

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ “एक सदस्य” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE

BEFORE SHRI ANIL CHATURVEDI,
ACCOUNTANT MEMBER

आयकर अपील स / ITA Nos.440 to 442/PUN/2017
निर्धारण वर्ष / Assessment Years : 2009-10 to 2011-12

Jitendra Roopraj Mehta,
302, Murad Society, 586/5/A,
Gultekdi, Market Yard,
Pune – 37.

..... अपीलार्थी /
Appellant

PAN : AFTPM1918B.

बनाम v/s

The Income Tax Officer,
Ward – 5(1), Pune.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri Pramod Shingte.

Revenue by : Shri M.K. Verma.

सुनवाई की तारीख / Date of Hearing : 24.12.2018	घोषणा की तारीख / Date of Pronouncement: 22.03.2019
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. These appeals filed by the assessee are emanating out of common order of Commissioner of Income Tax (A) – 4, Pune dated 15.11.2016 for the assessment years 2009-10 to 2011-12.

2. Before me, at the outset, both the parties submitted that though the appeals filed by the assessee are for different assessment years but the facts and issues involved in all the three appeals are identical except the assessment years and the amounts involved and therefore the submissions made by them while arguing one appeal would be equally applicable to the other appeals also and thus, all the three appeals can be heard together.

In view of the aforesaid submissions of both the parties, I, for the sake of convenience, proceed to dispose of all the three appeals by a consolidated order but however, proceed with narrating the facts in ITA No.440/PUN/2017 for assessment year 2009-10.

3. The relevant facts as culled out from the material on record are as under :-

Assessee is an individual stating to be engaged in the business of trading of computers, parts and accessories. Assessee electronically filed his return of income on 29.09.2009 declaring total income of Rs5,34,620/-. The return of income was initially processed u/s 143(1) of the Act. Thereafter, on the basis of the information received from Sales Tax Department, it was found that assessee had indulged into hawala transactions and was one of the beneficiaries. AO thereafter issued notice u/s 148 of the Act and it is stated to have been served on the assessee. Consequently, the case was taken for scrutiny and thereafter the assessment was framed u/s 143(3) r.w.s. 147 of the Act vide order dated 16.02.2015 and the total income was determined at Rs.8,73,970/-. Aggrieved by the order of AO, assessee carried the matter before LD.CIT(A), who vide consolidated order dated 15.11.2016 for A.Y 2009-10 to 2011-12 dismissed the appeals of the assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal and has raised the following grounds :

“1. On the facts and in the circumstances of the case and in law the learned CIT(A) erred in confirming the addition of Rs.3,39,350/- being 10% of G.P ratio involved in unregistered dealer(URD) purchases of Rs.33,93,506/- over and above the G.P. Ratio of

7.93% declared by the appellant disregarding the undisputed fact that books of accounts of appellant are not rejected and URD purchases and corresponding sales both are already part of the G.P ratio declared by the appellant and hence the addition if any should have been restricted to difference between the G. P as determined by the Assessing officer and G.P already declared by the appellant, as otherwise it amounts to double taxation of the same income.

2. On the facts and in the circumstances of the case and in law Learned CIT(A) erred in dismissing the appeal even though concurring with the appellants contention of decision of **CIT vs. BHOLANATH POLY FAB PVT.LTD.(2012)** 355 ITR 290 (GUJ) that it is the profit element embedded in such URD purchases which is subject to tax and in support himself relied upon a number decisions of Tribunals and High courts whereby G.P addition of 5% to 25% embedded in such purchases was upheld considering the past G.P trend of the Assessee's in those cases, but failed to appreciate the crux of all the decisions that G.P addition in those cases was not over and above the G.P already declared by the assessee.

3. Without prejudice to above grounds, on the facts and in the circumstances of the case and in law the learned CIT(A) erred in confirming the addition of Rs.3,39,350/- as G.P involved in URD purchases, which were originally alleged as bog-us purchases of Rs.33,93,506/- in the reasons recorded while reopening the assessment based on information received from Sales Tax department but were finally determined as purchases from unregistered Dealer (URD) by the assessing officer, without making a distinction between the terms bogus purchases and URD Purchases and rejecting appellants claim that when no addition is made on the ground for which assessment was reopened u/s 147, no other addition can be made by the Assessing officer which did not form part of the reasons recorded by him in view of the decision of Hon'ble Bombay High Court in **CIT Vs. Jet airways(India) Ltd 331 ITR 236** and Gujarat High Court in Tax Appeal No. 964 and 967 of 2011 in matter of **CIT Vs. Mohmed Juned Dadani**, hence beyond Jurisdiction of Assessing officer.

