

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

BEFORE SHRI R.C.SHARMA, AM

**ITA No.5359/Mum/2018
(Assessment Year:2009-10)**

**ITA No.5360/Mum/2018
(Assessment Year:2010-11)**

**ITA No.5361/Mum/2018
(Assessment Year:2008-09)**

&

**ITA No.5362/Mum/2018
(Assessment Year:2011-12)**

Income Tax Officer – 22(2)(4) Room No.310, Piramal Chambers, Lalbaug, Mumbai – 400 012	Vs.	Shri Naran D Patel 6, Aristocrat Co-op Hsg.Soc., Prabhat Colony Road Santacruz (E) Mumbai – 400 055
PAN/GIR No. AAHPP6647B		
(Appellant)	..	(Respondent)

Revenue by	Shri Akhtar H Ansari
Assessee by	Shri Pramita Ishwar Rathi
Date of Hearing	07/11/2019
Date of Pronouncement	13/11/2019

आदेश / ORDER

PER: R.C. SHARMA, A.M.

These are the appeals filed by Revenue against the order of CIT(A) for the A.Y.2008-09 to 2011-12, in the matter of order passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961.

2. In all the appeals, Revenue is aggrieved by the action of CIT(A) for restricting addition on account of bogus purchases to the extent of

12.5%, which was made by AO at 25% on alleged bogus purchases. One of the grounds also taken in the appeals relate to exception provided in para 10(e) of the amended instruction no.3 of 2018 dated 20/08/2018. It was argued by the Id. DR that since the reopening was on the basis of information from Sales Tax Department which is outside agency, these appeals are not covered by the Circular issued by CBDT for not filing appeal in case tax effect is less than Rs.50 lakhs.

3. It was vehemently argued by the Id. AR Ms. Pramita Ishwar Rathi that tax effect in the appeal filed by the Department works out to be Rs.78,433/-, which is much lower than the tax effect of Rs.50 lakhs as prescribed in Circular No.3/2018 to be read with Circular No.17/2019. Accordingly, no appeal is required to be filed. With regard to the ground raised by the revenue to indicate that appeal is covered by the exception in so far as reopening was on the basis of information from Sales Tax Department, Id. AR placed on record the order of the Co-ordinate Bench in case of late Shri Amarchand P Shah reported in 73 ITD 588 dated 08/07/2019 wherein the Tribunal observed as under:-

“The word External Sources” in our considered view, is used by CBDT to be an information received from sources which are external to Income-Tax Department and various departments/ wings which works under its aegis. Directorate of Income-tax (Investigation) is „law enforcement agency” under the Ministry of Finance and controlling authority is Investigation division of CBDT. Thus, Directorate of Income-tax(Investigation) an

internal agency/wing of Income- tax Department which works under the aegis of its controlling authority CBDT and can not be considered to be an „external source“ as is referred to vide communication dated 20.08.2018 in para 10(e). When CBDT is referring to an external sources , it is certainly referring to sources which are not internal sources within Income-tax Department and various wings functioning within its aegis. Our view is further fortified by careful perusal of illustrations referred to in para 10(e) of modification dated 20.08.2018 namely CBI/ED/DRI/SFIO/Directorate General of GST Intelligence , none of these agencies listed in para 10(e) works under the aegis of Income-tax Department and are in-fact „external sources“ so far as Income-tax Department is concerned . Thus, this plea of learned DR cannot be accepted that Directorate of Income-tax(Investigation) is an „external source“ for the purposes of interpreting para 10(e) of CBDT circular , and we hold that information received by AO from Directorate of Income-tax (Investigation) is an information received from internal sources and is not covered by exception as is contained in para 10(e) of CBDT circular dated 11.07.2018 as modified on 20.08.2018 as this information is received from sources which are from sources „internal“ to Income-tax Department. The interpretation placed by learned DR that CBDT meant in the aforesaid circulars as to all information received by AO from sources which are outside of the „assessment unit“ to be taken as „external source“ cannot be accepted as such interpretation is too wider and could not have been intended by CBDT. Moreover, as we have seen above that in para 10(e) , none of the agencies listed therein work under the aegis of Income-Tax Department, while Directorate of Income-tax(investigation) works under the aegis of Investigation Division of CBDT who is its controlling authority and hence could not be called as an „external source“. The policy of non filing of appeal by Revenue in low tax effect matter is part of litigation policy followed by Revenue wherein keeping in view low tax effect in its appeal , the Revenue choose not to persue its appeal further with higher forums keeping in view cost benefit analysis. The Revenue has chosen to free its resources by not persuing un-important and routine low tax effect appeals and instead direct its limited resources to bigger and important matters to generate higher resources more effectively and efficiently. This is purport of litigation policy wherein appeals filed by Revenue below threshold limits of tax effects are withdrawn by Revenue before Hon'ble Courts/tribunal. Thus keeping in view CBDT circular no. 3/2018 dated 11-07-2018 and as modified vide communication dated 20.08.2018, we are inclined to dismiss these three appeal filed by Revenue due to low tax effect involved in this appeal which is below Rs. 20 lacs being covered by circular dated 11.07.2018 as further modified on 20.08.2018. While disposing of these three appeals filed by Revenue due to low tax effect vide CBDT Circular no. 3/2018 dated 11.07.2018 and as further modified by communication dated 20.08.2018, we clarify that we have not commented

on the merits of the issues in these three appeals. However, at the same time we are granting liberty to Revenue that if at any stage Revenue wants to agitate the matter/issue in these three appeals in accordance with the clauses as are contained in the afore-stated circular number 3/2018 dated 11.07.2018 and modification dated 20.08.2018 based on cogent reasons/evidences that these appeals are covered under exceptions carved out in aforesaid CBDT circular , the Revenue is hereby granted liberty to file miscellaneous application(s) praying for recall of these orders in accordance with law. We order accordingly.

3.1. In view of the above, she vehemently argued that issue under appeal is not covered by the exception provided in CBDT Circular, therefore appeals deserve to be dismissed out rightly on the basis of low tax effect. So far as merit of addition is concerned, Id. AR vehemently argued that assessee has filed all the documentary evidence before the lower authorities and after considering all the facts and circumstances, the CIT(A) has very reasonably restricted addition to the extent of 12.5% of purchases from the suspicion dealers.

4. On the other hand, Id. DR contended that appeal should be decided on merit and order of the AO should be upheld.

5. I have considered rival contentions and carefully gone through the orders of the authorities below and found from record that AO reopened the assessment on the basis of information from Sales Tax Department alongwith statement of such parties who indulged in issuance of bogus bills. The AO added 25% of such purchases in assessee's income. The

CIT(A) has dealt with the issue threadbare and after considering all the facts and circumstances and after applying various judicial pronouncements of Tribunal and High Court restricted the addition to the extent of 12.5%. The precise observation of CIT(A) was as under:-

“7.1. 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 one of the hawala operators totaling to Rs.7,48,689/-. 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 with the remark 'Not known/left'. The onus shifted on the appellant particularly in the background of finding of Sales Tax Department, Mumbai. 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 was 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 entry. 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 judgment of Vijay Protein (supra) is a judgment related to manufacturing concern where all the documents were threadbare analysed and 25% disallowance on purchase was upheld. In the present case, the ratio of Vijay Protein, a manufacturing concern cannot be applied since the appellant is a business concern doing trading. In my opinion, the ratio of the judgment of Hon'ble Gujarat High Court in the case of Simit P. Seth 356 ITR 461 (Guj.) is applicable to the facts and circumstances of the appellant's case. Here, the Hon'ble Court has held that disallowance of 12.5% of the purchases from such hawala

dealers will be justified based on the premise that the appellant have derived benefit to this extent based on his nature of business. Thus the disallowance of purchase is "upheld in principle but it should be based on ratio of Simit P. Seth 356 ITR 461 (Guj.) as tire appellant is a trader not manufacturer. Thus the percentage disallowance by the A.O. out of suspicious purchases is upheld however this disallowance is restricted to the extent of 12.5% of purchase from suspicious dealers."

5.1. I found that findings recorded by CIT(A) are as per material on record, accordingly, I am inclined to agree with the Id. AR that CIT(A) was justified in confirming the addition only to the extent of 12.5% of bogus purchases. As the facts and circumstances in all the years are paremateria, following the reasoning given hereinabove, I confirm the order of CIT(A) in all the years under consideration.

6. In the result, all the appeals of the revenue are dismissed.

Order pronounced in the open court on 13/11/2019.

**Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER**

Mumbai; Dated 13/11/2019
Karuna, 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