

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER**

ITA.NO. 6825/MUM/2018 (A.Y: 2007-08)

Income Tax Officer – 27(2)(5) Room No. 421, 4 th Floor Tower No.6, Vashi Rly. St. Complex Vashi, Navi Mumbai – 400 703	v.	Shri Piyush D. Gada Flat No. 502, Anita Kutir CHS Ltd., 90 Feet Road, Ghatkopar(E) Mumbai – 400 075 PAN: ABRPG2822J
(Appellant)		(Respondent)

Assessee by	:	None
Department by	:	Kumar Padmapani Bora
Date of Hearing	:	27.11.2019
Date of Pronouncement	:	28.11.2019

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals) – 25, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 12.09.2018 for the A.Y. 2007-08 in deleting the entire addition made towards bogus purchases.
2. Briefly stated the facts are that, the assessee is engaged in the business of "Manufacturer of corrugated boxes", filed return of income on

23.09.2007 for the A.Y.2007-08 declaring income of Rs.NIL/- and the return was processed u/s. 143(1) of the Act. Subsequently, Assessing Officer received information from the DGIT(Inv.), Mumbai about the accommodation entries provided by various dealers and assessee was also one of the beneficiary from those dealers. The assessment was reopened u/s. 147 of the Act based on the information received from DGIT(Inv.), Mumbai, that the assessee has availed accommodation entries from M/s. Arun Paper and Iron Traders who is providing accommodation entries without there being transportation of any goods. In the reassessment proceedings, the assessee was required to prove the genuineness of the purchases made from the above said party i.e., M/s. Arun Paper and Iron Traders. Assessing Officer in order to verify the genuineness of the transactions, issued notice u/s. 133(6) of the Act to M/s. Arun Paper and Iron traders and the notice was returned unserved. Assessing Officer vide letter dated 27.02.2015 sought assessee to provide latest address of the said party or produce the party. In reply Assessee has furnished latest address of the party. Assessing Officer issued another notice u/s. 133(6) of the Act to M/s. Arun Paper and Iron Traders. In reply to the notice the said party has submitted the following details.

- a. Ledger account of the assessee in his books of account
- b. Extract of bank statement highlighting specific transaction with the party.
- c. Sales Bill Copy & Delivery Challan
- d. Sales Tax challan & Return
- e. ITR return with all annexure

3. Not convinced with the submissions of the assessee and the details produced by the party, the Assessing Officer treated the purchases of ₹.17,52,131/ as non-genuine and he was of the opinion that assessee had obtained only accommodation entries without there being any transportation of materials and the assessee might have made purchases in the gray market. It is the finding of the Assessing Officer that since the purchases made by the assessee and claimed as expenses in his Profit and Loss Account are not genuine, the purchases to that extent remained unverifiable. He also observed that the dealer from whom the assessee made purchases stated that they have issued only accommodation bills. Therefore, relying on various judicial pronouncements the Assessing Officer estimated the profit element from purchases @12.5% and added ₹.2,19,016/- to the income of the assessee. On appeal the Ld.CIT(A) considering the evidences and various submissions of the assessee and also various judicial pronouncements deleted the entire addition of ₹.2,19,016/-.

4. In spite of issue of notice none appeared on behalf of the assessee nor any adjournment was sought by the assessee. Therefore, we proceed to dispose off these appeals on hearing the Ld. DR on merits.

5. Ld. DR vehemently supported the order of the Assessing Officer.

6. We have heard Ld. DR, perused the orders of the authorities below. On a perusal of the order of the Ld.CIT(A), we find that the Ld.CIT(A) considered this aspect of the matter elaborately with reference to the submissions of the assessee and the averments in the Assessment Order and following the various judicial pronouncements deleted the entire addition of ₹.2,19,016/- made by the Assessing Officer, while holding so, the Ld.CIT(A) observed as under: -

"5. I have very carefully considered the Appellant's submissions and the aforesaid order of the AO. The appellant is an individual, running a proprietary concern in the name & Style of M/s. Package engaged in manufacturing of Corrugated Boxes. The return of income for the year under consideration was filed by the appellant on 23.09.2007 declaring a total income of Rs. NIL. Subsequently, on the basis of information received from the Investigation Wing, Mumbai, that one M/s. Arun Papers and Iron Traders had issued accommodation entries of bogus purchases and the assessee, Shri Piyush G. Gada is one of the beneficiaries of such accommodation entries, the case was re-opened by issuing notice u/s. 148 on 25.03.2014. In response to the said notice, the assessee vide letter dated 27.01.2015 has submitted that the return of income filed originally on 23.09.2007 may be treated as return filed in response to the notice u/s. 148. An order u/s 143(3) r.w.s. 147 of the Act was passed on 30.03.2015 determining the total income of the Appellant at Rs. 2,37,840/- after making addition of Rs. 2,19,016/-, being profit element estimated @ 12.5% embedded in purchases of Rs. 17,52,131/- treated as bogus purchases.

5.1 Vide the ground of appeal No.1 & 2, the assessee has challenged the action of the AO in making an addition of Rs.

2,37,840/-, being profit element estimated @ 12.5% embedded in purchases of Rs.17,52,131/- treated as bogus purchases by the AO. The main reason cited by the AO for making the said addition was that the AO of the supplier from whom the assessee had made purchases had made disallowance estimated @12.5% in respect of his purchases treated as bogus/suspicious.

5.1.1 During the appellate proceedings, it has been the contention of the assessee that the appellant had produced all the relevant details before the AO proving the bona fides of purchases. The assessee has further contended that the Vendor had appeared in response to notice u/s. 133(6) and testified before the AO by appearing before the AO and had submitted various documents to establish that the transactions/purchases under consideration were genuine, a fact which has also been mentioned by the A.O in para 12.1 of his assessment Order. The para 12.1 of his Assessment Order is reproduced hereunder:

"In reply to notice u/s.133(6) of the I.T. Act, 1961, Shri ArunAgrawal (Prop. of M/s. Arun Paper and Iron Traders) has submitted following details:

*Ledger account of the assessee in his books of account,
Extract of bank statement highlighting specific transaction
with the party
Sales Bill copy and delivery challan
Sales Tax Challan & Return
ITR return with all annexure."*

The A.O, however, did not accept the submission of M/s. Arun Paper & Iron Traders by observing in para 12.2 as under:

"The submission of M/s. Arun Paper & Iron Traders has been considered. However, the same is not acceptable as reason mentioned below:

- *On perusal of tax invoices, it is found that no details regarding transporter, vehicle No., Destination and freight payment are mentioned.*
- *As per tax invoice, payment schedule is immediate. However, payment was made after 3-4 months.*
- *On perusal of delivery challans no signature, seal and date of receiver is mentioned on it.*
- *On perusal of sundry creditors of M/s. Arun Paper & Iron Traders, it is found that the major supply was received from Foram Traders and V.S.K. Enterprise*

which are declared as hawala operator as per sales tax department, Govt. of Maharashtra. It indicates that the goods were not supplied by Arun Paper and Iron Traders.

- *As per assessment order u/s.143(3) dated 11.03.2015 in the case of M/s. Arun Paper and Iron Traders, it is seen that the assessing officer had considered the purchases made from M/s. V.S.K. Enterprise as bogus on various grounds and accordingly disallowed 12.5% of the total purchases i.e. 12.5% of Rs. 1,26,13,936/- from those bogus parties and added back to the total income of Shri Arun Agarwal (Prop. Of M/s Arun Paper and Iron Traders.)'*

5.12 The assessee has contended that his suppliers have appeared before the A.O in response to notice u/s.133(6) and confirmed the sales made to the assessee. The assessing officer of the suppliers has not doubted the sales made by the suppliers to the assessee. It is not the case of the AO that the addition has been made in the case of suppliers on account of sales to the assessee. The A.O. has also not doubted the sales of the assessee. The assessee had produced all the books of accounts, bills before the A.O. The assessee, in his aforesaid submissions has relied on the following decisions to prove his point:

(a) PCIT V/s. Tejua Rohit Kumar Kapadia, (2018) 94 Taxmann.com 325 (SC).

(b) ACIT Versus Jaybharat Textiles & Real Estate Ltd., (2017) 82 Taxmann.com 59 (Mumbai Tribunal).

5.1.3 Similar issue came up before the ITAT Mumbai in the recent case of Shantivijay Jewels Ltd., ITA.No. NO. 1045/Mum/2016 A.Y. 2011-12 dated: 13.04.2018 where the suppliers of goods had appeared before the A.O. and confirmed the sale of goods to assessee. The relevant portion reads as under:

6. We have heard the rival submissions and perused the material before us. We find that the assessee is engaged in the business of manufacturing of studded gold jewellery and plain gold jewellery, that during the year under consideration it had exported its manufactured goods, that it did not sell goods locally, that the AO had not doubted the sales, that the suppliers had appeared before the AO and admitted that they had sold the goods to the assessee, that they had filed affidavits in that regard. We find that DJ had admitted of issuing bogus bills. But, nowhere he had admitted that he had issued accommodation bills to the assessee. In our opinion, there is

subtle but very important difference in issuing bogus bills and issuing accommodation bills to a particular party. The difference becomes very important when a supplier in his affidavit admits supply of goods. In this matter, the assessee had made no local sales and goods were exported, as stated earlier. So, as far as sales are concerned there is no doubt about the genuineness of such sales. It is also a fact that suppliers were paying VAT and were filing their returns of income. In response to the notices issued by the AO, under section 133(6) of the Act, the supplier had admitted the genuineness of the transaction. Here, we would like to refer to order of the Tribunal in the case of Romila M. Nagpal (supra), wherein in the similar circumstances, addition confirmed by the FAA were deleted. In that order, the tribunal had referred to the case of M/s. Imperial Imp & Exp. (ITA No.5427/Mum/2015 A.Y.2009-10). In Imperial Imp & Exp. Matter, the assessee was exporting goods. The relevant portion of the order of reads as under:

“2. Effective Ground of appeal is about addition made to her income with regard to purchases. The AO received an information from the investigation wing that the sales tax department, Govt. of Maharashtra had made enquiries about bogus purchases/hawala transactions. The sales tax authorities had forwarded the list of beneficiaries who had taken bills from the hawala dealers. The AO observed that assessee had purchased goods worth Rs.1.35crores from three parties namely Shri Garnesh Trading (Rs.27.73 lakhs); Kishna Chemical Works (Rs.27.85 lakhs) and Shreyas Marketing Agency (Rs.80.40 lakhs). The AO issued a notice u/s.148 of the Act. In response to the notice the assessee stated that return filed on 24/9/2009 should be treated as return filed in response to re-assessment notice. After considering the submission of the assessee and the various details filed by her the AO issued notices u/s. 133 (6) of the Act to above mentioned three parties. As per the AO, notices were returned back by postal authorities as same could not be served. He held that in absence of authentic confirmation from the parties the genuineness of the transaction was not verifiable. He directed the assessee to produce the parties. The assessee, vide her letter dt. 12.11. 2014, stated that parties were not available as on date. The AO held that purchases made by her were not verifiable in absence of proper and legitimate confirmations, that the assessee had not produced the suppliers, that the onus was on the assessee to prove the genuineness of the purchases, that the profit element embedded in the purchases had to be brought to tax. Estimating the gross profit @ 12.5% of the

unproved purchases of Rs.1.35 crores, he made an addition of Rs.16.99 lakhs to the income of the assessee.

3. Aggrieved by the order of AO, the assessee preferred an appeal before the First Appellate Authority (FAA). Before him, the assessee made elaborate submissions and relied upon several case laws. Before him, it was argued that the assessee had filed ledger copies of the parties, sales details, that the purchases were fully backed by authenticated invoices, that she had made payment through banking channels, that the stock register and the consumption chart showed the nexus between the purchases and the sales made by the assessee, that details of closing stock were available on record, that there was no evidence to prove that assessee had received back the money in cash, that the AO had not rejected the books of account of the assessee, that the assessee was maintaining quantitative details of purchase and sales, that the AO had not pointed out any specific defects in the books maintained by her. After considering available material, the FAA held that the AO had made efforts beyond getting information from the investigation wing, that he had directed the AO to produce the parties, that the supplier were not found at the given addresses, that it was a case of purchases made from bogus parties rather than a case of bogus purchases, that without making purchases it was not possible for assessee to complete the sales, that the AO had rightly invoked the provisions of section 147, that he was justified in making the disallowance of Rs.16.99 lakhs. Finally, he dismissed the appeal filed by the assessee.

4. During the course of hearing before us the Authorised Representative (AR) submitted that the assessee had filed all necessary details before the AO, that stock register and quantitative details were made available to the AO, that payments were made through banking channels. He referred to the cases of Shri Mahesh Shah (ITA No.5194/Mum/2014 A.Y.2010-11); M/s. Imperial Imp & Exp. (ITA No.5427/Mum/2015 A.Y.2009-10); Shri Ramila Pravin Shah (ITA No.5246/M/2013 A.Y.10-11); Shri Deepak Popatlal Gala (ITA No.5920/Mum/2013 A.Y.2010-11, dated 27/3/2015); Ramesh Kumar and Co.(ITA No.2959/Mum/2014 A.Y.2010-11 dated 28/11/2014); Shri Rajeev G. Kalathil (ITA No. 6727/Mum/2012 A.Y.2009-10 dated 20/08/2014); Shri Ganpatraj A. Sanghavi (ITA No.2826/ Mum/ 2013 A.Y. 2009-10 dt.5/11/2014 and Shri Hiralal Chunilal Jain (ITA No.4547/Mum/2014 dated 01/01/2016. The DR supported the order of the FAA.

5. We have heard the rival submissions and perused the material before us. We find that in the case of Imperial Imp.& Exp.(supra) identical issue has been deliberated upon and has been decided by the Tribunal .We are reproducing the relevant portion consisting the facts of the case, order of the FAA, arguments advanced by AR and DR before the Tribunal and the operative part of the order of the Tribunal which reads as under :-

2. In this appeal, although the assessee has raised multiple Grounds of appeal, but the substantive grievance is against the action of the CIT(Appeals) in confirming an addition of Rs.4,19,356/- being estimated profit on unexplained purchases.

3. In brief, the relevant facts are that the appellant is a partnership firm, which is engaged in the business of export of consumer clothing. The return of income for assessment year 2009-10 was filed by the assessee declaring a total income of Rs.3,49,320/-, which was subject to a scrutiny assessment under section 143(3) of the Act, whereby the total income was assessed at Rs.3,66,344/-. Subsequently, the Assessing Officer issued notice under section 148 of the Act on 06/03/2014 reopening the assessment on the ground that certain income chargeable to tax had escaped assessment, in as much as, assessee had taken accommodation purchase bills from four parties, totalling to Rs.77,51,496/-. In the ensuing assessment, the Assessing Officer has held that purchases declared by the assessee of Rs.77,51,496/- from four parties, detailed in para-1 of the assessment order are bogus purchases. According to the Assessing Officer, assessee did not make actual purchases from such four parties because as per the information received from the Investment Wing, the four parties in question were found to have been VAT dodgers by the Maharashtra VAT Department. The Assessing Officer noted that since sales have been effected by the assessee, which showed that assessee was actually in possession of goods, the material would have been procured from grey market without bills in order to cover up the purchases, and thus assessee would have taken accommodation bills for purchases from the said four parties amounting to Rs.77,51,496/-. Accordingly, the Assessing Officer brought to tax the profit margin in relation to such non-genuine purchases, which he computed by applying the rate of 12.5% on the total amount of Rs.77,51,496/-, which came to Rs.9,68,937/-.

3.1 The plea of the assessee before the Assessing Officer as well as before the CIT(Appeals) was that the

purchases in question were duly supported by the bills of purchase. Moreover, the assessee pointed out that all its sales were by way of exports and that there was no evidence to say that the purchases in question were bogus. The assessee also referred to his bank statement to prove payments to such parties. The details of goods sold by the assessee was also furnished, which corresponded to the purchases effected from such four parties. The CIT(Appeals) has primarily affirmed the stand of the Assessing Officer based on the information stated to have been received from the Investigation Wing of the Department relating to the finding of the Maharashtra VAT Department. Additionally, the CIT(Appeals) also noticed that assessee could not prove the existence of the suppliers and, therefore, the circumstantial evidence also suggested that the entire purchases from the four parties was unverifiable. However, he restricted the addition to 5.41% of the amount of such unexplained purchases, instead of 12.5% adopted by the Assessing Officer. The CIT(Appeals) has applied the rate of 5.41% being the gross profit rate of the assessee for the year under consideration. Accordingly, out of an addition of Rs.9,68,937/- made by the Assessing Officer, the CIT(Appeals) retained an addition of Rs.4,19,356/- and deleted the balance.

4. Before us, the Ld. Representative for the assessee has vehemently pointed out that the entire sales of the assessee are by way of exports and, therefore, there was no liability towards sales tax on the purchases effected by it. It was also contended that though the Assessing Officer has referred to the four parties having been listed as 'hawala operators' by the Sales Tax Department of the Government of Maharashtra, but there is no clear evidence to suggest that the transaction with the assessee were bogus. It is pointed out that in the cases of some other assessees, under identical circumstances, the Coordinate Benches of the Tribunal have deleted the additions. In this connection, reliance have been placed on the following decisions:-

(1) ITO vs. Shri Deepak Popatlal Gala in ITA No.5920/Mum/2013 (A.Y 2010-11) dated 27/03/2015;

(2) Ramesh Kumar and Co. V/s. ACIT in ITA No.2959/Mum/2014 (A.Y. 2010- 11) dated 28/11/2014

(3) DCIT v/s. Shri Rajeev G. Kalathil in ITA No.6727/Mum/2012 (A.Y.2009-10) dated 20/08/2014;

(4) Shri Ganpatraj A. Sanghavi v/s. ACIT in iTA No.2826/Mum/2013 (A.Y.2009- 10) dated 5/11/2014; and

(5) Shri Hiralal chunilal Jain vs. Income Tax Officer in No.4547/Mum/2014 dated 01/01/2016. On this basis, the plea of the assessee is that the entire addition is liable to be deleted.

5. On the other hand, the Ld. Departmental Representative supported the orders of the authorities below by pointing out that the addition has been made on account of the enquiries conducted by the Sales Tax Department of the Government of Maharashtra and no effort has been made by the assessee to controvert such information.

6. We have carefully considered the rival submissions. The entire discussion in the assessment order reveals that purchases from four parties namely Dhruv sales Corporation - Rs.13,67,640/-; Subhlaxmi Sales Corp. - Rs.20,20,800/-; Dharshan Sales Corporation -Rs.9,64,656/-; and Paras (India)- Rs.33,98,400, totalling to Rs.77,51,496/- have been treated to be bogus based on the purported enquiries conducted by the Sales Tax Department of the Government of Maharashtra. Ostensibly, the Assessing Officer ought to have brought on record material which is relevant to the transactions of the assessee with the aforesaid four parties instead of making a general observation about the information received from the Sales Tax Department of the Government of Maharashtra. Quite clearly, the Assessing Officer as well as CIT(Appeals) have taken note of the fact that no sales could have been effected by the assessee without purchases. In the present case, assessee has explained that all its sales are by way of exports. The books of account maintained by the assessee show payment for effecting such purchases by account payee cheques and also the vouchers for sale and purchase of goods, etc. Notably, no independent enquiries have been conducted by the Assessing Officer. Under identical circumstances, our Co-ordinate Benches in the cases of Deepak Popatwala Gal (supra), Shri Rajeev G. Kalathil(supra)and Ramesh Kumar and Co.(supra) have held that the Assessing Officer was not justified in making additions merely on the basis of information obtained from the Sales Tax Department of the Government of Maharashtra without conducting any independent enquiries. Before the CIT(Appeals), one of the points raised by the assessee was with respect to an opportunity to cross examine the four (Assessment Year : 2009-10) parties, but we find that no such opportunity have been allowed. Considering the entirety of facts and circumstances of the case and the aforesaid precedents, which have been rendered under identical circumstances, in our view, the

CIT(Appeals) erred in sustaining the addition to the extent of Rs.4,19,356/- instead of deleting the entire addition of Rs.9,68,937/- made by the Assessing Officer. We direct accordingly.”

Respectfully, following the above order and the other orders relied upon by the AR during the course of hearing before us, we decide the effective Ground of appeal in favour of the assessee.

Considering the above, we are of the opinion that the FAA was not justified in partially confirming the addition. The assessee has proved the genuineness of the transactions and the parties suppliers had not only appeared before the AO but they had also filed affidavits confirming the sale of goods. Therefore, reversing his order, we decide first effective ground of appeal (GOA) in favour of the assessee.

5.14 *In a recent decision in the case of **PCIT v. TEJUA ROHIT KUMAR KAPADIA (2018) 94 Taxmann.com 325 (SC)** the Apex court has held that where purchases made by assessee-trader were duly supported by bills and payments were made by account payee cheque/ seller also confirmed transaction and there was no evidence to show that amount was recycled back to assessee, Assessing Officer was not justified in treating said purchases as bogus under section 690. The SLP filed by the revenue was dismissed.*

5.15. *In another case before the ITAT Mumbai in the case of **ACIT Versus Jaybharat Textiles & Real Estate Ltd., (2017) 82 Taxmann.com 59 (Mumbai Tribunal)** the Mumbai ITAT has held that:*

"it was a fact on record that all the suppliers in response to the notices issued by the Assessing Officer had confirmed of having effected sales to the assessee. There was no adverse material in the possession of the department to establish that the concerned suppliers were non-genuine and were providing accommodation bills. In contrast, enough documentary evidences by way of purchase bills, sales bills, ledger copies of suppliers, etc., along with the fact that payments were made through cheque had been brought on record by the assessee to demonstrate that purchases made from the concerned suppliers were genuine. Moreover, all the suppliers were identifiable persons with permanent account numbers and were assessed to income-tax regularly. The Sales effected by those persons had been accepted at their hands in income-tax assessment proceedings. Thus, when the sales effected by the suppliers were accepted in their hands, the purchases made from them by the assessee could not be held to be non-genuine, "(emphasis supplied).

5.1.6 In view of the above discussion and the binding precedents, I am of the view that the assessee has proved the genuineness of the transactions and the supplier parry had not only appeared before the AO but they had also filed relevant details confirming the sale of goods. Therefore, I am of the view that the AO was not justified in making an addition of Rs. 2,19,016/- estimating the profit element @12.5% in the purchases of Rs. 17,52,131/-, treating the purchases as bogus. The addition made by the AO is, therefore, deleted. Hence, the grounds of appeal No.1 & 2 are allowed.”

7. On a careful perusal of the order of the Ld.CIT(A) and the reasons given therein, we do not find any infirmity in the order passed by the Ld.CIT(A). The supplier had responded to the notice issued by the Assessing Officer u/s. 133(6) of the Act and confirmed the transactions and furnished various details to the Assessing Officer. Thus, the genuineness of the transactions is proved and the purchases cannot be treated as non-genuine. None of the findings and observations of the Ld.CIT(A) have been rebutted with evidences by the revenue and thus we do not see any infirmity in the order passed by the Ld.CIT(A) in deleting the addition/disallowance of the purchases. We sustain the order of the Ld.CIT(A) and reject the grounds raised by the revenue.

8. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on the 28th November, 2019

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai / Dated 28/11/2019
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

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.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum