

IN THE INCOME TAX APPELLATE TRIBUNAL "F", BENCH MUMBAI
BEFORE SHRI. VIKAS AWASTHY, JUDICIAL MEMBER
&
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER
ITA No.5216/Mum/2017
(Assessment Year: 2012-13)

ACIT-17(3) Room No.137, 1 st Floor Aaykar Bhawan,M.K.Marg Mumbai-400 020	Vs.	Vijay N.Mehta Room No.13,338 N.N.Street Masjid Bunder(W) Mumbai-400 009
		PAN/GIR No.AADPM8512G
(Appellant)	..	(Respondent)

Revenue by	Samatha Mullamudi
Assessee by	Poojan Mehta
Date of Hearing	04/11/2019
Date of Pronouncement	04/11/2019

आदेश / ORDER

PER G.MANJUNATHA (A.M):

This appeal filed by the revenue is directed against, the order of the Commissioner of Income Tax (Appeals)-28, Mumbai, dated 02/05/2017 and it pertains to Assessment Year 2012-13.

2. The revenue has raised the following grounds of appeal:-

1. " On the facts and circumstances of the case and in law, the Learned CIT(A) has erred in holding that the AO to restrict the disallowance of bogus purchases to 4.27% of unverified purchases of Rs.2,22,79,213/-, without appreciating the facts that -'

- (i) In the assessment order, the assessee has not provided confirmation of parties from whom purchases were made, it has been conclusively established that the said purchases are bogus.
- (ii) When the assessee has maintained a constant stand that the purchase have been made from the very parties to whom

payments have been made the appellate authorities cannot suo moto take a divergent stand in favour of the assesses, that the purchases have been from certain parties, whereas corresponding bills have been obtained from some other parties, as held by the Hon'ble Delhi High Court in the case of CIT vs. La Medica, 250 ITR 575,

(iii) If the purchase have been unambiguously established to be bogus, the quantitative tally as regards the sales and closing stock and the maintenance of stock register cannot lead to conclusion otherwise, as accountancy is essentially an art and not a science, as held by the Hon'ble Jaipur ITAT in the case of Khandelwal Trading Co., as reported in 55 TTJ 261.

2. "The appellant prays that the order of the A.O should be restored and order of the Ld, CIT [A] should be set aside."

3. "The appellant craves leave to amend or alter any ground or add a new ground which may be necessary/"

3. The brief facts of the case are that the assessee is engaged in the business of trading in Chemical and solvents through his sole proprietorship concern M/s. Rajvi Cheical Corporation, filed his return of income for AY 2012-13 on 29/09/2012, declaring total income of Rs. 31,75,870/-. The case has been selected for scrutiny and during the course of assessment proceedings, the AO, noticed that information received from DGIT, investigation, Mumbai, receles that Sales Tax Authorities of Government of Maharashtra had taken actions against number of Hawala dealers, who had issued bogus purchase bills to various parties in Mumbai. As per list of beneficiaries, the assessee is one of the beneficiary, who had taken accommodation bills of bogus purchases from various parties as listed by the AO in his assessment order amounting to Rs. 2,22,79,213/-. The AO, after considering submission of the assessee completed assessment u/s. 143(3) of the I.T.Act, 1961 on 30/03/2015 and determined total income of Rs. 2,55,70,080/-, after making 100% additions towards alleged bogus purchase amounting to Rs. 2,22,79,213 from those parties.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has reiterated his submissions made before the AO. The sum and substance of arguments of the assessee before the Ld.CIT(A) are that purchase from the above parties are genuine, which are supported by necessary evidences. Therefore, no additions could be made on the basis of information received from third party. The Ld.CIT(A), after considering relevant submission of the assessee and also, on analysis of information collected during the course of appellate proceedings and also by following the decision of Hon'ble Gujarat High Court, in the case of CIT vs. Nikunj Eximp Enterprises Pvt Lrd (2015) 372 ITR 619, scaled down addition to 4.27% % profit on alleged bogus purchases on the basis of gross profit declared by the assessee for earlier year. The relevant findings of the Ld.CIT(A) are as under:-

5.1 In the case of Totaram Sharma [ITO vs Totaram Sharma (Tax Appeal No 1344 of 2008 order dated 9.2.2010),GUJRAT HC.]the Hon'ble High Court has noted [in PARA 10]that AO had started the discussion on the issue of bogus purchases and ultimately came to the conclusion that though the purchases can be said to be genuine, the payments however were made in cash which were unaccounted and therefore the Hon'ble High Court has held that there was no basis for arriving at such conclusion. It was further noted by the Hon'ble High Court that Tribunal had recorded that the purchases made from 4 parties were recorded and the genuineness of the sales were not doubted by the Re venue, rat her has accepted the same, there is no allegation of suppression of sale price or suppression of value of c/s either quantity wise or value wise .The appellant accordingly lost the case which went in favor of the assessee.

