

आयकर अपीलीय अधिकरण "SMC" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य

BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 6875/Mum/2018

(निर्धारण वर्ष / Assessment Year 2010-11)

The Asst. Commissioner of Income Tax, Circle 27(1), Room No. 408, 4 th Floor, Tower No.6, Vashi Railway Station Complex, Vashi, Navi Mumbai	बनाम / Vs.	Shri Ajit Prahlad Yelmar Block No.5137, Bldg No.157, Near Tilak Nagar, Chembur, Mumbai
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAAPY0329G		

अपीलार्थी की ओर से / Appellant by	:	Shri Akhtar H. Ansari, DR
प्रत्यर्थी की ओर से / Respondent by	:	None

सुनवाई की तारीख / Date of hearing:	17.12.2019
घोषणा की तारीख / Date of pronouncement :	17.12.2019

आदेश / O R D E R

महावीर सिंह, न्यायिक सदस्य/
PER MAHAVIR SINGH, JM:

This appeal of the Revenue is arising out of the order of Commissioner of Income Tax (Appeals)]-24, Mumbai [in short



CIT(A)], in Appeal No. CIT(A)-24/ACIT-27(1)/552/6/2016-17 order dated 29.08.2018. The Assessment was framed by the Asst. Commissioner of Income Tax, Circle-27(1), Mumbai (in short ACIT/ ITO / AO) for the A.Y. 2010-11 vide order dated 26.02.2016, under section 143(3) read with section 147 of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of Revenue is against the order of CIT(A) restricting the addition made by applying the profit rate at 12.5% of the bogus purchases. For this assessee has raised following grounds: -

"i. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.14,03,713/- made by the Assessing Officer on account of bogus purchases, without appreciating the fact that the assessee had failed to produce bills, vouchers and other documentary evidences in support of his claim and without considering the latest Apex Court decision in the case of N.K. Proteins Ltd. wherein it is held that once it is proved that the purchases are bogus then addition should be made on entire purchases and not on profit element embedded in such purchases.

ii. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in estimating the profit from Hawala purchases by disallowing only Rs.2,00,530/-, being 12.5% of the bogus purchases as even the basic onus of producing transportation documents, inward register etc. were not fulfilled by the assessee.”

3. Briefly stated facts are that the assessee engaged in the business of Civil Construction. The AO received information from DGIT (Investigation), who in turn received information from Sales Tax Department, Mumbai that the assessee has made purchases from hawala parties, as listed in hawala dealers by the Maharashtra Sales Tax Department who are providing bogus bills of purchase amounting to ₹16,04,243/- as admitted by these hawala dealers in their deposition before the authorities. The same reads as under: -

<i>“Sl No.</i>	<i>Name of party</i>	<i>Amount</i>
1.	<i>Raj Traders</i>	<i>5,71,210</i>
2.	<i>Hiten Enterprises</i>	<i>19,005</i>
3.	<i>Jimit Enterprises</i>	<i>10,14,028</i>
	<i>Total</i>	<i>16,04,243</i>

4. During the course of assessment proceedings and during appellate proceedings, the assessee submitted all the documentary evidences such as inward register, stock register, payment received against such sales, receipt of material

purchases, account payee cheque. According to the AO, the assessee failed to establish the genuineness of the purchase and accordingly, he made addition of whole amount as unproved purchase at Rs. 16,04,243/- to the return income of the assessee. Aggrieved, assessee preferred the appeal before CIT(A), who restricted the disallowance at 12.5% of the bogus purchases by observing in para 2.4.1 as under: -

"2.4.1 The only effective ground is in respect of the action of the Ld. AO not accepting the purchases of Rs.16,04,243/- as genuine purchases based on the information received from Income Tax authorities. Briefly stated, the appellant is a company engaged in the business of trading. Ld. AO made the addition on the basis of information received from the investigation wing of Income Tax Department, Mumbai that the Sales Tax Department had recorded the statements of certain hawala operators who had confirmed to have given bogus bill to certain assessee including the appellant company. The bogus bill was in respect of 3 parties. The appellant company was asked to submit the details of purported purchases made and to show cause why the same should not be



disallowed as bogus purchases. The appellant filed their reply stating that purchases were made from regular parties supported by proper bills and the accounting entries and the payments were made account payee cheques. The Ld. AO was not in agreement with submissions of the appellant and observed that the appellant failed to furnish the supporting documentary evidence to establish that the purchase was actually made by them from these parties such as transportation documents, inward register etc. The investigation Wing of Mumbai had provided a list of hawala bill racketeers who were involved in issuing bills and also the list of beneficiaries. The Sales Tax Department of Mumbai had investigated all these cases thoroughly and prepared a list of such hawala operators and their beneficiaries which have been uploaded in their Website. The Ld.AO observed that these hawala operators were providing only accommodation entries and the appellant was also in the list beneficiaries. Accordingly, the Ld. AO treated the amount of Rs.16,04243/- as bogus

purchase and added the same to the total income of the appellant.

Under similar circumstances the Hon'ble High Court of Gujarat in the case of Simit P Seth. 2013 (356 ITR 451) had on occasion to deliver its judgment by confirming the decision of the ITAT which has estimated the disallowance at 12.5% of the disputed bogus purchases to meet the end of Justice. The head- note of the decision is reproduced as under-

"Section 145 of the Income-Tax Act, 1961- Method of Accounting- Estimation of Profits [Bogus Purchases]- Assessment year 2006-17 assessee was engaged in business of trading in steel on wholesale basis- Assessing Officer having found that some alleged suppliers of steel to assessee had not supplied steel to assessee but had only provided sale bills, held that purchases made from said parties were bogus —He accordingly, added entire amount purchases to gross profit of assessee Commissioner (Appeals) having



found that assessee had indeed made purchases though not from named parties but other parties from grey market, sustained addition to extent of 30% of purchase cost as probable profit of assessee- Tribunal however, sustained addition to extent of 12.5%- Whether since purchases were not bogus but were made from parties other than those mentioned it; books of account, only profit element embedded in such purchases could be added to assessee 's income- Held, yes Whether hence, order of tribunal needed no interference- held, yes [Paras 6,7&9] [in favour of assessee] [emphasis supplied] Based on the evidence in hand in the form of a report from DII (Inv). Mumbai the AO has asked the assessee to produce the parties along with evidence in order to verify the genuineness of the purchase transactions. The assessee instead submitted the ledger accounts of the above parties and bank statements extracts evidencing



the payments through bank cheque. In this case, the onus lies on the assessee to prove the genuineness of the purchases and the assessee had to prove that the suppliers were genuinely existing. The assessee has not made any efforts to discharge the onus and failed to produce any of the parties, in spite of the opportunities given by the Ld.AO. The assessee could not satisfactorily substantiate and establish the fact that there were genuine purchases from these parties. There was a report from SIT(inv) stating that all the seller parties as per the list supplied by them are bogus including the parties appearing in the books of the appellant company and as stated above, the assessee has not made counter submission to show that those parties are really existing. The AO has brought to tax the bogus purchases by adopting the method @ 100% of such purchases keeping in view the gain made by the appellant due to purchases of material in grey market without bills



and adjusting the purchases with the invoices taken from the hawala traders under discussions. Under These circumstances the AO cannot be found fault on this count Even though the AO could not prove substantively that the amounts given to the sellers in cheque from have came back to the appellant, the activities of accommodation entries in the trading community is not unheard of. Further. the investigations carried out by the Sales Tax Department, another Government Agency, with regard to VAT violation cannot be lost sight of. Further, as some of the names of the so-called bogus sellers out of the list supplied by the Sales Tax Department are appearing in the books of the appellant company, the link of involvement of appellant company getting bogus bills is established. Even though there are catena of cases decided by the jurisdictional ITAT which have decided the issue in favour of the assessee, they are not uniform in all

the cases as they were decided as per, facts and circumstances of that particular case before them. I am of the opinion that the facts and circumstances of the present case are more akin to the case decided by the Hon'ble Gujarat High Court in the case of Simit P Seth (Supra). Therefore, I hereby confirm the disallowance to the extent 12.5% amounting to Rs.2,00,530/- of the so-called bogus purchases made by the Ld. AO. The appellant succeeds partially and this ground is partly allowed."

5. I have considered the issue and gone through the facts and circumstances of the case. I noted the facts from the assessment order and also from CIT(A)'s that the assessee submitted the ledger accounts of the above parties and bank statements extracts evidencing the payments through bank cheque. The CIT(A) noted that facts of this case are similar to the case of Hon'ble High Court of Gujarat in the case of Simit P Seth V CIT (2013) 356 ITR 451(Guj) wherein it had on occasion to deliver its judgment by confirming the decision of the ITAT which has estimated the disallowance at 12.5% of the disputed bogus purchases to meet the end of Justice. Even now before me also revenue could not dislodge the factual aspects noted by



CIT(A). Hence, I find that the CIT(A) has rightly applied the profit rate at the rate of 12.5% and I confirm the same. This issue of Revenue's appeal is dismissed.

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

Order pronounced in the open court on 17.12.2019.

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 17.12.2019

सुदीप सरकार, व.निजी सचिव / *Sudip Sarkar, Sr.PS*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**