

IN THE INCOME-TAX APPELLATE TRIBUNAL "H" BENCH MUMBAI  
BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER

AND SHRI PAWAN SINGH JUDICIAL MEMBER

ITA No. 5788/Mum/2016 (Assessment Year 2009-10)

M/s Shreenox Synthetics Sr.No. 9, 548, Aasbibhi, Kalyan Road, Bhiwandi-421302. <b>PAN: ABFFS4088N</b>	Vs.	ACIT - 19(1)(3) Circle-1, 1 <sup>st</sup> Floor, Mohan Plaza, Wayale Nagar, Khadakpada, Kalyan (W) -421301
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Appellant

Respondent

Appellant by : Ms. Kiran Doifode (AR)

Respondent by : Shri Manoj Kumar Singh (DR)

Date of Hearing : 27.08.2019

Date of Pronouncement : 04.11.2019

**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)-2, Thane dated 30.06.2016 for Assessment Year 2009-10. The assessee has raised the following grounds of appeal:

A. The Ld Commissioner (Appeals) has erred in rejecting the books of account under section 145(3) of the I T Act 1961 in the absence of any defect being pointed out, when the required detailed information was submitted by the Appellant and Form 3CD Audit Tax Report was also filed.

B. The Ld. Commissioner (Appeals) has erred in holding that the onus was not discharged by the Appellant and has failed to appreciate and no justification is given to reject the explanation/clarification given by the Appellant when all the necessary supporting documents were submitted by the Appellant.

C. The Ld Commissioner (Appeals) has failed to consider and appreciate the purchase of RS.737291/- as genuine purchase from M/s. Swastik Enterprises, in the light of the fact that vide letters dtd.27.6.2016, 31.5.2016 and 24.5.2016, the Appellants had filed confirmation of accounts duly signed by Prop. of M/s. Swastik Enterprises, produced adequate evidences i.e. sale bills, delivery challans and octroi receipts from M/s. Swastik Enterprises and submitted certificate dated 12.12.2013 given by M/s. Swastik Enterprises stating that they had delivered the textile auxiliary and submitted ledger confirmation accounts.

D. The Ld Commissioner (Appeals) has failed to consider and appreciate that there were two different suppliers under the same name Ms. Swastik Enterprises, but having different addresses, different VAT Tin Number and the A.O. in his order dated 16.1.2014 in Para 6 only refers to one Affidavit of Shri Abdul Sari Jameer Ahmed Khan, Prop. of M/s. Swastik Enterprises having TIN NO.27610669252-V, this supplier is different and therefore the purchase of RS.737291 from M/s. Swastik Enterprises, Prop. Shri Jatin G. Ghelani ought to have been considered as genuine.

E. The Ld. Commissioner (Appeals) in Para 9.13 has erred in holding that the Appellants had suppressed its profit by 0.47% and has wrongly worked out quantum of suppressed profit as Rs. 615013/-, and therefore, the ratio applied of gross profit is erroneous.

F. The Ld Commissioner (Appeals) has failed to appreciate and consider that in the AY 2007-08 (non hawala year) the gross profit was 2.97% which was lower than 4.73% in AY 2009-2010, and therefore the Ld CIT ought to have worked out on the basis of average gross profit of AY 2007-08 (2.97%) and AY 2008-09 (5.20%) non hawala years, which would be 4.90% and therefore the suppressed profit would come to 0.17% (4.90% (-) 4.73% which works out to Rs 2,22,452/- (13,08,53,927 x 0.17/100).

G. The Appellant craves leave of this Hon'ble Tribunal to add, delete, amend or modify any of the above grounds if necessary before the Appeal is finally decided.

2. Brief facts of the case are that the assessee is engaged in the business of yarn processing & dyeing, filed his return of income on 31.08.2009 declaring total income of Rs. 8,99,460/- for Assessment Year 2009-10. The return of income was processed under section 143(1). The case was selected for scrutiny and assessment was completed under section 143(3) on 31.03.2011 assessing total income at Rs. 939460/-. Thereafter, the case 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. 9,68,691/- 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 25.03.2013 to the assessee. The assessee in response to the notice under section 148 filed its reply dated 03.10.2013 and stated that original return filed on 31.08.2009 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 25.03.2013 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.

<b>Name of the parties</b>	<b>Bill amount (Rs.)</b>
M/s Shreeji Commercial Corporation	1,43,000/-
M/s Swastik Enterprises	7,81,491/-
M/s Pawan Enterprises	44,200/-
<b>Total</b>	<b>9,68,691/-</b>

3. 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 the purchases reflected in the books of account of the alleged hawala parties, were not properly supported with the relevant document like transportation bills, delivery challan, goods receiving note and octroi receipt. The Assessing Officer on the basis of material available before him and on the basis of information received from Sale Tax Department disallowed the entire purchase shown from all three parties while passing the assessment order on 16.01.2014 passed under section 143(3) r.w.s. 147.

4. Aggrieved by the additions of 100% disallowance of the alleged bogus purchases, in the assessment order, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee made elaborate submission and also furnished various evidences to substantiate the genuineness of the purchases and submitted that the disputed purchases from three parties are only 0.27% against total purchases of Rs. 11,12,68,521/-. The assessee also furnish the Gross Profit (GP) and Net Profit (NP) ratio shown by assessee for Assessment Year 2007-08 to 2011-12, which is recorded by Id. CIT(A) in para-9.10 of the impugned order. The Id. CIT(A) after considering the submission of the assessee held that the assessee had suppressed profit by booking hawala purchases and restricted the disallowances to the extent of 25% of the disputed purchases, which was worked out to be Rs. 2,42,173/-. The Id. CIT(A) by taking view that the disallowance of hawala purchases is less than the suppressed GP, therefore, the disallowance was restricted to the extent of suppressed GP i.e. Rs. 6,15,013/-, out of total hawala purchases of Rs. 9,68,691/-. Thereby granted relief of Rs. 3,53,948/-. Further, aggrieved by the order of Id. CIT(A), the assessee has filed the present appeal before this Tribunal.
5. We have heard the submission of Authorized Representative (AR) of the assessee and Id. Departmental Representative (DR) for the revenue and perused the material available on record. The Id. AR of the assessee

submits that the Id. CIT(A) while restricting the addition as mechanically made the disallowance of Rs. 6,15,013/-, which is excessive. The Id. AR of the assessee further submits that the assessee made purchases of Dyes and Chemical. The assessee furnished complete details in the form of ledger accounts, purchase invoices, delivery challans showing goods received by the assessee. The payments were made through cheques/banking channel. The purchases were duly entered in the books of account and purchase register. Entire purchases from three alleged bogus parties of 5730 kg. is reflected in the Tax Audit Report. The assessee also filed a certificate from Swastik Enterprises dated 12.12.2013 certifying that the goods/materials were delivered to the assessee. The assessee also furnished the VAT amount paid by assessee. The Assessing Officer and the Id. CIT(A) relied upon the statement/affidavit of three parties without giving any opportunity to the assessee. The Id. AR of the assessee submits that though the entire addition is liable to be deleted, however, to avoid the protracted litigation, the disallowance may be restricted to the reasonable percentage keeping in view the business activities of the assessee and the history of Gross Profit (GP) declared by the assessee in past years. In the AY 2007-08 the assessee declared GP @ 2.97%, in AY 2008-09 @ 5.20% and during the under consideration (AY 2009-10) @ 4.73%. for subsequent years the assessee declared GP @ 3.73% for AY 2010-11

and at 3.44% for AY 2011-12. The disallowances sustained by Id CIT(A) is on higher side.

6. The Id. AR further submits that there is delay of 13 days in filing the present appeal. In support of application for condonation of delay, the assessee has filed the affidavit of Shri Suman Lal Jain, one of the partners of the assessee firm. The Id. AR of the assessee submits that the impugned order of Id CIT(A) dated 30.06.2016 was received by assessee on 16.07.2016, the partner of the assessee firm who is taking care of day to day affair was observing Jain Parushan from 29<sup>th</sup> August 2016 to 5<sup>th</sup> September 2016 and thereafter attended pilgrimage at Pali Thana Jain Temple and return to Mumbai on 13.09.2016 and the appeal was filed immediately after proper consultation with Advocate on 27.09.2016. The delay is neither intentional nor deliberate and the Bench may take a lenient view in condoning the delay as the assessee has good case on merit.
7. On the other hand, the Id. DR for the revenue on the issue of condonation of delay submits that the bench may take appropriate decision as per their discretion.
8. On merit, 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 Id. CIT(A) has reasonably estimated the disallowances. The assessee is not entitled for any further relief.

