

आयकर अपीलीय अधिकरण "एक-सदस्य" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, PUNE

BEFORE SHRI R.S.SYAL, VP AND  
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.160/PUN/2019

निर्धारण वर्ष / Assessment Year : 2012-13

Vijay Tukaram Raundal,  
Office No. C 708, Teerth Technospace,  
Next to Mercedes Showroom, Bangalore  
Mumbai Highway, Baner Road, Baner  
Pune-411 045  
PAN : AAQPR0124G

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Deputy Commissioner of Income Tax,  
Circle-2, Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.N. Puranik  
Revenue by : Shri Rajesh Gawali

सुनवाई की तारीख / Date of Hearing : 18.03.2019

घोषणा की तारीख / Date of Pronouncement : 18.03.2019

**आदेश / ORDER**

**PER PARTHA SARATHI CHAUDHURY, JM :**

This appeal preferred by the assessee emanates from the order of Ld. CIT(Appeals)-3, Pune dated 26.10.2018 for the assessment year 2012-13 as per following grounds of appeal on record:

*"1. Honorable Commissioner of Income Tax has erred in confirming Assessing Officers action of reducing Closing stock/Work in progress valuation as on 31.03.2012 by rejecting purchases of Rs.18,84,991/-. Appellant prays to accept and confirm the closing stock as per return and Balance Sheet.*

*2. Appellant denies consequential liability of interest u/s.234B and prays to cancel the same.*

*3. Appellant prays for just and equitable relief.*

*4. Appellant prays to add, alter, amend and /or withdraw the Ground/s as the occasion may demand during appellate proceedings.”*

2. The brief facts in this case are that the assessee is an individual and filed revised return of income for assessment year 2012-13 on 14.02.2013 declaring total income of Rs. Nil and showing current year loss of (-) Rs.2,65,218/-. The return was selected for scrutiny through CASS and accordingly, notice u/s.143(2) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') was served on the assessee. The assessment was completed u/s.143(3) of the Act by making various additions/disallowances as appearing in the assessment order.

3. The only grievance of the assessee is with regard to the addition made in respect of non genuine purchases of Rs.18,84,991/-. That during the assessment proceedings, the Ld. AR of the assessee was asked to furnish details of purchase of materials such as cement, steel, bricks, marble and other materials vide questionnaire. He was also asked to furnish sample copy of bills from each party against purchases made along with the cash invoice, delivery challan, octroi and stock register reflecting such purchases. In response, the assessee produced details of purchase of materials along with name, address of such parties along with tax invoice only. That with regard to purchases from M/s. Siddhivinayak Corporation, it was observed that the assessee submitted tax invoice and no supporting details relating to purchases were produced before the Assessing Officer and further, M/s. Siddhivinayak Corporation was a hawala party as declared by the Sales Tax Department. Therefore, the Assessing Officer held that no genuine purchases

have been made from this party and an amount of Rs.18,84,991/- was disallowed.

4. During First Appellate proceedings, the Ld. CIT(Appeals) also confirmed the addition made by the Assessing Officer.

5. We have perused the case records and analyzed the facts and circumstances in this case. It is alleged that purchases of Rs.18,84,991/- made by the assessee were not genuine purchases mainly because purchase bills were not produced by the assessee and also for the reason that the name of M/s.Siddhivinayak Corporation was appearing in the list of hawala operators as declared by the Sales Tax Department, Maharashtra. The Assessing Officer confirmed the entire purchases as non genuine and this was upheld by the Ld. CIT(Appeals). We find that being similar situation in the case of M/s. Chhabi Electricals Pvt. Ltd. Vs. DCIT in ITA No. 795/PUN/2014 for the assessment year 2010-11, wherein on the same facts and circumstances, we have observed that :

*“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.”*

We, therefore, respectfully, following our above stated decision and appreciating the similar set of facts and circumstances in the present case of the assessee, we hold addition @10% of the alleged hawala purchases, over and above the GP shown by the assessee for the year. We therefore, set aside the order of Ld. CIT(A) and hold as aforesaid.

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

Order pronounced on 18<sup>th</sup> day of March, 2019.

Sd/-  
**R.S.SYAL**  
**VICE PRESIDENT**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 18<sup>th</sup> March, 2019.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-3, Pune.
4. The Pr. CIT-2, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “एक-सदस्य” बेंच, पुणे / DR, ITAT, “**SMC**” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	18.03.2019	Sr.PS/PS
2	Draft placed before author	18.03.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		