

IN THE INCOME-TAX APPELLATE TRIBUNAL “SMC” BENCH MUMBAI
BEFORE SHRI PAWAN SINGH JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER
ITA No. 1672/Mum/2018 (Assessment Year 2010-11)

Shri Suresh Amarlal Mehta, M/s Nelco Steel India, 29, 2 nd Floor, Habib Building, 2 nd Panjrapole Lane, C.P. Tank, Mumbai-400004. PAN: ADBPM7463M	Vs.	ITO - 19(3)(4) Matru Mandir, Mumbai.
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Appellant

Respondent

Appellant by

: None

Respondent by

: Shri Akhtar H. Ansari (Sr. AR)

Date of Hearing

: 30.09.2019

Date of Pronouncement

: 01.11.2019

ORDER UNDER SECTION 254(1) OF INCOME TAX ACT

PER PAWAN SINGH, JUDICIAL MEMBER;

1. This appeal by assessee is directed against the order of Id. CIT(A)-53, Mumbai dated 22.12.2017 for Assessment Year 2010-11. The assessee has raised the following grounds of appeal:

Being aggrieved by the order passed by the Learned Assessing Officer (AO) u/s 143(3) r.w.s. 147 of the Income Tax Act ('the Act') and as partially confirmed by the CIT (A), your appellant prefers an appeal on the following grounds, which it is prayed, may be considered without prejudice to one another.

1. (a) On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the action of the A.O and approving the addition calculated by the A.O on alleged bogus purchases without appreciating the facts that the opinion of the A.O is based on merely presumptions and sub conjectures and

not on any material evidences corroborating the purchases when it is an accepted fact that material evidences super cedes all presumptions.

(b) The CIT (A) erred in confirming the addition without appreciating the understated vital facts that the purchases are duly supported with necessary documentary evidences including quantitative tally of purchases and sales and there appears no sign of it being bogus and the learned officer accepted the books of accounts.

(c) The Id. CIT(A) has erred in holding the impugned purchases to be bogus, in spite of voluminous evidences on record simply on the basis that the current addresses of vendors were not provided and the vendors were not produced before the Respondent.

(d) The Appellant prays that the addition/ disallowance of entire 751,705/- made in respect of Alleged purchases be deleted."

2. On the facts and circumstances of the case and in law, the Id. CIT(A), erred in dismissing the ground for the appellant's plea of withdrawal of initiation of penalty proceedings u/s 271(1)(c).

2. Initially this appeal was decided ex-parte against the assessee vide order dated 11.10.2018. However, on filing Miscellaneous Application (MA), the order was recalled vide order dated 02.08.2019 vide MA No. 346/Mum/2019. Hence, this appeal was listed again for hearing afresh by regular bench.

3. Brief facts of the case are that the assessee is reseller in ferrous and non-ferrous metals, filed its return of income on 18.09.2010 declaring total income of Rs. 13,61,540/-for Assessment Year 2010-11. 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. 60,13,6636/- 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 was issued on 15.09.2014 to the assessee. The assessee in response to the notice under section 148 filed its reply dated 29.12.2014 and stated that original return filed on 18.09.2010 under section 139(1) by assessee be treated as return in response to the said notice. The Assessing Officer after serving notice under section 143(2) dated 15.07.2015 proceeded for re-assessment. 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.)
Apex Ferromate Pvt. Ltd.	33,50,150
Arihant Trading Co.	19,86,302
Bhavani Impex India	2,47,721
Anmol Ferromet Pvt. Ltd.	4,02,463
Total	60,13,636

4. The assessee was asked to substantiate the purchases and to furnish the name of dealers, Bills &, Vouchers, description of goods purchased, quantity, rate and amount, the date of dispatch of goods and the name of place along with mode of transportation by road or other mode, Vehicle Number, and payment details. The assessee was also asked to furnish the corresponding sales of goods. The Assessing Officer noted that assessee could not produce any evidence during the course of hearing nor accepted the report of Sale Tax Department. The Assessing Officer in order to verify the transaction issued notice under section 133(6) of the Act. The notice was returned back unserved by the Postal Department with the remark 'Not known or Left'. The onus to prove the genuineness of purchases was on assessee, the assessee failed to discharge his onus. The assessee was asked to produce the parties for examination before Assessing Officer. The Assessing Officer noted that assessee failed to bring the said parties. The Assessing Officer noted that that assessee produced quantitative tally and evidence of payment. The Assessing Officer after considering the material before him concluded that the purchases shown from the alleged bogus parties remained unverifiable and that the assessee obtained bogus bills to inflate the expenses. The Assessing Officer after considering the material before him and contention of assessee disallowed 12.5% of the aggregate of total of non-genuine/alleged hawala purchases by taking

view that it would be just fair and proper to make addition of profit element embedded in such bogus purchase; in the assessment order dated 09.02.2016 passed under section 143(3) r.w.s 147.

5. On appeal before the Id. CIT(A), the action of Assessing Officer and disallowances made on account of bogus purchases was sustained. Further, aggrieved by the order of Id. CIT(A), the assessee has filed the present appeal before us.
6. None appeared on behalf of assessee despite the service of notice of hearing of appeal through registered post. The sent through registered post is returned back unserved with the remark of postal authorities "intimated/ID". Therefore, we left no option except to hear the Id. DR for the revenue and to decide the appeal on the basis of material available on record.
7. We have heard the submission of Id. Departmental Representative (DR) for the revenue and perused the material available on record. 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. On re-opening the Id. DR submits that there was sufficient tangible material/information in the form of information from DGIT (Investigation) that Sale Tax Department, Government of Maharashtra has unearthed the scheme about the hawala entry provider, who were engaged in providing bogus bills, therefore, the Assessing Officer has sufficient reason for making belief that the income of the assessee has escaped assessment.

8. We have considered the submissions of Id. DR for the revenue and perused the record. The sole ground of appeal raised by assessee relates to disallowance of 12.5% of the bogus purchases. During the assessment, the Assessing Officer issued show-cause notice to the assessee to prove the genuineness of the purchases and to produce the parties for verification. The assessee produced evidences of purchases and payment of consideration through cheques. The assessee was asked to produce the parties. The Assessing Officer noted that the assessee failed to produce the parties. The Assessing Officer also made investigation by issuing notice under section 133(6) to all the dealers. The notices sent to dealers were returned back with the remark of Postal Authorities 'Not Known or Left'. The Assessing Officer also noted that the assessee could not produce the proof of delivery, transport of goods and inward register maintained at the godown. The Assessing Officer

has not disputed the sale of the assessee. The Assessing Officer after rejecting the books of account made addition to the extent of profit element embedded in such transactions and restricted the disallowance to the extent of 12.5% of the alleged non-genuine purchases. The Id. CIT(A) confirmed the action of Assessing Officer by following the decision of Hon'ble Gujarat High Court in CIT vs. Simith P. Seth [356 ITR 451 (Guj.)].

9. We have noted that the assessee is engaged in the business of in ferrous and non-ferrous metals. 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. Considering the written submissions of the assessee that the disallowance of alleged bogus purchase is unreasonable. 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. Needles to say that before making addition, the Assessing Officer shall grant opportunity to the assessee before passing the order in accordance with

law. In the result, the grounds of appeal raised by assessee is partly allowed.

10. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 01/11/2019.

Sd/-
RAJESH KUMAR
ACCOUNTANT MEMBER

Sd/-
PAWAN SINGH
JUDICIAL MEMBER

Mumbai, Date: 01.11.2019

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Copy of the Order forwarded to :

1. Assessee
3. The concerned CIT(A)
5. DR "SMC" Bench, ITAT, Mumbai
6. Guard File

2. Respondent
4. The concerned CIT

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai