

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “SMC”, MUMBAI
Before Shri Shamim Yahya (AM) & Shri Pawan Singh (JM)

ITA No. 5072/Mum/2018(A.Y : 2009-10)

Anand Govind Vyas 27, Vrundavan Building 12 th Khetwadi, Near Harkisandas Hospital, Khetwadi, Mumbai-400 004 PAN : ABVPV2601C	Vs	ITO 19(1)(1), Mumbai
APPELLANT		RESPONDEDNT

Appellant by	Shri Pavan Ved AR
Respondent by	Shri Akhtar H Ansari Sr DR
Date of hearing	19-11-2019
Date of pronouncement	25-11-2019

ORDER

Per Pawan Singh, JM :

1. This appeal filed by the assessee is directed against the order of CIT(A)-53, Mumbai dated 24-07-2018 for the assessment year 2009-

10. The assessee has raised the following grounds of appeal

“1.) The Id. CIT (A) erred in confirming validity of reopening for various reasons.

2.) The Id. CIT(A) erred in confirming partial addition for so called unverifiable purchases despite submission of affidavit of suppliers, payment by account payee cheques to suppliers, proof of transportation of goods, corresponding sale, admission of factum of purchase by LAO in assessment etc reasons.

3.) Without prejudice to above, the Id. CIT (A) was not justified in confirming the quantum of addition for so called unverified purchases.

4.) Both the lower authorities were possibly willfully perverse in passing the order the LAO possibly backdated the order as the order was passed before the date of hearing. Hence cost be awarded to the innocent appellant.”

2. The brief facts of the case are that the assessee, an individual, filed his return of income on 22-09-2009 declaring income at Rs.8,05,640/-. The return was processed u/s 143(1) of the I.T. Act, 1961 accepting the returned income. Subsequently, the case was re-opened under section 147 on the basis of information received from Sale Tax Department, Government of Maharashtra informing that certain hawala operators were 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 beneficiaries. The assessee allegedly made the purchases of Rs.1,31,09,897 /- 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 dated 11-02-2014 was issued to the assessee. Subsequently, the assessing officer issued notice u/s 142(1) on 16-05-2015 and the assessee was also supplied with recorded reasons for re-opening. The Assessing Officer thereafter issued notices u/s 143(2) and u/s 142(1) were issued on 27-11-2014. During the assessment, the Assessing Officer noted that the assessee has shown purchases from the

following party, who was declared as hawala dealers by the Sale Tax Department, Government of Maharashtra:

1	K R C Trading Co. Pvt Ltd	Rs.1,31,09,897/-
	Total	Rs.1,31,09,897/-

3. During the assessment the assessee was asked to furnish name of seller with address, bills and voucher, description of goods, quantity, rate and amount, mode of transportation with vehicle number and payment details. The details of corresponding sales were also required by assessing officer. The assessing officer recorded that the assessee could not produce any evidence. The assessing officer issued notice under section 133(6), which was return back with the remark 'left' / not traceable. After analysing the books of the assessee and the evidences furnished by assessee, the AO concluded that the purchases made by assessee from that party were not genuine as claimed and debited in his P&L account. The AO rejected the books of account of the assessee. The AO concluded that by showing the purchases from hawala parties, the assessee suppressed the profit to reduce the tax liability. The AO accordingly disallowed 12.5% of the aggregate of non genuine purchases. On appeal, action of the assessing officer was confirmed. Further aggrieved, assessee has filed further appeal before us.

4. We have heard the submissions of the Ld.AR for the assessee and the Ld. DR of the revenue. The Ld.AR of the assessee submits that the purchases shown by the assessee are genuine. Ground 1 relates to validity of reopening. The Ld.AR of the assessee submits that there was no verification of the opinion by AO in the reasons recorded. The approval of Joint Commissioner was without application of mind. The AO not supplied this information despite making request. The AO not supplied copy of material on the basis of which reasons of reopening was recorded. The Ld.AR of the assessee submits that in absence of sufficient material for reopening, the reopening was invalid. The Ld.AR of the assessee relied upon the decision of Hon' ble Apex Court in CIT vs Odeon Builders Pvt Ltd in Review Petition in Civil Appeal No.9604-9605 of 2018 order dated 21-08-2019.
5. On the other hand, the Ld. DR for the revenue supported the order of lower authorities. The Ld. DR further submits that in the present case, no scrutiny assessment u/s 143(3) was passed. The assessment was reopened by issue of notice u/s 148 dated 11-02-2014 which was within four years from the end of relevant assessment year. No objection was filed by the AO against the reopening of the assessment. Therefore, no approval from the competent authority was required.

