

IN THE INCOME-TAX APPELLATE TRIBUNAL “SMC” BENCH MUMBAI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

AND SHRI PAWAN SINGH JUDICIAL MEMBER

ITA No. 5326/Mum/2018 (Assessment Year 2011-12)

Shri Mukeshkumar Bhandari 40/27, Ground Floor, Shree Niwas Bldg, 2 nd Carpenter Street, C.P. Tank, Mumbai-400004. PAN: AGQPB2876F	Vs.	ITO - 19(2)(3) Matru Mandir, Nana Chowk, Mumbai-400007.
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Appellant

Respondent

Appellant by : Miss. Arbina Shaikh (AR)

Respondent by : Shri Akhtar H. Ansari (Sr. DR)

Date of Hearing : 27.11.2019

Date of Pronouncement : 20.12.2019

ORDER UNDER SECTION 254(1) OF INCOME TAX ACT

PER PAWAN SINGH, JUDICIAL MEMBER;

1. This appeal by assessee is directed against the order of Id. CIT(A)-30, Mumbai dated 11.07.2018 for Assessment Year 2011-12. The assessee has raised the following grounds of appeal:

1. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeal) erred in

(a) arriving at the conclusion that purchases made of Rs. 4628848/- from parties mentioned in assessment order are non genuine

(b) confirming estimation of profit element @ 12.50% on alleged non genuine purchases of Rs.4628848/- which is over and above the normal profit declared @ 10.09% in books of accounts.

(b) confirming addition of Rs. 578606/- on above basis made by the Assessing Officer to the total income of the appellant.

2. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in and failed to appreciate that

- (a) Proceeding initiated under section 147 1148 of the Act is on the basis of reason to suspect and not on reason to believe.
 - (b) There is no new tangible material in possession of the Assessing Officer which justify issuance of notice u/s 148 of the Act
 - (c) Reasons provided to the appellant is unsigned and undated.
 - (d) The initiation of proceeding under section 147 of the Act and issuance of notice under section 148 is bad in law and contrary to the provisions of the Act and liable to be cancelled 1 annulled
3. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in confirming order made under section 143(3) rws 147 of the Act by the learned Assessing Officer which is illegal, bad-in-law, ultra vires and without allowing reasonable opportunity of the hearing, without appreciating the facts, submission and evidences in their proper perspective, without providing copies of material used against the appellant and without providing cross examination, is liable to be annulled.
4. The learned assessing officer erred in charging interest under section 234B and 234C of the Act.
2. Brief facts of the case are that the assessee is an individual and running a proprietary firm in the name of Jaydeep Impex and engaged in trading of ferrous and non-ferrous metals, filed his return of income for Assessment Year 2011-12 on 23.09.2011 declaring total income of Rs. 4,38,715/-. The return of income was processed under section 143(1). The assessment was re-opened under section 147 on the basis of information received from Sale Tax Department, Government of Maharashtra that certain hawala operators are indulging in providing accommodation bills without actual delivery of goods. The Sale Tax Department, Government of Maharashtra referred the list of such hawala dealers and the beneficiary to the DGIT (Investigation), Mumbai. The name of assessee appeared in the list of beneficiary. The

assessee allegedly made the purchases of Rs. 46,28,848/- from such hawala dealers. On the basis of information, the Assessing Officer made a belief that the income of the assessee escaped assessment, therefore, re-opened the assessment under section 147. Notice under section 148 was issued on 07.11.2014 to the assessee. The assessee in response to the notice under section 148 filed its reply and stated that original return filed on 23.09.2011 under section 139(1) by assessee be treated as return in response to the said notice. The Assessing Officer after serving notice under section 143(2) proceeded for re-assessment. During the assessment, the Assessing Officer noted that the assessee has shown purchases from the following parties, which was declared as hawala dealers by the Sale Tax Department, Government of Maharashtra.

Name of the parties	Bill amount (Rs.)
Ashtavinayak sales agency	6,02,992
Stelco Steel Industries	1,51,728
Shubh Labh Metal Alloys/ Bright Enterprise	2,26,148
Harish metal & Tubes	2,57,530
Malani Metal (India)	4,82,028
Samco Steel & Alloys	14,03,948
Meridian Trading Co.	3,68,628
Manidhari Enterprises	5,58,230
Good Luck Metal Impex	2,32,232
Ratnakar Traders	3,45,354
Total	46,28,848

3. The assessee was asked to substantiate the purchases and to furnish the name of dealers, Bills & Vouchers, description of goods purchased, quantity, rate and amount, the date of dispatch of goods and the name of place along with mode of transportation by road or other mode, Vehicle

Number, and payment details. The assessee was also asked to furnish the corresponding sales of goods. The Assessing Officer noted that assessee could not produce any evidence during the course of hearing nor accepted the report of Sale Tax Department. The Assessing Officer in order to verify the transaction issued notice under section 133(6) of the Act. The notice was returned back unserved by the Postal Department with the remark 'Not known or Left'. The onus to prove the genuineness of purchases was on assessee, the assessee failed to discharge his onus. The assessing officer asked the assessee to furnish certain details such as purchase bill, invoices, copy of ledger account, detailed of transportation of goods, lorry receipt and evidence showing that goods were received by assessee and consumed. In response to the queries of Assessing Officer, the assessee submitted purchase bill of specified parties, copy of bank statement showing the payment through banking channel, quantitative tally of purchases and corresponding sales. The explanation and the evidence furnished by assessee was not accepted by Assessing Officer by taking view that the hawala parties in their statement before Sale Tax Authorities have admitted on oath that they have not done any genuine business. On the basis of report of Sale Tax Department, the Assessing Officer concluded that the expenses incurred by assessee on the purchases shown from hawala dealer are unverifiable. The Assessing Officer rejected the books of account of

assessee by invoking the provision of section 145(3). The Assessing Officer after considering the material before him and following the decision of Hon'ble Gujarat High Court in CIT vs. Simith P. Sheth (ITA No. 553/2012) concluded that a reasonable rate of non-genuine purchase, if profit element embedded in such purchases is taken as profit earned from such purchases would be fair and equitable. On the basis of aforesaid observation, the Assessing Officer disallowed 12.5% of the aggregate of total of non-genuine/alleged hawala purchases, in the assessment order dated 30.10.2015 passed under section 143(3) r.w.s 147.

4. On appeal before the Id. CIT(A), the action of Assessing Officer and disallowances made on account of bogus purchases was sustained. Further, aggrieved by the order of Id. CIT(A), the assessee has filed the present appeal before us.
5. We have heard the submission of Id. Authorised Representative (AR) of the assessee and the Id. Departmental Representative (DR) for the revenue. The Id. AR of the assessee submits that the Assessing Officer made the addition without disputing the sales of assessee. The sale is not possible without purchases. The Assessing Officer rejected the books of account without recording valid reasons. The Assessing Officer relied on the information of third parties. The Id. AR submits that the disallowance of 12.5% of the bogus purchases is on higher side. The

assessee has already declared profit @ 10.09% in the books of assessee. The Id. AR submits that disallowance on bogus purchases may be restricted to a reasonable disallowances considering the profit declared by the assessee. In support of her submission, the Id. AR of the assessee relied on the decision of Hon'ble Bombay High Court in PCIT vs. M/s Mohommad Haji Adam & Co. in ITA No. 1004/2016.

6. On the other hand, the Id. DR for the revenue supported the order of lower authorities. The Id. DR further submits that Investigation Wing of Income-tax Department has made full-fledged investigation in respect of hawala traders. The hawala traders were/are engaged in providing bogus bill without actual delivery of goods. The assessee has shown bogus purchases only to inflate the profit. The Id. DR for the revenue submits that the Assessing Officer has given sufficient relief. The Assessing Officer has reasonably estimated the disallowances. The assessee is not entitled for any further relief. On re-opening the Id. DR submits that there was sufficient tangible material/information in the form of information from DGIT (Investigation) that Sale Tax Department, Government of Maharashtra has unearthed the scheme about the hawala entry provider, who were engaged in providing bogus bills, therefore, the Assessing Officer has sufficient reason for making belief that the income of the assessee has escaped assessment.

7. We have considered the submissions of Id. DR for the revenue and perused the record. Though the assessee has raised grounds of appeal against the validity of reopening, however, no submission was made on such ground of appeal; therefore, the ground no. 2 & 3 of the appeal are treated as not pressed.
8. Ground No.1 relates to disallowance of 12.5% of the alleged non-genuine purchases. The Assessing Officer during the assessment issued show-cause notice to the assessee to prove the genuineness of the purchases and to produce the parties for verification. The Assessing Officer noted that the assessee failed to produce the parties. The Assessing Officer also made investigation by issuing notice under section 133(6) to all the dealers. The notices sent to dealers were returned back with the remark of Postal Authorities 'Left'. The Assessing Officer has not disputed the sale of the assessee. The Assessing Officer after rejecting the books of account made addition to the extent of profit element embedded in such transactions and restricted the disallowance to the extent of 12.5% of the alleged non-genuine purchases. The Id. CIT(A) confirmed the action of Assessing Officer by following the decision of Hon'ble Gujarat High Court in CIT vs. Simith P. Seth [356 ITR 451 (Guj.)].
9. We have noted that the assessee is engaged in the business of dealing in ferrous and non-ferrous metals. The lower authority has not examined

the Gross Profit (GP) or profitability already declared by the assessee on such non-genuine and other genuine purchases. Therefore, considering the facts and circumstances of the case, we direct the Assessing Officer that disallowance be restricted to 12.5% - (minus) the GP declared by assessee on such bogus purchases. In the result, the ground no.1 of appeal raised by assessee is partly allowed.

10. Ground No.4 relates to charging of interest under section 234B & 234C.

These grounds of appeal are consequential and needs no specific adjudication.

11. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 20/12/2019.

**Sd/-
SHAMIM YAHYA
ACCOUNTANT MEMBER**

**Sd/-
PAWAN SINGH
JUDICIAL MEMBER**

Mumbai, Date: 20.12.2019

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Copy of the Order forwarded to :

1. Assessee
3. The concerned CIT(A)
5. DR "SMC" Bench, ITAT, Mumbai
6. Guard File

2. Respondent
4. The concerned CIT

BY ORDER,

**Dy./Asst. Registrar
ITAT, Mumbai**