

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

ITA No. 5605/Mum/2018(A Y : 2010-11)

ITO 17(2)(1), 1st Floor, Room No. 134, Aayakar Bhavan, M.K.Road, Mumbai-400020	vs	M/s Ishardas Aggarwal & Sons 390, Latif House, S.T. Road, Mumbai-400 009 PAN : AABFI2423E
APPELLANT		RESPONDEDNT

Appellant by	Shri Akhtar H Ansari
Respondent by	None
Date of hearing	20-11-2019
Date of pronouncement	25-11-2019

ORDER

Per Pawan Singh, JM :

1. This appeal filed by the revenue is directed against the order of CIT(A)-56, Mumbai dated 31-07-2018 for the assessment year 2010-11. The revenue has raised the following grounds of appeal:-

"On the facts and circumstances of the case, and in law, the Ld. CIT(A) has erred in directing the A.O. to restrict the addition of Rs. 45,91,500/- being 12.5% of bogus purchase of Rs. 3,67,32,000/- to 3% thereby giving a relief of Rs.34,89,540/- to the assessee without considering the fact that the aforesaid addition to the total income of the assessee was made by A.O. on the basis of information received from an authoritative external source i.e. Maharashtra Sales Tax Department through DGIT(Inv.) Mumbai.."

2. The brief facts of the case are that the assessee is a firm, doing business in iron and steel Pipe trading, filed its return of income on 28-09-2010 declaring total income at Rs.41,907/- which was processed u/s 143(1) of

the Income-tax Act (Act). The assessment 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. 3,67,31,998/- 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 27.03.2015 was issued to the assessee. The assessee, thereafter asked for reasons recorded for reopening of assessment which was supplied to the assessee vide letter dated 24-07-2015. Assessing Officer thereafter issued notices u/s 142(1) & 143(2) along with a questionnaire on 29.03.2015.. During the assessment, the Assessing Officer noted that the assessee has shown purchases from the following parties, who were declared as hawala dealers by the Sale Tax Department, Government of Maharashtra:

	Name of the parties	Bill amount (Rs.)
1	DHRV Sales Corporation	20,17,100
2	Om Corporation	28,00,687
3	Deepali Enterprises	4,74,714

4	Siddhivinayak Trading	16,45,873
5	Rekha Trading Company	4,74,015
6	Siddhivinayak Steels	12,46,533
7	Naman Enterprises	8,62,331
8	Shantinath Corporation	9,60,009
9	Bhavani Trade Link	53,13,852
10	Chanchal Tube Corporation	29,10,354
11	Surat Tube Corporation	4,66,657
12	Nadeep Trading Corporatyion	46,36,811
	Total Amount	3,67,31,998

3. The assessing officer noticed that the assessee has claimed total purchases of Rs.3,67,31,998/- from the above parties and the TIN provided by the assessee in respect of the above mentioned parties was exactly the same as appearing in the information available in his office. The AO asked the assessee to furnish all relevant evidence to establish that goods have actually been delivered / supplied. The assessee was also asked to furnish his explanation on the purchases purported to have made from the aforesaid party and the details of brokers / agents through whom purchases were claimed to have been made by the assessee including name, address, contract number, etc. to prove the genuineness of the transaction. The assessee, in its reply dated 22-02-2016 has furnished copies of purchase bills and payment details to purchase parties; however, no furnished the details of brokers / agents or the suppliers before the AO.

The AO noted that the assessee has not made available the details of transportation of the material purported to have been purchased from the aforesaid hawala dealers, such as transportation receipts, delivery challans, and ledger account confirmation from the aforesaid dealers. The AO further noted that the deduction of VAT in the bill does not bolster the case of the assessee because such deduction does not prove genuineness of a particular transaction in terms of supply of material, such deduction is basically linked with the payment aspect only and cannot establish the purpose for which payment is made; the production of invoice is of no help to the assessee since in the activity of accommodation entry, such documents are meticulously maintained both by the entry provider and entry seeker. The AO further noted that it was also not important whether the amount is small or big and whether the assessee is having loss or profit. There may be number of reasons for seeking the accommodation entry as it leads to generation of the cash in the hands of the assessee. The AO further observed that the onus was on the assessee to prove the genuineness of expenditure as it was the assessee who has made the claim and further the hawala parties were personally present for giving the deposition before the sales-tax authorities but vanished into thin air immediately when income-tax department started making enquiry. The AO ultimately took his view

that the assessee has intentionally inflated the purchases by taking accommodation entry to reduce the profit element. He observed that the assessee has stated that it has sold the goods purchased from the alleged bogus parties to various parties. Therefore, only profit element embedded in such purchases could only be added to income of the assessee. Accordingly, following the decision of ITAT, Mumbai in the case of ACIT vs Arya Texturisers & Twisters (ITA No.29/Mum/2002) dated 03-12-2005, and also the judgment of Hon'ble Gujarat High Court in the case of CIT vs Bholanath Poly Fab Pvt Ltd (2013) 355 ITR 290 (Guj), the AO added an amount of Rs.45,91,500/- being the profit element at 12.5% embedded in the alleged bogus purchases.

4. On appeal, the Ld.CIT(A) reduced the addition to the extent of 3% of transactions covered by accommodation entries, with the following observations:-

“17. All submissions of the appellant is duly considered. The gross profit rate of is 4.7%. The assessee deals in iron and steel. The Assessing Officer disallowed '12.5% of the alleged, amount of accommodation entries. On facts and circumstances of the case, I, after considering all aspects which includes (a) the extent of documentation Appellant has and (b) the strength of evidences brought to record by Assessing Officer and making relative weighing of same, hold that a moderate disallowance suffice in this specific case. It is directed that the disallowance be kept at 3% of transactions covered

accommodation entries. Regrouped Ground 2 is disposed of accordingly and Assessing Officer is directed to modify assessment.”

5. Aggrieved by the order of Ld.CIT(A), the revenue has filed the present appeal before us. None appeared on behalf of assessee, despite service of notice. Therefore, we are left with no option except to hear the submission of Ld. DR for the revenue and to decide the appeal on the basis of material available on record.
6. The Ld. DR for the revenue submits that during the assessment assessee failed to furnish necessary evidence. The assessee was one of the beneficiaries from the parties shown in the list of hawala dealers, copy of which was forwarded to the AO. The Ld. DR for the Revenue further submitted that the Investigation Wing of the Income-tax Department made full-fledged enquiry. The parties from whom the assessee has shown the purchases are bogus Hawala dealers. The hawala dealers are indulged in issuing bogus bills without delivery of any material or goods. The assessee obtained accommodation bills only in order to inflate the expenses and to bring down the profitability in order to avoid the tax.
7. We have considered the submissions of the Ld. DR for the revenue and perused the material available on record. We have noted that during the assessment the assessee was asked to furnish the evidence relating to the alleged hawala purchases. The AO recorded that the assessee failed to produce any evidence. The AO, however, following the decision of

Hon'ble Gujarat High Court in the case of CIT vs Bholanath Poly Fab Pvt Ltd (supra) and the decisions of the Tribunal cited above, added 12.5% of the alleged hawala purchases being the profit element embedded in such unrecorded purchase, which came to Rs.45,91,500/-. On appeal, the Ld. CIT(A) reduced the addition to the extent of 3% on such hawala purchases. The ld CIT(A) considered the gross profit (GP) declared by the assessee @ 4.7%. The ld. CIT(A) after considering the facts that the assessee is dealing in Iron and steel and has already declared GP @ 4,7% and considering the evidence filed by the assessee sustained the disallowance to the extent of 3% of the impugned purchase. No contrary fact to take other view is brought to our notice. Accordingly, we do not find any infirmity in the order of Ld.CIT(A). We uphold the same. The ground of the revenue fails.

7. In the result, appeal of the revenue is dismissed.

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

Sd/-

Sd/-

(Shamim Yahya)	(Pawan Singh)
ACCOUNTANT MEMBER	JUDICIALMEMBER

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