

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "A", MUMBAI

BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER  
AND  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA No. 564/Mum/2017  
Assessment Year : 2012-13

M/s. Vedangi Ventures, Shop No. 5, Raghunath Apartment, Ganesh Chowk, Manjarali, Badlapur (West) [PAN : AAHFV6691D]	Vs.	Asst. Commissioner of Income Tax, Circle-2, Kalyan
(Appellant)		(Respondent)

Appellant By : NONE  
Respondent By : Shri Satishchandra Rajore, DR

Date of Hearing : 24-01-2019	Date of Pronouncement : 1-02-2019
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**ORDER**

**Per G. Manjunatha, Accountant Member:**

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-3, Thane, dated 03-10-2016, and pertains to AY 2012-13.

2. The assessee has filed this appeal with a delay of one day.

For that, it has filed an affidavit seeking condonation of delay.

2.1. Considering the petition for condonation of delay and being satisfied with the reasonable cause for the delay, we hereby condone the delay in filing the appeal, which is admitted to be heard on merits.

3. The assessee has raised the following ground(s) of appeal:

*“The Ld. CIT(A) has erred in confirming the action of AO of adding purchases to the tune of Rs. 41,34,987/- from four parties listed as hawala parties in the list of Sales Tax department. The partywise details of alleged bogus purchases are as follows:*

• Abhedya Trading Pvt. Ltd.,	-	Rs. 3,96,400/-
• Avi Enterprises	-	Rs. 12,94,227/-
• Kalpak Trading Pvt. Ltd.,	-	Rs. 17,44,360/-
• Ameer Enterprises	-	Rs. 7,00,000/-
Total	-	Rs. 41,34,987/-

*The same may please be deleted.*

*The appellant craves leave to add, amend, supplement, alter and/or delete any of the above Grounds of Appeal”.*

4. Brief facts of the case are that, assessee is engaged in the business of sale and purchase of lands also developers and builders, filed its return of income for the AY. 2012-13 on 26-09-2012, declaring total income of Rs.1,49,45,790/-. The case was selected for scrutiny and notices u/s. 143(2) and 142(1) of the Income Tax Act, 1961 (Act) were issued. In response to notices, the Authorised Representative (AR) of the assessee appeared from time to time and filed various details as called for.

5. During the course of assessment proceedings, the AO called upon the assessee to furnish complete details of purchases along with necessary bills and vouchers. In order to verify the correctness of purchases, AO has issued notices u/s. 133(6) of the Act to four parties viz., (i) M/s. Abhedya Trading Private Limited, (ii) M/s. Avi Enterprises, (iii) Kalpak Trading Pvt. Ltd., and (iv) Ameer Enterprises, but notices issued u/s. 133(6) were returned un-served. Therefore, AO called upon the assessee to furnish the correct addresses of these parties and also to produce the said parties for verification. The assessee neither furnished complete names and addresses nor produced parties for verification, but reiterated its stand taken earlier, to argue that purchases from the above parties are genuine, which are supported by purchase bills. The AO after considering the submissions of assessee and also taken into account the report prepared by Maharashtra Sales Tax Department, where the investigation proved that certain parties were involved in providing accommodation entries without actual business, opined that assessee failed to produce proof, accordingly made additions towards purchase from those parties for Rs. 41,34,987/- as unexplained expenditure.

5.1. Aggrieved by the assessment order, assessee preferred an appeal before the CIT(A).

6. Before the CIT(A), assessee has filed written submissions, which have been re-produced at para 4 of page No. 5 in the order of Ld. CIT(A). The assessee also relied upon plethora of judgments, including judgment of Hon'ble Supreme Court in the case of Kishanchand Chellaram Vs. CIT (1980) [4 Taxman 29] to argue that making additions on the basis of third party evidence without confronting those evidences to the assessee is a gross violation of principles of natural justice, therefore, the additions made by AO are incorrect, which was based on incorrect assumption of facts.

6.1. Ld.CIT(A) after considering relevant submissions of assessee and also relied upon certain judicial precedents, including the decision of the Hon'ble Delhi High Court in the case of CIT Vs. La Medica [250 ITR 575] (Del), upheld the additions made by the AO towards 100% bogus purchases for the following reasons:

*“5.0 Ground No. 1 is directed against the addition of Rs. 41,34,987 on account of bogus purchases*

(i) I have carefully considered the submissions of the appellant, the observations of the AO in the assessment order, case laws relied upon by the appellant and the facts of the case.

(ii) Basically, the exchange of information amongst various enforcing agencies includes Sales tax Department, Customs and Excise, Economic Offence wing, Enforcement Directorate, CBI, RBI, PSU Banks etc which comes under the umbrella of Regional Economic Intelligence Committee (REIC), a Committee recognized by the Govt. of India. Therefore, the information received from sales tax department cannot be ignored as it has evidentiary values.

The information received from Sales Tax Department cannot be said as "no good evidence". It is a known fact that information cannot necessarily be a concrete one, therefore, the requirement is primary/basic information, and in the course of assessment proceedings, the appellant failed to prove the genuineness of the purchases as discussed below.

(a) From the above discussion, it is seen that the appellant did not produce the Hawala dealers before the Assessing Officer for cross verification. The appellant has booked the aforesaid purchases in its books of accounts as expenses, therefore, the onus to prove the genuineness and correctness of the purchase transactions lies with the appellant by producing the parties, but failed to do so. When expenditure (purchase) is claimed to have been incurred, initial burden will be on the appellant to prove that purchases were genuine. Reliance is placed on the decision in the case of CIT vs. Chandra Vilas Hotel (1987) 164 ITR 102(Guj). This onus has not been discharged by the appellant.

The statement or affidavit filed by the Hawala dealers before the Sales Tax Department has evidentiary value, which cannot be ignored. If the purchases were genuine in toto, the appellant could have filed counter affidavit and should not have paid the VAT on behalf of the Hawala dealers/unverifiable dealers, but failed to do so.

(b) The aforesaid parties with whom the appellant had made purchases are Hawala Operators, who issue only bills without delivery of materials to the beneficiaries and Sales Tax Department has branded these/some parties as bogus dealers in their official website. Now, the appellant is agitating that such evidences cannot be used against them, but the appellant should have filed a counter affidavit by stating that what is stated by the supplier before the Sales Tax Department is not correct and the appellant should have asked for cross examination of the Hawala dealers before the Sales Tax Authority.

In addition to this, when the appellant cannot produce the Hawala dealer with whom he had business transactions, then, how come the appellant is asking for cross examination from the AO.

(c) There are various reasons as to why the Hawala dealers were absconding and also not appeared before the Assessing Officer for cross examination during assessment proceedings, whereas in other purchases, no such anomaly have been found by the Assessing Officer. At least, the appellant could have produced copy of return filed along with P & L a/c and B/S, bank statement of Hawala dealers before Assessing Officer, but failed to do so. By simply issuing cheques for payments and purchase invoices does not mean that the genuineness is proved, but the overall circumstances requires to proof that the expenses are genuine. Therefore, in principle the judgment of Hon'ble SC is relied upon i.e. in the case of Lachminarayan Madan Lal vs. CIT 86 ITR 439(SC), wherein held that even if there is an agreement between assessee and agents for payment, that does not bind Income tax officer to allow the payment was made exclusively and wholly for the purposes of the business.

(d) In this case, Notices u/s. 133(6) were issued to the parties, however, it has come back unserved, therefore, the appellant was asked to furnish the current addresses of these parties and also to produce these parties for verification. The appellant was not in a position to produce the parties for cross examination or filed current addresses of the parties. The Ward Inspector had also reported that no such parties were in existence at the given addresses. In addition to this, the appellant failed to furnish any delivery challans or transport receipt in respect of the goods being received from the aforesaid parties.

(d) As per Tax Audit Report in Form No:3CD at SI.No.28, it is seen that the appellant has not maintained stock register, therefore, the appellant failed to give the quantitative details with regard to opening stock, purchases, consumption, sales and closing stock. Therefore, the quantitative details with regard to consumption of raw materials are not verifiable. In this case, as discussed above, the appellant has not proved to show that the materials have been received as no delivery challans or transport receipt is produced before AO as well as before me.

(e) The appellant argued that the names of M/s.Abhedya Trading Pvt Ltd & M/s.Avi Enterprises does not appear in the list published by Sales Tax Department, however, the AO has found that these parties names were published for the earlier period. In addition to this, these parties have not responded as well as the appellant could not produce these parties for cross verification.

*(f) The Gross Profit ratio for the A.Ys. 2011-12, 2012-13 & 2013-14 is shown @ 33.21%, 23.96% & 41.70% respectively. All the more, the addition made by the AO is justified because the Gross profit in the year under appeal is less by 9.25% as compared to immediate preceding year & less by 17.74% in the immediate subsequent year.*

*Considering the totality of the facts of the case, I am of the considered opinion to disallow 100% as bogus/inflated purchases on the total purchases made from unverifiable parties. Accordingly, the book result is rejected u/s. 145(3) of the Act. The disallowance @ 100% of unverifiable purchases made from Hawala/unverifiable dealers had been upheld in the following cases:*

- (1) CIT vs. La Medica (2001) 250 ITR 575 (Del)*
- (2) Sri. Ganesh Rice Mills vs. CIT (2007) 294 ITR 316 (All)*
- (3) Khandelwal Trading Co. vs. ACIT (1996) 55 TTJ (JP) 261*
- (4) Swetambar Steels Ltd. vs. ITO 707/1075/1262/1263/JD(2002) ITAT (Ahd). Also upheld up to Supreme Court.*
- (5) Ruchi Developers, ITAT 'B' Bench, Ahmedabad in ITA No. 3348/Ahd/201.0 - A.Y.2007-08 & ITA No. 1170/Ahd/2014 -A.Y.2007-08. Date of order: 05.06.2015 has held that the appellant failed to establish the purchases with corroborative evidences in spite of umpteen opportunities given to it. The appellant has not maintained any quantitative details regarding purchases and consumption of various items used for construction.*

*In view of the above stated facts, the addition of Rs. 41,34,987/- made by the AO is confirmed as bogus purchases in the hands of the appellant and added to the total income of the appellant”.*

7. None appeared on behalf of the assessee. We have heard Ld. DR and perused the material available on record. Although, the assessee claims to have filed complete details of purchases from above four parties, but on perusal of findings of the lower authorities where it was categorically observed that the assessee could able to file only purchase bill and payment proof for such purchases through proper banking channel. The assessee

neither could controvert the findings of fact recorded by the lower authorities in the backdrop of clear finding of sales-tax authorities that those parties are involved in providing accommodation entries. The assessee was not able to file complete details as required by the AO except purchase bill and payment proof. Further, the assessee could not able to produce the parties in person before the AO for examination. Under these facts, it is difficult to accept the arguments of the assessee that purchases from the above parties are genuine which are supported by evidences. When the purchases are considered to be bogus and also when the assessee is not able to prove the purchases to the satisfaction of the AO, what needs to be taxed – whether the total amount of alleged bogus purchases or only a profit element embedded on those purchases is a question of fact. The Courts and Tribunals in number of cases have come to the conclusion that in cases where purchases are not proved with necessary evidences, only profit element embedded on those purchases needs to be taxed. The Hon'ble Gujarat High Court in the case of CIT vs Simit P Sheth (2013) 356 ITR 451 (Guj) has held that no uniform yardstick can be applied for estimation of profit and it depends upon facts of each case. The co-ordinate bench of ITAT, Mumbai Benches in several cases have taken a

consistent view and directed the AO to estimate profit ranging from 5% to 12.5% depending upon facts of each case and nature of business carried out by the assesses. In this case, admittedly, the assessee is in the business of land developer. In this line of business the profit percentage is between 10 to 15%. Therefore, considering the facts of the present case, we deem it fit to estimate a profit of 12.5% on the alleged bogus purchases. Hence, we direct the AO to adopt a profit percentage of 12.5% on the alleged bogus purchases and determine the total income accordingly. The order of Ld.CIT(A) is modified to this extent.

8. In the result, appeal filed by the assessee is partly allowed.

*Order pronounced in the open court on 01<sup>st</sup> day of February, 2019*

Sd/-

(SANDEEP GOSAIN)

न्यायिक सदस्य/JUDICIAL MEMBER

sd/-

(G. MANJUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/Mumbai; दिनांक/Dated : 01<sup>st</sup> February, 2019

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A), Mumbai
4. आयकर आयुक्त / CIT, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file

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