

आयकर अपीलीय अधिकरण "A" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

**BEFORE SHRI C.N PRASAD, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.478,480 & 481/Mum/2018

(निर्धारण वर्ष / Assessment Year : 2008-09, 2010-11 and 2011-12)

Advance Compseals Private Ltd., 406, Golden Chambers, New Link Road, Andheri(E), Mumbai- 400053	बनाम/ v.	ITO 9(1)(1) Churchgate , Mumbai
स्थायी लेखा सं./PAN: AAECA7292F		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:		Shri. Roshan Ochani (AR)
Revenue by:		Shri. Ajay Ojha (DR)

सुनवाई की तारीख /**Date of Hearing** : 10.07.2019

घोषणा की तारीख /**Date of Pronouncement** : 31.07.2019

आदेश / ORDER

PER BENCH:

These three appeals, filed by assessee, being ITA No. 478,480 to 481/Mum/2018, are directed against three separate appellate orders all dated 15.09.2017 passed in Appeal No. CIT(A)-16/IT-08/ITO-9(1)(1)/2016-17, passed by learned Commissioner of Income Tax (Appeals)-16, Mumbai (hereinafter called "the CIT(A)"), for assessment years (AY) 2008-09 and Appellate order in Appeal No. CIT(A)-16/IT-09/ITO-9(1)(1)/2016-17 for ay: 2010-11 and Appellate order in Appeal No. CIT(A)-16/IT-10/ITO-9(1)(1)/2016-17 for ay: 2011-12, the appellate proceedings had arisen before learned CIT(A) from three separate assessment order(s) all dated 29.02.2016 passed by learned

Assessing Officer (hereinafter called “the AO”) u/s 143(3) r.w.s. 147 of the Income-tax Act, 1961 (hereinafter called “the Act”) for AY’s 2008-09, 2010-11 and 2011-12 respectively. Since common issues are involved and facts are similar in all these three appeal , we will be first taking up appeal filed by the assessee for ay:2008-09.

2. The grounds of appeal raised by assessee in memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called “the tribunal”) in ITA no. 478/Mum/2018 for AY 2008-09, read as under:-

“1. The Ld. AO has Erred in Law and on facts, In reopening of the case U/s 147. He merely relied on the information received from the Maharashtra VAT department and CIT (A) have failed to appreciate the contention of the assessee that AO Could never had "reasons to believe" that income chargeable to tax had escaped the assessment and consequently the reopening is bad in law and ultra-virus. The LD. AO and / CIT (A) failed to appreciate that "suspicious dealers" list by Mvat Dept. do not mean that purchases are bogus.

2. The Lt CIT (A) have Erred in law and on Facts in holding the impugned additions in the assessment year 2008-09. The additions are confirmed without understanding the nature of the business of the assessee. Assessee being trader there cannot be any sale without corresponding purchase and hence it is not possible that the purchase can be bogus.

3. The Ld. CIT(A) failed to appreciate that the material purchased during the year are duly accounted in the book of the Appellant and the same are supported by proper documentary evidences. The said material was subsequently sold by the Appellant and the profit earned thereon is offered for tax. Hence, addition of entire alleged bogus purchases is unjustified and the same may be deleted.

4. The Ld. CIT(A), further, failed to the appreciate that the Ld. A.O. has neither rejected the books of accounts of the Appellant nor pointed any discrepancies in the same. The Ld. A.O. also accepted the sales made during the year. Hence, the Additions made of the purchases in the said circumstances is unjustified and the same may be deleted.

5. The Ld. CIT (A) has erred in Law and on Facts disregarding the entire sets of evidences containing various documents submitted before him before the disposal of the appeal.

6. The Assessee craves leave to add, amend, alter, amend or drop any or all Grounds of appeal at the time of the Appeal proceedings.”

3. The brief facts of the case are that the assessee is engaged in the business of providing customized engineering components and is

also the sole distributor of M/s. Greene Tweed & Co. Pte. Ltd., Singapore & M/s. Astrum (UK) Ltd. catering products for Aerospace, Defence, Fluid Handling (Petrochemicals, Refineries, Fertilisers, etc) , Oil Fields etc.

3.2 The case of the assessee was reopened by the AO u/s. 147 of the 1961 Act based on the information received from Maharashtra VAT Department through DGIT(Inv.) , Mumbai that the assessee is engaged in making bogus purchases wherein bills were obtained from accommodation entry providers without obtaining any material physically. The factum of assessee being involved in bogus purchases/hawala transactions had also came to light during the assessment proceedings conducted by the AO in the case of the assessee for ay:2009-10 .

3.3 The reasons were recorded by the AO for reopening of the concluded assessment by invoking provisions of Section 147 of the 1961 Act, as under:-

"1. The assessee company fled its e-return of income for A.Y. 2008-09 on 08.08.2008 declaring total income of Rs.5,70,300/. The return of income was processed u/s 143(1) on 12.2.2009. No Scrutiny assessment has been completed for the relevant assessment year.

2. During the course of re-assessment proceedings for A.Y. 2009-10 it came to knowledge that the assessee was involved in bogus purchase/hawala transactions during the F.Y.2007-08 relevant to A.Y.2008-09.The assessee was involved in bogus purchase transaction amounting to Rs.1,41,21,236/- during the F.Y.2007-08 relevant to the A.Y.2008-09. The assessee had made these bogus purchase through the following parties.

<i>Sr. No</i>	<i>Name of Hawala Party</i>	<i>Address</i>	<i>TIN</i>	<i>Bill Amount</i>
<i>1</i>	<i>Dharmesh Trading Company</i>	<i>B-203,Ram Tower, Opp. Yogi Nagar, Off. Link Road,Borivali(W, Mumbai</i>	<i>27040154641V</i>	<i>47,03,875</i>
<i>2</i>	<i>Om Enterprises</i>	<i>D-102, Dharma Nagar, Opp. Jayraj Nagar, Off. New Link</i>	<i>27680554123V</i>	<i>45,38,753</i>

		Road, Borivali(W), Mumbai-400091		
3	Meetali Industries	C/1203, Hulas Basti garden Tower, Kandivali(W), Mumbai-67	27420531665V	15,47,025
4	Bharat Industrial Corporation	4, Amartlal Amarchand Bldg, C.O.D.Road, Off Manchhubahi Rd., Malad(E), Mumbai-97	27420502953V	20,64,632
5	Adashwer Traders	15/117A, MHB Colony, Malwani, Malad (W) Mumbai -400095	27600537483V	12,66,951
		Total		1,41,21,236

3. Further on verification of the website of Maharashtra Soles Tax Department (mahavat.gov.in) shows that these parties have been declared as hawala dealers and their TIN have been cancelled.

4. During the course of assessment proceedings for A. Y.2009-10, notice u/s 133(6) of the I.T.Act,1961 were issued to the above parties to verify the genuineness of creditors shown in the name of the above parties which were returned as un-served. This fact was brought to the notice of the assesses and asked to produce the above parties but it has failed to produce the above parties.

5. Further Shri Ashish Bharat Shah, Proprietor of M/s Adashwer Trader filed affidavit on 22.11.2011 before the sales tax department stating that Mr. Sanjay Dhedia was operating above concern & was issuing accommodation bills without effecting any sales or purchase or given/taken physical delivery of goods.

& From the above facts, it is clear that the assessee had booked bogus purchase in its books of account to the tune of Rs.1,41,21,236/- and failed to disclose fully and truly all material facts in respect of purchases necessary for its assessment for the A.Y.2008-09. Thus, the assessee has debited bogus purchase and suppressed the income. In view of the above, I have reason to believe that in the case of the assessee, income chargeable to tax of Rs.1,41,21,236/- has escaped assessment for A.Y.2008-09 within the meaning of sec. 147 of the I.T.Act by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessments and therefore it is a fit case for issue of notice u/s. 148 of the I.T..Act, 1961,because of the failure on the part of the assessee to disclose the fact truly and fully in. its return of income.”

The aforesaid reasons for reopening of the concluded assessments by invoking provisions of Section 147 were furnished to the assessee by the AO, vide letter dated 05.05.2015. Earlier notice dated 09.03.2015 u/s 148 of the 1961 Act was issued by the AO to the assessee which returned unserved by postal authorities. Later , fresh notice dated 23.03.2015 was issued by the AO u/s 148 to the assessee, which was duly served on the assessee. The assessee vide letter dated 24.06.2015 submitted that return of income filed by it on 08.08.2008 represents true and correct return of the assessee for ay: 2008-09.

3.4 The assessee had allegedly made bogus purchases to the tune of Rs. 1,41,21,236/- from following parties, as detailed hereunder:-

Name	TIN	Amount
Dharmesh Trading Company	27040154641V	47,03,875
Om Enterprises	27680554123V	45,38,753
Meetali Industries	27420531665V	15,47,025
Bharat Industrial Corporation	27420502953V	20,64,632
Adashwer traders	27600537483V	12,66,951
Total		1,41,21,236

3.5 During the course of reassessment proceedings conducted by the AO u/s 147 read with Section 143(3) of the 1961 Act , the assessee submitted details of goods purchased from above parties , copies of purchase bills and delivery challans of the above purchase parties only. With respect to the above purchase parties , in order to make further enquiries notices were issued by AO u/s. 133(6) to all the five parties from whom allegedly the assessee made bogus purchases, but these notices returned un-served by postal authorities with remarks 'Not known/left'. The ward inspector was deputed by the AO to serve the

notices u/s 133(6) but none of the concerns were found operating from the given addresses. The AO conducted enquires from the bank of these parties and bank statement of these parties were obtained from the banks directly by the AO in response to the notices issued u/s. 133(6) of the 1961 Act. It was observed by the AO from bank statement of these parties that there were immediate withdrawal of cash/transfer of funds after clearing of the cheques in the said bank accounts. The AO also observed that other parties listed in the list of bogus accommodation entry parties prepared by Maharashtra VAT Department also found mentioned in the bank statements of these parties. The AO observed that this lend credence to the fact that the said bank accounts were not used for any genuine business purposes but merely to give color to bogus transactions. The assessee was asked by the AO to produce the aforesaid parties before it but assessee failed to produce the aforesaid parties before the AO. The assessee had produced before the AO details of purchases, purchase bills, delivery challans and detail of payment made to these parties . The AO observed that there are no signatures of the receiver of the goods and no stamp of receiving party on delivery challans . The AO also observed that there is also no evidence filed with respect to transportation of goods. The AO observed that despite being specifically asked to prove consumption of material, the assessee being manufacture has not produced register wherein details of description and quantity of material purchased, material consumed and details of final products manufactured have been maintained. The AO also observed that the parties namely Dharmesh Trading Company , M/s Bharat Industrial Corporation and M/s Adashwer Traders have accepted before the Sales Tax Authorities that these concerns are not doing any genuine business. The AO also observed that proprietor of M/s Dharmesh Trading Company is also proprietor of M/s Om Enterprises. The AO also observed that the assessee has not made any payments to M/s Bharat Industrial Corporation during the year under consideration. The AO had also observed from the bank accounts of these parties that these parties

have immediately withdrawn/transferred the funds from their bank accounts. The AO made additions to the tune of 100% of the alleged bogus purchases to the income of the assessee vide assessment order dated 29.02.2016 passed by the AO u/s 143(3) read with Section 147 of the 1961 Act.

4. Being aggrieved by assessment framed by the AO vide assessment order dated 29.02.2016 u/s 143(3) read with Section 147 of the 1961 Act, the assessee filed first appeal before learned CIT(A) but despite notices issued by learned CIT(A) for hearing of the appeal filed by the assessee, the assessee did not appear before Ld. CIT(A) who confirmed the additions both on the legal ground as to challenge to reopening of the concluded assessment u/s. 147 of the 1961 Act, as well addition on merit were upheld/confirmed by Ld. CIT(A) vide appellate order dated 15.09.2017.

5. Aggrieved by appellate order dated 15.09.2017 passed by learned CIT(A), the assessee has filed an appeal before the tribunal. Ld. Counsel for the assessee advocate Mr. Roshan Ochani filed an application for adjournment but at the same time it was also stated before the Bench by Ld. Counsel for the assessee Mr. Roshan Ochani that assessee could not produce proper documents before the AO as some of the documents were seized by Sales Tax Department and also that the then counsels of the assessee did not made proper representation before the authorities below, which led to 100% additions being made by the authorities below of the entire alleged bogus purchases. It was explained by the learned counsel for the assessee before the Bench that there was no appearance of the assessee before Ld. CIT(A) as none appeared before the Ld. CIT(A) on behalf of the assessee during appellate proceedings which led Ld. CIT(A) to pass an ex-parte order against the assessee dismissing its appeal. The Ld. Counsel for the assessee had prayed that one more opportunity be granted to the assessee in the interest of justice wherein the statement was made before the Bench by aforesaid learned counsel of the

assessee that the assessee will lead all relevant and credible evidences such as purchases bills, delivery challans, evidences of transportation, stock record , consumption details of the material , correlation with production of final product, excise records etc in order to prove that the purchases made by assessee from these five parties were genuine purchases and no additions were warranted in the hands of the assessee. The Ld. Counsel for the assessee also submitted sample purchases invoices and invoices raised by the assessee for AY 2008-09 along with a chart to correlate purchases with sales to contend its point that purchases are duly reconciled with the sales. Thus, it is prayed by learned counsel for the assessee that if an opportunity is granted to the assessee then the assessee will produce all the relevant documents/ evidences which can then be verified by the authorities below and appropriate orders be then passed on merits in accordance with law. The Ld. DR on the other hand relied upon the appellate order passed by ld. CIT(A) and submitted that appellate order passed by Ld. CIT(A) be upheld.

6. We have considered rival contentions and perused the material on record. We have observed that the assessee is manufacturer and is engaged in the business of providing customized engineering components and is also the sole distributor of M/s. Greene Tweed & Co. Pte. Ltd., Singapore & M/s. Astrum (UK) Ltd. catering products for Aerospace, Defence, Fluid Handling (Petrochemicals, Refineries, Fertilisers, etc) , Oil field etc. . The assessee has , inter-alia , made purchases from following five parties against which information was received by the AO from Maharashtra VAT Department through DGIT(Inv.), Mumbai that these five parties are indulging in issuing bogus purchase bills without supplying any material physically, as under:

Name	TIN	Amount
Dharmesh Trading Company	27040154641V	47,03,875

Om Enterprises	27680554123V	45,38,753
Meetali Industries	27420531665V	15,47,025
Bharat Industrial Corporation	27420502953V	20,64,632
Adashwer traders	27600537483V	12,66,951
Total		1,41,21,236

The factum of these parties being bogus accommodation entry providers also came to notice of the AO during the course of assessment proceedings conducted by the AO for ay: 2009-10. Based on the above tangible incriminating material which came to the notice of the AO, the case of the assessee was reopened by the AO by invoking provisions of Section 147 of the 1961 Act wherein notice dated 09.03.2015 u/s. 148 of the Act was issued by the AO , which was after the end of four years from the end of the ay: 2008-09(However, notices u/s 147 of the 1961 Act were issued within four years from end of ay: 2010-11 and 2011-12) but within six years from the end of the assessment year. The assessee has produced purchase bills, delivery challans , detail of purchases and payments proof , wherein payments towards these purchases were claimed to be made through banking channel. The enquiries were made by the AO by calling information from all these parties directly vide notices issued u/s. 133(6) which returned un-served . The ward inspector who was deputed by the AO to serve notices u/s 133(6) of the 1961 Act also reported to the AO that these parties do not exist at the given addresses. The assessee was asked by the AO to produce these five parties but assessee fails to do so. The assessee being manufacturer was required to produce, inter-alia, consumption records before the authorities below but the assessee failed to produce stock record, consumption details , excise records etc. before the authorities below in order to substantiate that these purchases are genuine. The assessee had also failed to furnish proper delivery challans and evidence of transportation of material . The enquiries made by the AO with the

bankers of these five parties also revealed that these parties had immediately withdrawn cash or transferred funds after deposit of cheques issued by the assessee towards the alleged purchases. Some of the parties have also deposed before Maharashtra Sales Tax department that they were only issuing bogus bills without supplying any material physically. The assessee did not appear before Ld. CIT(A) during course of first appellate proceedings conducted by learned CIT(A). The reasons advanced by learned counsel for the assessee before the Bench is the lapses by the erstwhile counsel who did not made effective representations before the authorities below. The assessee has now filed some sample invoices and chart to co-relate purchases with sales to make view its point that purchases are supported/correlated with sales . These details now filed by the assessee before the Bench requires verification by authorities below as this is filed for the first time before tribunal. The Ld. Counsel for the assessee in his statement made before the Bench has also stated that if one more opportunity is provided to the assessee by setting aside/remanding the matter, the assessee will produce all necessary evidences and records to prove genuineness of these purchases and then authorities below can adjudicate the issues in these appeals on merits in accordance with law. These purchases are appearing in the books of accounts and assessee is claiming deduction of these purchases while computing income of the assessee and thus, onus is on the assessee to prove genuineness of these purchases. These material facts as to genuineness of these purchases are especially within the knowledge of the assessee and it is for the assessee to bring credible evidences and material to substantiate that these purchases are genuine. It is also averred by learned counsel for the assessee that documents relating to these purchases were seized earlier by Sales Tax authorities which also prevented assessee to produce these documents before lower authorities in first round of litigation .The learned counsel has made prayers to set aside and restore the matter to lower authorities to enable assessee to submit all relevant and credible evidences to substantiate its contentions . It is a matter of record that

100% of the alleged bogus purchases stood disallowed by both the authorities below in the absence of stock consumption records/details, proof of delivery/transportation as well receipt of incriminating material from Maharashtra VAT Department that the assessee has made bogus purchases from these parties , but now the assessee has made categorical statements before the Bench through its counsel that if one more opportunity be granted the assessee will lead all evidences including consumption records, proof of delivery, transportation etc to substantiate that these purchases are genuine and then authorities below can decide the issues on merits in accordance with law. Keeping in view entire factual matrix of the case as well statements made by Ld. Counsel for the assessee before the Bench and in the interest of justice , we are inclined to set aside and restore the issues in these appeals to the file of Ld. CIT(A) for fresh adjudication of the issues after considering evidences/contentions filed by the assessee during denovo appellate proceedings. The assessee is directed to file necessary evidences/explanations before the Ld. CIT(A) in its defence which shall be admitted by Ld. CIT(A) in the interest of justice and thereafter adjudicated on merits in accordance with law. These purchases are appearing in the books of accounts of the assessee and the assessee is claiming deduction of these purchases while computing its income , hence onus is on the assessee to prove that these purchases are genuine. Needless to say that proper and adequate opportunity of being heard shall be provided by Ld. CIT(A) to the assessee in de-novo proceedings before learned CIT(A). Needless to say that powers of ld. CIT(A) are co-terminus with the powers of the AO including power of enhancement. The assessee had not appeared before learned CIT(A) in first round of litigation . In case the assessee did not again appear before learned CIT(A) in second round of litigation or did not file credible and relevant evidences to substantiate its contentions, the learned CIT(A) shall be free to decide the issue on merits in accordance with law. We clarify that we have not commented on merits of the issues in this appeal and all the issues are kept open . This appeal filed by the

assessee is allowed for statistical purposes in the manner indicated above. We order accordingly.

7. This appeal filed by the assessee in ITA no. 478/Mum/2018 for AY 2008-09 is allowed for statistical purposes.

8. Our decision in this appeal in ITA no. 478/Mum/2018 for AY 2008-09 shall apply mutatis mutandis to the appeal in ITA no. 480 & 481/Mum/2018 for ay's: 2010-11 and 2011-12 respectively as the facts are similar in these two appeals also. We order accordingly.

9. In the result, all the three appeals in ITA no. 478/Mum/2018 and 480-481/Mum/2018 for AY 2008-09, 2010-11 and 2011-12 respectively are allowed for statistical purposes.

Order pronounced in the open court on 31.07.2019.

आदेश की घोषणा खुले न्यायालय में दिनांक: 31.07.2019 को की गई

Sd/-

(C.N PRASAD)

JUDICIAL MEMBER

Sd/-

(RAMIT KOCHAR)

ACCOUNTANT MEMBER

Mumbai, dated: 31.07.2019

Nishant Verma
Sr. Private Secretary

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

// Tue copy//

BY ORDER

DY/ASST. REGISTRAR
ITAT, MUMBAI