

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

BEFORE SHRI WASEEM AHMED (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 5930/MUM/2018
Assessment Year: 2010-2011
&
ITA No. 5931/MUM/2018
Assessment Year: 2011-2012**

Manohar Shambu Suvarna, 3, Suresh Bhawan, Chincholi Bunder Road, Malad (W) Mumbai - 400064 PAN: ABEPS0736L	Vs.	The Income Tax Officer Ward - 31(2)(3), Mumbai
(Appellant)		(Respondent)

Assessee by : Ms. Neha Pranjpe (Adv.)
Revenue by : Shri Akhtar H. Ansari (Sr.DR)

Date of Hearing: 05/11/2019
Date of Pronouncement: 08/11/2019

ORDER

PER RAM LAL NEGI, JM

These appeals have been filed by the assessee against the common order dated 01.06.2018 passed by the Commissioner of Income Tax (Appeals)-42, (for short 'the CIT(A), Mumbai, for the assessment years 2010-11 and 2011-12, whereby the Ld. CIT(A) has dismissed the appeals filed by the assessee against the assessment orders passed u/s 144 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 by this common and consolidated order for the sake of convenience.

ITA No. 5930/MUM/2018 (Assessment Year: 2010-2011)

Brief facts of the case are that the assessee an individual engaged in the business of trading in screws, hinges and hardware fittings, filed its return of income for the assessment year under consideration declaring the total income

of Rs. 5,41,830/-. 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. 6,31,655/- from M/s. Disha Enterprises, which was in the list of 'hawala' parties prepared by the Maharashtra sales tax department. The said parties used to provide bogus purchase bills on commission basis without making actual delivery of goods. 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. Accordingly, the AO issued notices u/s 143 (2) and 142(1) of the Act. However, the AO did not receive any response from the assessee. Ultimately, the AO completed assessment u/s 144 r.w.s. 147 of the Act and determined the total income of the assessee at Rs. 11,73,490/- after making addition of the aforesaid amount of bogus purchases. The assessee challenged the assessment order before the Ld. CIT(A). The Ld. CIT(A) after hearing the assessee dismissed the appeal of the assessee and confirmed the addition made by the AO. Against the said order, 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. The Ld. CIT(A) erred in not considering that the assessing officer has sent notices for hearing on old address although new address was known to him and therefore he was not justified in passing the impugned order U/s. 144.

*2. The Ld. CIT(A) also failed to consider that the impugned order is passed in contravention of *principia of natural justice.**

3) The Ld. CIT(A) failed to consider that the Ld. A.P. has illegally reopened the case of the Appellant without verifying the veracity of alleged information from Sales Tax Department.

4) The Ld. CIT(A) also failed to consider that the impugned order is illegal in view of doctrine of “Res-judicata” since in the earlier assessment year “2009-10”, on the identical facts the assessing officer had not disallowed the entire alleged bogus purchases. ‘

5) *The Ld. CIT(A) also erred in not considering that the assessing officer has made addition of the entire purchases amounting to Rs. 6,31,655/- for A.Y. 2010-11 while sales for those years were not doubtte.*

6) *Without prejudice to above the Ld. CIT(A) failed to considere that the purchase bills may be bogus but the purchase of goods should not be treated as bogus since the corresponding sales are reflected. ‘*

7) *The Ld. CIT(A) also erred in not considering the fact that the issue involved int e present case has been covered by various High Courts and Tribunals by holding that eh entire allewged bogus purchases cannot be disallowed and the addition onaccount thereof be restricted to certain percentage of gross profit (GP) on such purchases.*

8) *It is therefore prayed that the Hon’ble Members may be pleased to delete the impugned addition for the A.Y. 2010-11 amount to Rs. 6,31,655/- or in alternative the Hon’ble Members may be pleased to pass any such other order or orders in favour of the appellant in the interest of justice.”*