9. We have considered the submissions of both the parties and perused the order of lower authorities and the other material available on record. First we are considering the plea of Id. AR of the assessee for condoning the delay in filing appeal. We have noted that the Id. AR of the assessee has fairly stated in the application/affidavit for condonation of delay that the impugned order dated 30.06.2016 was received on 16.07.2016. Considering the contents of the affidavit of the partner of the assessee that he was observing Jain Parushan from 29<sup>th</sup> August 2016 to 5<sup>th</sup> September 2016 and thereafter attend pilgrimage at Pali Thana Jain Temple and return to Mumbai only on 13.09.2016 and the appeal was filed immediately after proper consultation with Advocate on 27.09.2016. The assessee has shown bonafidely explained the delay and we have further seen that the delay is of only 13 days, thus, the delay in filing of the appeal is condoned.

10. Now we are adverting to the merits of grounds of appeal. We have seen that the assessee has raised as many as seven grounds of appeals. Ground No.1 relates to rejection of books of accounts, we noted that the

Id AR for the assessee has not argued in support of this ground, therefore, this ground is treated as not pressed and dismissed. Rest of the grounds of appeal are related to the disallowance of bogus purchases. The assessing officer made the additions/ disallowance by taking view that the assessee has shown purchases from the parties which are identified as hawala dealers by Sales Tax department of the State Government. The list of such hawala dealers was forwarded by the sales tax department to the investigation wing of Income –tax authorities and the assessee was shown as one of the beneficiary. And that during the assessment the assessee could not substantiate delivery of such purchases. The assessing officer made 100% disallowances of such purchases. However, on appeal the Id CIT(A) after considering the disallowance @ 25% of the bogus purchases noted that disallowance @ 25% of hawala purchases are is less than the suppressed GP, therefore, disallowance to the extent of alleged suppressed GP i.e Rs. 6,15,013/- out of total hawala purchase was sustained. The Id AR for the assessee vehemently submitted that the disallowances sustained by Id CIT(A) is on higher side and that the assessee for the year under consideration has already declared GP @ 4.73%. We have that in the AY 2007-08 the assessee declared GP @ 2.97%, in AY 2008-09 @ 5.20% and during the under consideration (AY 2009-10) @ 4.73% and in subsequent years the assessee declared GP @ 3.73% for AY 2010-11 and at 3.44% for AY

2011-12 respectively. Considering the GP ration declared by the assessee, the disallowances sustained by Id CIT(A) is on higher side.

11. We are of the considered opinion that under Income Tax Act only real income can be taxed by the Revenue. We may further conclude that even if the transaction is not verifiable, the only taxable is the taxable income component and not the entire transaction. And after considering the facts of the case and the rival contentions of the parties we are of the opinion that in order to fulfill the gap of revenue leakage the disallowance of reasonable percentage of such purchases would meet the end of justice. The Hon'ble Bombay High Court in **CIT Vs Hariram Bhambhani in ITA No. 313 of 2013** decided on 04.2.2015 held that revenue is not entitled to bring the entire sales consideration to tax, but only the profit attributable on the total unrecorded sales consideration alone can be subject to income tax. Considering the facts of the present case the disallowance on account of bogus purchases is restricted to 12% of the total impugned (disputed) purchases. The assessing officer is directed accordingly.

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

Order pronounced in the open court on 04/11/2019.

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

**Sd/-**  
**PAWAN SINGH**  
**JUDICIAL MEMBER**

Mumbai, Date: 04.11.2019  
SK

**Copy of the Order forwarded to :**

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

2. Respondent
4. The concerned CIT

**BY ORDER,**

**Dy./Asst. Registrar  
ITAT, Mumbai**