

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI C.N. PRASAD (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 6345/MUM/2018
Assessment Year: 2010-11**

Vinod H. Sanghvi,
C/o. D.C. Bothra & CO. LLP
(CA) (formerly known as
D.C. Bothre & Co.) 297,
Tardeo Road, Wille
Mansion, 1st floor, Opp
Bank of India, Nana Chowk,
Mumbai-400007.

PAN No. AFMPS3101F
Appellant

ITO 19(3)(5), 2nd floor,
MatruMandir, Tardeo Road,
Vs. Mumbai-400007.

Respondent

Assessee by : Ms. Aditi Shroff, AR
Revenue by : Mrs. Samatha Mullahudi, DR

Date of Hearing : 19/09/2019
Date of pronouncement : 30/09/2019

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the assessee. The relevant assessment year is 2010-11. The appeal is directed against the order of the Commissioner of Income Tax-54, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) r.w.s. 147 of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the assessee read as under :

1. That on the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in upholding the validity of the reassessment proceedings initiated u/s 147 by issue of notice u/s 148 on wrong facts and in unlawful manner.
2. That the Ld. CIT(A) has erred in confirming the disallowance of Rs.3,79,245/- being 8% of the trading purchases from the alleged suspicious hawala dealers of Rs.47,40,567/-.

3. Briefly stated, the facts of the case are that the assessee filed his return of income on 30.09.2010 declaring total income of Rs. 14,37,324/-. The assessment was completed u/s 143(3) on 15.03.2013. Subsequently, the Assessing Officer (AO) received information from the Sales Tax Department, Government of Maharashtra that the assessee was involved in availing accommodation entries of bogus purchases from 17 parties amounting to Rs.5,53,69,747/-. On the basis of the said information, the AO re-opened the assessment after recording the reasons. In response to the notice u/s 148 dated 03.11.2014 issued by the AO, the assessee filed a reply dated 03.12.2014 stating that the return already filed be treated as return filed in response to notice u/s 148.

During the course of re-assessment proceedings, the AO issued notice u/s 133(6) to the said parties by speed post. However, the said notices could not be served and were returned un-served by the postal authorities with the remarks 'not known' or 'no such address' or 'left' etc.

Thereafter, the AO gave an opportunity to the assessee *vide* order sheet noting dated 15.03.2016 to establish the genuineness of these parties and the purchases made from them with adequate supporting evidence and also to produce the parties along with books of account. In response to it the assessee filed details viz. copies of purchase invoices of the specified parties; copies of bank statements evidencing payments made through banking channels by issuing account payee cheques in respect of the parties; chart showing the details of purchases of the alleged parties and details in respect of purchases from the said parties and the corresponding sales made out of it.

In the instant appeal, we are concerned with the purchases of Rs.47,40,567/- made from the following parties :

| Sr. No. | Name of Hawala Parties | Amount (Rs.) |
|---------|------------------------------|------------------|
| 1. | Mumbai Metal Corporation | 2,70,608 |
| 2. | P M Steel Alloys | 11, 02,732 |
| 3. | Vijay industries | 6,48,778 |
| 4. | Nerolac Metal (India) | 33,284 |
| 5. | Wel Steel (India) | 23,47,543 |
| 6. | Bhagyalaxmi Steel Industries | 1,60,905 |
| 7. | Malwa Metal Corporation | 1,76,717 |
| | Total | 47,40,567 |

The AO observed that the Sales Tax Department, Government of Maharashtra has conducted independent inquiries in each of these 'non-

genuine' parties and conclusively proved that these parties are engaged in the business of providing accommodation entries only. It is further noted by him that though the assessee was asked to produce the above parties for examination, he failed to do so. Further, the assessee could not file documents such as delivery challans, transport receipts, octroi receipt, receipt of weighbridge, excise gate pass, goods in-ward register etc.

Therefore, relying on the decision in *CIT v. Simit P. Sheth* (2013) 356 ITR 451 (Guj), the AO estimated the profit @ 12.5% on the purchases of Rs.47,40,567/- which comes to Rs.5,92,571/-.

4. In appeal, the Ld. CIT(A) held :

“6.6 In the appellant’s own case similar additions have been made by the Assessing Officers for earlier assessment years, i.e. 2009-10, 2010-11 and 2011-12. On appeal to the ITAT, the Hon’ble ITAT, Mumbai had in the appellant’s own case restricted the addition to 8% of the aggregate value of alleged bogus purchases. In this case, the assessee has shown gross profit (GP) of 21.16% on the alleged non-genuine purchases. The Ld.AO had made an additional disallowance of 12.5% which takes the GP to 33.71% which is very high. In any case, the Hon’ble ITAT for all the three years had restricted the addition on identical facts in the appellant's own case to 8% of the alleged non-genuine purchases. Respectfully, following the decision of the Hon'ble ITAT, the Ld.AO is directed to restrict the addition even for this year to 8% of the alleged non-genuine purchase.”

5. Before us, the Ld. counsel for the assessee files a Paper Book containing copy of the documents which were filed before the AO and

CIT(A). Further, reliance is placed by him on the decision by the Hon'ble Bombay High Court in *Pr. CIT v. M/s Mohommad Haji Adam & Co.* in ITA No. 1004 of 2016. It is thus argued by him that the addition be limited to the extent of bringing the G.P. rate on the disputed purchases at the same rate of other genuine purchases.

Also the Ld. counsel files a copy of the order of the Tribunal in assessee's own case for AYs 2009-10, 2010-11 and 2011-12.

6. On the other hand, the Ld. DR submits that the order of the CIT(A) restricting the disallowance of disputed purchases to 8% be confirmed, as it is based on the facts and circumstances of the case.

7. We have heard the rival submissions and perused the relevant materials on record. The AO has reopened the assessment on the basis of information from the Sales Tax Department, Government of Maharashtra that the assessee has obtained accommodation entries from the said parties. As the information is tangible and was not disclosed earlier by the assessee, the reopening has been validly done by the AO. Thus the 1st ground of appeal is dismissed.

7.1 Now we turn to the 2nd ground of appeal. In the case of *M/s Mohommad Haji Adam & Co.* (supra), the assessee was a trader of fabrics. In that case, the Tribunal restricted the additions limited to the extent of bringing the GP rate on purchases at the same rate of other genuine purchases. In appeal by the Department, the Hon'ble Bombay High Court held that no question of law arises in the above case.

7.2 In the instant case, the assessee is engaged in the business of dealing in ferrous and non-ferrous metals. Similar issue arose before the ITAT 'F' Bench, Mumbai in assessee's own case for AY 2010-11 in ITA No. 126/Mum/2016. The Tribunal *vide* order dated 27.10.2017 held :

"9. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. We have given a thoughtful consideration to the facts of the case and are of the considered view that from a perusal of the records it can safely be gathered that the assessee had failed to substantiate the genuineness and veracity of the purchase transactions under consideration. We are of the considered view that the information received by the A.O from the Sales Tax Authorities, Government of Maharashtra that the parties under consideration were engaged in providing accommodation entries without any actual sale of the goods, as accepted by them in their respective statements and affidavits filed with the sales tax authorities, thus, did cast a very heavy onus on the assessee to substantiate the authenticity of purchases which were claimed by the assessee to have been made from them. We are further of the view that the returning by the postal authorities of the notices issued u/s 133(6) to the aforementioned parties by the A.O, with the remarks "not known", "left" and "unclaimed", further fortified the fact that they were non-existent and bogus parties. We find ourselves to be in agreement with the observations of the lower authorities that even otherwise the assessee had failed to substantiate the genuineness and veracity of the purchase transactions by not only failing to produce the parties for examination before the A.O, but even by failing to place on record irrefutable documentary evidence to substantiate the authenticity of the purchase transactions. We further find that as observed by the A.O, though the assessee had during the course of the assessment proceedings placed on record the copies of the ledger accounts of the aforementioned parties, copies of the purchase bills and the bank statements

indicating payments made to them, but however, despite specific directions the assessee had failed to place on record material as was called for by the A.O to prove the genuineness of purchase transactions to the hilt and dispel the doubts raised as regards the veracity of the same, viz. transportation details, documents evidencing delivery of goods at assesses place, details of the transport contractor who had delivered the goods etc. We are in agreement with the view of the CIT(A) that now when the assessee had claimed to have made purchases from the aforementioned supplier parties and had debited its profit and loss account to the said extent, then, the onus was cast upon the assessee to place on record documents which could go to evidence the genuineness and veracity of the purchase transactions. We are further of the view that now when there were serious allegations in respect of the purchase transactions claimed by the assessee to have been made from the aforementioned parties, therefore, a much more heavy onus was liable to be discharged by the assessee in order to irrefutably evidence the genuineness and veracity of the purchase transactions under consideration. We find that the assessee had failed to substantiate the authenticity of the purchase transactions, and to the extent the material was placed on record by him, the same to our considered view was seriously falling short of the quality of onus which was required to be discharged by him. We have given a thoughtful consideration to the facts of the case and are of the considered view that now when the assessee had failed to discharge the onus as stood cast upon him as regards proving the authenticity of the purchase transactions under consideration, therefore, the same without any choice had been held as ingenuine transactions by the CIT(A). We are further of the considered view that the CIT(A) had fairly concluded that now when the sales of the assessee had been accepted by the A.O, therefore, it could safely be concluded that the assessee had purchased the goods, though not from the aforementioned bogus parties, but from unidentified sources. We are persuaded to be in agreement with the CIT(A) that as the sales of the

assessee had not been doubted, therefore, the A.O could not have made an addition towards peak investment in the hands of the assessee. We agree with the view of the CIT(A) that the addition in the hands of the assessee was liable to be restricted only to the extent of the profit element involved in making of such purchases by the assessee from the unorganized sector. We have further given a thoughtful consideration to the estimation of the profit element involved in making of such purchases by the assessee from the unidentified suppliers operating in the open/grey market. We are of the considered view that the assessee by making the purchases from the open/grey market would had procured the goods at a lower rate, i.e by saving on the VAT liability, cash discounts and certain other factors, as in comparison to the price at which the same would be available in the organized sector. We find that as the VAT involved on ferrous and non-ferrous items during the year under consideration was 4%, therefore, keeping in view the other monetary benefits which the assessee as observed by us hereinabove would had benefited from by procuring the goods from the open/grey market, the same could safely be taken at an aggregate figure of 8%. We thus, in the backdrop of our aforesaid observations direct the A.O to restrict the addition in the hands of the assessee to 8% of the aggregate value of the purchases of 5,47,94,473/- (as tabulated hereinabove) claimed by the assessee to have been made from the aforementioned parties. We thus modify the order of the CIT(A) to the extent of estimation of the profit element involved in making of the purchases under consideration.”

7.3 Facts being identical, assessment year being same, we follow the order of the Co-ordinate Bench in assessee’s own case for the impugned assessment year and uphold the order of the CIT(A) restricting the disallowance to 8% of the disputed purchases.

8. In the result, the appeal is dismissed.

Order pronounced in the open Court on 30/09/2019.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 30/09/2019

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai