

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
Before Shri Shamim Yahya (AM) & Shri Pawan Singh (JM)
ITA No. 5598/Mum/2018(Assessment year : 2011-12)

DCIT-4(3)(1), Mumbai	vs	M/s Tribhovandas Bhimji Zaveri Bombay Ltd, 241-243, Zaveri Bazar, Mumbai-400 002 PAN : AA ACT4893P
APPELLANT		RESPONDEDNT

Appellant by	Shri Akhtar H Ansari Sr DR
Respondent by	Shri Pradeep Bhatia AR
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)-9, Mumbai dated 24-07-2018 for the assessment year 2011-12. The revenue has raised the following grounds of appeal:-

"1. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the AO to delete the disallowance made on bogus purchase of Rs.1,68,820/- as the disallowance was made on the basis of information forwarded by Maharashtra Sales Tax Department and further enquiry."

2. "The information was generated by Maharashtra Sales Tax Department and received through the Investigation Wing of the Income Tax Department. As such, the case squarely falls under the exception 10(e) of circular No.3/2018 dt.11.07.2018 and amendment thereto dated 20.08.2018."

2. The brief facts of the case are that the assessee is a company engaged in the business of manufacturing jewellery on job work basis, filed its return of income on 29-09-2011 declaring total income at Rs.30,54,270/-.

The return of income was selected for scrutiny and notices u/s 143(2) & 142(1) were issued. During the course of assessment, the assessee was asked to furnish the details of purchases along with parties name, address, etc. In the meantime Sale Tax Department, Government of Maharashtra has sent the list of suspicious dealers, who have issued accommodation bills without delivery of goods. On verification of the list, the AO noticed that M/s Unique Enterprises is one of such hawala dealers. The assessee has shown purchases amounting to Rs.1,68,820/-, from M/s Unique Enterprises. The assessee company was asked to file bills, ledger account of M/s Unique Enterprises. The AO specifically asked the AO to explain whether the stores, spares and consumables purchased from the party have been used for the business during the year. However, the assessee filed only the copies of bill. The AO further observed that throughout the submission the assessee could not prove that the goods purchased were actually received by it and that the goods purchased were used for business purpose. On the strength of this, the assessing officer made addition of Rs.1,68,820/- being 100% of such alleged bogus purchases. On appeal, the Ld.CIT(A) restricted the disallowance to 12.5% of such alleged bogus purchases by following the judgement of Hon'ble Gujarat High Court in the case of CIT vs Simit P Sheth (2013) 356 ITR 451 (Guj). Aggrieved, the revenue has filed the present appeal before us.

3. We have heard the submissions of the learned authorised representative (Ld.AR) for the assessee and the Ld. DR of the revenue. The learned departmental representative (Ld. DR) for the revenue submits that during the assessment assessee failed to furnish necessary evidence to prove that the purchased material from M/s Unique Enterprises was actually received by the assessee. 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.
4. The Ld.AR for the assessee, on the other hand submitted that the assessee has proved that goods purchased were received by assessee. Ledger copy of account of M/s Unique Enterprises was submitted; copies of delivery challans of each bill which was properly verified and stamped by security department was also submitted; copies of bank statement showing the payment was submitted; copy of stock register showing the quantity of goods purchased from M/s Unique Enterprises. Finally, he submitted that the addition cannot stand without confronting the third party evidence to the assessee.
5. We have considered the submissions of the Ld. DR for the revenue and Ld AR for the assessee 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 about the actual delivery of the material purchases from M/s Unique Enterprises. The AO added the entire amount of alleged hawala purchases, to the total income declared by the assessee. On appeal, the Ld.CIT(A), by relying upon the judgement of Hon'ble Gujarat High Court in the case of CIT vs Simit P Sheth(356 ITR 451 Guj HC) sustained the addition to the extent of 12.5% on such hawala purchases.

6. The Hon 'ble Bombay High Court in CIT vs Hari Ram Bambani in ITA No.313 of 2013 decided on 04-02-2015 held that revenue is not entitled to bring the entire sale consideration to tax but only the profit attributable on such unrecorded sale consideration. Therefore, we find that the addition retained by the Ld. CIT(A) is in conformity with the judgement of the Hon'ble Bombay High Court. 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