

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA Nos.2222 & 2223/PUN/2016
निर्धारण वर्ष / Assessment Years : 2010-11 & 2011-12

Venky's (India) Ltd.,
Venkateshwar House, S.No.114/A/2,
Near Sarada Math,
Pune – Sinhagad Road,
Pune-411030.

PAN : AAACW1300L

.....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Central Circle-1(2),
Pune.

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos.2331 & 2332/PUN/2016
निर्धारण वर्ष / Assessment Years : 2010-11 & 2011-12

DCIT, Central Circle-1(2),
Pune.

.....अपीलार्थी / Appellant

बनाम / V/s.

Venky's (India) Ltd.,
Venkateshwar House, S.No.114/A/2,
Near Sarada Math,
Pune – Sinhagad Road,
Pune-411030.

PAN : AAACW1300L

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak, CA
Revenue by : Shri N. Ashok Babu, (DR)

सुनवाई की तारीख / Date of Hearing : 13.03.2019
घोषणा की तारीख / Date of Pronouncement : 19.03.2019

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

There are two sets of cross appeals (i.e. **four appeals**) for different two assessment years under consideration. All the four appeals filed by

the assessee as well as by the Revenue are against the common orders of CIT(A)-11, Pune dated 29.07.2016 for the Assessment Years 2010-11 and 2011-12 respectively. Since the facts and issues involved in these four cross appeals are common, therefore, all the four cross appeals were heard together and are being disposed of by this composite order.

2. Since the similar grounds raised by the assessee as well as by Revenue in their respective cross appeals, therefore, the grounds raised by the assessee in ITA No.2222/PUN/2016 and by the Revenue in ITA No.2331/PUN/2016 are extracted hereunder for the sake of brevity :-

“ITA No.2222/PUN/2016 (By Assessee):

1] *The learned CIT(A) erred in confirming disallowance @ 20% amounting to Rs.33,93,705/- out of the total purchases made by the appellant company of Rs.1,69,68,524/- from M/s. Ajanta Enterprises on the ground that the said purchases were made from suspicious dealer and hence, disallowance to the extent of 20% on the basis of average gross profit declared by the appellant company was reasonable.*

2] *The learned CIT(A) failed to appreciate that the purchases made by the appellant company from M/s. Ajanta Enterprises were genuine and it had submitted all the documentary evidences to establish receipt and consumption of the material and therefore, such adhoc disallowance to the extent of 20% of the total purchases from the said party was not justified at all and the same should be deleted.*

3] *The learned CIT(A) erred in making disallowance on an adhoc basis on presumptions and surmises when he himself has accepted that the appellant has established the receipt and consumption of the material purchased from M/s. Ajanta Enterprises and accordingly, the disallowance confirmed by him may kindly be deleted.*

4] *Without prejudice to the above grounds, if at all any disallowance is warranted, the appellant submits that the gross profit percentage in this year was 17.75% and the same should be adopted as against 20% applied by the CIT(A) and hence, the addition should be reduced accordingly.*

5] *The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.*

ITA No.2331/PUN/2016 (By Revenue):

1. *Whether on the facts and circumstances of the case, the Ld. CIT(A) erred in holding that the Assessing Officer has not conducted proper*

enquiries for the verification of genuineness or otherwise or these purchases wherein the facts that the purchases were made from the bogus / hawala dealers as per the information received from the Maharashtra Sales Tax Department, even though admitted by the CIT(A) himself that the supplier under reference was not a genuine concern.

2. *Whether on the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs.1,69,68,524/- and upholding only part of this addition @ 20% of the bogus purchases even when the assessee himself accepted that the purchases were made only from M/s Ajanta Enterprises and nowhere else.*

3. *The order of CIT(A) may be vacated and that of the Assessing Officer be restored.*

4. *The Appellant craves leave to add, amend or alter any of the above grounds of appeal.”*

ITA Nos.2222 & 2223/PUN/2016 (By Assessee)

3. First we shall take the appeals of the assessee in ITA Nos.2222 & 2223/PUN/2016 for the assessment years 2010-11 & 2011-12 for adjudication of the preliminary issue.

Preliminary Issue

4. Briefly stated the relevant facts include that the assessee is a company and is engaged in the business of production, trading and sale of one day old chicks, grown-up commercial broiler and layer birds, poultry feed, animal health products, other poultry products, refined oil and de-oiled cake. The assessee filed the return of income declaring total income of Rs.77,28,58,240/- for the assessment 2010-11 and Rs.101,79,52,613/- for the assessment year 2011-12 respectively. Based on the information received from the Sales Tax Department, Maharashtra Government, the Assessing Officer found that the assessee

was a beneficiary of the bogus purchases bills from the entry operators. As per the said information, the assessee was a beneficiary of the bills issued by M/s. Ajanta Enterprises amounting to Rs.1,69,68,524/- for the assessment year 2010-11 and Rs.51,89,957/- for the assessment year 2011-12 respectively. The assessee was asked to explain the same by issue of show-cause notice. As the assessee did not reply to the said show-cause notice, the Assessing Officer finalized the assessment order u/s 143(3) of the Act and added the said addition of Rs.1,69,68,524/- for the assessment year 2010-11 and Rs.51,89,957/- for the assessment year 2011-12 on account of bogus purchases to the returned income of the assessee respectively. Aggrieved with the said decision of the Assessing Officer, the assessee carried the matter before the CIT(A).

5. The CIT(A) after considering the submission of the assessee and relying on various decisions of the Tribunal and the judgements of the Hon'ble High Court, restricted the addition of Rs.33,93,705/- (20% of Rs.1,69,68,524/-) instead of Rs.1,69,68,524/- for the assessment year 2010-11 and the addition of Rs.10,38,000/- (20% of Rs.51,89,957/-) instead of Rs.51,89,957/- for the assessment year 2011-12 respectively and partly allowed the appeals of the assessee.

6. Aggrieved with the said decision of the CIT(A), the assessee as well as the Revenue are in cross appeals before the Tribunal with the above extracted common grounds in their respective cross appeals.

7. Before us, at the outset, ld. Counsel for the assessee submitted that this is a case of involving the issue of bogus purchases and the addition of entire purchases made by the Assessing Officer. The CIT(A) restricted the said addition @ 20% of the entire purchases and partly allowed the appeals of the assessee.

8. At the outset, ld. Counsel for the assessee submitted that the orders of the authorities below 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.”

9. Further, ld. Counsel for the assessee submitted that the disallowance at the rate of 10% towards gross profits should meet the ends of justice.

10. Considering the above facts and submission of the assessee and following the above decision of the Tribunal in the case of M/s. Chhabi Electricals Pvt. Ltd. and others (supra), we are 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 both the assessment years uniformly. This is over and above the net profit shown by the assessee in both the assessment years. Accordingly, the grounds raised by the assessee are partly allowed.

11. In the result, both the appeals of the assessee are partly allowed.

ITA Nos.2331 & 2332/PUN/2016 (By Revenue)

12. In these two appeals of the Revenue, the issues relate to the relief granted by the CIT(A). However, they relate to the bogus purchase. The said issues stand adjudicated by us in the earlier paragraphs of this order vide appeals in ITA Nos.2222 & 2223/PUN/2016 for the assessment years 2010-11 & 2011-12. The issues are decided partly in favour of the assessee. Therefore, the adjudication of the grounds raised by the Revenue in both the cross appeals becomes an academic exercise. Thus, the grounds raised by the Revenue are dismissed as an academic.

13. In the result, the cross appeals of the Revenue are dismissed.

14. To sum up, the appeals filed by the assessee are partly allowed and the cross appeals filed by the Revenue are dismissed.

Order pronounced on 19th day of March, 2019.

Sd/-
(विकास अवस्थी /**VIKAS AWASTHY**)
न्यायिक सदस्य/**JUDICIAL MEMBER**
पुणे / Pune; दिनांक / Dated : 19th March, 2019.
Sujeet

Sd/-
(डी. करुणाकरा राव/**D. KARUNAKARA RAO**)
लेखा सदस्य/**ACCOUNTANT MEMBER**

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-11, Pune.
4. The DGIT (Inv.), Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

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