

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
SHRI G MANJUNATHA, ACCOUNTANT MEMBER  
ITA Nos. 5272 & 5273/Mum/2018 (AYs : 2010-11 & 2011-12)

Shri Pratap N Rajgor 2 <sup>nd</sup> Floor, Room No.94 Badrika Ashram Bldg 1 <sup>st</sup> Khetwadi Lane, Mumbai-4 PAN: AAAPR7926C	Vs	ITO, Ward.19(2)(5), Matrumandir, Mumbai
<b>APPELLANT</b>		<b>RESPONDEDNT</b>

Appellant by	Shri Prakash Pandit
Respondent by	Shri Akhtar H Ansari
Date of hearing	26-09-2019
Date of pronouncement	01-10-2019

**ORDER**

Per Pawan Singh, Judicial Member:

1. These are two appeals by the assessee are directed against the order of Commissioner of Income tax (Appeals)-2 hereinafter called "Id CIT(A)" dated 14.05.2018 for the assessment years 2010-11 & 2011-12. In both the appeals the assessee has challenged the confirmation of disallowance of alleged bogus purchases @ 12.5% on the impugned/ bogus purchases made from so-called hawala dealers. In both the appeals the assessee has raised identical grounds of appeals; hence, both the appeals were taken up hearing together and are decided by common order. For appreciation of fact the appeals for AY 2011-12 is treated as lead case.

2. The brief facts of the case as taken from appeal for AY 2011-12 are that the case of the assessee was reopened u/s 147 by issue of notice u/s 148 on the basis of information received from DGIT Inv) wherein it was informed that sales-tax department, Maharashtra has identified certain dealers, who were indulging in providing accommodation entries in the form of bogus bills without actual supply of any goods. A list of beneficiaries was also forwarded by the DGIT(Inv). The assessee was one of the beneficiaries of such bogus bills. After supplying the reasons for reopening, the AO proceeded for re-assessment. During the re-assessment, the assessing officer noted that assessee has shown purchases from the following 8 parties:-

Sr.No	Name of Hawala party	Amount Rs.
1	Champion Steel (India)	33,154
2	Shubham Metal Corp	18,80,817
3	Chirag Steel Centre	32,69,098
4	Hans Enterprises	11,26,917
5	Reliable Metal (India)	37,63,500
6	Pushpak Metal Inds	5,86,768
7	Neelam Industries	9,66,318
8	Hirani Metal Inds	14,86,800
	Total	1,31,13,372

3. In order to verify the genuineness of purchases, the AO issued notice u/s 133(6) to all the parties, through registered post at the address provided by the assessee. Notices could not be served on all the parties and were returned back by the postal authorities with the remark, “not known”/ “no such address”/ “left”. The assessee was given opportunity to establish the genuineness of purchases by furnishing

supporting evidences and to produce the parties. The assessee failed to produce the parties. However, the assessee furnished copy of ledger account, purchase bills, bank statement showing that payments were made through banking channel. Thereafter, the assessing officer asked the assessee to furnish the details of invoices, bills, ledger account and transportation of goods / lorry receipts. The assessee filed the quantitative details of purchases and corresponding sales. After examining the evidences furnished by assessee, the AO took his view that the assessee has provided the stock statement and the entries of the alleged purchases, thus, the inevitable conclusion are that the assessee may have purchases from the open market. The AO after taking in account all the facts and the comparative position of trade concluded that the assessee obtained accommodation bills for introducing unaccounted goods in the accounted stream. The AO also rejected the books of account of the assessee. The AO, by making reliance on the decision of Gujarat High Court in case of CIT vs Simit P Sheth ITA No.553 of 2012 order dated 16-01-2013 and CIT vs Bholanath Poly Fab (P) Ltd 355 ITR 290 (Guj) took the view that only profit element embedded in such purchases is to be taken from the said purchases shown by the hawala / nonexistent parties. The assessee has obtained accommodation entries of Rs.131.13 lakhs. Therefore, the AO, considering the margin of profit on such purchases disallowed 12.5%

of the aggregate of purchases which came to Rs.16,39,171/-. On appeal before CIT(A), the action of AO in making addition of 12.5% of the total alleged bogus purchases was confirmed. Thus, further aggrieved by the order of CIT(A), the assessee has filed present appeal before us.

3. We have heard the submissions of the learned authorised representative (AR) for the assessee and the learned departmental representative (DR) for the revenue and also gone through the record carefully. The Ld.AR of the assessee submitted that the lower authorities were not justified in making addition @12.5% of the alleged hawala purchases. The ld. AR for the assessee submits that the assessee has established that the purchases are genuine. The lower authorities have not disputed the sale of the assessee. The books of account were rejected in a mechanical way. If the sale of the assessee was not doubted the purchases cannot be treated as bogus. The ld AR for the assessee submits that the margin profit in the business of trade of ferrous and nonferrous trade is 2 to 2.5% only. The assessee has already declared gross profit @ 3.66%. The ld. AR for the assessee submits that entire disallowance is liable to be deleted. The ld AR for the assessee relied on the decision of Hon'ble Gujarat High Court in the case of Principal CIT v. Tejua Rohitkumar Kapadia 94 taxman.com 324 (Guj). He further submitted that the SLP filed against this judgement was dismissed by the

Hon'ble Apex Court reported in PCIT VS Tejua Rohit Kumar Kapadia (2018) 94 taxman.com 325 (SC). The Ld.AR also relied upon the judgement of Hon'ble jurisdictional High Court in the case of Babulal C Borana vs Third Income Tax Officer [(282 ITR 251) (Bom)]. In alternative submissions the learned AR for the assessee submits that in the recent decision the Hon'ble Bombay High Court in CIT Versus M Haji Adam & Co in ITA No. 1004 of 2016 dated 11<sup>th</sup> February 2019 held that addition in respect of bogus purchases is to be limited to the extent of bringing the gross profit rate on such purchases at the same rate as of other genuine purchases.

4. The Ld. DR, on the other hand, submitted that Investigation Wing of Income-tax department made a full-fledged enquiry. The parties from whom the assessee has shown purchases are bogus hawala dealers. The hawala dealers were indulging in issuing bogus bills without delivery of any material or goods. The assessee obtained accommodation bills in order to inflate the expenses to bring down the profit in order to avoid the payment of genuine tax. The lower authorities have already given substantial relief to the assessee.
5. We have considered the rival submissions of the parties and have gone through the orders of the lower authorities carefully. Perusal of records reveals that the assessee has not challenged the validity of re-opening

before the Ld. CIT(A) hence, the issue of reopening attained finality. The assessee has only challenged the quantum of addition made by the AO. We have further noted that on the basis of information and examining the list of beneficiaries, the AO identified that assessee has shown purchases from 10 parties mentioned above. In order to verify the genuineness of purchases, the AO issued notices to the parties. However, none of the parties could be served with the notice and the notices were returned by the postal authorities. The assessee was given opportunity to establish the genuineness of purchases by furnishing supporting evidences and to produce the parties. The assessee failed to produce the parties. However, the assessee furnished copy of ledger account, purchase bills, bank statement showing that payments were made through banking channel. The assessing officer asked the assessee to furnish the details of invoices, bills, ledger account and transportation of goods / lorry receipts. The assessee filed the quantitative details of purchases and corresponding sales only no receipt of transportation or delivery of goods was furnished. After examining the evidences furnished by assessee, the AO took his view that the assessee has provided the stock statement and the entries of the alleged purchases, thus, the inevitable conclusion are that the assessee may have purchases from the open market. The AO after taking in account all the facts and the comparative position of trade concluded

that the assessee obtained accommodation bills for introducing unaccounted goods in the accounted stream. The AO also rejected the books of account of the assessee. The AO, by making reliance on the decision of Gujarat High Court in case of CIT vs Simit P Sheth ITA No.553 of 2012 order dated 16-01-2013 and CIT vs Bholanath Poly Fab (P) Ltd 355 ITR 290 (Guj) took the view that only profit element embedded in such purchases is to be taken from the said purchases shown by the hawala / non-existent parties. The assessee has obtained accommodation entries of Rs.131.13 lakhs. Therefore, the AO, considering the margin of profit on such purchases disallowed 12.5% of the aggregate of purchases which came to Rs.16,39,171/-. On appeal before CIT(A), the action of AO in making addition of 12.5% of the total alleged bogus purchases was confirmed by holding the AO has done fair and just estimation on the alleged bogus purchases.

6. Recently the High Hon'ble Bombay High Court in CIT versus Mohd. Haji Adam & Co. (supra) held the addition in respect of bogus purchases to be limited to the extent of bringing the gross profit rate on such purchases at the same rate as of other genuine purchase. Respectfully following the decision of the Hon'ble Bombay High Court as referred above, we set aside the matter to the file of assessing officer with the direction to restrict the addition with regard to the bogus purchases by bringing the gross profit rate on such bogus

purchases as the same rate as that of other genuine purchases. Needless to order that before passing order on our direction the assessing officer said Grant opportunity of hearing to the assessee and would pass the order in accordance with law. In the result the appeal of the assessee is partly allowed.

**ITA No. 5273/Mum/2018 for Ay 2010-11**

7. The facts and circumstances being pari material, the decision arrived at against appeal in ITA No.5272/Mum/2018 applies mutatis mutandis to this appeal also.
8. In the result, both the appeals of the assessee are partly allowed

Order pronounced in the open court on 01-10.2019.

Sd/-

Sd/-

(G.Manjunatha)	(Pawan Singh)
ACCOUNTANT MEMBER	JUDICIALMEMBER

Mumbai, Dt : 1<sup>st</sup> October, 2019

Pk/-

sCopy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Asstt. Registrar, ITAT, Mumbai