

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

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं./ ITA No. 2305/PUN/2016
निर्धारण वर्ष / Assessment Year : 2010-11

Mr. Yogesh Gosavi,
Prop. M/s. Rajyog Enterprises,
5/6, Silver Palace Apartment,
Ekta Colony, Indira Nagar,
Nashik – 422 001
PAN : AGEPG7773Q

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO, Ward-1(2),
Nashik

.....प्रत्यर्थी / Respondent

Appellant by : Shri Kishor Phadke
Respondent by : Shri M.K. Verma

सुनवाई की तारीख / Date of Hearing : 01.08.2018	घोषणा की तारीख / Date of Pronouncement : 03.08.2018
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM

This appeal is filed by the Assessee against the order of CIT(A)-1, Nashik, dated 15-07-2016 for the A.Y. 2010-11.

2. Grounds raised by the assessee are extracted here as under:

1. Learned CIT(A)-1, Nasik erred in law and on facts in confirming the belief of escapement of income u/s 147 of the ITA, 1961 for alleged bogus purchases from alleged HAWALA parties amounting to Rs. 1.19 CR and finally, retaining addition of Rs. 1.06 CR under section 41(1) of the ITA, 1961. Learned CIT(A) erred in not appreciating apparent conflict in the said two situations.

2. *Learned CIT(A) and the learned AD Ward 1(2), Nashik erred in law and on facts in treating the purchases of Rs. 1.06 CR as bogus without appreciating the reasonable evidences such as original purchase bills, payment by crossed a/c payee cheques, transport receipts, sales bills, payment receipts from the customers, etc.*
3. *Appellant contents that Appellant is eligible to get relief against additions sustained by learned CIT(A) u/s 41(1) since, majority of the outstanding creditors balances were discharged by crossed a/c payee cheques after 31/3/2010.*
4. *Learned I-T authorities failed to appreciate that if the alleged bogus purchases from the alleged HAWALA parties are to be considered as bogus, the corresponding sales of the very same material involved therein also ought to have been considered as bogus and removed from the profitability statement for working out taxable income of the Appellant.*
5. *Learned I-T authorities erred in law and on facts in assuming that the transactions of alleged HAWALA purchases of Rs. 1.06 CR as bogus without appreciating that the very same materials involved therein were in fact, supplied to various government undertakings and payment thereof has been received by the appellant from time to time. Learned I-T authorities ought to have appreciated that alleged bogus parties and alleged bogus purchase bills do not convert the sales made to government undertakings as bogus and as such, erred in not restricting the additions to some reasonable Gross Profit / commission, which at best, could have been disallowed.*
6. *Learned I-T authorities erred in not restricting the additions of Rs. 1.06 CR to a reasonable gross profit relating to such trade practices wherein, bills could be bogus but transactions remain genuine and bonafide.*
7. *The appellant craves, leave to add / modify / delete all or any of the grounds of appeal.*

3. Background facts of the case include that the assessee is an individual and engaged in the business of supply of machinery and specialized materials to thermal power station. Assessee filed the return of income declaring total income of Rs.5,73,090/-. During the assessment proceedings, the AO noticed that assessee purchased goods from 7 suppliers amounting to Rs.1,18,86,508/- whose names are listed by the Sales Tax Department of Maharashtra Govt. as engaged in providing accommodation entries. AO added the entire amount of Rs.1,18,86,508/- as fictitious entries/adjustment entries in order to reduce the profit. In the First Appellate proceedings, the CIT(A) restricted

the said addition to Rs.1,06,34,633/- and gave relief of Rs.12,51,875/- to the assessee.

4. Aggrieved with the same, the assessee filed the appeal before the Tribunal raising the grounds extracted above.

5. After hearing both the sides and perusing the orders of the Revenue authorities, we find this is a case where the assessee made purchases from the seven suppliers whose names are in the list of suspected suppliers by the Sales Tax Department. AO made the addition on account of fictitious/adjustment entries and CIT(A) granted part relief to the assessee based on the reasoning that the payment made by the assessee constitutes an allowable purchases and outstanding payable constitutes bogus purchases.

6. Further, on perusal of the above facts, we find the decision of the Tribunal in the case of M/s. Chhabi Electricals Pvt. Ltd. and others Vs. DCIT in ITA No.795/PUN/2014, relating to assessment year 2010-11, decided on 28-04-2017 is not available to the AO/CIT(A). In this case, the Tribunal analysed various beneficiaries of such bogus entry operators and depending on the submission of the evidences with regard to the trail of goods, payment etc. the Tribunal identified 4 types of categories. For the sake of completeness, we proceed to extract the said paragraphs from the order of the Tribunal (supra) and the same read as under :

“40. In view of the above said ratios, the present issue of bogus purchases is to be decided on the basis of facts of each case. The first aspect is the information received by the Assessing Officer from the Sales Tax Department in respect of alleged hawala dealers. In many cases, the Assessing Officer has not even received the copy of statement recorded or any other evidence from the Sales Tax Department, except the list of hawala dealers and on the basis of the said list, the assessment proceedings have been completed in the hands of assessee, who had made the purchases from the said parties. In case, no such evidence has been received by the

Assessing Officer before making addition, then there is no warrant in making aforesaid addition in the hands of assessee merely on the basis of so called list of hawala dealers. There are other cases, where the Assessing Officer had received the statement of the persons who were hawala dealers and who had admitted to have just issued bills of sale without delivery of goods. In such circumstances, there is evidence against the respective assessee that where the seller of the goods, has admitted not to have entered into real transaction of sale of goods. Against such non-transaction, there can be no delivery of goods, then it is case of passing of bills of sale and purchases, against which no VAT has been paid. Such bogus purchases are then to be added in the hands of assessee. Where the Assessing Officer had confronted the assessee with the information received, supplied copies of statements and where the persons have not been traced and no confirmation has been filed by the assessee in this regard, then the addition is to be made in the hands of assessee on account of such bogus purchases. In the facts and circumstances of some cases, the goods have been transferred by such hawala dealers to the respective purchasers, against which the assessee has to discharge onus of establishing the trail of goods which are transferred and further sold by them. Where the assessee is able to produce evidence of purchase of goods by way of weighment bridge receipts, transportation documents, payment of octroi and subsequent sale of goods to the respective parties and / or where the assessee has maintained complete quantitative details of purchase and sale of goods, then total bogus purchases cannot be added in the hands of assessee, but GP rate of 10% is to be applied on bogus purchases. Where the assessee does not establish its case, then the complete bogus purchases are to be added as hawala purchases. Further, in cases, where the statements are recorded and copies of which have been supplied to the assessee and assessee established the case of receipt of goods and its onward transmission by way of sale bills, then the factum of purchases by the assessee stands established in such circumstances. However, the benefit of purchases being made from grey market, needs estimation in the hands of assessee. The Tribunal has already held that the addition be made by estimating the same @ 10% of the alleged hawala purchases. Accordingly, it is so held. In view thereof, the issues which emerge are as under:-

- I. In case no information is received by the Assessing Officer from the Sale Tax Department and no copy of statement recorded or any other evidence is received from the Sales Tax Department, then no addition is to be made on the basis of name of hawala dealer in the list prepared by the Sales Tax Department, where the assessee had asked for the said information during assessment proceedings.
- II. Where the Assessing Officer had received the statements of persons who had admitted to have just issued bills of sale without any delivery of goods. In view of such evidence, where the assessee had not entered into real transaction of purchase of goods and in the absence of any delivery of goods, the sales are bogus and the entire sales are to be added in the hands of assessee. Admittedly, the dealer had not even paid VAT against such passing of goods.
- III. The case where the Assessing Officer had confronted the information received from the Sales Tax Department and had supplied copies of statements recorded and had also issued notice under section 133(6) of the Act, where hawala dealer was not traceable and in the absence of the assessee failing to file any documentary evidence of delivery of goods, addition is to be upheld in the hands of assessee on account of such bogus purchases.
- IV. **The next instance is the case of goods which have been admittedly sold by the hawala dealer and has been received by the assessee,**

who in turn had maintained quantitative details and also evidence of its movement i.e. transportation details and quality control details of consumption of the said material or exact details of sale of the same consignment through same transporter directly to the party, then the total purchases cannot be added in the hands of assessee. However, since the purchases are made from the grey market, some estimation needs to be made in the hands of assessee. The Tribunal in M/s. Chetan Enterprises Vs. ACIT (supra) has already held that the addition be made by estimating the same @ 10% of the alleged hawala purchases, over and above the GP shown by the respective assessee.

- V. Another set of cases where the statements recorded by the Sales Tax Department have been handed over to the assessee and the copies of same have been supplied to the assessee, then where the assessee established the case of receipt of goods and its onward transmission, then the factum of purchases by the assessee stands established in such circumstances. However, estimation is to be made in the hands of assessee because of purchases from the grey market and following the above said ratio, addition is to be made by estimating the same @ 10% of the alleged hawala purchases, over and above the net profit shown by the assessee.

41. Now, coming to the factual aspects of each of the appeal, which have already been referred to by the learned Authorized Representative for the assessee and also refer to the orders of authorities below, where none has appeared on behalf of the assessee.

42. The lead case is in the case of M/s. Chhabi Electricals Pvt. Ltd., where the grievance of the assessee is that the Assessing Officer before making the addition has not even supplied the copy of statement or any other evidence recorded by the Sales Tax Department to establish that the purchases made by the assessee were bogus. I have already decided this issue in M/s. Chetan Enterprises Vs. ACIT (supra) and held that in cases where the Assessing Officer has failed to supply such statement recorded by the Sales Tax Department or any other evidence justifying the addition, no addition is to be made in the hands of assessee. The grounds of appeal raised by the assessee are thus, allowed. The learned Authorized Representative for the assessee has further referred to various documents i.e. gate pass, GRN and issue pass establish its case of delivery of goods i.e. purchase from hawala dealer and its onwards consumption in the manufacturing process of the assessee. In such circumstances, where the assessee has established the trail of goods purchased to the final consumption, then there is no merit in the addition made by the Assessing Officer. Thus, the grounds of appeal raised by the assessee are allowed and appeal of the assessee is allowed.”

7. In all fairness, we are of the opinion that the matter should be remanded to the file of CIT(A) for considering the above decision of the Tribunal and apply the ratio laid down to the facts of the present case. Accordingly, the grounds raised by the assessee on merits are allowed for statistical purposes.

8. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced on in the open Court on 03rd day of August, 2018.

Sd/-

Sd/-

(विकास अवस्थी / VIKAS AWASTHY) (डी. करुणाकरा राव/D. KARUNAKARA RAO)
न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 03rd August, 2018.
Satisb

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals)-2, Thane
4. The Pr.CIT-2, Thane
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे/ DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदष्टानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ ITAT, Pune.