6. We have considered the submissions of both the parties and perused the material available on record. We have noted that case was reopened u/s 147 and accordingly notice u/s 148 was issued on 11-02-2014, which was duly served upon the assessee on 19-02-2014. The assessment involved in the present appeal is AY 2009-10. Admittedly, notice u/s 148 was issued within four years from the end of relevant assessment year. Accordingly, no approval was required u/s 151. So far as other objection of Ld.AR of the assessee are concerned that the AO has not supplied the information. We have noted that the assessee contested the preceding / reopening and no such objection was raised nor any other objection for non supply of other material was raised within one month from receipt of notice u/s 142(1) or 143(2).
7. We have noted that the assessee neither before Tribunal nor before the Id CIT(A) raised any grounds that the finding of facts recorded by assessing officer are perverse or the assessee furnished complete details to substantiate his purchase. We have also perused the statement of facts filed by the assessee before Id CIT (A) and no such facts that any material on the basis of which the assessing officer made belief to reopen the assessment was made, was demanded during assessment or any objection was raised. The assessee has not shown

any evidence to us that he demanded cross examination of the hawala dealers. The Hon' ble Gujarat High Court in Peass Industrial Engineers (P) Ltd (2016) 76 taxmann.com 106 (Gujarat) held that where Assessing Authority had tangible material in form of specific information received by Investigation Wing that assessee had been beneficiary of bogus transactions, it was thoroughly justified in issuing notice for reassessment. Therefore, considering the decision of Hon' ble Gujarat High Court in Peass Industrial Engineers (P) Ltd (supra) we do not find any merit in the ground of appeal raised by the assessee.

8. The case law relied upon by the Ld.AR of the assessee is not helpful to the assessee as the facts of that case are different. In the said there is clear finding of the lower that the assessee substantiated its purchases by furnishing sufficient documentary evidences. However, in the present case the assessing officer has clearly recorded that the assessee failed to substantiate the purchases. At the cost of repetition we may mentioned that the assessee has no where pleases that the finding of the assessing officer are perverse. In view of the aforesaid discussions, we do not find any merit in Ground No. 1 of the appeal and the same is dismissed.

9. Grounds 2 & 3 relate to 12.5% of disallowance of purchases. The Ld.AR of the assessee submits that the addition is based only on the information of third parties. The AO has not verified the information. The assessee was not provided cross examination of the parties. The assessee furnished all the purchase bills along with the proof of payments through cheques. The assessee also furnished the proof of transportation. The transporter was paid through cheque. The assessee also furnished the proof of sale of the material. The assessee also filed the affidavit of seller confirming the sale. The Ld.AR submits that the assessee has properly reconciled the purchase and sales. Therefore, no addition was warranted. The ld. AR for the assessee also filed certain bullet points on his submissions.
10. On the other hand, the Ld. DR for the revenue supported the orders of lower authorities. The Ld. DR submits that the investigation wing of income-tax department made full-fledged enquiry to unearth the modus operandi of the hawala traders, who were indulged in providing the bogus bills without actual delivery of the goods. The assessee is one of the beneficiaries of the purchases from the hawala dealers. The assessing officer has already granted sufficient relief to the assessee and the assessee is not entitled for further relief and the appeal of the assessee is

liable to be dismissed. The assessee never asked for cross examination of the parties. The notice sent to the supplier was return back as unserved.

11. We have considered the submissions of the Id. A.R of the assessee and D.R for the revenue and also gone through the orders of the lower authorities. During the reassessment the assessing officer asked the assessee to furnish sales bills, transportation documents, delivery challan, bills, lorry receipts, copy of ledger account and date wise payment details, bank statements, stock register, and sales tax return. The assessing officer recorded that the assessee could not file vital documents like delivery challan, goods inwards register and no documents that goods were delivered was filed by the assessee. Mere filing of evidence that payments was made through cheque id not sufficient. On the basis of his observation the assessee officer concluded that mere making payment through cheques is not sufficient. The parties from whom the assessee made purchases were identified as hawala dealers. We have seen that the assessing officer while passing assessment order made addition on account of bogus purchases @ 12.5% of the aggregate of purchases shown from the alleged hawala traders. The Id CIT(A) confirmed the action of the assessing officer on the similar lines. The assessing officer has not made any independent inquiry.

12. From the record, we noted that the assessee is manufacturer, stockist and dealers in M.S / EN&D Bright Bars/Rounds/ HEX/ Square/ Carbon steel and alloy steel. The assessee has already shown a GP @ 3.75%. In our view if 12.5% of the addition is sustained, the GP of assessee would increase which is unreasonable in the business of assessee. 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 fulfil the gap of revenue leakage the disallowance of reasonable percentage of such purchases would meet the end of justice. Considering the facts that the assessee has already declared GP @ 3.75%, therefore, we direct the Assessing Officer to restrict the disallowance on account of bogus purchase to the extent of 12.5% minus GP declared by assessee.
13. We have further noted that the Id AR for the assessee has filed copy of decision of Bombay High Court in CIT Vs Nikunj Eximp (P) Ltd (2013) 35 taxmann.com 384(Bom) and Chhugamal Rajpal Vs S.P. Chaliha (79 ITR 603SC) , however, no reliance was made on these decisions, during the submissions made by Id AR for the assessee. The other case law

relied by Id AR for assessee in CIT vs Odeon Builders Pvt Ltd (supra) is not helpful to the assessee as the facts of that case are different. In the said there is clear finding of the lower that the assessee substantiated its purchases by furnishing sufficient documentary evidences. In the result, Ground Nos. 2 & 3 of the appeal are partly allowed.

14. Ground No. 4 relates to passing of assessment order on back date. The Id AR for the assessee not made any submissions, therefore, this ground of appeal is treated as not pressed and dismissed accordingly.

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

Order pronounced in the open court on 25-11-2019.

Sd/-

Sd/-

(Shamim Yahya)	(Pawan Singh)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dt : 25th November, 2019

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

/True copy/

By order

Asstt. Registrar, ITAT, Mumbai