4. Similar grounds have been raised by the assessee in A.Ys 2010-11 and 2011-12.

5. On the basis of information received from Sales Tax Department, it was noticed that assessee had made purchases aggregating to Rs.33,93,506/- in A.Y 2009-10 from 3 parties listed on page 2 of the assessment order. AO was of the view that the purchases made by the assessee from the aforesaid 3 parties were

not genuine and the purchases have been made by the assessee to inflate the expenses/reduce the total income of the assessee. Assessee was asked to prove the genuineness of purchases by producing the original purchase bills, bank account extract and confirmation from the parties. To prove the genuineness, assessee furnished details regarding the purchases, proof of receipt of goods, proof of payment through bank, corresponding sales etc. Assessee however did not furnish the confirmations from the parties from whom the purchases were made. AO therefore concluded the purchases to be not fully verifiable and treated the purchases as "URD purchases". He thereafter relying on the decision of Jaipur Tribunal in the case of ITO Vs Deepak Dalela reported in (50 DTR 502) and after taking into consideration the average gross profit of the assessee for the past three years, made addition of 10% of such purchases and added Rs.3,39,350/-.

As far as A.Y 2010-11 is concerned, AO relying on the decision dated 23.10.2012 of Hon'ble Gujarat High Court in the case of Bholanath Poly Fab Ltd and taking into consideration the Gross profit for the year under consideration of 6.39%, made addition of Rs.5,03,248/- (6.39% of purchases of Rs 78,75,560/-).

As far as A.Y 2011-12 is concerned, AO relying on the decision dated 23.10.2012 of Hon'ble Gujarat High Court in the case of Bholanath Poly Fab Ltd (supra) and taking into consideration the Gross profit for the year under consideration of 8.27%, made addition of Rs 1,89,360/-(8.27% of purchases of

Rs. 22,89,725/-). Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who upheld the order of AO by observing as under:

“5.3 DECISION: - I have perused the assessment order and the submission made by the Ld. AR of the appellant. The AO has reopened the case u/s 147 for all the three Assessment years on the basis of information received from sales tax department regarding alleged bogus hawala purchases from the few parties as stated in reasons recorded by the assessing officer and reproduced by him in the body of the Assessment order. The AO has made addition on the basis of gross profit involved in purchases at 10%, 6.39% and 8.27% amounting to Rs.3,39,350/- for A.Y. 2009-10, Rs.5,3,248/- for A.Y. 2010-11 and Rs.1,89,360/- for A.Y. 2011-12 respectively. The Sales Tax Department had conducted surveys on the various entry providers and it came to light that the purchases amounting to Rs.33,93,506/-, Rs.78,75,560/- and RS.22,89,725/- for the A.Y. 2009-10, A.Y. 2010-11 and A.Y. 2011-12 respectively were purchases which were treated by the Sales Tax Department as in the nature of accommodation bills / hawala transactions.

5.3.1. The Appellant has challenged the act of the AO in reopening the case u/s 147 of the Act on the basis of information received from the Sales Tax Department. In the present case, there being a confirmation from the Hawala Operator against the hawala purchases, such reason, as held by various judicial pronouncements is sufficient to reopen case and as such this contention of the appellant is dismissed:

5.3.2. It is observed that the appellant too, in his return, has disclosed this amount of purchase as URD i.e. from Unregistered Dealers.

5.3.3 There are number of decisions b:- the various courts, wherein 25% to 100% disallowances of bogus purchases have been upheld. Without going to the nitty-gritty of the decisions. some of these arc reproduced as under :

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5.3.4 In view of the foregoing decisions, it is very clear that various courts /Tribunals have held that percentage of disallowance of bogus purchases has to be based on the facts of each case and cannot be generalized in all cases. Moreover, the question whether entire purchases should be disallowed or addition should be restricted to the profits embodied on sale proceeds was answered by Hon'ble Gujarat High Court in the case of CIT us President Industries (258 ITR 654) and Hon'ble Madhya Pradesh High Court in the case of CIT vs. Balchand Ajit Kumar (263 ITR 610). Considering the above decisions, it is clear that only the profits embodied on sale' proceeds should be taxed instead of addition on

account of entire purchases. Looking to the circumstantial evidence in the present case, it is evident that impugned purchases from the alleged suppliers were not genuine. One has to consider the totality of facts, surrounding circumstances and human probability for arriving at such a conclusion. Under such circumstances, I don't find any infirmity in the order of the AO in making an addition assuming GP @ 10% on purchases for A.Y. 2009-10, 6.39% for A.Y. 2010-11 and 8.27% for A.Y. 2011-12. Accordingly, the Ground No.1 raised for all the three A.Ys by the appellant.

Aggrieved by the order of Ld.CIT(A), assessee is now in appeal

6. Before me, Ld AR reiterated the submissions made before lower authorities and pointing to the reasons recorded by the AO for reopening the assessment and which are reproduced by the AO in the assessment order submitted that AO had initiated the reopening the assessment for the reason that assessee had made bogus purchases but however in the reassessment order passed, AO has not treated the purchases as bogus but has treated the purchases as URD purchases without making the distinction between the terms “bogus purchases” and “URD purchases”. He therefore relying on the decision of Hon’ble Bombay High Court in the case of CIT Vs. Jet Airways India Ltd reported in (2011) 331 ITR 236 submitted that if after issuing a notice u/s 148 of the Act, the AO accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment has not escaped assessment, then it is not open to independently assess other income. In the present cases, relying on the aforesaid decision of Hon’ble Bombay High Court, he submitted that for the three assessment years since there is no addition for alleged bogus or non genuine purchases, the addition

made by the AO in all the three assessment years on account of gross profit of URD purchases are beyond the jurisdiction of the AO. On the merits of the addition, he submitted that assessee has maintained complete record of the items purchased and its sale, the payment for purchases are through banking channels, the parties from whom the purchases have been made have valid PAN and GST registration number and assessee has also paid VAT on the purchases made. He therefore submitted that no addition even on merits is called for in the present three cases. Ld DR on the other hand supported the order of lower authorities.

7. I have heard the rival submissions and perused the material on record. The issue raised in all the 3 appeals is with respect to addition made on account of purchases made in the re-assessment order framed u/s 143(3) r.w.s. 147 of the Act. The reasons recorded for reopening as reproduced by the AO in the assessment orders refers to the information received from sales tax department about hawala transactions of purchases made by the assessee amounting to Rs 33.93 lacs (rounded off) in A.Y 2009-10 from the 3 parties noted in the order and the aforesaid purchases being bogus/non genuine. However, finally the AO does not treats the purchases as non-genuine / bogus but makes addition by treating the purchases as "URD purchases". The addition is made only of the Gross profit on such alleged "URD purchases". We find that Hon'ble Bombay High Court in the case of Jet Airways (supra) has held that if after issuing notice u/s 148 of the Act, AO holds that the income which he has initially formed a reason to believe had

escaped assessment has not escaped assessment, then it is not open to him to independently assess some other income. In the present case when seen in the light of the aforesaid decision of Hon'ble Bombay High Court (supra) the reasons for reopening was on account of bogus/non genuine purchases but no addition has been made on that count but addition has been made for the reason that the purchases are "URD purchases". I further find that during the course of reassessment proceedings assessee had furnished the details called for to prove his contention that the purchases are genuine except for the confirmation of the parties from whom the purchases were made. Before me, no fault has been pointed out in those details submitted by the assessee. Considering the totality of the aforesaid facts and relying on the decision of Hon'ble Bombay High Court cited hereinabove, I am of the view that the AO was not justified in initiating the reassessment proceedings. I therefore set aside the assessment orders for all the 3 years. **Thus, the grounds of the assessee are allowed.**

8. In the result, all the three appeals of assessee are allowed.

Order pronounced on 22nd day of March, 2019.

Sd/-

(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 22nd March, 2019.

Yamini

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

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

आदेशानुसार/ BY ORDER

// True Copy //

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