

**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
&
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.6102/Mum/2018
(Assessment Year :2008-09)**

| | | |
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| Mahavir Metal 6 th Jaikunwar Bhavan Khetwadi, 8 th Lane Mumbai-400 004 | Vs. | ACIT,Circle-19(3) Matrumandir, Tardeo Road Mumbai-400 007 |
| PAN/GIR No.AAIFS6733N | | |
| Appellant) | .. | Respondent) |

| | |
|------------------------------|--|
| Revenue by | Smt. Jothilakshmi Nayak, Sr.AR (DR) |
| Assessee by | Shri. Satish Modi, AR |
| Date of Hearing | 02/12/2019 |
| Date of Pronouncement | 02/12/2019 |

आदेश / O R D E R

PER G.MANJUNATHA:

This appeal filed by the assessee is directed against, the order of the Ld. Commissioner of Income Tax (Appeals)-7, Mumbai, dated 11/09/2018 and it pertains to Assessment Year 2008-09.

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

- 1) *The Learned CIT(A) has erred in confirming the addition made by the Assessing Officer of Rs. 15,54,324/- on account of "Bogus Purchases".*
- 2) *The Learned CIT(A) has further erred in enhancing the addition made by the Assessing Officer from Rs. 15,54,324/- to Rs. 2505,467/-*
- 3) *The Learned CIT(A) has further erred in twisting the submissions made by the assessee at the time of hearing of the appeal-*
- 4) *The Learned CIT (A) has erred in not giving a notice to the assessee for enhancement of assessable income to the assessment order.*
- 5) *The order appealed against is bad in law and is against the principle of natural justice.*

- 6) *The order appealed against is based on surmises and conjectures.*
- 7) *Your Petitioner reserves the right to add, to delete and/or amend any of the foregoing grounds.*

3. The brief facts of the case are that the assessee is a partnership firm engaged in the business of dealing in ferrous and non ferrous metal, filed its return of income for AY 2008-09 on 19/09/2008, declaring total income of Rs. 39,89,840/-. Thereafter, the case has been reopened u/s 147, on the basis of information received from DGIT, investigation, Mumbai, as per which, Sales Tax Authorities of Government of Maharashtra had taken actions against number of Hawala dealers, who had issued bogus purchase bills to various parties. As per list of beneficiaries, the assessee is one of the beneficiary, who had taken accommodation bills of bogus purchases bills from various parties as listed by the AO in his assessment order amounting to Rs. 1,24,34,599/-. The case was selected for scrutiny and the assessment has been completed u/s. 143(3).r.w.s. 147 of the I.T.Act, 1961 on 17/02/2016 and determined total income of Rs. 55,44,164/-, after making addition of 12.50% profit on alleged bogus purchase from those parties and made additions of Rs. 15,54,324/-.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has filed elaborated written submissions, on the issue, which has been reproduced at Para 3 on pages 2 to 4 of Ld. CIT(A) order. Further, the assessee had filed complete details of purchase from both parties as per which the amount of purchase from Metalex Tube Industries was admitted at Rs. 1,23,23,876, as against total amount considered by the AO for Rs. 47,14,736/-. The sum and substance of the arguments of the assessee before the Ld.CIT(A) are that purchase

from the above party is genuine, which is 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, by following the decision of Hon'ble Gujarat High Court, in the case of CIT vs. Simith P. Sheth (356 ITR 451) confirmed 12.50% profit rate adopted by the AO, but in respect of total purchases, he had adopted an amount of Rs. 2,00,43,739/- and on which applied 12.50% profit, which resulted in enhancement of total addition towards alleged bogus purchases to Rs. 25,05,467/-. The relevant findings of the Ld.CIT(A) are as under:-

4.3.5 In view of the facts and circumstances of the case and the judicial pronouncements cited above, what can be disallowed or taxed in the instant case, is the excess profit element embedded in such purchases shown to have been made from aforesaid parties. As narrated earlier, the AO in this case has held that the parties from whom the purchases were made by the appellant were found to be bogus, estimations ranging from 12.5% to 25% have been upheld by the Hon'ble Gujarat High Court, depending upon the nature of the business.

4.3.6 In a number/series of recent cases involving the scam unearthed by the Sales Tax Dept of Maharashtra whereby the hawala dealers were found to be issuing bogus purchase bills without delivery of goods, the Hon'ble Mumbai Tribunal has estimated the G.P addition on account of such bogus purchases as 12.5% some of which are listed below:

- i) Smt. KirartNavinDoshi in ITA No. 2601/Mum/2016 dated 18.01.2017.*
- ii) AshwinPurshotam Bajaj -&Anr. Vs ITO &Anr.in ITA No.4736/Mum/2014,5207/Mum/2014,dated:14-12-2016.*
- iii) ITO &Anr. Vs. Manish Kanji Patel &Anr., in ITA No. 7299/Mum/2014, 7154/Mum/2012 & 7300/Mum/2014, 7627/Mum/2014, dated: 18-05-2017.*
- iv) Metropolitan Eximchem Ltd., ITA No. 2935/Mum/2015, dated":29-03-2017.; Ronak Metal Industries vs. ITO, ITA No. 722/Mum.2017 did. 04,09.2017;*
- v) ITO vs. Jugraj R. Jain, ITA No, 2571 /Mum/2016 & 2572/M/2016 dtd. 02.08.2017;*
- vii) B. J. Exports vs. Asstt. Commissioner of Income tax, ITA No. 5442-5444/Mu m/2016 dated 13.09.2017;*
- viii) Batliboi Environmental Engineering Ltd, vs. Deputy Commissioner*

of Income-tax, ITA No, 2840 & 3482/M/2015 dated 15.03.2017;

ix) Deputy Commissioner of income-tax &Anr. Vs. Remi Process Plant & Machinery Ltd. &Anr., ITA No, 1723/M/2015, 1317/M/2015 dated - 21.03.2017.

x) Smt. Usha B. Agarwal vs. ITO, TTA No. 7034/Mum/2016, dated 01.09.2017.

In view of the above discussed factual matrix and precedents, I am of the view that the AO is justified in estimating the profit element calculated @ 12.5% embedded in impugned purchases shown from the alleged hawala parties and adding the same to the total income returned. However, as pointed out in Para 4.1.4 above the figure of purchases from Metalex Tube Industries is to be taken as Rs. 1,23,23,876/- instead of Rs. 47,14,736/- wrongly taken by the AO. Thus the bogus purchases for the payment of disallowance would be as follows :

| Sr. No. | Name of the Party | Amount in Rs. |
|---------|------------------------------|---------------|
| 1 | Shree Sundha Steels Pvt Ltd. | 77,19,8637- |
| 2 | Metalex Tube Industries | 1.23,238767- |
| | Total | 2,00,43,7397- |

This mistake in the order of the AO is apparent from record and same is accordingly rectified here. As the mistake has been brought to my notice by the assessee himself and therefore, in my view no fresh notice needs to be given to the assessee in this regard.

The assessment order of the AO is a well-reasoned and a speaking order giving in detail the reasons for his fair estimation and therefore, I do not see any reason to take a view in the matter different from the one taken by the AO. The action of the AO in estimation of 12.5% GP is sustained and addition is accordingly enhanced at 12.5% of Rs. 2,00,43,739/- at Rs. 25,05,467/-.

Thus, ground of appeal is dismissed and income enhanced.

5. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. We find that the Ld. AO has made addition of 12.50% profit 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 a purchase from the above party is 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 parties and also, considered materials 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 satisfactions of the Ld.AO. At the same time, the Ld. AO had also failed to take the investigation to a logical conclusion by carry 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, in cases invloved alleged bogus purchases, 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 15% on total alleged bogus purchases. In this case, considering the nature of business of the assessee the Ld. AO has estimated 12.50% profit, and the Ld.CIT(A) has affirmed findings of the AO insofar as profit rate of 12.50% on total alleged bogus purchase, but adopted total purchase amount at R.s. 2,00,43,739/-. Although, both authorities have taken uniform rate of 12.50% profit for estimation of income from alleged bogus purchase, but no one could support said rate of gross profit with necessary evidences or any comparable cases. Further, the ITAT, "SMC" Bench Mumbai, in assessee own case for Asst. Year 2010-11 had considered identical issue and after considering facts has adopted 12.50% profit on alleged bogus purchase, but allowed further deduction towards gross profit already offered by the assessee. Therefore, considering facts and circumstances of this case and consistent with view taken by the Co-ordinate Bench in number of cases, including in assessee own case, we direct the AO to adopt 12.50% profit on alleged bogus purchases amounting to Rs. 2,00,43,739/- from those two parties and reduce gross profit declared by the assessee for the year.

7. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on this 02 /12/2019

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated :02/12/2019
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