

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH MUMBAI
BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER
&
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER
ITA No.5458/Mum/2018
(Assessment Year :2010-11)

Solution INC Unit No.4, Maplle-Morya Classic Plot No.B-18, Off new link Road Near Infinity Mall Andheri (West) Mumbai-400 053	Vs.	ITO-25(1)(2) Mumbai
PAN/GIR No.AAZFS6782Q		
Appellant)	..	Respondent)

Revenue by	Akhtar H. Ansari
Assessee by	None
Date of Hearing	15/10/2019
Date of Pronouncement	15 /10/2019

आदेश / O R D E R

PER BENCH:

This appeal filed by the assessee is directed against, the order of the Ld. Commissioner of Income Tax (Appeals)-37, Mumbai, dated 15/05/2018 and it pertains to Assessment Year 2010-11.

2. The assessee has raised the following grounds of appeal:-

1) *The Ld. CIT(A) erred in law and on facts in confirming the addition @12,5% of total purchase of Rs.10,1 1,767/- from so called purchases from hawala dealers.*

2) *The Ld. CIT(A) erred in law and on fact in applying the ration of Sumit P. Seth and making addition @12.5% instead of Nil addition.*

3) *The evidence used against the assessee was not allowed to cross verify to the assessee and mere on the basis of information received from VAT Department the addition made. In spite of admission of the fact that, the Ld, AO had not extended opportunity of cross verification of the evidence used against the assessee Neither AO had made any efforts to substantiate the additions with any further evidence the Ld. CIT(A) has confirm the addition @12,5% which is against the tenets of law, hence may be deleted.*

4) *The Ld. CIT(A) had not considered the ground of erroneously rejecting books of accounts by the Ld. AO.*

5) *The Assessee craves leave to add, amend, alter, amend or drop any or all Grounds of appeal at the time of the Appeal proceedings.*

3. The brief facts of the case are that the assessee is engaged in the business of manufacturing/reselling of vertical/Horizontal/Roller Blinds & wall paper, filed its return of income for AY 2010-11 on 30/09/2010, declaring total income of Rs. 12,61,245/-. Thereafter, the case has been reopened u/s 147, on the basis of information received from DGIT, investigation, Mumbai, as per which, Sales Tax Authorities of Government of Maharashtra had taken actions against number of Hawala dealers, who had issued bogus purchase bills to various parties in Mumbai to reduce or suppress profits. As per list of beneficiaries, the assessee is one of the beneficiary, who had taken accommodation bills of bogus purchases from various parties as listed by the AO in his assessment order amounting to Rs. 10,11,767/-. The case was selected for scrutiny and the assessment has been completed u/s. 143(3).r.w.s. 147 of the I.T.Act, 1961 on 23/12/2015 and determined total income of Rs. 22,73,010/-, after making 100% additions towards alleged bogus purchase from those parties and made additions of Rs. 10,11,767/-.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has

filed elaborated written submissions, on the issue, which has been reproduced at Para 4 on page 2. The sum and substance of the arguments of the assessee before the Ld.CIT(A) are that purchase from the above party is genuine, which is supported by necessary evidences. Therefore, no additions could be made on the basis of information received from third party. The Ld.CIT(A), after considering relevant submission of the assessee and also, on analysis of information collected during the course of search and also by following the decision of Hon'ble Gujarat High Court, in the case of CIT vs. Simith P. Sheth (356 ITR 451) scaled down addition to 12.50% on alleged bogus purchases. The relevant findings of the Ld.CIT(A) are as under:-

5.6 On consideration of the facts available on record it is seen that information uploaded by the State Sales Tax authorities wherein the said Department put up lists of parties found to be engaged in issuing false bills without actual sale of goods, was the point of genesis for enquiry related to possible bogus purchases in a number of cases. In case of a manufacturer, if the purchases are bogus, it must be possible to produce the goods as shown, even without use of materials, the purchase of which is suspicious. If it is not possible to produce the goods as shown without consumption of these materials, these suspicious purchases cannot be held bogus unless production is also held bogus. Where purchase is held as bogus then the corresponding sales must also be held bogus as without the material being purchased, production/sales is not possible. Therefore, without the corresponding production/sales being held bogus, it cannot be a case of bogus purchases. In other words in a case where the purchase is shown being bogus and it is not possible to or the production as shown even without the material, it needs to be shown whether the sale transaction was effect at production was done even without using such material whether such material were also used unless it is shown that such materials were not used in corresponding sales or the production as shown, purchase cannot be held it will be case of purchase from bogus parties, However if the material has been used in the sales as the case may be in production, it cannot be a case of bogus purchase, rather it will be a case of purchase from bogus parties, statements of hawala providers recorded by sales tax authorities affidavit filed by such suppliers before sales tax authority absence of evidence in support of transportation/delivery of material etc., have been

held relevant as mere indicators and not decisive factors, to draw a conclusion regarding genuineness of purchases.

5.7 The suppliers were found to be engaged in providing bogus bill without actual dealing of goods. The appellant made payments for these purchase by account payee cheques duly cleared through normal banking channel and are duly reflected in the appellant's bank statements. Before the AO, the appellant produced documentary evidence like copies of invoices and ledger accounts of the vendors in the appellant's books of account recording these purchases to substantiate the genuineness of these purchase. Since the sales receipts was not doubted or disputed by the AO and he has accepted the sales receipts of the appellant as it is, therefore, the AO cannot deny that purchase were not made by the appellant as it is, therefore, the AO cannot deny that purchases were not made by the appellant and the material was not used for its contract work. What is under dispute is the purchase from the parties from whom bills have been taken and cheques have been issued to them. Purchases are not in dispute but the parties from whom purchase are shown to have been made are disputed and suspicious.

