

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” Bench, Mumbai**

**Before Shri G. Manjunatha, Accountant Member
and Shri Ravish Sood, Judicial Member**

**ITA No. 3439/Mum/2017
(Assessment Year: 2009-10)**

Shri. Mansukhlal M. Mehta
C/o M/s Randhir Metal
Syndicate, 50, Dawawala
Building, 3rd Floor, 1st Suthar
Gali, Mumbai – 400 004.

Vs

ACIT 19(2),
Matru Mandir, 2nd Floor,
Tardeo Road,
Mumbai- 400007

PAN – AABPM8990Q

(Appellant)

(Respondent)

Appellant by: Shri. N.M Porwal, A.R.
Respondent by: Smt. Joythilaxmi Nayak, D.R.
Date of Hearing: 12.12.2019
Date of Pronouncement: 13.12.2019

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-30, Mumbai, dated 24.02.2017, which in turn arises from the assessment order passed by the A.O under Sec. 143(3) r.w.s 147 of the Income Tax Act, 1961 (for short 'Act'), dated 26.03.2015.

2. Briefly stated, the assessee who is engaged in the business of trading in metals had filed his return of income for A.Y. 2009-10 on 30.09.2009, declaring a total income of Rs.22,00,334/-. On the basis of information received from the DGIT (Inv.), Mumbai, that the assessee as a beneficiary had obtained accommodation entries from certain hawala dealers, his case was reopened under Sec. 147 of the Act.

3. During the course of the assessment proceedings it was observed by the A.O that the assessee had claimed to have made purchases from the following 16 parties:

Sr. No.	Name of the hawala parties	Amount
1.	M/s Navratan Impex.	1,15,59,063
2.	M/s Kiran Sales Corporation/Nidhi Impex India	2,02,12,894
3.	M/s Suraj Steel India	1,02,71,511
4.	M/s Goodluck Impex India.	80,66,049
5.	M/s Shalaka International)	94,86,776
6.	M/s Reliance Metal Alloys	27,63,748
7.	M/s Navkar Traders	31,56,689
8.	M/s New Zone Multitrade Pvt. Ltd.	11,79,172
9.	M/s Pioneer Metal & Alloys	30,11,788
10.	M/s Titan Metal Corporation	50,84,550
11.	M/s Rajendra Impex India.	64,52,656
12.	M/s Sidhivinayak Pipe & Fitting	73,70,232
13.	M/s Excel Industrial Corporation	86,07,454
14.	M/s Shanti Pipe & Tubes	1,15,61,493
15.	M/s Laxmi Metal (India)	1,15,08,339
16.	M/s Suraj Metal Industries	1,82,35,474
	Total	14,21,27,888

In order to verify the genuineness and veracity of the aforesaid purchase transactions, the A.O directed the assessee to place on record supporting documentary evidence viz. copy of ledger accounts of the parties, copies of invoices, copies of delivery challans, proof of transportation, copy of bank statement, note on tally between the sales and purchases, and a note on stock tally. Also, the assessee was directed to produce the aforesaid supplier parties. In reply, though the assessee in his attempt to substantiate the authenticity of the purchase transactions furnished certain documentary evidence, but he failed to produce the supplier parties for necessary examination before the A.O Further, as observed by the A.O, the enquiries made during the course of the assessment proceedings by issuing notices under Sec. 133(6) to the aforesaid parties were returned unserved, which supported the fact that the assessee had not made any genuine purchases from them. Also, the assessee could not substantiate the authenticity of the purchase transactions by placing on record the transportation details and delivery challans. It was further observed by the A.O that the assessee had also failed to furnish the confirmations of the aforementioned parties. As regards the emphasis placed by the assessee on the invoices of the aforesaid parties, and the fact that VAT was therein charged, the A.O was of the view that the same did not inspire much of confidence as regards the authenticity of the impugned purchase transactions. Also, the A.O was of the view that the fact

that the assessee had made the payments to the aforesaid parties through banking channel could not be held as sacrosanct for proving the genuineness of the impugned purchase transactions. However, the A.O taking cognizance of the quantitative tally and the evidence of payments that were made by the assessee for purchase of goods under consideration, therein held a conviction that the goods were procured by the assessee from the open/grey market. In the backdrop of his aforesaid observations, the A.O was of the view that the assessee had purchased the goods at a discounted value from the open/grey market, and thereafter on the basis of inflated bogus bills procured from the aforesaid accommodation entry providers had suppressed his true profits. Accordingly, the AO was of the view that the assessee by making such purchases from the open/grey market would had benefited by procuring the goods at a discounted value as against that booked in his 'books of accounts.' In the backdrop of his aforesaid observations the A.O quantified the profit element involved in the aforesaid purchase transactions @ 12.5% of the aggregate value of the impugned purchases of Rs. 14,21,27,888/-, and made a consequential addition of Rs. 1,77,65,986/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) after deliberating on the contentions advanced by the assessee was however not persuaded to subscribe to the same and dismissed the appeal.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Id. Authorized Representative (for short 'A.R') for the assessee at the very outset of the hearing of the appeal submitted that as the assessee had made genuine purchases, therefore, no part of the same was liable to be disallowed. Alternatively, it was submitted by the Id. A.R, that the quantification of the profit element by the lower authorities @ 12.5% of the aggregate value of the unproved purchases was substantially on the higher side.

6. Per contra, the Id. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities. It was submitted by the Id. D.R that as the assessee had failed to substantiate the genuineness and veracity of the purchase transactions under consideration, therefore, the lower authorities had rightly sustained the addition to the extent of 12.5% of the aggregate value of the impugned purchases.

7. We have given a thoughtful consideration to the facts involved in the case before us, and find that the assessee had failed to substantiate the genuineness and veracity of the purchase transactions under consideration on the basis of irrefutable documentary evidence. Apart there from, we find that despite specific directions the assessee had also failed to produce the parties for necessary examination before the A.O. To sum up, in our considered view, the assessee had failed to discharge the 'onus' that was cast upon him as regards proving the authenticity of the purchases which were claimed by him to have been made from the aforementioned 16 parties. Accordingly, we are of the considered view that the lower authorities had rightly concluded that the assessee after making the purchases at a discounted value from the open/grey market, had thereafter in order to suppress its true profits had merely obtained inflated bills from the aforementioned accommodation bill providers.

8. At the same time, we are however in agreement with the lower authorities that as the sales of the goods had duly been accounted by the assessee in his 'books of accounts', therefore, the addition in his hands was liable to be restricted only to the extent of the profit which he would have generated by making of such purchases from the unorganised sector operating in the open/grey market. Be that as it may, we find that the view taken by the CIT(A) that the addition in the hands of the assessee was only liable to be restricted to the extent of the profit element involved in making of such purchases by the assessee had not been assailed any further by the revenue and had thus attained finality. Insofar the quantification of such profit element is concerned, we find that the **Hon'ble High Court of Bombay** in its recent judgement in the case of **Pr. Commissioner of Income Tax-17 Vs. M/s Mohhomad Haji Adam & Company (ITA No. 1004 of 2016, dated 11.02.2019)** while upholding the order of the Tribunal, had observed, that the addition in the hands of the assessee as regards the bogus/unproved purchases was to be made to the extent of bringing the G.P rate of such purchases at the same rate as that of the other genuine purchases. The Hon'ble High Court while concluding as hereinabove had observed as under:

"8. In the present case, as noted above, the assessee was a trader of fabrics. The AO found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy

between the purchases shown by the assessee and the sale declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trade. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases. The decision of the Gujarat High Court in the case of N.K. Industries Ltd.(supra) cannot be applied without reference to the facts. In fact in paragraph 8 of the same Judgment the Court held and observed as under-

“So far as the question regarding addition of Rs.3,70,78,125/- as gross profit on sales of Rs.37.08 Crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular books during Financial Year 1997-98 is concerned, we are of the view that the assessee cannot be punished since sale price is accepted by the revenue. Therefore, even if 6 % gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as a result of which profit comes to 5.66%.Therefore, considering 5.66 % of Rs.3,70,78,125/- which comes to Rs.20,98,62 1.88 we think it fit to direct the revenue to add Rs.20,98,621.88 as gross profit and make necessary deductions accordingly. Accordingly, the said question is answered partially in favour of the assessee and partially in favour of the revenue.”

9. In these circumstances, no question of law, therefore, arises. All Income Tax Appeals are dismissed, accordingly. No order at costs.”

Accordingly, the Hon'ble jurisdictional High Court had observed that the addition in respect of purchases which were found to be bogus in the case of the assessee before them, who alike the assessee before us was a trader, was to be worked out by bringing the G.P. rate of such bogus purchases at the same rate of other genuine purchases. We thus respectfully following the aforesaid judgment of the Hon'ble High Court direct the A.O to restrict the addition insofar the bogus/unproved purchases aggregating to Rs.14,21,27,888/- in the case before us are concerned, by bringing the G.P. rate on the amount of such bogus purchases at the same rate as that of other genuine purchases. Needless to say, the assessee in the course of the 'set aside' proceedings shall furnish the requisite details before the A.O who shall after making necessary verifications restrict the additions in terms of our aforesaid observations. The order passed by the CIT(A) is 'set aside' and the matter is restored to the file of the A.O to give effect to our aforesaid directions.

9. The appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 13.12.2019

Sd/-
(G. Manjunatha)
ACCOUNTANT MEMBER

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 13.12.2019

Ps. Rohit

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT,
Mumbai
6. गार्डफाईल / Guard file.

सत्यापितप्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt. Registrar)

आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai.