

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI**

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA No.:- 4342/Del/2018
Assessment Year: 2009-10

Manoj Sharma, CU 107, Pitampura, New Delhi -110034	Vs.	ITO, Ward -39(5) New Delhi
(Appellant)		(Respondent)

Assessee by:	Shri Ved Jain, Advocate
Department by :	Shri S.L. Anuragi Sr. DR
Date of Hearing	15/11/2018
Date of pronouncement	28/01/2019

ORDER

The aforesaid appeal has been filed by the assessee against impugned order dated 16.5.2018, passed by Ld. CIT (Appeals) 13 New Delhi for the quantum of assessment passed u/s 147/143(3) for the assessment year 2009-10.

2. In various grounds of appeal, assessee has challenged the validity of reopening u/s 147; and on merits he has challenged the addition of Rs. 12,56,068/- made on account of bogus purchases. The facts in brief are that assessee has filed his return of income on 19.8.2009, declaring income of Rs. 2,85,650/- which was duly processed u/s 143 (1). Later, on the basis of certain information received from CIT Central Circle II, New Delhi, enclosing letter dated

13.3.2013 of ACIT Central Circle -10, which contained the list of the persons to whom bogus purchases / accommodation entries were provided by Shri Rakesh Gupta, Shri Vishesh Gupta, Shri Navneet Jain, Shri Vaibhav Jain. Since assessee was also one of the name included in the list, the AO issued a notice u/s 148 on 7.3.2016/ 23.3.2016 for reopening the case u/s 147. In the 'reasons recorded' AO has noted that assessee has taken accommodation entry from the following three parties:-

- (i) M/s. Vishnu Trading Co. – Rs. 3,53,973/-
- (ii) M/s. Shree Shyam Trading Co. – Rs. 4,64,987/-
- (iii) M/s. Om Trading Co. – Rs. 4,37,108/-

3. AO has also taken note of the statement of Shri Vishesh Gupta, recorded by ACIT central Circle-10, wherein in his statement, he has explained about the modus operandi of providing bogus purchase bills and that there were 11 firms belonging to him and his family concerns who were issuing bogus accommodation entries/ bills. Since assessee has also shown to have made purchases from the above three concerns of Shri Vishesh Gupta, AO accordingly, treated the said purchases as bogus. The assessee's case before the AO was that assessee was a genuine dealer of metal scrap and is carrying out business from his proprietary concern, M/s. Vinayak Traders and the purchases made by these concerns were genuine who were properly registered under DVAT having TIN number. Copy of DVAT assessment orders were also filed before the AO. However, the Ld. AO relying upon the assessment proceedings in the case of Shri Vishesh Gupta and Shri Rakesh Gupta passed in pursuance of search carried out at their places, held that these purchases made by the assessee are bogus and accordingly he made the addition of Rs. 12,56,068/- u/s 69C.

4. Before the Ld. CIT(A), assessee has made detailed objections with regard to the validity of the reopening u/s 147 on the ground that 'reasons recorded' are not in accordance with law for which detailed submissions were made, which have been incorporated in the impugned appellate order. Ld. CIT(A) has dismissed the assessee's objection holding that there was a clear cut connection between the material available on record and the escapement of income and AO did had prima-facie 'reason to believe' based on such material. He observed that, here in this case AO has noted that Vishesh Gupta was providing accommodation entries which was found during the course of his search proceedings; and also during their assessment proceedings they have admitted that they were providing accommodation entries and in their course of admission, it was found that the list containing bills accommodation entries, assessee's name also appeared. On merits, the assessee challenged that AO has not allowed any cross examination of these persons whose statements were recorded, to which Ld. CIT (A) held that, nowhere the assessee had asked for cross examination. Apart from that assessee has made various submissions which can be summarised as under:-

- (i) That statement of the persons (Sh. Rakesh Gupta, Vishesh Gupta, Navnit Jain and Vaibhav Jain) should not be given any credence because they are themselves engaged in anti-tax-law practices.
- (ii) The appellant has made the payment by cheque.
- (iii) The appellant has produced stock register to tally the quantity.
- (iv) AO has not rejected books of accounts.
- (v) Conclusion of the AO in terms of returning the fact that M/s. Om Trading Company, M/s. Vishu Trading Company and M/s. Shree Shyam Trading Company are not engaged in actual

business is incorrect because there was substantive inventory found during the search at their premises.

- (vi) The statement of Sh. Rakesh Gupta, Vishesh Gupta, Navnit Jain and Vaibhav Jain are not collaborated by independent material.
- (vii) Accounts were audited and cannot be ignored.
- (viii) If purchases are bogus, then sales are also bogus
- (ix) The department has not proved that the appellant has received any cash back from the parties who are claiming to have provided accommodation entries.

5. However, the Ld. CIT(A) rejected all the contentions of the assessee on the ground that onus which was cast upon the assessee to show that purchases made are genuine were discharged by submitting copies of bills, stock register, payment made through cheques, however, here in this case, once assessee was confronted with certain incriminating material then onus was shifted back to the assessee again to prove that these materials are not correct. He held that the statement of these persons assumes great significant, because they themselves were found to be engaged in anti tax practices; and once statement of these persons were provided to the assessee, compliance of natural justice has been made. If in the statement the seller has disowned the bill then reliance on entries in the stock register will not discharge the onus upon the assessee. After detailed discussion, he has confirmed the said addition by and large holding that assessee was not able to discharge his onus after being confronted with the material indicating that purchases under consideration are bogus.

6. Before us, Ld. Counsel for the assessee Shri Ved Jain, submitted that, here in this case exactly on similar facts and exactly same

'reasons recorded', this Tribunal in the case of Unique Metal Industries vs. ITO in ITA No. 1372/Del/2015 dated 28.10.2015 has held that reopening is bad in law and even on merits the Tribunal has held that purchase made by the assessee cannot be doubted. Apart from that, he has submitted that once purchases have been made from sources shown in the books, then the entire purchases cannot be held to be bogus, especially when no discrepancy has been found in stock, quantitative tally and sales. Further, in support he has filed various decisions of the Tribunal wherein on similar set of facts purchases have been addition on account of bogus purchases has been deleted.

7. On the other hand, Ld. DR strongly relied upon the order of the Ld. CIT (A) and submitted that, once there is a concrete information and material that assessee was one of the beneficiary of accommodation entry of bogus purchases bill and the said entry provider has categorically accepted that they were only providing bogus purchase bills, then said purchase cannot be held to be genuine and hence the same has rightly been confirmed by the Ld. CIT (A).

8. I have considered rival submissions, perused the relevant finding given in the impugned order as well as the material referred to at the time of hearing. Assessee is engaged in the business of trading in scrap metals and during the year under consideration, he has shown purchases of Rs. 90,12,049/-. Out of the said purchases, sums amounting to Rs. 12,56,068/- has been held to be bogus purchases on the ground that assessee has obtained purchase bills from three parties who were owned and controlled by Shri Vishesh Gupta and his family members, who in the course of their assessment proceedings have admitted that they were providing bogus purchase bills/ accommodation entry bills to the concerned parties. The cheques were

received from the concerned parties which were deposited in the bank account of the their concerns from where purchase/accommodation bill has been received and thereafter cash was withdrawn after deducting the commission and was handed over to the persons seeking accommodation entry. Based on this information, assessee's case has been reopened u/s 147 and also addition has been made u/s 69C as bogus purchases. One undisputed fact as culled out from the impugned orders as well as material referred to before us are that, assessee is maintaining quantitative wise stock register, purchase and sale bills alongwith regular books of account which were produced before the AO in the trading account. Assessee has disclosed following figures in the trading account:-

Opening stock: Rs.9,05,814	Sales: Rs.88,49,043
Purchases: Rs.90,12,049	Closing stock: Rs.18,73,690
Gross profit: Rs.8,04,869	

The above figures of opening stock, purchases, sales, closing stock and gross profit has been accepted by the AO, including all the quantitative tally in the trading account.

9. From the perusal of the bills as placed in the paper book, it is seen that assessee has shown purchase of steel scraps, aluminium scraps, brass scraps and in these bills, lorry / truck number for delivery has also been mentioned which is even evident from the scanned copy of one particular bill at page 69 in the impugned order. The purchases admittedly have been made through account payee cheque and the source of the purchases are from the books of account as it is not the case of AO that purchases from any party is outside books of account. The quantitative details of stock as on 31.3.2009 was as under:-

Quantitative details of stock as on 31.03.2009

Sl. No. ITEMS	OP.STOCK	PURCHASES	SALE	CL STOCK
1. Aluminium Scrap	4345.500	42578.650	39188.900	7735.250
2. Brass Scrap	837.550	20902.050	19850.700	2788.900
3. Copper Scrap	1216.500	4125.100	2790.400	2551.200
4. Copper Wire	166.000	NIL	166.000	NIL
5. Steel Scrap	290.000	4396.000	4250.000	436.000
TOTAL	6855.550	72001.800	65346.000	13511.350

This has also been mentioned in the audit report and certified by the tax auditors.

10. Once the quantity of opening stock and purchases on the debit side; and sales and closing stock in the credit side in the books of account has been accepted, then to hold that the some quantity of purchases recorded in the books are unexplained or outside books of account, is very difficult proposition to accept. Because, the quantitative details of stock, purchases, sales have not been discarded or any defect has been found, then purchases as debited in the books of accounts cannot be added u/s 69C. Here in this case, even balancing figure of the gross profit shown by the assessee has not disturbed. Even if it is to be accepted that the purchases made from the three parties were in the nature of accommodation entries, then it has to be seen, *firstly*, whether these purchases have been made outside books or does not matches with the quantitative tally; or *secondly*, whether such bills have been obtained merely to suppress the gross profit. Ostensibly, the first reason is lacking here in this case as discussed above; and in so far as the second reasoning is concerned, one has to examine, if purchases have been made through cheques, the source of which are from the books of accounts and if

later on, cash has been received in lieu of such cheque but no purchases have been made, then clearly there would be a difference in quantitative tally of purchases as well as in the stock and such a discrepancy has been found then purchases can be held to be bogus. But here in this case no such difference in the quantitative tally has been found. Further, if assessee after receiving the cash in lieu of the cheque has made purchases from the grey market for getting the same quantity of material in cash from some different vender, then at the most it could be a case of the suppressing of gross profit. In other words, assessee has debited higher amount for the purchase which in fact has purchased the same material and quantity at a lesser amount, thereby suppressing the gross profit. Under these circumstances any addition at all which could be made, is by enhancing the Gross Profit on such purchases. Nowhere there is a finding or whisper either by the AO or CIT (A) that the gross profit shown by the assessee during the year was less as compared to earlier or subsequent years or there is any material to show that gross profit has been low during the year. If all the entries in the trading account including the quantitative tally of purchases, opening stock, sales and closing stock are found to be correct and no discrepancy has been found, then no addition on account of unexplained purchases can be made, because nowhere it has been found that assessee has made purchases outside the books. The entire finding of the Ld. CIT (A) hinges upon the fact that there was material indicating purchase under consideration are bogus without even appreciating that if the source of purchases are from the books and through account payee cheque, then how such purchases can be treated as un accounted. Since gross profit rate and gross profit has been accepted including the trading account then no such addition can be made. In the result

on merits addition made by the AO is deleted and consequently assessee's appeal is allowed.

11. Since we have already allowed the addition of Rs. 12,56,068/- on merits, therefore, the validity of reopening u/s 147 has become purely academic and the same is kept open.

12. In the result appeal of the assessee is allowed.

Order pronounced in the open court on 28th January, 2019.

**(AMIT SHUKLA)
JUDICIAL MEMBER**

Dated: 28/01/2019

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Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR

ITAT, New Delhi