

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI  
Before Shri Shamim Yahya (AM) & Shri Pawan Singh (JM)

ITA No. 5433/Mum/2018(Assessment year : 2010-11)

Shri Chimanlal K Bokadia M/s Ishwar Steel Corporation 15, Ardeshir Dady Cross Lane, Opp. Madhav Baug, CP Tank, Mumbai 400 004 PAN : AJEPB4618C	Vs	ITO, Wd.(19)(1)(3), Mumbai
<b>APPELLANT</b>		<b>RESPONDEDNT</b>

Appellant by	Ms. Priyanka Jain
Respondent by	Ms. Samastha Mullamadi
Date of hearing	14-10-2019
Date of pronouncement	14 -10-2019

**ORDER**

Per Pawan Singh, JM :

1. This appeal filed by the assessee is directed against the order of Id. CIT(A)-30, Mumbai dated 06.06.2018 for Assessment Year 2010-11. The assessee has raised the following grounds of appeal:

“1. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeal) erred in

(a) arriving at the conclusion that purchases made of Rs. 1,02,45,394/-from parties mentioned in assessment order are not genuine and not made from them but from other sources

(b) estimating rate of profit at 12.5% on alleged bogus purchases over and above gross profit declared of 3.87% by the appellant on such purchases..

(c) confirming addition of Rs. 12,80,674/- made by the Assessing Officer to the total income of the appellant.

2. On the facts and in the circumstances of the case and in law the learned Commissioner of Income tax (Appeals) erred in confirming conclusion arrived at by the learned Assessing Officer that purchases made from parties mentioned

in assessment order are non genuine and thereby rejecting books of accounts of the appellant by invoking provisions of section 145(3) of the Act.

3. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) failed to appreciate that

(a) Proceeding initiated under section 147 /148 of the Act is on the basis of reason to suspect and not on reason to believe.

(b) There is no new tangible material in possession of the Assessing Officer which justify issuance of notice u/s 148 of the Act

(c) The initiation of proceeding under section 147 of the Act and issuance of notice under section 148 is bad in law and contrary to the provisions of the Act and liable to be cancelled / annulled

4. On the facts and in the circumstances of the case and in law the Learned Commissioner of Income Tax (Appeals) erred in confirming order made under section 143(3) rws 147 of the Act by the learned Assessing Officer which is illegal, bad-in-law, ultra vires and without allowing reasonable opportunity of the hearing, without appreciating the facts, submission and evidences in their proper perspective, without providing copies of material used against the appellant and without providing cross examination of parties is liable to be annulled.

5. The learned assessing officer erred in charging interest under section 234A, 234B, 234C and 234D of the Act.”

2. Brief facts of the case are that the assessee is Proprietor of M/s Ishwar Steel Corporation and engaged in the trading of Iron and steel, filed return of income for AY 2010-11 on 26-09-2010 declaring total income at Rs. 4,27,235/-. 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. 1,02,45,394/- from 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 23.09.2014 was issued and served upon the assessee. Reasons recorded were supplied to the assessee. The Assessing Officer after serving notices under section 142(1) dated 01-12-2015 and u/s 143(2) dated 22.12.2015 proceeded for re-assessment. During the assessment, the Assessing Officer noted that the assessee has shown purchases from the following parties, which was declared as hawala dealers by the Sale Tax Department, Government of Maharashtra.

	<b>Name of the parties</b>	<b>Bill amount (Rs.)</b>
1	Harshil Ferromet Pvt Ltd	10,62,320
2	Nirush Trading Co.	17,420
3	Vardhman Trading Co	4,73,070
4	Stainless Impex Pvt Ltd	1,16,513
5	Wel Steel (India)	25,57,151
6	Kanak Steel (India)	60,12,302

7	Banarsidas Aggarwal & Sons	6,618
	<b>TOTAL</b>	<b>1,02,45,394/-</b>

3. The assessee vide show cause notice dated 28.12.2015 was asked to substantiate the purchases and issued show-cause notice as to why the aforesaid transaction should not be treated as non-genuine. The assessing officer also conducted inquiry by sending notice under section 133(6) to all the parties. The notices sent to the parties were returned back with the remark of postal authorities “not known or left”. The assessee filed its explanation and furnished the copy of ledger account and proof of payment through cheques. The Assessing Officer not accepted the explanation furnished by assessee and noted that the assessee has not produced Lorry Receipt, Transportation Details etc. The Assessing Officer rejected the books of account. The Assessing Officer after considering the material available before him and the submission made by assessee concluded that the assessee was in possession of goods and has shown the sale against the purchases. The sale is not possible without purchases. The Assessing Officer concluded that the assessee is indulged in purchasing goods from the hawala parties to suppress the true profit and reduce tax liability. The Assessing Officer on his above said observation concluded that in such cases

disallowances to be made to the extent of profit element embedded in such purchases and accordingly disallowed 12.5% of the aggregate of total of non-genuine/alleged hawala purchases in assessment order dated 29.02.2016 passed under section 143(3) r.w.s 147.

4. On appeal before the Id. CIT(A), the action of Assessing Officer was sustained. Further aggrieved by the order of Id. CIT(A), the assessee has filed the present appeal before us.
5. 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. No submissions was made by Id AR for the assessee on the issues/ grounds of reopening and rejection of books of accounts, thus the ground No. 2,3&4 are dismissed as not pressed. Ground No. 1 relates to restricting the disallowance to the extent of 12.5% of the impugned purchases. The Id. AR of the assessee submits that the assessee furnished complete details of purchases and the sales made against the alleged bogus purchases. The Assessing Officer made the disallowance of 12.5% of the alleged bogus purchases. The Id. AR of the assessee further submits that assessee has already shown

Gross Profit (GP) at 3.87%. The addition sustained on account of alleged bogus purchases is on higher side. The Id. AR of the assessee further submits that after addition sustained by Id. CIT(A), the GP of assessee would rise substantially which is not possible in the trade of the assessee. The Id. AR for the assessee submits that the rate of Value Added Tax (VAT) applicable on the alleged purchases is only @ 4%.

6. The Id. AR of the assessee further submits that the Hon'ble Bombay High Court in a recent decision on similar set of fact in PCIT vs. M Haji Adam & Co. in ITA No. 1004 of 2016 dated 11.02.2019 held that addition in respect of bogus purchases is to be limited to the extent of bringing the GP rate on such purchase at the same rate as on other genuine purchases. The Id. AR of the assessee submits that the disallowance of alleged bogus purchase may be restricted in accordance with the decision of Hon'ble jurisdictional High Court in PCIT vs. M Haji Adam & Co. (supra).
7. On the other hand, the Id. Departmental Representative (DR) for the revenue supported the order of lower authorities. 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 ld. DR for the revenue submits that the Assessing Officer has given sufficient relief. The Assessing Officer has reasonably estimated the disallowances. The assessee is not entitled for any further relief.

8. We have considered the submissions of both the representatives and perused the record. A short issue for our adjudication is whether the disallowance of alleged bogus purchase @ 12.5% is reasonable or not. The ld. AR of the assessee has vehemently relied upon the decision of Hon'ble jurisdictional High Court in M Haji Adam & Co.(supra). We have noted that on similar set of fact, the Hon'ble Bombay High Court in PCIT vs. M Haji Adam & Co. (supra) held that addition in respect of bogus purchase be limited to the extent of bringing the GP rate on bogus purchase at the same rate as other genuine purchases. We have further noted that the assessee has shown GP of 3.87% and the VAT applicable on the alleged purchases in also 4%. Therefore, considering the fact of the present case and the nature of business activities of the assessee and by following the decision of Hon'ble Bombay High Court, we direct

the Assessing Officer to restrict the addition with regard to bogus purchases by bringing the GP rate on such purchases at the same rate as that of other genuine purchases. Needles to say that before making addition, the Assessing Officer shall grant opportunity to the assessee before passing the order in accordance with law.

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

Order pronounced in the open court on 14-10-2019.

Sd/-

Sd/-

(Shamim Yahya)	(Pawan Singh)
ACCOUNTANT MEMBER	JUDICIALMEMBER

Mumbai, Dt : 14<sup>th</sup> October, 2019

Pk/-

Copy to :

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

By order  
Asstt. Registrar, ITAT, Mumbai