

आयकर अपीलिय अधिकरण, पुणे न्यायपीठ “एक-सदस्य मामला” पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE**

श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / **ITA No.1165/PUN/2018**
निर्धारण वर्ष / **Assessment Year : 2010-11**

Consep Engineering Pvt. Ltd.,
Shop No.9, Shree Surya Kiran CHS,
Plot No.5, Sector-5, New Panvel,
Navi Mumbai.

PAN : AAEFC8613M

.... अपीलार्थी/Appellant

Vs.

ITO, Ward-3,
Panvel.

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : None
प्रत्यर्थी की ओर से / Respondent by : Shri M. K. Verma

सुनवाई की तारीख / Date of Hearing : 12.02.2019	घोषणा की तारीख / Date of Pronouncement: 01.03.2019
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This appeal is filed by the assessee against the order of CIT(A)-2,
Pune dated 04.05.2018 for the Assessment Year 2010-11.

2. The ground raised by the assessee is as under :-

“1. The Learned CIT(A) has erred in disallowing the purchases of Rs.12,43,200/- wherein the assessee has discharged the burden of proof cast on him and the CIT(A) or Assessing Officer has neither disproved the genuinity of the transaction nor established that the transaction is bogus with any clinching evidence.”

3. Briefly, the relevant facts include that the assessee is a Private Limited Company and is engaged in the business of engineering and fabrication contracts. The assessee filed the return of income declaring total income of Rs.6,06,920/-. Based on the information received from the

Sales Tax Department, Maharashtra, the Assessing Officer found that the assessee was a beneficiary of the bogus purchases bills from the entry providers. The assessee was asked to explain the same by issue of notice u/s 148 of the Act for reopening of the assessment. As the assessee did not reply to the said notice, the Assessing Officer passed the reassessment order u/s 143(3) r.w.s. 147 of the Act and made addition of Rs.12,43,200/- as per the discussion given in para 4.2 of the assessment order. Aggrieved with the said decision of the Assessing Officer, the assessee carried the matter before the CIT(A). The CIT(A) confirmed the same.

4. Aggrieved with the said decision of the CIT(A), the assessee is in appeal before the Tribunal with the above extracted ground of appeal.

5. Before me, there was none to represent on behalf of the assessee. It is evident from the record that this is the case involving the issue of bogus purchases and the addition of entire such purchases was made by the Assessing Officer. The CIT(A) confirmed the same. I find the above manner of assessment and the addition are not in tune with the order 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. 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.”

6. Considering the above facts and following the above decision of the Tribunal in the case of M/s. Chhabi Electricals Pvt. Ltd. and others (supra), I am of the opinion that the addition by way of estimation is to be made in

the hands of the assessee at the rate of 10% of the alleged bogus purchases in the year under consideration. This is over and above the net profit shown by the assessee in this assessment year. Accordingly, the ground raised by the assessee is partly allowed.

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

Order pronounced on this 01st day of March, 2019.

Sd/-
(D. KARUNAKARA RAO)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 01st March, 2019.
Sujeet

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-2, Pune;
4. The CCIT, Thane;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "एक-सदस्य मामला" / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

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