

आयकर अपील अाधिकरण, अहमदाबाद ढयायपीठ  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
"C" BENCH, AHMEDABAD

BEFORE, SHRI WASEEM AHMED, ACCOUNTANT MEMBER

And

Ms. MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./ITA No.3024/AHD/2015

अाधारण वष/Asstt. Year: 2011-12

SandeepKumar S. Chandak, Pro. Of Dev Metal Coporation, 91-95, Mukund Bhavan, Off No.18, 1 <sup>st</sup> Floor, 3 <sup>rd</sup> Kumbharwada, Mumbai.  PAN: AFKPC4880P	Vs.	The I.T.O, S.K. Ward-1, Himatnagar.
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(Applicant)		(Respondent)
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Assessee by :	Shri Tushar Hemani, A.R
Revenue by :	Shri L.P. Jain, Sr.DR

सुनवाई का तारख/Date of Hearing : 07/08/2019

घोषणा का तारख /Date of Pronouncement: 22/10/2019

**आदेश/O R D E R**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals)-2, Ahmedabad [Ld.CIT(A) in short], dated 28/08/2015 arising in the matter of assessment order passed under s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dated 16/02/2015 relevant to Assessment Year (A.Y.) 2011-12.

2. The assessee has raised as many as 20 grounds of appeal but the effective issue relates to the purchases made by the assessee amounting to Rs. 55,61,085.00 only which were treated as bogus. For the sake of brevity and convenience, we are not inclined to reproduce the grounds of appeal raised by the assessee in the memo of appeal.

3. Briefly stated facts are that the assessee in the present case is an individual and engaged in the business of trading of ferrous and non-ferrous metals. The assessee is running his proprietorship firm under the name and style of M/s Dev metal Corporation. The assessee inter-alia has shown purchases during the year from the parties as detailed under:

<i>Sr.No.</i>	<i>Name of the dealer</i>	<i>Purchasing Amt.</i>
1.	<i>Avinash Enterprise</i>	<i>Rs.2,72,503/-</i>
2.	<i>Fasto traders</i>	<i>Rs.8,54,010/-</i>
3.	<i>Henil Sales Agency</i>	<i>Rs.10,52,830/-</i>
4.	<i>Maruti Impex</i>	<i>Rs.15,68,057/-</i>
5.	<i>Raj Gala Traders Pvt. Ltd.</i>	<i>Rs.3,10,986/-</i>
6.	<i>Vatika Metal Pvt. Ltd.</i>	<i>Rs.15,02,699/-</i>
<i>Total</i>		<i>Rs.55,61,085/-</i>

3.1 The assessee has also shown sales in the year under consideration to the parties as detailed under:

<i>Sr.No.</i>	<i>Name of the Party</i>
1.	<i>True Fab Engineers (P) Ltd</i>
2.	<i>Sky Forge Pvt. Ltd</i>
3.	<i>S &amp; G Engineers Pvt. Ltd.</i>
4.	<i>Asi Engineers Pvt. Ltd.</i>
5.	<i>Sempitern India</i>

6.	<i>True Forge Pvt. Ltd.</i>
7.	<i>Uttam Industries Engineering Ltd.</i>
8.	<i>Nataraj Machinery Pvt. Ltd</i>
9.	<i>Web Tech Engineering Pvt. Ltd.</i>
10.	<i>Sidharth and Goutam Engineers</i>

3.2 The assessee has also claimed to have availed the services of certain transporters as detailed under:

<i>Sr.No.</i>	<i>Name of the transporter</i>
1.	<i>Mahalaxmi Road Carrier</i>
2.	<i>Uttam Cargo Management Services</i>
3.	<i>Jaipur Golden Transport Co. Pvt. Ltd.</i>

4. However, the AO during the assessment proceedings observed certain facts as enumerated below:

- i. There was the information received from the Maharashtra sales tax department that the assessee during the year has made bogus purchases from the parties as mentioned above amounting to Rs. 55,61,085.00 only.
- ii. Notices were issued under section 133(6) to the parties from whom the assessee has made purchases, to whom the sales has been made and the transporters involved with the assessee. But in case of purchases, all the notices remain unserved with the remark 'unknown'. Similarly, in case of other parties being sales parties and the transporters, either the notices were unserved or there was no response from any of them except in case of one transporter who sought the **bilti** detail from the AO.

- iii. There was also some difference between the amount of VAT paid by the assessee in the VAT return and shown in the income tax return.
- iv. As the purchases were not genuine and therefore the sales shown by the assessee is also doubtful.

In view of the above, the AO issued a final show cause notice to the assessee dated 9<sup>th</sup> January, 2015 for seeking clarification on the observations as discussed above.

5. The assessee in response such notice submitted that all the purchases are supported by invoices, containing delivery challans and the payments have been made through account payee cheque. The time when the purchases were made, the impugned parties were operating from the places as mentioned in the invoices but the latest addresses are not available.

5.1 The details of the parties to whom the sales were made for the goods purchased as discussed above, have already been furnished. Such parties, on verbal communication, have assured to send the requisite information in the due course of time. There was the change in the address of the 2 parties, accordingly the assessee furnished the new addresses of such parties.

5.2 The reminder notices can be sent to the transporters who have not replied in response to the notices issued under section 133(6) of the Act along with the details as sought by one of the transporter.

5.3 The assessee also claimed that the sales cannot be made without having the purchases. Therefore, there is no question of treating the purchases as

bogus. All the purchases and sales are supported by the invoices and the payments for the same were carried out through the banking channel.

5.4 The amount of gross profit out of such purchases and sales has already been disclosed in the audited books of accounts and the same has been offered to tax in the income tax return.

5.5 The assessee also claimed that the details of the notices and corresponding reply under section 133(6) of the Act from the parties were not made available for the rebuttal.

5.6 However, the AO disagreed with the contention of the assessee by observing that none of the purchase party was served the notice issued under section 133(6) of the Act. Therefore, the purchases as claimed are not genuine as these were made from the non-existent parties.

5.7 It was the duty of the assessee to collect the details of the notices issued and the replies in response to such notices issued under section 133(6) of the Act on making the payment of the requisite fees.

5.8 The payment against the purchases was not made in any of the case during the year under consideration. As such the payment was made in the subsequent year.

In view of the above and after considering the information received from the Maharashtra sales tax department, the AO held that the impugned purchases of Rs. 55,61,085.00 are bogus. Accordingly, the AO disallowed the same and added to the total income of the assessee.

The aggrieved assessee preferred an appeal to the learned CIT (A).

6. The assessee before the Ld. CIT(A) claimed that he has shown sales against such purchases in the books of accounts which have not been disturbed by the AO. In case the purchases are treated as bogus then the assessee should be entitled for the deduction of the sales made against such purchases. All the purchases were supported based on the invoices, transporters receipts which were duly recorded in the books of accounts. The sundry creditors for the purchase were made the payment through the banking channel which was not disputed by the revenue.

6.1 The books of accounts were duly accepted by the AO during the assessment proceedings. As such, had there been purchases from the non-existent parties or representing the bogus purchases, the AO was empowered to reject the books of accounts but he has not done so.

7. However, the Ld.CIT (A) disagreed with the contention of the assessee by observing that the onus lies on the assessee to prove his stand that the impugned purchases were from the genuine parties. Therefore, the obligation lies on the assessee to produce the parties from whom the purchases were made in the year under consideration. In view of the above, the Ld. CIT(A) treated the entire amount as bogus purchases and confirmed the order of the AO.

Being aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

8. The Ld. AR before us filed a paper book running from pages 1 to 60 submitted that the AO and the Id. CIT-A failed to appreciate that purchases made by assessee from the parties are absolutely genuine as evident from the books of accounts are duly audited and the tax audit report with the financial statement is placed at pages 43 to 50 of the paper book.

8.1 The documentary evidences amply prove the purchases made from the parties in question are absolutely genuine. Hence, question of making any disallowance in respect of the same does not arise at all.

8.2 Learned A.R further submitted that the corresponding ~~sales~~ have not been disputed. Thus, the factum of sales made by the assessee has not been doubted by AO at all. If the assessee had not made the underlying purchases, it would have been possible for assessee to make the corresponding sales. This shows that goods have undoubtedly been purchased by the assessee. Hence, no case of bogus purchases can be made out.

8.4 Alternatively, it is a normal practice whereby purchases are actually made from unregistered dealers or other suppliers who do not issue any bills and hence, to regularize such bills, accommodation bills are obtained. But such purchases of the goods by itself doesn't render concerned purchases as bogus. In such scenario, addition should be confirmed based on some reasonable estimate.

9. On the other hand, the Ld. DR before us vehemently supported the order of the authorities below.

10. We have heard the rival contentions of both the parties and perused the materials available on record. The AO in the instant case has treated the purchases from the 6 parties as discussed above as bogus purchases. The primary reason for treating such purchases as unexplained expenses that these parties were declared bogus by the Maharashtra Vat Department as providing Hawala entries.

10.1 Subsequently, the Ld. CIT(A) confirmed the order of the AO by observing that the onus lies on the assessee to justify the expenses incurred by him by producing the parties besides the documentary evidence.

10.2 From the preceding discussion we also note that the assessee has claimed to have made sales against such purchases which have been admitted by the Revenue. As such in our considered view, such sales cannot be executed without having the corresponding purchases. There was no defect pointed out by the authorities below insofar the sales made against such purchases. Moreover, there is also no allegation regarding the genuineness of the books of accounts which were duly audited under the Income Tax Act.

10.3 However, before parting we cannot ignore the practice prevailing in the business industries to purchase the goods from the grey market and subsequently justify such purchases by obtaining a purchase bill from the parties engaged in providing accommodation entries. It is because the assessee in the present case has claimed to have purchased the goods from the parties not having valid VAT/CST registration certificate though he is claiming to have purchased goods from the registered party. Moreover, there was no submission from the side of the assessee against the finding of the Maharashtra Sales Tax Department wherein it was alleged that the parties are

not genuine. In view of the above, we can presume that the actual purchases were made by the assessee from the grey market but shown in the name of impugned parties.

10.4 We are also conscious to the fact that the assessee has already declared the GP in its books of accounts by recording the sales and the corresponding purchases. But to prevent the possible leakage of the Revenue, as the purchases from the local/grey market is normally cheaper, we are inclined to make the ad hoc addition at the rate of 5% of such purchases in order to meet the end of justice and to stop the ongoing dispute. In holding so, we find support and guidance from the judgment of ITAT Ahmedabad in case of ITO vs. Sun steel reported in 92 TTJ 1126 wherein it was held as under:

*“At the most it, can be presumed that the assessee did not make purchases from above parties but made from other unregistered dealer and got benefit of margin of purchases from unregistered dealer. We find that to that extent an estimation of profit can be made which will be fair and reasonable under the facts and circumstances of the case. Therefore, for the above purposes we estimate Rs. 50,000 and accordingly the- order of the CIT(A) is modified and the addition to the extent of Rs. 50,000 is sustained and balance addition of Rs. 26,89,407 is deleted out of the total addition made of Rs. 27,39,407.”*

In view of the above, we direct the AO to make the ad-hoc addition on such purchases as discussed above. Hence the ground of appeal of the assessee is partly allowed.

10.5 The assessee has raised the additional ground of appeal vide letter dated NIL which was received dated 19-3-2019 as detailed under:

*The appellant, through oversight, could not raise in the original appeal memo, the following legal ground of appeal and therefore, appellant now craves leave to raise this additional ground of appeal before this Hon'ble ITAT. This, being a legal ground, can be raised before Hon'ble the ITAT as per decision of Hon'ble Supreme Court in the case of “National Thermal Power – 229 ITR 383.”*

1. *On the facts and circumstances of the case, the Assessing Officer was not justified in reopening the assessment under section 147 of the Act.*

*Appellant craves leave to add, amend, alter, change, delete and edit the above ground of appeal before or at the time of the hearing of the appeal.*

11. At the outset Learned Counsel appearing for the assessee did not press the additional ground of appeal raised by the assessee. Hence the same is dismissed as not pressed.

12. In the result the appeal of the assessee is partly allowed.

**Order pronounced in the Court on 22/10/2019 at Ahmedabad.**

**-Sd-  
(Ms MADHUMITA ROY)  
JUDICIAL MEMBER**

**(True Copy)**  
Ahmedabad; Dated 22/10/2019  
*Manish*

**-Sd-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**