

IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI
BEFORE SHRI R. C. SHARMA, AM AND SHRI AMARJIT SINGH, JM

I.T.A. Nos.7051/M/2017 & 7052/M/2017
(Assessment Years: 2009-10 & 2010-11)

Halan International (Prop. Om Hari Mahabir Prasad Halan) 20, 4 th Floor, Bhatia Niwas, 233/235, Samuel Street, Mumbai-400003.	Vs.	DCIT, Central Circle 5(1) Air India Building Nariman Point 19 th Floor, Mumbai- 21.
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I.T.A. No.6816/M/2017
(Assessment Year: 2010-11)

DCIT, Central Circle 5(1) Air India Building Nariman Point 19 th Floor, Mumbai-21.	Vs.	Halan International (Prop. Om Hari Mahabir Prasad Halan) 20, 4 th Floor, Bhatia Niwas, 233/235, Samuel Street, Mumbai-400003.
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. : AAAPH1353B		
(Appellant)	..	(Respondent)

Assessee by:	Shri D. V. Lakhani & Rohan Shah (AR)
Department by:	Shri Manoj Kumar Singh(DR)

Date of Hearing: 13.03.2019
Date of Pronouncement:...

10/06/2019



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ORDER

PER AMARJIT SINGH, JM:

The assessee as well as the revenue have filed the above mentioned appeals against the different order passed by the Commissioner of Income Tax -53, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the assessment years 2009-10 & 2010-11.

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2. The assessee has filed the present appeal against the order dated 25.09.2017 passed by the Commissioner of Income Tax -53, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the assessment years 2009-10.

3. The assessee has raised the following grounds: -

"On the facts & circumstances of the Ld. Commr. of Income Tax (Appeals) has erred in holding that the notice u/s. 148 was validly issued and the order passed u/s. 43(3) rws 143 is valid and legal order. The appellant prays that the notice issued u/s. 148 is bad in law and the basic conditions of Section 147 are not satisfied. The appellant prays that the order passed by the Learned Assessing Officer and confirmed by the (Appeals) is bad in law and may be set aside.

2. On the facts & circumstances of the case the appellant prays that the basic conditions of issue of notice 147 are not satisfied and notice issued u/s. 148 is bad in law and the order passed by the learned Assessing Officer in reassessment proceedings and continued by the Learned Commr of Income Tax (Appeals) may be set aside.

3. Without prejudice to Ground No. 1 & 2. the learned Commr. Of Income tax (Appeals) has erred in confirming the disallowance amounting to Rs. 5,85,520/, The appellant prays that the decision of the



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Learned Comm. Of Income Tax (Appeals) confirming the addition of Rs.5.85.520/- is erroneous and the said addition may be deleted.

4. On the facts and circumstances of the case the appellant prays that the Learned Commr. Of Income Tax (Appeals) has erred in confirming the addition of Rs.5.85.520/- by making disallowance to the extent of 12.5 per cent of the purchase from M/s. Payal Enterprises, M/s. Shree Trading Corporation and M/s. A-1 Sales Corporation. The appellant prays that the addition made by the Ld. Commr. Of Income tax (Appeals)

5. The Ld. Commr. of Income Tax (Appeals) has erred in confirming the levy of interest u/s 234B. The appellant denies the liability of payment of interest u/s 234B. On the facts & circumstances of the case the appellant prays that the levy of interest u/s 234B is not justified and be deleted.

6. Without prejudice to Ground No. 5 the appellant prays that interest u/s 234B be levied on the final tax liability that may be determined after giving effect to the order of Hon'ble tribunal.

7. The appellant craves leave to add, alter or amend the grounds of appeal which are without prejudice to one other."

4. The brief facts of the case are that the assessee filed his return of income on 03.09.2009 declaring total income to the tune of Rs.1,23,820/-. The assessment was completed u/s 143(3) of the Act determining total income to the tune of Rs.1,23,820/-. Thereafter, an information was received from the office of DGIT (Inv.), Mumbai regarding Hawala Operators and beneficiaries involving huge amounts. The said information was received from the Sales Tax Department who identified such Hawala Operators. The information received from the Sales Tax Department was forwarded to this office in the case of M/s. Halan International who is one of the beneficiary and made purchases from the following parties:-



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S. No.	Name	Purchased from	PAN	Amount
1	Halan International	Payal Enterprises	AAGHB7856M	27,73,680
2	Halan International	Shree Trading Corporation	BZPPS2869L	12,01,200
3	Halan International	A-1 Sales Corporation	ALAPD2195E	7,09,280

Thereafter, the case was reopened by issuance of notice u/s 148. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. Thereafter, the AO also conducted the enquiry but the office of the Hawala Operators were not found, therefore, the AO rejecting the bogus purchases to the tune of Rs.46,84,160/- and added to the income of the assessee u/s 69C of the Act. The total income of the assessee was assessed to the tune of Rs.48,07,980/-. Feeling aggrieved, the assessee has filed an appeal before the CIT(A) and the CIT(A) partly allowed the claim of the assessee and restricted the addition to the extent of 12.5% of the bogus purchase total in sum of Rs.5,85,520/-. Feeling aggrieved, the assessee has filed the present appeal before us.

ISSUE Nos. 1 & 2:-

5. Under these issues the assessee has challenged the notice u/s 148 of the Act. The Ld. Representative of the assessee has argued that the case of the assessee has wrongly been reopened by issuance of the notice u/s 148 of the Act whereas the condition raised therein are not satisfied, therefore, the order passed u/s 147/148 of the Act is not in accordance with law and is liable to be set aside. It is also argued that all the necessary details with regard to the objectionable transaction if



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any, has been given to by virtue of letter dated 04.03.2015 but the same was not properly considered, therefore, the provisions u/s 147/148 of the Act has wrongly been invoked, therefore, the proceeding u/s 147/148 of the Act is liable to be set aside. It is also argued that the said provision was invoked on the basis of information received from the Sales Tax Authorities which is not independently acquired by AO, therefore, in the said circumstances, the proceeding u/s 147/148 of the Act is liable to be set aside. However, on the other hand, the Ld. Representative of the Revenue has refuted the said contention. We noticed that the AO invoked the provision u/s 147/148 of the Act on the basis of the information received from the office of DGIT(Inv.), Mumbai regarding Hawala Operators and beneficiaries involving huge amount. This information was received from the Sales Tax Department who identified such Hawala Operators after carrying proper inquiry. The assessee purchased the material from all the parties mentioned above total in sum of Rs.46,84,160/- The AO conducted the enquiry and also issued the notice u/s 133(6) of the Act which was not served being addressee were not residing there. The AO also sent the Ward, Inspector at the address of the bogus seller/hawala dealer but the hawala dealers were not found there. However, the assessee submitted his explanation by virtue of letter dated 04.03.2015 but the same was not found justifiable by the AO. AO invoked the power u/s 147/148 of the Act on the basis of information received from the Sales Tax Authorities in connection



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with bogus seller/hawala dealer. In this regard, the Hon'ble Jurisdictional High Court of Bombay has decided the matter of controversy in the case of **Shoreline Hotel P. Ltd. Vs. CIT (2018) 98 taxmann.com 234 (Bom)** in which it is specifically held that the AO has justifiably invoked the power on the basis of information received from the Sales Tax Department. However, in that the case CIT invoked the power u/s 263 of the Act but the principle is the same and accordingly, we are of the view that the law settled in the case of **Shoreline Hotel P. Ltd. Vs. CIT (2018) 98 taxmann.com 234 (Bom)** is quite applicable to the fact of the present case, therefore, we upheld the finding of the CIT(A) on these issues. Accordingly, we are of the view that the AO has rightly invoked the power u/s 147/148 of the Act on the basis of the information received from the Sales Tax Department. Accordingly, we decide these issues in favour of the revenue against the assessee.

ISSUE Nos. 3 & 4:-

6. Under these issues the assessee has challenged the confirmation of the addition to the extent of 5,85,520/- i.e. 12.5% of the bogus purchase. The Ld. Representative of the assessee has argued that the assessee earned meager gross profit of 0.30% and net profit on 0.01% on the sales turnover of Rs.92,96,64,130/-, therefore, in the said circumstances, the proportionate disallowance required, hence, the finding of the CIT(A) is not justifiable and is liable to be set aside. On



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the other hand, the Ld. Representative of the Department has strongly relied upon the order passed by the CIT(A) in question. Before going further, we deem it necessary to advert the finding of the CIT(A) on record.:-

“5.5 I have considered the submission of the appellant, carefully. It is seen that the Assessing Officer could not serve notice u/s. 133(6) of the I.T. Act, 1961 on the impugned parties and this fact was brought to the knowledge of the Appellant Company. It is not clear as to why appellant could not furnish the current address of these parties to the Assessing Officer for service of notice u/s.133(6) of the I. T. Act, 1961. This was specifically asked in the appellate proceedings also but the appellant submitted that the party cannot be produced nor could their bank statement be obtained. On the other hand, the assessee has furnished correlation between the purchases and its corresponding sales. The Tax Audit Report shows that quantitative details are maintained. The r appellant is a trader and there are no opening and closing stock. The Assessing Officer has not accepted the contention that there can be no sale without any purchases. He has disallowed the entire purchases. Thus the matter boils down to the quantum of disallowance that should be made in the facts of this case. When the purchases are not absolutely proved it implies that the material may have been obtained from some other source and not from these parties.”

7. On appraisal of the above said finding, we noticed that after the receipt of an information received DGIT(Inv.), Mumbai, the AO issued the notice u/s 133(6) of the Act. Notice received back unserved being the addressee were not residing there. The AO also deputed the ward Inspector who nowhere found the assessee at their address. The assessee also failed to produce the parties before the AO and nowhere filed any confirmation before the AO. The bank-statement of the hawala dealers were also not produced. However, the assessee produced the books of account etc. It is not in dispute that the assessee



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had earned meager gross profit i.e. 0.30% on sale turnover of Rs.92,96,64,130/-. The CIT(A) has decided the case of the assessee on the basis of the decision in the case of **CIT Vs. Bholanath Plyfab Pvt. Ltd. (2013) 355 ITR 290** and in the case of **CIT Vs. Simit P. Sheth (2013) 2019 Taxman 85 (Guj)**. In the above settled law the profit embedded to the transaction was taken into consideration and in these cases, the profit embedded to the transaction was to the extent of 12.5%. In the instant case, the profit is very low. Taking into account, all the facts and circumstances, we are of the view that the end of justice would met if the addition be restricted to the extent of 6% of the bogus purchase. Accordingly, we set aside the finding of the CIT(A) on this issue and restrict the addition to the extent of 6% of the bogus purchase in sum of Rs.46,84,160/-. Accordingly, these issues are decided in favour of the assessee against the revenue.

In the result, the appeal filed by the assessee is hereby partly allowed.

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8. The facts of the present case is quite similar to the fact of the case as narrated above while deciding the appeal of the assessee bearing ITA. No.7051/M/2017 for the A.Y.2009-10. However, the figure is different. There is no need to repeat the fact again. The matter of controversy in these appeals is also the same. The revenue filed the appeal to raise the addition more than 12.5% of addition and



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the assessee filed the appeal challenging the addition which has been restricted to the extent of 12.5%. The matter of controversy has been decided while deciding the appeal in ITA. No.7051/M/2017. Accordingly, the finding given in the said appeals is quite applicable to these appeal also as mutatis mutandis. Accordingly, we dismissed the appeal of revenue bearing ITA. No.6816/M/2017 and restrict the addition to the bogus purchase in the assessee's appeal bearing ITA. No. 7052/M/2017 to the extent of 6% of the bogus purchase. In brief, the appeal of the assessee is partly allowed and appeal of the revenue is hereby dismissed.

9. In the result, appeals filed by the assessee are hereby ordered to be partly allowed and appeal filed by the revenue is hereby dismissed.

Order pronounced in the open court on 10/06/2019.

Sd/-

(R. C. SHARMA)

लेखासदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 10/06/2019.

Sd/-

(AMARJIT SINGH)

न्यायिकसदस्य/JUDICIAL MEMBER

Vijay



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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील)/ The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापितप्रति //True Copy//

(Sr. Private Secretary)

आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai