

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

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

**ITA No. 5831/MUM/2018
Assessment Year: 2010-2011
&
ITA No. 5832/MUM/2018
Assessment Year: 2011-2012**

M/s Valsons Metal, 110, Gulal Wadi, 1/19, Bharja Bhavan, Kika Street, Mumbai - 400004 PAN: AAAFV3006B	Vs.	The ITO – 19(3)(5), Room No. 201, Matru Mandir, Tardeo Road, Mumbai - 400007
(Appellant)		(Respondent)

Assessee by : Shri Vimal Punmiya (CA)
Revenue by : Shri C.S. Sharma (DR)

Date of Hearing: 25/09/2019
Date of Pronouncement: 30/10/2019

ORDER

PER RAM LAL NEGI, JM

These appeals have been filed by the assessee against the order dated 01.08.2018 passed by the Commissioner of Income Tax (Appeals)-29 (for short 'the CIT(A), Mumbai, for the assessment years 2010-11 and 2011-12 respectively, whereby the Ld. CIT(A) has partly allowed the appeal filed by the assessee against the assessment order passed u/s 143 (3) r.w.s 147 of the Income Tax Act, 1961 (for short the 'Act'). Since, these appeals pertain to the same assessee, these were clubbed, heard together and are being disposed of this common and consolidated order for the sake of convenience.

ITA No. 5831/MUM/2018 (Assessment Year: 2010-2011)

Brief facts of the case are that the assessee engaged in trading of non-ferrous metal, filed its return of income for the assessment year under consideration declaring the total income of Rs. 2,84,210/-. 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. 17,07,818/- from fifteen parties mentioned in the assessment order, whose name were mentioned 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 of the Act 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 parties. In order to verify the genuineness of transactions, AO issued notice to the parties concerned u/s 133(6) of the Act. However, the notices were received back un-served. The AO rejected the claim of the assessee and treating the purchases as bogus made addition of 25% 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.7,11,160/-. In the first appeal, the Ld. CIT(A) restricted the addition to 12.5% of the total amount of the questioned purchases. Against the said findings, the assessee is in appeal before the Tribunal.

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

1. *“On the facts and circumstances of the case and in law the Ld. CIT (A) erred in confirming the initiation of the reassessment proceeding under section 147.*

2. *On the facts and circumstances of the case and in law the Ld. CIT (A) failed to consider that reassessment proceeding cannot be initiated.*

a) *No reassessment can be made just to make an enquiry or verification.*

b) *Reassessment proceeding cannot be initiate merely on the information received from investigation wing.*

c) Reassessment proceeding cannot be initiated when the Ld. CIT (A) have reason to suspect and not reason to believe.

3. On the facts and circumstances of case and law the Ld. CIT (A) erred in confirming the assessment order under section 143 sub section 3 r w s 147 of income tax Act which is passed against the principal of natural justice.

4. The Ld. CIT (A) erred in confirming the treating Rs. 2,13,477/- being 12.5 per cent of the total purchases of Rs. 10,07,818/- as bogus non-genuine expenditure and thereby erred in adding the same to the total income of the assessee.

5. The Ld. CIT (A) erred in confirming the charging of interest under section 234A, 234B 234C and 234D of the Income Tax Act, 1961.

6. The Ld. CIT (A) erred in confirming the initiation of the penalty proceeding under section 271 (1) (c) of the Income Tax Act, 1961.” another.”

3. The assessee has challenged the impugned order on legal issue as well as on merits. So far as the legal issue is concerned, the Ld. counsel submitted that the initiation of reassessment proceedings by the AO is bad in law as the same was based on information received from investigation wing of the department that too without any reason to believe that the income of the assessee has escaped assessment. Since, the action of the AO was bad in law, the Ld. CIT(A) ought to have set aside the assessment order. On merits the Ld. counsel submitted that since the AO had made addition 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 parties, 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 or in alternative a reasonable percentage of addition may be made in the light of the GP shown by the assessee.

4. 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 based on 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.

5. 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. So far as the legal ground is concerned we do not find any illegality in initiating proceedings u/s 147 of the Act on the basis of information received from the Maharashtra sales tax department through DGIT (Investigation) as the only requirement for reopening of assessment is that the AO must have reason to believe that any income chargeable to tax has escaped assessment. Therefore, the source of information is immaterial. We further notice that the AO has afforded a reasonable opportunity to the assessee to establish the genuineness of the question transactions. We are convinced from the material on record that the assessee has failed to establish the genuineness of the purchases in question by adducing cogent and convincing evidence. The notices issued by the AO were received back un-served. The assessee also failed to produce the parties before the AO for verification. The documents produced by the assessee during the assessment proceedings do not establish the genuineness of the transaction. Hence, in our considered view, the AO has rightly concluded that the assessee has not made the questioned purchases from the parties mentioned in the books of account of the assessee. However, the AO has not rejected the sale of the goods so purchased. The above-mentioned facts give rise to the conclusion that the assessee had purchased

the goods in question from grey market and evaded the tax applicable during the relevant period. Under these circumstances, the AO had no option but to make an addition on estimation basis considering the applicable rate of VAT or other taxes and the profit embedded in the said transaction. But, he instead of doing so, made addition of 25% of the entire amount in question to the income of the assessee. In the first appeal, the Ld. CIT(A) restricted the addition to 12.5% of the total amount of bogus purchases.

6. The Ld CIT(A) has restricted the addition to 12.5% mainly on the ground that the assessee has failed to discharge his onus of proving the genuineness of the purchases made from the fifteen hawala parties . The Hon'ble Gujarat High Court in the case *CIT vs. Simit P. Seth 356 ITR 451(Guj)*, while dealing with the similar issue, has upheld the decision of the Tribunal and sustained the addition 12.5% of the total amount of bogus purchases determined by the Tribunal, holding that only profit element embedded in such purchases can be added to income of the assessee. The Tribunal estimated the addition keeping in view the existing rate of VAT which was 10% and the estimated profit of 2.5% from the questioned transaction. As pointed out by the Ld. counsel, the applicable rate of VAT in the present case was 4% and the revenue has not disputed this fact. Hence, we find merit in the contention of the Ld. counsel that the addition sustained by the Ld. CIT (A) is on higher side. Accordingly, following the principles of law laid down by the Hon'ble Gujarat High Court in the said case, we estimate the addition at 6.5% i.e. 4% VAT plus 2.5% profit from the transactions in question. We therefore, modify the impugned order passed by the Ld. CIT (A) and restrict the addition to 6.5% of the total amount of bogus purchases determined by the AO.

ITA No. 5832/MUM/2018 (Assessment Year: 2011-2012)

The facts of the present case are similar to the facts of the assessee's case pertaining to the assessment year 2010-11 and the issue involved in both the cases are identical except the amount of bogus purchases determined by the AO. In the assessment year under consideration, the AO make addition of

Rs. 11,45,628/- i.e. 25% of the total amount of bogus purchases. In the first appeal the Ld. CIT (A) restricted the addition to 12.5%. The assessee is in appeal against the findings of the Ld. CIT(A).

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

1. *“On the facts and circumstances of the case and in law the Ld. CIT (A) erred in confirming the initiation of the reassessment proceeding under section 147.*
2. *On the facts and circumstances of the case and in law the Ld. CIT (A) failed to consider that reassessment proceeding cannot be initiated.*
 - a) *No reassessment can be made just to make an enquiry or verification.*
 - b) *Reassessment proceeding cannot be initiate merely on the information received from investigation wing.*
 - c) *Reassessment proceeding cannot be initiated when the Ld. CIT (A) have reason to suspect and not reason to believe.*
3. *On the facts and circumstances of case and law the Ld. CIT (A) erred in confirming the assessment order under section 143 sub section 3 r w s 147 of income tax Act which is passed against the principal of natural justice.*
4. *The Ld. CIT (A) erred in confirming the treating Rs. 5,72,914/- being 12.5 per cent of the total purchases of Rs. 45,82,512/- as bogus non-genuine expenditure and thereby erred in adding the same to the total income of the assessee.*
5. *The Ld. CIT (A) erred in confirming the charging of interest under section 234A, 234B 234C and 234D of the Income Tax Act, 1961.*
6. *The Ld. CIT (A) erred in confirming the initiation of the penalty proceeding under section 271 (1) (c) of the Income Tax Act, 1961.”*
another.”

3. Since, the facts and issue involved in the present case are identical to the facts and issue involved in the assessee’s own appeal pertaining to the assessment year 2010-11 decided by us and since we have restricted the addition to 6.5% of the total amount of bogus purchases determined by the AO, our findings in assessee’s case for the assessment year 2010-11 shall *mutatis mutandis* apply for the appeal pertaining to the assessment year 2011-12.

Accordingly, we modify the impugned order passed by the Ld. CIT(A) and restrict the addition to 6.5% of the total amount of bogus purchases determined by the AO.

In the result, appeals filed by the assessee for assessment years 2010-11 and 2011-12 are partly allowed.

Order pronounced in the open court on 30th October, 2019.

Sd/-
(S. RIFAUR RAHMAN)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 30/10/2019

Alindra, PS

Sd.-
(RAM LAL NEGI)
JUDICIAL MEMBER

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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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