

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
Before Shri Shamim Yahya (AM) & Shri Pawan Singh (JM)

ITA No. 4909/Mum/2018(Assessment year : 2010-11)

Shri Samir H Padia 2A/83A, Sharda Estate Vazira Naka, L.T. Road, Borivali (W), Mumbai-400 092 PAN : AGPPP8362F	Vs	ITO 30(3)(2), C-13, , 6 th Floor, Pratyaksh Kar Bhawan , Road No. 610, BKC Bandra, (E), Mumbai -400051
APPELLANT		RESPONDEDNT

Appellant by	None
Respondent by	Shri Akhtar H Ansari Sr DR
Date of hearing	19-11-2019
Date of pronouncement	04-12-2019

ORDER

Per Pawan Singh, JM :

1. This appeal filed by the assessee is directed against the order of CIT(A)-41, Mumbai dated 09-05-2018 for the assessment year 2010-11. The assessee has raised the following grounds of appeal:-

“(1) That the appellant under his bonafide belief is of the opinion that the proceeding initiated was without issue of requisite notice or recording the reasons u/s. 148(2) of the Act, Id. CIT(A) ought to have verified jurisdiction of the AO to assess the income u/s.147,before confirming the order of the AO.

(2) That the reopening invoked u/s. 147 is contrary to the law as merely on hear say version of authorities under the provisions of different Act and violation of the provision made there under which could create case of suspicion only. There is no application of mind to the information received by the AO to accord the jurisdiction to invoke this proceeding and therefore, the proceeding may be held as bad in law as being void ab initio.

(3) Without prejudice to the aforesaid, on merit, Id. AO is erred to invoke S.69C of the Act particularly when the payments having made from the regular books/bank account of the business, source of expenditure payment u/s.69C is deemed to have explained and hence, the addition made is contrary to the fiction laid therein.”

2. The brief facts of the case are that the assessee is an individual and proprietor of M/s Jyoti Traders, engaged in the business of manufacturing and reselling of medical and surgical products, cloth, sheets, etc. The return of income was filed on 30-09-2010 declaring total income at Rs.5,57,428/- which was processed u/s 143(1) of the I.T. Act, 1961. The assessment was re-opened under section 147 on the basis of information received from Sale Tax Department, Government of Maharashtra informing that certain hawala operators were 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 beneficiaries. The assessee allegedly made the purchases of Rs.9,09,988/- 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 dated 19-03-

2014 was issued to the assessee. Subsequently, the assessing officer issued notice u/s 143(2) on 02-07-2015 fixing appointment on 21-07-2015; however, there was no compliance from the assessee. The Assessing Officer thereafter issued a notice u/s 142(1) along with a questionnaire. During the assessment, the Assessing Officer noted that the assessee has shown purchases from the following parties, who were declared as hawala dealers by the Sale Tax Department, Government of Maharashtra:

	Name of the parties	Bill amount (Rs.)
1	Tara Enterprises	4,16,000
2	Pratik Trading Company	4,93,988
	Total Amount	9,09,988

3. In order to ascertain the genuineness of purchases, the AO issued notices u/s 133(6) to both the parties calling upon for quantitative details of sales, copy of ledger account of assessee reflecting the sales, copy of bank statement highlighting the entry pertaining to the transaction with the assessee. The notices sent by the AO were returned by the postal authorities with the remark, "unclaimed". The assessing officer issued show cause notice to the assessee to prove the purchases and to file the documentary evidences of Stock Register, Lorry receipt, Evidence of consumption of material etc.

The AO noted that the assessee failed to furnish necessary evidence to substantiate the purchases. The AO further recorded that during the assessment, the assessee was asked to segregate the trading and manufacturing component from the purchases and also to co-relate the material purchased for manufacturing and sales. The AO recorded that assessee was given sufficient time but assessee failed to produce such details. The AO, in absence of any explanation, treated the entire purchases as unexplained expenditure and made addition of 100% of the alleged bogus purchases. On appeal before CIT(A), the action of assessing officer was upheld. Further aggrieved by the order of Ld.CIT(A), the assessee has filed the present appeal before us.

4. None appeared on behalf of assessee, despite service of notice of hearing through 'RPAD', copy of acknowledgement due card (AD) is placed on record. Therefore, we are left with no option except to hear the submission of learned departmental representative (ld. DR) for the revenue and to decide the appeal on the basis of material available on record.
5. We have heard the submissions of the learned departmental representative DR for the revenue and perused the record. The Ld.

DR for the revenue submits that during the assessment assessee failed to furnish necessary evidence and segregate and co-relate the purchases with its manufacturing and trading activities. Before the Ld .CIT(A), the assessee again failed to furnish any evidence. The assessee is not entitled for any relief. On the issue of reopening, the Ld. DR for the revenue submits that the AO has sufficient information for making his belief to reopen the assessment. The assessment was reopened on the basis of credible information received from DGIT (Inv), Mumbai that certain parties were indulging in providing bogus bill without actual delivery of goods. The assessee was one of the beneficiaries from the parties shown in the list of hawala dealers, copy of which was forwarded to the AO. Thus, the AO reopened the assessment on the basis of credible information.

6. We have considered the submissions of the Ld. DR for the revenue and perused the material available on record. Grounds 1& 2 relate to reopening and recording of reasons. We have noted that the AO in para 2 of the assessment order has recorded that case was reopened on the basis of information received from office of DGIT(Inv), Mumbai about the assessee being involved in taking

accommodation entry from hawala traders. On the basis of such information, the AO identified that the assessee has shown purchases from two parties, who were indulging in providing accommodation entries. Names of those two parties were forwarded to the AO. In our considered view, the AO was having sufficient credible information to make his belief for reopening. The Hon'ble Gujarat High Court in Peass Industrial Engineers (P) Ltd (2016) 76 taxmann.com 106 (Gujarat) held that where Assessing Authority had tangible material in form of specific information received by Investigation Wing that assessee had been beneficiary of bogus transactions, it was thoroughly justified in issuing notice for reassessment. Therefore, considering the decision of Hon'ble Gujarat High Court in Peass Industrial Engineers (P) Ltd (supra) we do not find any merit in the ground of appeal raised by the assessee. In the result, grounds 1 & 2 are dismissed.

7. Ground 3 relates to making addition u/s 69C on account of unexplained expenditure. We have noted that during the assessment the assessee was asked to furnish the evidence relating to stock register, lorry receipt along with challan copy, and evidence for utilisation of materials, mode of payment for purchase and bank

statement. The AO recorded that the assessee failed to produce any evidence. The AO disallowed the entire purchases of Rs.9,09,988/- and added to the income of assessee as unexplained expenditure. We have noted that the AO has not rejected the books of account of the assessee. The sale of assessee is also not disputed by the AO. The sale of assessee is also not disputed by the AO. The assessee is engaged in the business of manufacturing and resale of medical and surgical products, cloth and sheets. The AO has not mentioned the turnover of the assessee. The assessee has declared income of Rs.5.57 lakhs from its business activity. In our view, the entire purchases, in absence of bringing any material on record that assessee has shown any other purchases in its manufacturing and trading activity, the 100% of disallowance is not justified. We are of the further view that under the income-tax, only real income can be taxed by the revenue, even if the entire transaction is not verifiable, the amount taxable is the taxable income component and not the entire transaction. After considering the facts of the present case and the submission of Ld. DR for the revenue, we are of the view that in order to fulfil the gap of revenue leakage, disallowance of a reasonable percentage of the alleged bogus purchases would

meet the ends of justice. Therefore, in our view, if disallowance is restricted to 12.5% of the impugned bogus purchases that would meet the ends of justice. Similar view was taken by Hon'ble Bombay High Court in C IT vs Hari Ram Bambani in ITA No.313 of 2013 decided on 04-02-2015 wherein it was held that revenue is not entitled to bring the entire sale consideration to tax but only the profit attributable on such unrecorded sale consideration.

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

Order pronounced in the open court on 04-12-2019.

Sd/-

Sd/-

(Shamim Yahya)	(Pawan Singh)
ACCOUNTANT MEMBER	JUDICIALMEMBER

Mumbai, Dt : 4th December, 2019

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

/True copy/

By order

Asstt. Registrar, ITAT, Mumbai