

IN THE INCOME-TAX APPELLATE TRIBUNAL “SMC” BENCH MUMBAI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH JUDICIAL MEMBER
ITA No. 5332/Mum/2018 (Assessment Year 2009-10)
ITA No. 5333/Mum/2018 (Assessment Year 2010-11)

DCIT Circle-1 Room No. 22, B-Wing, 6 th Floor, Ashar IT Park, Road No.16Z, Wagle Industrial Estate, Thane(W)-400604	Vs.	M/s Asian Hardware and Tools, Jambhli Naka, Gandhi Chowk, Thane (West)-400601. PAN: AAEFA7273M
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Appellant

Respondent

Appellant by

: Shri Akhtar H. Ansari (DR)

Respondent by

: None

Date of Hearing

: 03.10.2019

Date of Pronouncement

: 03.10.2019

ORDER UNDER SECTION 254(1) OF INCOME TAX ACT

PER PAWAN SINGH, JUDICIAL MEMBER;

1. These two appeal by revenue are directed against the consolidated order of Id. CIT(A)-3 Nasik (Camp office Thane) dated 15.06.2018 for Assessment Year 2009-10 & 2010-11. In both the appeals, the revenue has raised identical grounds of appeal. Facts for both the Assessment Years are identical, therefore, both the appeals were clubbed, heard together and are decided by common order. For appreciation of fact, the appeal for Assessment Year 2009-10. Though the revenue has raised as many as seven grounds of appeal, however, in our considered view, the only substantial ground of appeal is whether the Id. CIT(A)

was not justified in restricting the disallowance of bogus purchases to the extent of 12.5% of bogus/hawala dealers/non-existent vendors.

2. Brief facts of the case are that the assessee-firm is engaged in the business of Trading in Hardware, filed its return of income for Assessment Year 2009-10 on 30.09.2009 declaring total income of Rs. 16,32,700/-. The return of income was processed under section 143(1). The assessment was re-opened under section 147 on the basis of information received from Sale Tax Department, Government of Maharashtra that certain hawala operators are indulging in providing accommodation bills without actual delivery of goods. The Sale Tax Department, Government of Maharashtra referred the list of such hawala dealers and the beneficiary to the DGIT (Investigation), Mumbai. The name of assessee appeared in the list of beneficiary. The assessee allegedly made the purchases of Rs. 2,76,275/- from M/s Sachi Mercantile Pvt. Ltd., whose name were included in the list such hawala dealer. On the basis of information, the Assessing Officer made a belief that the income of the assessee escaped assessment, therefore, re-opened the assessment under section 147. Notice under section 148 was issued to the assessee. The assessee vide its letter dated 16.10.2014 stated that the return originally filed on 30.09.2009 may be treated as return in response to the notice under section 148. The Assessing Officer after serving notice under section 143(2)

proceeded for re-assessment. During the assessment, the Assessing Officer noted that the assessee has shown purchases of Rs. 2,76,275/- from the following party, which was declared as hawala dealers by the Sale Tax Department, Government of Maharashtra.

	Name of the party	Bill amount (Rs.)
1	M/s Sachi Mercantile Pvt. Ltd.	2,76,275/-

3. The Assessing Officer in order to verify the transaction issued notice under section 133(6) to M/s Sachi Mercantile Pvt. Ltd. The notice sent through registered post was returned back with the remark "Left". The assessee was asked to produce the party and substantiate the purchases. The Assessing Officer after considering the report of Investigation Wing of Sale Tax Department disallowed the entire purchases shown from Sachi Mercantile Pvt Ltd. in assessment order dated 31.10.2014 passed under section 143(3) r.w.s 147.
4. On appeal before the Id. CIT(A), the Id. CIT(A) restricted the addition to the extent of 12.5%. The Id. CIT(A) while restricting the disallowances relied upon the decision of Hon'ble Gujarat High Court in case of Simith P. Seth (356 ITR 451). The Id. CIT(A) also concluded that assessee might have made the purchases from grey market, operating in the grey market leads to various savings on account of non-payments of various taxes by use of unaccounted money and on such purchases, when sales are not disputed, the

reasonable disallowances should be considered to avoid the revenue leakage. Thus, aggrieved by the order of Id. CIT(A), the revenue has filed the present appeal before us.

5. None appeared on behalf of assessee despite the service of notice of hearing of this appeal. Thus, we left no option to hear the submission of Id. DR and to decide the appeal on the basis of material available on record.
6. We have heard the submission of Id. Departmental Representative (DR) for the revenue and perused the material available on record. The Id. DR for the revenue supported the order of Assessing Officer. The Id. DR further submits that Investigation Wing of Income-tax Department has made full-fledged investigation in respect of hawala traders. The hawala traders were/are engaged in providing bogus bill without actual delivery of goods. The assessee has shown bogus purchases only to inflate the profit. The Id. DR for the revenue submits that the Assessing Officer has brought sufficient material on record to prove that the purchases shown by assessee were bogus. The assessee is not entitled for any relief.
7. We have considered the submissions of Id. DR for the revenue and perused the record. The Assessing Officer made the disallowance of 100% of the alleged bogus purchases. The Assessing Officer has not disputed the sales of the assessee. The Assessing Officer solely relied

upon the report of Investigation Wing of Sale Tax Department. Before the Id. CIT(A), the assessee urged that the purchases shown by assessee are genuine. The payments of purchases were made through account payee cheques. The goods were received by assessee and quantitative details and corresponding sales were shown to the Assessing Officer. Though, the assessee fairly stated that they are unable to produce the supplier for verification. It was also urged that the assessee has paid sale tax on behalf of the dealers and relied upon the decision of Hon'ble Gujarat High Court in Simith P. Seth (supra). The Id. CIT(A) after considering the material placed before him and the ratio of the decisions including the decision of Simith P. Seth (supra) concluded that it has been held by various Courts that where assessee could show that he has made purchases and there are corresponding sales against the purchases, in such circumstances, it is appropriate to tax the possible profit of such purchase from non-genuine parties. Accordingly, the Id. CIT(A) restricted the disallowance to 12.5% of the purchases of Rs. 2,76,275/-. We have noted that the Id. CIT(A) after considering the material and the various decision of superior courts arrived on a fair conclusion, which we affirm. Even otherwise the revenue authority is required to tax the profit earned by the assessee on such bogus purchases and not the

entire transaction. The ld. DR for the revenue failed to bring any contrary decision to our notice to take any other view.

8. In the result, appeal of the revenue is dismissed.

ITA No. 5333/Mum/2018 A.Y. 2010-11

9. As we have noted above, the revenue has raised the identical grounds of appeal as raised in appeal for Assessment Year 2009-10. The disallowance made by Assessing Officer on account of alleged bogus purchases from the same similar other alleged hawala dealer. Considering our order for Assessment Year 2009-10 on similar ground, the appeal for the year under consideration is also dismissed with similar direction.

10. In the result, appeal of the revenue for both the AY's are dismissed.

Order pronounced in the open court on 03/10/2019.

**Sd/-
SHAMIM YAHYA
ACCOUNTANT MEMBER**

**Sd/-
PAWAN SINGH
JUDICIAL MEMBER**

Mumbai, Date: 03.10.2019

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Copy of the Order forwarded to :

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| 1. Assessee | 2. Respondent |
| 3. The concerned CIT(A) | 4. The concerned CIT |
| 5. DR "SMC" Bench, ITAT, Mumbai | |
| 6. Guard File | |

BY ORDER,

**Dy./Asst. Registrar
ITAT, Mumbai**