confirmations and affidavits from the parties who had supplied the goods. The AO has discussed in detail the modus operandi explained by Rajendra Jam, the Prop. Of Avi Export and Maulimani and Sanjay Chaudhari, It was explained by the hawala dealers that the client places the order with them and take payment by cheque from the customer and issues the bill. The cheque is deposited in bank and cash is withdrawn and given to the parties who are real importer of diamonds and take actual delivery of the goods, but these parties do not provide bills In the result, the customer gets bill from hawala dealer and the material from other person. This explains the statement of hawala dealers at the time of such proceedings and the affidavit given during assessment proceedings. In the affidavit given during assessment proceedings, they have confirmed having issued the bill and received the money by cheque. In the search, it was explained that the goods are also supplied to the assessee by them by paying cash to the real importer of the goods. The assessee does not know who has supplied the goods as the assessee had made



the payment by cheques and the hawala dealer has completed the transaction by withdrawing cash and procuring goods from the real importer who does not account for the goods.

In the background of this modus operandi, AO has rightly held that this is not a case of Bogus purchases but purchases from bogus parties, wherein the bills are taken from hawala dealers and purchases from other parties and has correctly applied the ratio of various Case Laws and came to the conclusion that only the profit element embedded in the transactions needed to be taxed. The AO has disallowed 12.5% of the purchases amounting to Rs. 4,92,627 made from the Hawala dealers resulting in addition of Rs. 61578. The grievance of the assessee is that the disallowance @ of 12.5% is very high considering the nature of business of the assessee. The only issue which is required to be adjudicated is the percentage of GP applied on such purchases.

In various case laws available on the issue including decision of the Hon'ble Gujarat High court in the case of CIT vs. Simith P. Sheth and Ramesh Kumar and Co. v/s ITAT Mumbai ITA No. 2959/Mum/2014, the appellate authorities have restricted the additions based on certain percentage of such unverifiable purchases. The appellate authorities have also stressed upon the



reasonability of the profit shown by the assessee while making any such disallowance. Ongoing through the various orders in case of the assessee for different years, the AO has disallowed from 12.5% to 100%. It is seen that the AY 2007-08, the AO has disallowed only 12.5%, which appears to be very reasonable. Therefore, the addition made by the AO of ₹ 61,578/- is sustained.”

5. I have considered the issue and gone through the facts and circumstances of the case. I find from the facts of the case and argument of both the sides. The CIT(A) has confirmed the profit rate at the rate of 12.5%, which according to me is on higher side going by the nature of business of the assessee i.e. manufacturing & trading in industrial tools. I am in full agreement with the contentions raised by the assessee before CIT(A) and according to me a profit rate of 12.5% is on higher side as assessee has also paid the VAT element on these bogus purchases, and hence, further deduction in estimation of profit to the extent of 4.5% can be allowed. Hence, I direct the AO to recompute the income after applying profit rate at the rate of 8% and compute the income accordingly. The appeal of the assessee is partly allowed.

6. ITA No. 217/Mum/2018 for AY 2008-09. 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 estimate of profit percentage at the rate of 12.5 % on bogus purchases. For this assessee has raised following additional grounds: -

“1. Without prejudice to the above, even if the addition @ 12.5% of the purchase is made, the



appellant ought to have been given relief of the gross profit rate already offered by the appellant in the Return of income filed.”

7. Briefly stated facts are that the assessee engaged in the business of manufacturing & trading in industrial tools. 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. 6,44,541/- as admitted by these hawala dealers in their deposition before the authorities. The same reads as under:-

<i>Name of party</i>	<i>Amount</i>
<i>Avi Exports (prop. Rajendra Jain)</i>	<i>4,16,167</i>
<i>Maulimani Impex P Ltd. (Prop. Rajendra Jain)</i>	<i>1,21,800</i>
<i>Sparsh</i>	<i>1,06,574</i>
<i>Total</i>	<i>6,44,541</i>

8. The AO issued noticed under section 133(6) to the parties and did not reply. 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 20% of ₹ 1,28,908/- to the returned income of the assessee. Aggrieved, assessee preferred the appeal before CIT(A), who restricted the addition at 12.5% of the bogus purchases of ₹ 80,568/- by observing in para 9 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: -



“9. Addition on account of Bogus Purchases: ₹
1,28,910/-

During AY 2008-09, the appellant had made purchases of ₹ 6,44,541/- which included purchases of ₹ 4,16,167/- from Avi Exports (prop. Rajendra Jain), ₹ 1,21,800/- from Maulimani Impex P. Ltd. (Prop. Rajendra Jain) and ₹ 1,06,574/- from Sparsh. The AO had disallowed 20% of the total purchases, resulting in addition of ₹ 1,28,908/-. As the facts of the case and the parties from whom the purchases were made are same, therefore for the sake of consistency and reasonability of the profit shown by the assessee while making any such disallowance, in my opinion it would be reasonable if the disallowance of 12.5% is made on the purchases of ₹ 6,44,541/-, resulting in disallowance of ₹ 80,568/-. The AO is directed to restrict the addition to ₹ 80,568/-. In the result ground of appeal is partly allowed.”

9. I have considered the issue and gone through the facts and circumstances of the case. I find from the facts of the case and argument of both the sides. The CIT(A) has confirmed the profit rate at the rate of 12.5%, which according to me is on higher side going by the nature of business of the assessee i.e. manufacturing & trading in industrial tools. I am in full agreement with the contentions raised by the assessee before CIT(A) and according to me a profit rate of 12.5% is on higher side as assessee has also paid the VAT element on these bogus purchases, a further deduction in estimation of profit to the extent of 4.5% can be



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allowed. Hence, I direct the AO to recompute the income after applying profit rate at the rate of 8% and compute the income accordingly. The appeal of the assessee is partly allowed.

10. In the result, both, the appeals of assessee are 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

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