5.2 The only issue against the appellant is the non-verification of parties selling goods and the secondary evidence of Sales tax department investigation. Onus in terms of sec.101 of Evidence Act, 1872 too is on appellant which has not been discharged. A key factor in my view is non confirmation by parties concerned (which was not so

in NIKUNJ case) and not their non appearance which stands settled in terms of NIKUNJ judgment(supra).

5.3 On circumstances, I find that an addition of percentage is warranted as profit embedded in purchases because if indeed they were made from unregistered dealers and accommodation entry obtained from other parties, as preponderance of probability strongly indicates, that addition is warranted. The gross profit this year is Rs.21,887,008/- against turnover of Rs.512,853,643/- giving GP % of 4.27. Last year it was turnover of Rs.371,378,970/- with GP of Rs,12,674,153/- giving GP of 3.41%. Under the facts, GP % of 4.27 shown by appellant himself this year shall be a good yardstick to be applied on unverified purchases of Rs.2,22,79,213/- following my predecessor's order in similar circumstances and fact situation.

Directed accordingly. Appellant gets relief of the rest,

5. We have heard Ld. Counsels for both the sides, perused the material available on record and gone through orders of the authorities below along with certain judicial precedents. We find that the Ld. AO has made 100% additions towards alleged bogus purchases on the ground that the assessee one of the beneficiary of accommodation entries of bogus purchase bills issued by Hawala dealers. According to the Ld. AO, although assessee has filed certain basic evidences, but failed to file further evidence in the backdrop of clear finding by the Sales Tax Department, Maharashtra that those parties are involved in providing accommodation entries without actual delivery of goods. The Ld. AO had also taken support from the investigation conducted during the course of assessment proceedings, as per which notice issued u/s 133(6) to the party were returned un-served by the postal authorities. Therefore, he came to the conclusion that purchase from the said party is bogus in nature. It is the contentions of the assessee before the lower authorities that purchases from the above party are supported by necessary evidences. It has furnished all possible evidences, including books of accounts, stock details and bank statement to prove that payment

against said purchases have been made through proper banking channels.

6 Having considered arguments of both sides and also, material available on record, we find that both the sides failed to prove the case in their favour with necessary evidences. Although, assessee has filed certain basic evidences, but failed to file further evidences to conclusively prove purchases to the satisfactions of the Ld.AO. At the same time, the Ld. AO had also failed to take the investigation to a logical conclusion by carrying out necessary enquires, but he solely relied upon information received from investigation wing, which was further supported by information received from Maharashtra Sales Tax Department. Under these circumstances, it is difficult to accept arguments of both the sides. Further, various High Courts and Tribunals had considered an identical issue in light of investigation carried out by the Sales Tax Department and held that in case purchases claims to have made from alleged hawala dealers, only profit element embedded in those purchases needs to be taxed, but not total purchase from those parties. The Hon'ble Gujarat High Court, in the case of CIT vs Simith P.Sheth 356 ITR 451 had considered a similar issue and held that at the time of estimation of profit from alleged bogus purchases no uniform yardsticks could be adopted, but it depends upon facts of each case. The ITAT, Mumbai, in number of cases had considered an identical issue and depending upon facts of each case, directed the Ld.AO to estimate profit of 10 to 12.50% on total alleged bogus purchases. In this case, considering the nature of business of the assessee the Ld. AO has made 100% addition towards bogus purchase, whereas the Ld.CIT(A) has scaled down estimation of profit to 4.27% on total

alleged bogus purchase on the basis of gross profit declared by the assessee for earlier year. Although, both authorities have taken different rate of profit for estimation of income from alleged bogus purchase, but the Id. CIT(A) had adopted gross profit rate declared by the assessee for earlier year. Therefore, considering facts and circumstances of this case and also consistent with view taken by the Co-ordinate Bench in number of cases, we are of the considered opinion that the Id. CIT(A) has taken one of the plausible method and estimated profit on alleged bogus purchases on the basis of gross profit declared by the assessee for earlier year to settle dispute between the parties and therefore, we cannot find fault with the findings of the Id. CIT(A). Hence, we are inclined to uphold order of the Id. CIT(A) and dismiss appeal filed by the Revenue..

7. In the result, appeal filed by the revenue is dismissed.

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

Sd/-

(VIKAS AWASTY)
JUDICIAL MEMBER

Sd/-

(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated 04/11/2019
Thirumalesh Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai