

IN THE INCOME-TAX APPELLATE TRIBUNAL "SMC" BENCH MUMBAI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH JUDICIAL MEMBER

ITA No. 5358/Mum/2018 (Assessment Year 2009-10)

ITO 22(1)(2) Room No. 313, Piramal Chambers, Lalbaug, Mumbai-400012	Vs.	Shri Deepak Navnitlal Shah (Prop. Of M/s Rajdeep Traders 2, Maheshwar Kunj, Saraswati Road, Santacruz (W), Mumbai- 400054. PAN: AAEPS9982R
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Appellant

Respondent

ITA No. 5375/Mum/2018 (Assessment Year 2009-10)

Shri Deepak Navnitlal Shah (Prop. Of M/s Rajdeep Traders 2, Maheshwar Kunj, Saraswati Road, Santacruz (W), Mumbai- 400054. PAN: AAEPS9982R	Vs.	ITO 22(1)(2) Room No. 313, Piramal Chambers, Lalbaug, Mumbai-400012
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Appellant by

: Shri Akhtar A. Ansari (DR)

Respondent by

: Shri Haresh Purushottamdas Shah
(AR)

Date of Hearing

: 09.10.2019

Date of Pronouncement

: 09.10.2019

ORDER UNDER SECTION 254(1) OF INCOME TAX ACT

PER PAWAN SINGH, JUDICIAL MEMBER;

1. These cross appeal are directed against the order of Id. CIT(A)-34, Mumbai dated 26.06.2018 for Assessment Year 2009-10. The revenue in its appeal has raised the following grounds of appeal:

(1) "Whether on the facts and in the circumstances of the case and in-law, the learned CIT(Appeal) was right in deleting addition made in respect of purchase from M/s C.R. Enterprises as bogus purchases, merely on the ground that the said party has filed confirmation of sales, however the

assessee clearly failed in establishing the genuineness of purchases before AO during assessment proceedings".

(2) " Whether on the facts and in the circumstances of the case and in-law, the learned CIT(Appeal) was right in considering the confirmation of sales from M/s C.R. Enterprises, however the AO has not stated about such confirmation in the assessment order and thus the Ld. CIT(A) has violated the provisions of Rule 46A of the Income Tax Act Rule".

(3) " On the facts and in the circumstances of the case in law, the Ld .CIT(A) failed to appreciate the fact that onus is on the assessee to explain and substantiate the genuineness and true nature purchase transaction".

(4) The appellant prays that appeal is being filed because it covered under exception provided in the para 10(e) of the amended instruction no. 3 of 2018 dated 20.08.2018.

(5) The appellant prays that the order of the CIT(A) on the above ground to be reversed and that of the Assessing Officer be restored.

2. The assessee in its cross appeal has raised the following grounds of appeal:

(I) ON REOPENING & VALIDITY OF REASSESSMENT-

(1) On the facts and in the circumstances and in law, the learned CIT(A)-34, Mumbai [referred as "CIT(A)"] erred in confirming reopening under the provisions of section 147 of the Act.

(2) On the facts and circumstances and in law, the Learned CIT(A) erred in confirming reassessment without considering or disregarding that the mandatory notice under section 143(2) of the Act for the reassessment was not served.

(3) On the facts and circumstances and in law, the Learned CIT(A) erred in confirming the alleged addition without appreciating that neither relevant material received from the Sales Tax Dept was provided nor any opportunity was granted.

(4) On the facts and circumstances and in law, it is prayed that the impugned reassessment order may be quashed as there was reason to believe within the meaning of section 147 of the Act.

(II) ON ADDITION OF RS. 3,93,051/- BEING DISALLOWANCE @ 12.5% OUT OF ALLEGED PURCHASES OF RS. 31,44,408/- FROM HAWALA DEALERS.

(1) On the facts & circumstances and in law the learned CIT(A) erred in confirming the disallowance of Rs. 3,93,051/-@12.5%, on ad-hoc basis, out of purchases from the alleged hawala dealers [as per the sales tax authority] merely on the basis of suspicion, surmises or conjecture.

(2) On the facts and circumstances the learned CIT(A) failed to appreciate that the basis of alleged addition was purely upon the undisclosed information from the office of DGIT (Inv), Mumbai.

(3) On the facts and circumstances Your Appellant prays that the alleged addition of Rs. 3,93,051/- may be deleted & oblige.

3. Brief facts of the case are that the assessee is engaged as a dealer and broker in mild steel, filed its return of income for Assessment Year 2009-10 on 12.08.2009 declaring total income of Rs. 2,83,158/-. 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. 31,44,408/- from C.R. Enterprises, Arihant Traders and Hazi Rajbali Chittawala/Standard Metal Impex, whose names were included in the list such hawala dealers. 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 dated 14.03.2014 was issued to the assessee. The assessee in response to the notice under section 148 filed its reply dated 15.04.2014 and stated that original return filed by assessee may be treated as return in response to 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. 31,44,408/- 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	C.R. Enterprises	7,64,712/-
2	Arihant Traders	15,02,186/-
3	Hazi Rajbali Chittawala/Standard Metal Impex	8,77,510/-
	Total	31,44,408/-

4. The Assessing Officer issued notice under section 133(6) to all three traders from whom the assessee has shown purchases. The Assessing Officer noted that the notices sent to the traders were returned back as not claimed. The assessee was asked to produce the parties for confirmation and to prove the genuineness of purchase. The Assessing Officer noted that no reply was filed by the assessee to show-cause notice dated 09.01.2015. The Assessing Officer on the basis of report of DGIT(Investigation) drawn inference that the assessee may have purchased the goods from other supplier without bill. If such persons are indulging in practice of purchasing of goods from grey market and obtaining bogus bills from other persons, would do so for getting some benefit, the magnitude of these benefits may differ from face to face. The assessee had made purchases from

grey market and tried to give the purchase of colour of genuineness by obtaining fictitious invoices from other concern (bogus dealers). The Assessing Officer on his above observation disallowed 12.5% of the aggregate of alleged bogus purchases of Rs. 31,44,408/-, which was worked out to Rs. 3,93,051/-.

5. On appeal before the Id. CIT(A), the Id. CIT(A) upheld the validity of re-opening, however, the disallowance qua the purchases from C.R. Enterprises was deleted and disallowances of Arihant Trader and Hazi Rajbali Chittawala/Standard Metal Impex was upheld. Thus, aggrieved by the order of Id. CIT(A), the revenue as well as the assessee, both filed their respective appeal before this Tribunal by raising the grounds of appeal as referred above.
6. We have heard the submission of Id. Authorized Representative (AR) of the assessee and Id. Departmental Representative (DR) for the revenue and perused the material available on record.

ITA No. 5375/Mum/2018 by assessee

7. Ground No. I (1 to 3) relates to challenging the validity of re-opening and notice under section 143(2). The Id. AR of the assessee has not argued anything against these grounds of appeal, therefore, all the grounds of appeal are treated as not pressed and dismissed accordingly.

8. Ground No. II (1 to 3) relates to disallowance of 12.5% of purchases from Arihant Trader and Hazi Rajbali Chittawala/Standard Metal Impex. The ld. AR of the assessee submits that the assessee has made genuine purchases. The Assessing Officer disallowed the 12.5% of the purchases despite the fact that the assessee has proved all purchases. The Assessing Officer has not rejected the books of account. The sales of assessee was not disputed by Assessing Officer. No sale is possible without purchases. The ld. AR submits that the assessee has already shown Gross Profit Ratio (GP) of 3.85%, which is higher than the preceding years. The ld. AR of the assessee submits that in order to buy the peace, the assessee is ready to accept the reasonable disallowance as per the latest decision of Hon'ble Bombay High Court in PCIT vs. Mohammed Haji Adam & Co. in ITA No. 1004 of 2016, wherein it was held that addition in respect of bogus purchases is to be limited to the extent of bringing the GP rate on such purchases at same rate as on other genuine purchases.
9. On the other hand, the ld. DR for the revenue supported the order of Assessing Officer. The ld. 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 ld. 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.

10. We have considered the submission of Id. DR for the revenue and Id. AR of the assessee. The Assessing Officer made the disallowance of 12.5% 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. The Id. CIT(A) after considering the material placed before him and the ratio of the decisions including the decision of Simith P. Seth [356 ITR 451] concluded that the Assessing Officer has not questioned the sale of the assessee, there cannot be sale without purchases. However, the Id. CIT(A) noted that the assessee is indulging in trading with bogus accommodation entry provider. The advantage from such bogus bills are in the form of saving VAT, Transportation Charges and other taxes. On his observation, the Id. CIT(A) confirmed the disallowance of bogus purchases @ 12.5% qua Arihant Trader and Hazi Rajbali Chittawala/Standard Metal Impex. Before us, the Id. AR of the

assessee vehemently argued that the assessee has already shown GP of 3.85% and further disallowance will increase the GP which is unreasonable in the trade of assessee. Considering the fact that neither the books of account of assessee was rejected nor the sale of assessee was disputed by the lower authority, therefore, considering the decision of Hon'ble Bombay High Court of in PCIT vs. Mohammed Haji Adam & Co.(supra), we direct the Assessing Officer to restrict the disallowance of bogus purchase by bringing the GP rate on the such purchases at the same rate as that of other genuine purchases. Needless to order that before restricting the addition, the Assessing Officer shall grant opportunity to the assessee.

11.In the result, appeal of the assessee is partly allowed.

ITA No. 5358/Mum/2018 by revenue

12.Ground No. 1 to 3 relates to deleting the addition of purchases from C.R. Enterprises.

13.The ld. DR for the revenue supported the order of Assessing Officer. The ld. DR submits that the ld. CIT(A) deleted the addition by accepting the submission made by assessee during the appellate stage without giving opportunity to the Assessing Officer. The ld. CIT(A) not followed the procedure of Rule 46A of Income-Tax Rules.

14. On the other hand, the Id. AR of the assessee supported the order of Id. CIT(A). The Id. AR of the assessee further submits that the assessee has not filed any additional evidence or additional fact before the Id. CIT(A). The Assessing Officer has not considered the reply filed by M/s C.R. Enterprises in response to the notice under section 133(6). In response to the notice under section 133(6), Shri Raju Doshi, Proprietor of M/s C.R. Enterprises filed confirmation in the form of affidavit on 02.02.2015, the assessment was completed on 16.02.2015. The assessee fully discharged the onus to prove the genuineness of purchases shown from C.R. Enterprises.

15. We have considered the submission of both the parties and perused the order of lower authorities. We have noted that the assessee has not filed any additional evidence before the First Appellate Authority (FAA). The assessee explained that in response to notice under section 133(6), the proprietor of M/s C.R. Enterprises filed his affidavit confirming the sales of Rs. 7,64,712/- on 02.02.2015, much before the passing the assessment order. We have further noted that the assessee has shown the sale of material/goods purchased from C.R. Enterprises to M/s Shivraj Drums & Containers and SPA Interior. The assessee also submitted that the Assessing Officer has not taken cognizance of confirmation filed on behalf of C.R. Enterprises. We have noted that neither the assessee has filed fresh

evidence nor any evidence which was not filed during the assessment was relied during the first appellate stage. Further, the sale of assessee qua the purchases shown from C.R. Enterprises was disputed by Assessing Officer. In our view, the assessee has discharged his primary onus to prove the genuineness of purchases from C.R. Enterprises. The Assessing Officer made addition on adhoc basis without bringing any adverse material against the assessee. Therefore, we do not find any infirmity in the order passed by Id. CIT(A), which we affirm.

16. In the result, Ground Nos. 1 to 3 are dismissed.

17. Ground Nos. 4 to 6 are general and needs no specific adjudication.

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

Order pronounced in the open court on 09/10/2019.

Sd/-
SHAMIM YAHYA
ACCOUNTANT MEMBER

Sd/-
PAWAN SINGH
JUDICIAL MEMBER

Mumbai, Date: 09.10.2019

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Copy of the Order forwarded to :

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

2. Respondent
4. The concerned CIT

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai