

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH MUMBAI

BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER
&
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA No.5408 & 5409/Mum/2018
(Assessment Years :2009-10 & 2011-12)

Aquapure Agencies A-15, Central Facility Building- 2 APMC Market-II, Phase-II Sector 19 Vashi, Navi Mumbai-400 703	Vs.	ITO WARD-28(1)(1) Room No.329, 3 rd Floor Tower No.6, Vashi Station Complex Vashi Navi Mumbai-400 703
PAN/GIR No.AAKFA3441R		
Appellant)	..	Respondent)

Assessee by	A.N.Shah
Revenue by	Akhtar H.Ansari
Date of Hearing	14/10/2019
Date of Pronouncement	14 /10/2019

आदेश / O R D E R

PER G.MANJUNATHA (A.M):

These two appeals filed by the assessee are directed against separate, but identical orders of the Commissioner of Income Tax (Appeals) -26, Mumbai, both dated 25/06/2018 for the Assessment Years (AY) 2009-10 & 2011-12. Since, the facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are disposed-off by this consolidated order.

2. The assessee has, more or less filed common grounds of appeal for both Assessment Year's. Therefore, for the sake of brevity, grounds of appeal filed for AY 2009-10 are reproduced as under:-

1.) On the facts and in the circumstances of the case and in law, the learned CIT (Appeal) erred in not considering the appeal on merits in respect of following issues:-

a) The re-opening of assessment was bad in law and was not in accordance with any right conferred on the assessing officer to re-open the assessment under the Income Tax Act.

2) On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in directing that the disallowance of the purchases be retained to the extent of 20% of the purchases from Valiant Steel Engineering Company of Rs. 4,74,367/-

3) Your appellant craves leave to add to, amend, alter or delete any of the above grounds may be advised,

ITA.No.5408/Mum/2018:-

3. The brief facts of the case are that, the assessee is engaged in the business of dealing in erection and installation services, filed its return of income for AY 2009-10 on 30/09/2009, declaring total income of Rs.29,372/-. 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. 4,74,367/-. 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 25/03/2015 and determined total income of Rs. 1,47,960/-, after making additions towards alleged bogus purchase @ 25% of total purchases from those parties and made additions of Rs. 1,18,592/-.

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 5.2 on pages 6 to 11 of Ld.CIT(A) order. 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 estimation of profit from 25% to 20%. The relevant findings of the Ld.CIT(A) are as under:-

5.3 I have considered the facts of the case and the appellant's submissions As per the investigations carried out by the Sales Tax Authorities, the above mentioned party was found to be involved in giving accommodation entries only without actually supplying the goods. The logical inference is that the purchases made by the appellant would also be in the nature of accommodation entries only. To verify the same, the AO had issued notice u/s 133(6) to the party which was returned un-served by the postal authorities. This was communicated to the appellant and the AO had required the appellant to produce the party which the appellant could not do. The AO was of the view that held that the appellant had not discharged its onus of proving the genuineness of fire transactions and added 25% of the impugned purchases to the total income of the appellant. The appellant, on the other hand, has contended that except for non-producing of the party, it had submitted all relevant evidences in support of its claim of genuineness of purchases as under:

- 1. Copy of our ledger account as appearing in our books in respect of said Supplier.*
- 2. Copies of Invoices of the said supplier.*
- 3. Copies of Bank statement highlighting the relevant payments made to the supplier.*
- 4. Copies of Delivery Challans for purchases made from the supplier.*

5. Copy of Consumption Report for purchases made from the supplier.
6. Details of Processing & Manufacturing Activities of the Firm,
7. Copies of Corresponding Sales Invoices,
8. Copy of Certificate from Punjab National Bank certifying payments made to the supplier.

5.4 As far as the genuineness of purchases made from the party is concerned, it has to be kept in mind that this party had admitted on oath before the Sales Tax Authorities that it had given accommodation entries only without actually supplying the goods. The documentation submitted by the appellant in support of its claim would, therefore, have been orchestrated to present a facade of genuineness and does not necessarily mean that the purchases from this party is genuine. The Courts have held that payment by cheque by itself is not sacrosanct so as to prove genuineness of purchases when the surrounding circumstances are suspect. However, the appellant has shown onward sales of the goods purchased which has not been doubted by the Assessing Officer. Since there can be no sales without corresponding purchases, the only logical explanation is that the appellant would have made purchases from undisclosed parties in the grey market at lower rates and purchases were shown as being made from the impugned parties to suppress its profits. In such a situation, the various Courts including the Hon'ble Gujarat High Court in the case of CIT vs Simit P. Sheth, 356 ITR 451 have held that not the entire purchases but only the profit element embedded in these purchases was to be disallowed. The estimation would vary with the nature of business and no uniform yardstick could be adopted. The AQ had made disallowance by adopting GP ratio of 25%. The appellant has made a without prejudice submission that 2% to 3% may be disallowed by considering the case law of ACIT 19(3) vs M/s Steel Line (India) ITA No. 1321/Mum/2016. This contention is not tenable as it is seen that the appellant's GP ratio during the year under consideration was 16.39%. However, considering this fact, the GP ratio of 25% adopted by the AO appears to be on the higher side. The disallowance made by the AO is, therefore, scaled down to 20% which should sufficiently cover the profit element embedded in the impugned purchases. The appellant's grounds of appeal are partly allowed

5. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. We find that the Ld. AO has made additions towards alleged bogus purchases @ 25% of such 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 purchases from the above party are 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 had filed certain basic evidences, but failed to file further evidences to conclusively prove purchases to the satisfactions of the Ld.AO. At the same time, the Ld. AO had also failed to take the investigation to a logical conclusion by carrying 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 the 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 25% profit, whereas the Ld.CIT(A) has scaled down estimation of profit to 20% on total alleged bogus purchase. Although, both authorities have taken different rate of profit for estimation of income for 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 deem it appropriate to direct the Ld.AO to estimate profit of 12.5% on alleged bogus purchases. Accordingly, we direct the AO to reduce additions made towards alleged bogus purchases to 12.5% of such purchases.

7. In the result, appeal filed by the assessee is partly allowed.

ITA.No.5409/Mum/2018:-

8. The facts and issues are involved in this appeal are identical to facts and issues, which we had already considered in ITA.No.5408/Mum/2018. The reasons given by us in preceding paragraph in ITA No. 5408/Mum/2018 shall mutatis mutandis apply to this appeal also, therefore for similar reasons, we direct the AO to estimate 12.5% profit on alleged bogus purchases.

9. In the result, appeal filed by the assessee is partly allowed.
10. As a result, both appeals filed by the assessee for AY's 2009-10 & 2011-12 are partly allowed.

Order pronounced in the open court on this 14 /10/2019

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated 14/10/2019

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