

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH MUMBAI
BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER
&
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER
ITA No.5356/Mum/2018
(Assessment Year :2007-08)

ACIT, CIRCLE-22(1) Room No.322, 3 rd Floor Income Tax Office Piramal Chambers, Lalbaug Parel, Mumbai-400 012	Vs.	Bharoomal & Co. 1 & 2, Narsing Co-op. Soc. 4 th Road, Khar (West) Mumbai-400 052
		PAN/GIR No.AADFB0780H
Appellant)	..	Respondent)

Revenue by	Akhtar H. Ansari
Assessee by	Anil Sathe
Date of Hearing	14/10/2019
Date of Pronouncement	14 /10/2019

आदेश / ORDER

PER G.MANJUNATHA (A.M):

This appeal filed by the revenue is directed against, the order of the Commissioner of Income Tax (Appeals)-34, Mumbai, dated 26/06/2018 and it pertains to Assessment Year 2007-08.

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

1. "Whether on the facts and in the circumstances of the case and in /aw the Id. CIT(A) is correct in restricting the disallowance @ 12.5% on account of bogus purchases against 100% made by AO ignoring the latest decision of the Supreme Court in the case of M/s N.K.Protiens Ltd Vs CIT No. 769 of 2017 dated 16.01. 2017(SC) wherein the Hon'ble Supreme Court has decided the issue of bogus purchases with a direction of making addition amounting to entire bogus purchase as assessee's income. "

2. *"On the facts and in the circumstances of the case and 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 purchases transaction. "*

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

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

5. *The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.*

3. The brief facts of the case are that the assessee is engaged in the business of whole-seller, indenters, Exporters of Plywood Laminates Veneers, Timbers etc., filed its return of income for AY 2007-08 on 28/07/2007, declaring total income of Rs. 16,93,150/-. 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. 14,06,514/-. 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 28/03/2015 and determined total income of Rs. 31,98,660/-, after making 100% additions towards alleged bogus purchase from those parties and made additions of Rs. 14,06,514/-.

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 pages 5 to 6 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 addition to 12.50% profit on alleged bogus purchases. The relevant findings of the Ld.CIT(A) are as under:-

5.6. In view of the above, it is an admitted fact that Sales Tax Department has conducted search and seizure operation and has established large number of companies/firms/partnership concerns as hawala dealers who are engaged in accommodation entries without actually supplying the goods. The appellant is one of the beneficiary and has received such accommodation bills from two of the hawala operators totaling to Rs.14,06,514/-. The A.O. attempted to verify such parties by making independent enquiries u/s, 133(6) of the I.T.Act, 1961. All these verification letters came back unserved. The appellant filed certain details such as purchase bills, Ledger account, bank statement etc. However, some of the specific details required to establish the genuineness of purchase such as evidence of transportation of goods, entry of goods in the stock register, one to one consumption pattern of alleged purchase items; confirmation from the parties concerned etc could not be submitted before the A.O.. Nor the Principle Officer of these concerns were produced before the A.O. for examination. However, it is also a fact that the A.O. has not questioned the total sale component and if there is a sale, there should be purchase. The appellant being a trading concern, has indulged in using such accommodation entity As evident from catena of judgments on bogus purchases, only the benefit derived by using such accommodation entries has to be brought to tax. The advantages from using such bogus bills are in the form of saving VAT, saving of transportation charges and various taxes etc. The A.O. has rightly disallowed part of the purchases claimed such hawala dealers. However, the ratio of the judgment of Hon'ble Gujarat High Court in the case of Simit P. Seth 356 1TR 461 (Guj.) is applicable to the facts and circumstances of the appellant's case since the appellant is a trading concern. Here the Hon'ble Court has held that disallowance of 12.5% of the purchase from such hawala dealers will be justified. Thus

the disallowance made by the A.O. is upheld in principle. However, the percentage is restricted from 100% to 12.5%. The ground of appeal filed by the appellant on this issue.

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 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 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 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 Reveune..

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

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