

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.218 to 220/PUN/2017
निर्धारण वर्ष / Assessment Years : 2009-10 to 2011-12

ITO, Ward-2(1),
Nashik

Vs.

M/s. Steel Point
D-52/1, MIDC,
Ambad, Nashik – 422 011
PAN : ABGFS1015G

(Appellant)

(Respondent)

Appellant by
Respondent by

Shri Pankaj Garg
Shri Devendra Jain

Date of hearing 06-03-2019
Date of pronouncement 07-03-2019

आदेश / ORDER

PER R.S.SYAL, VP :

These three appeals filed by the Revenue relate to assessment years 2009-10 to 2011-12. Since common issues are raised in these appeals, we are, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

A.Y. 2009-10 :

2. The first issue raised in this appeal is against the deletion of addition of Rs.2,03,58,071/- in respect of bogus purchases.

3. Briefly stated, the facts of the case are that an information was received from the Director of Income-tax (Investigation), Pune regarding the beneficiaries in hawala transactions detected by the Sales Tax Department of Maharashtra Government. One of the beneficiaries, in a such list, was the assessee also. A survey action was taken u/s.133A of the Income-tax Act, 1961 (hereinafter also called 'the Act') on 21-03-2013 at the business premises of the assessee firm. The information received from the Director of Income-tax (Investigation), Pune was verified in as much as the assessee had recorded purchases from the hawala parties to the tune of Rs.2,03,58,071/-. The AO made addition for the equal amount, which came to be deleted by the Id. CIT(A). Aggrieved thereby, the Revenue has come up in appeal before the Tribunal.

4. We have heard both the sides and gone through the relevant material on record. It is seen that several assessees had obtained bogus purchases from such hawala parties. The Pune Benches of the Tribunal has disposed off a group of similar cases. Vide the lead order in the case of M/s. Chhabi Electricals Pvt. Ltd. and others Vs. DCIT dated 28-04-2017 in ITA No.795/PUN/2014 and others, the Tribunal has made certain categories. Finding in

respect of category No. IV of the said order, which is germane to the instant appeal, is as under :

“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.”

5. Going by the *ratio* laid down in the case of M/s. Chhabi Electricals Pvt. Ltd. and others (supra), which has been followed in innumerable cases, we hold that the addition should have been sustained on the amount of hawala purchases @10% plus the normal GP rate shown by the assessee for the year. We, therefore, set aside the impugned order and remit the matter to the file of AO for re-computing the amount of addition @10% plus the normal gross profit rate shown by the assessee for this year on the bogus purchases.

6. The only other effective Ground No.4 reads as under :

“4. On the facts and circumstances of the case, whether the Id.CIT(A)-2, Nashik was justified in holding that notice u/s.143(2) is mandatory before passing the order u/s.147, when the Act has given immunity to the AO u/s.292BB that

when no objection is taken regarding this during the assessment proceeding, the objection is not sustainable.”

7. Facts apropos this ground are that the assessee contended before the Id. CIT(A) for the first time that no notice u/s.143(2) of the Act was issued and hence, the proceedings be quashed. The Id. CIT(A) called for a report from the AO. Vide the remand report dated 15-09-2016, the AO wrote that notice u/s.143(2) was issued on 22-11-2013 but acknowledgement for service of above notice was not found on record. Even the order sheet entry dated 22-01-2013 properly recorded that notices u/s.143(2) and 142(1) were issued fixing the case for hearing on 29-01-2013 at 4.30 pm. The Id. CIT(A) observed that the AO has not made a mention of issuing notice u/s.143(2) in the assessment order. He, however, did not adjudicate on the issue of validity of reassessment on this score in view of the fact that addition itself was deleted.

8. We have heard both the sides and gone through the relevant material on record. It is seen that the Id. CIT(A) has not adversely adjudicated on the so-called non-issuance of notice u/s.143(2) *qua* the Revenue, though he recorded in the impugned order that the AO admitted to have issued such a notice. As such, the Revenue can have no grievance against such non-adjudication. The assessee

has neither preferred any cross objection nor taken recourse to any other legal remedy challenging the validity of assessment in view of the alleged non-issuance of notice u/s.143(2). As such, the ground raised by the Revenue is dismissed.

A.Yrs. 2010-11 and 2011-12 :

9. Both sides are in agreement that the facts and circumstances for these years are *mutatis mutandis* similar to those of the preceding year 2009-10. But for the difference in the amount of hawala entries recorded by the assessee, the facts are admittedly similar. Following the view taken hereinabove for the A.Y. 2009-10, we direct the AO to re-compute the amount of addition in the light of our above observations, that is, 10% over and above the normal G.P. rate of the respective year on the amount of hawala purchases.

10. The other ground on the validity of reassessment for the reason of non-issuance of notice is similar to that of the preceding year. The same is dismissed as not arising out of the impugned order.

11. In the result, all the three appeals are partly allowed for statistical purposes.

Order pronounced in the Open Court on 07th March, 2019.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 07th March, 2019
सतीश

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-2, Nashik
4. The Pr.CIT-2, Nashik
विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे
5. “बी” / DR ‘B’, ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

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

		Date	
1.	Draft dictated on	06-03-2019	Sr.PS
2.	Draft placed before author	06-03-2019	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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