3. The assessee has challenged the impugned order on legal ground as well as on merits. However, the Ld. counsel for the assessee pointed out before us that the during the assessment year 2009-10, the AO treating the purchases made from the same party, i.e., M/s Disha Enterprises amounting to Rs. 15,15,182/- as bogus, made addition of 12.5% of the said amount to the income of the assessee holding that the assessee has failed to establish the genuineness of the transaction of purchases in question. The assessment order was neither revised u/s 263 of the Act by the competent authority nor challenged by the assessee. The Ld. counsel further pointed out that in the assessment year under consideration, the authorities below have made addition of the total amount of the questioned purchases without assigning any reason for taking a view contrary to the view taken by the department in assessee’s own case for the assessment year 2009-10. In the light of the aforesaid facts, the Ld. counsel submitted that the addition may be restricted

to 12.5% of the total amount of questioned purchases in accordance with the findings of the AO in assessee's case for the AY 2009-10.

4. On the other hand, the Ld. departmental representative (DR) fairly admitted that the assessment order passed by the AO pertaining to the assessment year 2009-10 has attained finality as no appeal or other proceedings are pending against the said order. However, supporting the concurrent findings of the authorities below in the present case submitted that since the assessee has failed to discharge the onus of proving genuineness of the transaction, the Ld. CIT(A) has rightly upheld the addition of the total amount made by the AO .

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. As pointed out by the Ld. counsel, in the assessment year the assessee had shown purchases from M/s Disha Enterprises amounting to Rs. 15,15,182/-. The AO after hearing the assessee made addition of 12.5% of the said amount holding the transaction bogus. In the present case also the assessee had shown purchase from the same party, however, the AO made 100% addition of the amount of bogus purchases. We notice that the AO has not given any reason for not following the order of his predecessor passed in assessee's own case for the earlier year. Since, there is no change of any material fact of the case in the year pertaining to the assessment year under consideration, we find merit in the submissions of the Ld. counsel that there is no justification in making 100% addition.

6. So far as the justification of addition of 12.5% in assessee's case pertaining to AY 2009-10 is concerned, the AO has made addition to 12.5% mainly on the ground that the assessee has failed to discharge the onus of proving the genuineness of the purchases made from hawala party. 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 ITAT and sustained the addition of 12.5% of the total amount of bogus purchases estimated by the Tribunal, holding that only profit element embedded in such

purchases can be added to income of the assessee. Hence, we find merit in the contention of the Ld. counsel that the action of the Ld. CIT(A) of upholding 100% addition is not in accordance with the ratio laid down by the Hon'ble Gujarat High Court discussed above. Accordingly, following the principles of law laid down by the Hon'ble Gujarat High Court in the said case, we modify the impugned order passed by the Ld. CIT(A) and restrict the addition to 12.5% of the total amount of bogus purchases determined by the AO. Since, we have restricted the addition to 12.5% of the total amount of bogus purchases on the principle of consistency and in the light of the ratio laid down by the Hon'ble Gujarat High Court in the case of *CIT vs. Simit P. Seth (supra)*, we do not deem it necessary to adjudicate the legal grounds raised by the assessee.

ITA No. 5931/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, except the amount of bogus purchases. Further, the issues involved in both the cases are identical. Like in the case pertaining to the assessment year 2010-11, in the assessment year under consideration, the AO made addition of the total amount of bogus purchases and in the first appeal the Ld. CIT (A) confirmed the addition. 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 identical grounds.

3. Since the facts of the present case are similar to the facts of the assessee's own case pertaining to the assessment year 2010-11 and the assessee has challenged the impugned orders passed by the Ld. CIT(A) on identical grounds and since we have restricted the addition to 12.5% of the total amount of bogus purchases in assessee's case for the AY 2010-11, our findings in the said case shall apply *mutatis mutandis* for the appeal pertaining to the assessment year 2011-12 also. Accordingly, in this case also, we modify the impugned order passed by the Ld. CIT(A) and restrict the addition to 12.5% 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 8th November, 2019.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 08/11/2019

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