

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

ITA No. 6096/Mum/2018 (Assessment year : 2009-10)

Sharad Vrajlal Doshi 51/57, Donald Street Damar Gally, Masjid Bunder Mumbai-400 009 PAN : AACPD0897Q	vs	ITO 17(3)(3), Mumbai
APPELLANT		RESPONDEDNT

Appellant by	Shri Ashok Mehta
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)-28, Mumbai dated 17.08.2018 for Assessment Year 2009-

10. The assessee has raised the following grounds of appeal:

"1. The Learned Assessing Officer and CIT(A) -34 erred in assessing the total income of Rs. 15,78,5607- instead of the returned income of Rs. 3,06,294/-.

2. The Learned Assessing Officer erred in not providing all the evidence received from the investigation working of Income Tax Department and the VAT Department and the CIT(A)-34 erred in rejecting the grounds without any reasoning.

3. The Learned Assessing Officer and CIT(A)-34 erred in concluding that the Sales Tax Department has certified that the above said parties are "Non-Genuine" without adequate evidence. The AO failed to understand that the Sales Tax Department has only claim that these dealers are "Suspicious" dealers and have not even completed assessments in these cases.

4. The Learned CIT(A) -34 erred in concluding that the parties are assessee's witness without appreciating that it was the claim of the department that the purchases were bogus and therefore it was the witness of the department and the department is to produce the party.
 5. The Learned Assessing Officer and CIT(A)-34 failed to make addition on the issue for which assessment is reopened and made addition on gross profit. Thus the entire assessment needs to be set aside following Jet Airways Ltd Bombay High Court 331ITR 236.
 6. The Learned Assessing Officer and CIT(A)-34 erred in treating the purchases as non-genuine without appreciating the fact that the assessee had received delivery of goods and sold the same to third parties and that there cannot be any sales without purchases.
 7. The Learned Assessing Officer and CIT(A) -34 erred in rejecting Books of Accounts u/s 145(3) based on surmises and conjectures without indicating any error in the Books of Accounts
 8. Without prejudice to the above ground that the purchases are genuine, we plead that Learned AO and CIT(A) -34 erred in making a GP Addition of 12.5%
 9. The Learned Assessing Officer and CIT(A) -34 erred in making an addition of 12.5% without deducting the GP already shown by the assessee on these goods.”
2. Brief facts of the case are that the assessee is Proprietor of M/s Sharad Steel Corporation and is engaged in trading in Iron and Steel filed return of income for AY 2009-10 on 25-09-2009 declaring total income at Rs. 3,06,294/-. 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. 1,01,78,109/- 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 11.03.2014 was issued and served upon the assessee. Reasons recorded were supplied to the assessee. The Assessing Officer after serving notice under section 143(2) dated 31.07.2014 proceeded for re-assessment. For the year under scrutiny the assessee has shown sales turn over of Rs. 5,17,95,621/- and gross profit of Rs. 1,08,627/-. 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.

	Name of the parties	Bill amount (Rs.)
1	Sidhivinayak Trading Company	35,93,401/-

2	J.B. Interlink	30,021
3	Rekha Trading Co	41,93,620/-
4	Amar Enterprises	1,38,877/-
5	Sun Enterprises	1,78,724/-
6	M.R. Corporation	10,99,249/-
7	Navdeep Trading Corporation	1,31,196/-
8	Grifton India Ridhi Enterprises	3,56,985/-
9	D.K. Enterprises	4,04,227/-
10	P.K. Trading	32,121/-
11	Pawan Enterprises	19,688/-
	Total	1,01,78,109/-

3. The assessee 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 assessee was also asked to produce the party for verification. 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 after considering the material available before him and the submission made by assessee concluded that certain purchase shown by the assessee remained unverifiable and there is possibility of revenue leakage, the gross profit (GP) shown by assessee is very

low. The Assessing Officer concluded that the assessee may have purchased goods from other suppliers without bills, which is commonly known as grey market and the assessee is beneficiary of margin of grey market. The Assessing Officer on his above said observation disallowed 12.5% of the aggregate of total of non-genuine/alleged hawala purchases in assessment order dated 29.01.2015 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. 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 has rejected the books of account without mentioning specific reasons. The Assessing Officer made the disallowance of 12.5% of the alleged bogus purchases. The Id. AR of the assessee further submits that 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 to unreasonably high.

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 Id. 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. Though, the assessee has raised as many as ten grounds of appeal, however as per our considered view, a short issue for our adjudication is whether the disallowance of alleged bogus purchase @ 12.5% is reasonable or not. The Id. 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. 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. Needless 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 : 14th October, 2019

Pk/-

Copy to :

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

/True copy/

By order

Asstt. Registrar, ITAT, Mumbai