5.8 The AO had made the addition as some of the suppliers were declared hawala dealers by the VAT Department. This may be a good reason for making further investigation but the AO did not make any further investigation and merely completed the assessment on suspicion . Once the assessee has brought on record the details of payments by account payee cheque, it was incumbent on the AO to have verified the payment details from the bank of the assessee and also from the bank of the suppliers to verify whether there was any immediate cash withdrawal from their account. No such exercise has been done or findings recorded. There was no detailed investigation made by the AO himself. It is also found that the payments have been made by account payee cheque which are duly reflected in the bank statement of the assessee. There is no evidence to show that the assessee has received cash book from the suppliers. Merely because the suppliers did not file some confirmation and documents, one cannot conclude that he purchases were not made by the assessee. This view is supported by the decision of NikunjEximp Enterprises vs. CIT 216 Taxman 171 (Bom). To this extent I am in view with the appellant, if appellant has fulfilled its onus making the payment by cheque and has supplied the address fo the sellers then it cannot be presumed that supplier were bogus simply because the sellers were not found at the given address. There is a considerable time gap between the period of purchase transaction period of scrutiny proceedings. The AO has not brought any material on record to show that there is suppression of sales. It is basic rule of accountancy as well as of taxation laws that profit from business cannot be ascertained without deducting cost of purchase from sales. Estimation of profit ranging from 12.5% to 15% has been upheld by the Hon'ble Gujarat High court in the case of CIT vs Simit P. Sheth 356 ITR 451 (Guj.) depending upon the nature of business.

5.9 Considering the totality of the facts before me, as well as the judicial opinion available I am incline to agree with the appellant's stand that the addition is excessive. The AO has disallowed the amount of Rs. 10,11,767/- on account of bogus purchase. The total purchase debited to

the trading account from these parties are Rs. 10,11,767/-. I am of the view that estimation of profit at 12.5% would meet the ends of justice. Therefore, I direct the AO to estimate profit of 12.5% on the total purchase in question which works out to Rs. 1,26,471/-(12.5% of Rs. 10,11,767/-). The appellant therefore gets relieved of Rs. 8,85,2996/- (Rs. 1011,767/- minus Rs. 1,26,471/-). The grounds raised are partly allowed.

5. None appeared for the assessee. We have heard the Ld. DR, perused the material available on record and gone through orders of the authorities below. We find that the Ld. AO has made 100% additions towards alleged bogus purchases, on the ground that the assessee one of the beneficiary of accommodation entries of bogus purchase bills issued by Hawala dealers. According to the Ld. AO, although assessee has filed certain basic evidences, but failed to file further evidence in the backdrop of clear finding by the Sales Tax Department, Maharashtra that those parties are involved in providing accommodation entries without actual delivery of goods. The Ld. AO had also taken support from the investigation conducted during the course of assessment proceedings, as per which notice issued u/s 133(6) to the party were returned un-served by the postal authorities. Therefore, he came to the conclusion that purchase from the said party is bogus in nature. It is the contentions of the assessee before the lower authorities that a purchase from the above party is supported by necessary evidences. It has furnished all possible evidences, including books of accounts, stock details and bank statement to prove that payment against said purchases have been made through proper banking channels.

6 Having considered arguments of the Ld. DR and also, material available on record, we find that both the sides failed to prove the

case in their favour with necessary evidences. Although, assessee has filed certain basic evidences, but failed to file further evidences to conclusively prove purchases to satisfactions of the Ld.AO. At the same time, the Ld. AO had also failed to take the investigation to a logical conclusion by carry out necessary enquires, but he solely relied upon information received from investigation wing, which was further supported by information received from Maharashtra Sales Tax Department. Under these circumstances, it is difficult to accept arguments of both the sides. Further, various High Courts and Tribunals had considered an identical issue in light of investigation carried out by the Sales Tax Department and held that in case purchases claims to have made from alleged hawala dealers , only profit element embedded in those purchases needs to be taxed, but not total purchase from those parties. The Hon'ble Gujarat High Court, in the case of CIT vs Simith P.Sheth 356 ITR 451 had considered a similar issue and held that at the time of estimation of profit from alleged bogus purchases no uniform yardsticks could be adopted, but it depends upon facts of each case. The ITAT, Mumbai, in number of cases had considered an identical issue and depending upon facts of each case, directed the Ld.AO to estimate profit of 10 to 15% on total alleged bogus purchases. In this case, considering the nature of business of the assessee the Ld. AO has estimated 100% profit, whereas the Ld.CIT(A) has scaled down estimation of profit to 12.50% on total alleged bogus purchase. Although, both authorities have taken different rate of profit for estimation of income from alleged bogus purchase, but no one could support said rate of gross profit with necessary evidences or any comparable cases. Therefore, considering facts and circumstances of this case and consistent with view taken by the Co-ordinate Bench in number of

cases, we are of the considered opinion that the Id. CIT(A) has taken one of the possible method for estimation of profit to settle dispute between the parties and hence, we are inclined to uphold order of the Id. CIT(A) and dismiss appeal filed by the assessee.

7. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open court on this 15/10/2019

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated 15/10/2019
Thirumalesh Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai