

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "SMC", MUMBAI**

BEFORE SHRI S. RIFAUR RAHMAN (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 5747/MUM/2018
Assessment Year: 2010-11**

Gel EXIM, Shop No. 1, Ground Floor, Parda Cottage, 97 Narayan Dhuru Street, Mumbai - 400003 PAN: AAIFG0588K	Vs.	The Income Tax Officer- 17(1)(4), Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Assessee by : Pramita Rathi (AR)
Revenue by : Shri C.S. Sharma (DR)

Date of Hearing: 26/09/2019
Date of Pronouncement: 31/10/2019

ORDER

PER RAM LAL NEGI, JM

The assessee has filed the present appeal challenging the order dated 17.07.2018 passed by the Commissioner of Income Tax (Appeals)-28 (for short 'the CIT(A), Mumbai, for the assessment year 2010-11, whereby the Ld. CIT(A) has dismissed the appeal filed by the assessee against the assessment order passed u/s 143(3) read with section 147 of the Income Tax Act, 1961 (for short the 'Act').

2. Brief facts of the case are that the assessee engaged in the business of trading in hardware and light engineering goods, filed its return of income for the assessment year under consideration, declaring total income of Rs. 59,505. The return was processed u/s 143(1) of the Act. Subsequently, the AO received information from sales tax department Maharashtra through DGIT (Investigation) to the effect that the assessee during the year relevant to the assessment year under consideration, obtained bogus purchase bills amounting to Rs. 1,70,62,476/- from M/s Bhavi Sales Agency Pvt. Ltd., whose

name was there in the list of 'hawala' parties prepared by the Maharashtra sales tax department. On the basis of the said information, the AO reopened the assessment u/s 147 after issuing notice u/s 148 of the Act. Thereafter, the AO issued notices u/s 143 (2) and 142(1) of the Act. In response thereof, the authorized representative of the assessee appeared before the AO, submitted the details called for and contended that the assessee had made genuine purchases from the said party. In order to verify the genuineness of transactions, AO issued notice to the party concerned u/s 133(6) of the Act. However, the notice was received back un-served. The AO rejected the claim of the assessee and treating the purchases as bogus made addition of 12.5% of the total amount of amount of bogus purchases and after making addition of the said amount determined the total income of the assessee at Rs.21,92,315/- In the first appeal, the Ld. CIT(A) confirmed the addition made by the AO. Against the said findings, the assessee is in appeal before the Tribunal.

3. The assessee has challenged the impugned order passed by the Ld. CIT (A) on the following effective ground:-

1. *“On the facts and circumstances of the case and in law, the Hon’ble Commissioner of Income Tax (Appeals) [‘CIT (A)’] has erred in dismissing the appeal ex-parte, without providing proper opportunity of being heard.*

2. *On the facts, circumstances of the case and in law, the Hon’ble CIT (A) has grossly erred in upholding the reopening of assessment done by the learned Assessing Officer (‘AO’) u/s 147/ 148 of the Act.*

3. *On the facts and circumstances of the case and in law, the Hon’ble CIT (A) has erred in estimating the additional Gross Profit of the Appellant at the rate of 12.5% of the alleged bogus purchases of Rs. 1,70,62,476/- and thereby sustaining the addition at Rs. 21,32,810.*

4. *On the facts and circumstances of the case and in law, the learned AO has erred in considering the alleged*

bogus purchases from M/s Bhavi Sales Agency Pvt. Ltd. at Rs. 1,70,62,476 as against the actual amount of Rs. 43,95,522.”

4. The Ld. counsel for the assessee submitted before us that the assessee does not want to press Ground No. 1 and 2 of its appeal. Hence, we dismiss Ground No. 1 and 2 of the appeal as not pressed.

5. Vide Ground No. 3 and 4 of the appeal, the assessee has challenged the addition of 12.5% confirmed by the Ld. CIT (A). At the outset, the Ld. counsel pointed out that the order passed by the Ld. CIT(A) is apparently wrong and contrary to the facts as the authority below have wrongly mentioned that the assessee had made purchases in question from Bhavi Sales Agencies Pvt. Ltd. worth Rs. 1,70,62,476/- against the actual purchases amounting to Rs. 43,95,522/-. The Ld. counsel further submitted that the purchases amounting to Rs. 1,26,66,954/- were made from Macoma Hardware and the assessee has proved the genuineness of transaction of purchase from the said party by adducing documentary evidence. The Ld. counsel further submitted that since the findings of the authorities below are based on the wrong facts, the impugned order is liable to be set aside.

6. On merit, the Ld. counsel submitted that since the AO had made addition of 12.5% of the total amount of alleged bogus purchases without taking into consideration the submissions made by the assessee in the light of the documentary evidence produced by the assessee to prove the genuineness of the purchases in question, the Ld. CIT(A) ought to have deleted the addition. The Ld. counsel further pointed out that AO has not rejected the sales made by the assessee but, rejected the purchases ignoring that there cannot be any sale without purchases. The assessee apart from the details of the whereabouts of the party, has furnished the copies of invoices, payment details and statement of bank account before the authorities below in order to establish the genuineness of transaction of purchases. The Ld. counsel further submitted that in view of the aforesaid facts, the addition of 12.5% sustained by the AO may be deleted.

6. On the other hand, the Ld. departmental representative (DR) relying on the concurrent findings of the authorities below submitted that since the assessee has failed to discharge the onus of proving genuineness of the transaction, the Ld. CIT(A) has rightly sustained the addition of 12.5% of the total amount of bogus purchases determined by the AO. The Ld DR further submitted that the findings of the Ld. DR are as per the evidence on record and in accordance with the settled principles of law; hence, the appeal of the assessee deserves dismissal being devoid of any merit.

7. We have heard the rival submissions of the parties and carefully gone through the relevant material on record in the light of the contentions of the parties. We notice that the AO has mentioned the purchases amounting to 1,70,62,476/- from M/s Bhavi Sales Agencies Pvt. Ltd., whereas the contention of the Ld. counsel is that the assessee had made purchases from Bhavi Sales Agencies amounting to Rs. 43,95,522/-. We further notice that the assessee has pointed out this fact before the AO vide letter dated 16.02.2016. In the said letter, the assessee has mentioned that purchase amounting to Rs. 1,26,66,954/- were from Macoma Hardwares and the figure of Rs. 1,70,62,476/- comes only after including the purchases from Bhavi Sales Agencies. However, the authorities below have not discussed this issue in their orders.

8. As pointed out by the Ld. counsel, the impugned order appears to be based on incorrect facts as the authorities below have not addressed the issue raised by the assessee vide letter dated 16.02.2016 referred above. Under these circumstances, the said issue needs proper verification by the AO to ascertain the exact amount of bogus purchases made by the assessee during previous year. We accordingly, set aside the order passed by the Ld. CIT(A) and remand the appeal back to the AO with the direction to decide the issue afresh in the light of the contention of the assessee raised vide letter dated 16.02.2016, after affording a reasonable opportunity of being heard to the assessee.

In the result, appeal filed by the assessee for assessment year 2010-2011 is partly allowed for statistical purposes.

Order pronounced in the open court on 31st.October, 2019.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 31/10/2019

Alindra, PS

आदेश 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.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai