

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” Bench, Mumbai**

**Before Shri Manoj Kumar Aggarwal, Accountant Member
and Shri Ravish Sood, Judicial Member**

**ITA No. 5132/Mum/2017
(Assessment Year: 2009-10)**

Deputy Commissioner of
Income Tax-8(2)(1),
Aayakar Bhavan, Room No.624,
M.K. Road,
Mumbai – 400020

M/s Shree Sai Steel Industries India Pvt.ltd.,
127-A, Magazine Street, Darukhana,
Mumbai - 400010
Vs.

PAN – AAJCS7709N

(Appellant)

(Respondent)

Appellant by:	Shri Vinay Sinha, CIT D.R
Respondent by:	None
Date of Hearing:	06.01.2020
Date of Pronouncement:	08.01.2020

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-14, Mumbai, dated 18.05.2017, which in turn arises from the order passed by the A.O under Sec.143(3) r.w.s 147 of the Income Tax Act,1961 (for short ‘Act’), dated 27.02.2015. The revenue has assailed the impugned order on the following grounds of appeal before us:

- “(i) The Learned CIT(A) has erred on facts and in law in giving relief in respect of addition on account of bogus purchase after noting that appellant failed to negate the information based on enquiry conducted by DGIT(Inv.), Mumbai, triggered by information from the Sales Tax Department that they were hawala dealers and providing accommodation bills.
- “(ii) The Learned CIT(A) has erred on facts and in law, in restricting the addition to 12.5% on account of bogus purchases as the parties from whom purchases were made were hawala dealers and absolute burden of proof is cast on the assessee and this burden of proof never shifts to the Department.

- (iii) The Learned CIT(A) has erred on facts and in law in not appreciating that this being a case of utter disregard and subversion of law, the burden of proof cast on the assessee was of a very high degree and assessee failed to discharge this burden.
- (iv) The Learned CIT(A) has erred on facts and in law, in not giving effect to Section 114(g) of the Indian Evidence Act which clearly lays down that if a fact in knowledge of a party is not explained, adverse inference can be drawn against the party possessing the knowledge of facts/ information.
- (2) The Ld. CIT(A)'s order is contrary to law and on facts and deserves to be set aside.
- (3) The appellant craves leave to amend or alter any ground or add a new ground that may be necessary.
- (4) The appellant prays that the order of CIT(A)'s on the above grounds to be set aside and that of the AO restored."

2. Briefly stated, the assessee company which is engaged in the business of trading in iron and steel, machinery etc. had filed its return of income for A.Y. 2009-10 on 27.09.2009, declaring its total income at Rs.1,45,65,720/-. The return of income filed by the assessee was processed as such under Sec. 143(1) of the Act. On the basis of information received by the A.O that the assessee as a beneficiary had obtained bogus purchase bills aggregating to Rs.42,95,62,364/-, its case was reopened under Sec. 147 of the Act.

3. During the course of the assessment proceedings it was observed by the A.O that the assessee had claimed to have made purchases aggregating to Rs.42,95,62,364/- from the following 4 parties:

Sr. No.	Name of the Pur. Parties	Amt. (in Rs.)
1.	I.S.K. Trading Company Pvt. Ltd.	Rs.16,81,58,700/-
2.	K.R. C. Trading Co. Pvt. Ltd.	Rs.20,75,00,990/-
3.	S.B. Metal Corpn	Rs. 2,03,20,320/-
4.	Hanuman Steel	Rs. 3,35,82,354/-
	Total	Rs.42,95,62,364/-

In order to verify the genuineness and veracity of the aforesaid purchase transactions, the A.O directed the assessee to produce the aforementioned parties for necessary examination. However, the assessee failed to comply with the aforesaid direction of the A.O and did not produce either of the aforementioned parties before him. Also, the assessee failed to comply with the specific direction of the A.O, wherein the latter had directed him to produce supporting documents which would evidence the authenticity of the purchase transactions under consideration. As the assessee failed to substantiate the authenticity of the purchases claimed to have been made from the aforementioned parties, therefore, the A.O holding a conviction

that the assessee had indulged into booking of bogus purchases disallowed the entire value of the impugned purchases of Rs.42,95,62,364/- which were claimed by the assessee to have been made from the aforementioned parties. On the basis of his aforesaid deliberations the A.O assessed the income of the assessee company at Rs. 44,41,96,084/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). Observing, that the A.O had not doubted the duly accounted sales of the assessee for the year under consideration, the CIT(A) was of the view that the entire value of purchases could not have been disallowed. Rather, it was observed by the CIT(A) that a clear correlation between the amount of purchases and the corresponding sales could safely be gathered from the stock register of the assessee company. Apart from that, it was observed by the CIT(A) that the disallowance of the entire value of purchases would result into an abnormal increase in GP/NP by 26%, which was unheard of in the trade line of the assessee. In the backdrop of his aforesaid deliberations, the CIT(A) was of the view that the assessee had purchased the goods under consideration not from the aforementioned hawala parties but from the open/grey market. On the basis of his aforesaid observations, the CIT(A) held a conviction that the addition in the case of the assessee was liable to be restricted only to the extent of the profit involved in making of such purchases by the assessee at a discounted value from the open/grey market. As such, the CIT(A) restricted the addition in the case of the assessee to the extent of 12.5% of the aggregate value of the amount purchase of Rs.44,41,96,084/-.

5. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us.

6. We find that the assessee despite having been put to notice had failed to appear before us. Accordingly, we are constrained to proceed with the matter and dispose off the appeal as per Rule 26 of the Appellate Tribunal Rules, 1963, after hearing of the appellant revenue and perusing the orders of the lower authorities.

7. The Id. Departmental Representative (for short 'D.R') relied on the assessment order. It was submitted by the Id. D.R, that both the assessee and the revenue being aggrieved with the order of the CIT(A) had carried the matter in appeal before the Tribunal. It was submitted by the Id. D.R that the appeal of the assessee was disposed off by the Tribunal, vide its order dated

20.12.2017 in ITA No.4576/Mum/2017. It was averred by the Id. D.R, that as the appeal of the assessee was independently disposed off by the Tribunal, therefore, the revenue had filed a miscellaneous application with the Tribunal viz. M.A. No. 88/Mum/2019, seeking recall of the order, with a request, that the same may be disposed off along with the appeal of the revenue which was pending before the Tribunal. It was the claim of the Id. D.R that the aforesaid miscellaneous application filed by the revenue was dismissed by the Tribunal vide its order passed in M.A. No. 88/Mum/2019, dated 05.07.2019. It was submitted by the Id. D.R that independent of the aforesaid facts the present appeal of the revenue may be disposed off.

8. We have heard the Id. D.R, perused the orders of the lower authorities and the order passed by the Tribunal while disposing off the assessee's appeal in ITA No. 4576/Mum/2017, for the year under consideration viz. A.Y. 2009-10 (copy placed on record). As observed by us hereinabove, the genesis of the controversy involved in the present appeal revolves around the scaling down of the disallowance of the entire value of the bogus purchases of Rs.42,95,62,364/- made by the A.O to 12.5% of the aggregate value of the impugned purchases by the CIT(A). We find that both the assessee and the revenue being aggrieved with the order of the CIT(A) had carried the matter in appeal before the Tribunal. On the one hand, the assessee was aggrieved with the sustaining of the addition by the CIT(A) to the extent of 12.5% of the aggregate value of the impugned purchases, while for on the other hand the revenue was aggrieved with the scaling down of the disallowance of the entire value of purchases made by the A.O to 12.5% of the aggregate value of the said impugned purchases by the CIT(A). As observed by us hereinabove, the appeal of the assessee had been disposed off by the Tribunal viz. ITAT, Bench "E", Mumbai, vide its order passed in Shri Sai Steel Industries India (P) Ltd. Vs. ACIT- 8(2)(1), Mumbai [ITA No.4576/Mum/2017, dated 20.12.2017] for the captioned year i.e A.Y. 2009-10. In the aforesaid order, the Tribunal had upheld the disallowance of 12.5% of the aggregate value of the tainted/bogus purchases by the CIT(A). In sum and substance, the order of the CIT(A) had been upheld by the Tribunal while disposing off the appeal of assessee. The Tribunal while dismissing the appeal of the assessee for the captioned year had observed as under:

"8. We have considered the rival submission of the parties and have gone through the orders of authorities below. During the re-assessment proceedings the assessee was asked to substantiate the purchases and to furnish the documents related to the purchases and to

produce the parties for verification. The assessee failed to produce the parties for verification and the relevant documents to prove the genuineness of the purchases. The AO on his observation that that the assessee failed to produce the genuineness of transaction disallowed the entire purchases from four parties. The AO has not issued any notice under section 133(6) or summons under section 131 of the Act. The AO disallowed the purchases of Rs.42,95,62,363/-. On appeal before the Id. CIT(A) restricted the disallowance @12.5% of the purchases disallowed by AO. Before us as well as Id CIT(A), the Id AR of the assessee contended that he has filed affidavit of the two supplier which was not considered by AO. The Id CIT(A) while considering the contention of Id AR observe that the affidavit were sworn on 27.02.2015 and the assessment order was also passed on the same day. The Id CIT(A) treated the copy of the affidavit as additional evidence and the same was not considered. Even before us the Id AR has not prayed for taking additional evidence on record. Though, the copy of the said affidavit is placed on record, however, the Id AR for the assessee or the assessee has not certified that the copy of the affidavit were filed before AO. Regarding the contention that the purchases from KRC Trading and ISK Trading was more, the Id AR for assessee vide order sheet noting dated 30.03.2017 before the Id. CIT(A) accepted that there was a mistake due to inclusion of opening stock and figure taken by AO was correct. We have noted that the Id AR for the assessee, despite admitting mistake before Id. CIT(A), has again argued before us that the purchases made from KRC Trading and ISK Trading was more. The Id CIT(A) observe that the assessee has not furnished the evidence of transportation. However, the Id CIT(A) on his observation that there cannot be any sale without purchases further by making additions the GP/NP will increased by 26% for which there is no comparable. The Id. CIT(A) sustained the addition at 12.5% of the bogus purchases on the basis of decision of different High Courts which includes Bholanath Poly Feb Pvt. Ltd. 355 ITR 290 (Guj), Sanket Steel Traders vs. ITO and the Vijay Proteins Ltd. vs. ACIT 58 ITR 428 (Ahd.) and CIT vs. Simit P. Sheth [39 taxman.com 385 (Guj)] etc. We are also of the view that under Income-tax Act, the only real income can be taxed by the Revenue, even if the transaction is not verifiable due to any reason, the only taxable is the taxable income component and not aggregate of the transaction. After considering the fact and nature of business of assessee, we are of the opinion that in order to fulfil the gap of revenue leakage, the disallowance of reasonable percentage of impugned purchases would meet the end of justice. The Hon'ble Bombay High Court in CIT v. Hariram Bhambhani [IT Appeal No. 313 of 2013, dated 04-2-2015] held that revenue is not entitled to bring the entire sales consideration to tax, but only the profit attributable on the total unrecorded sales consideration alone can be subject to income tax. We have noted that the Id CIT(A) after relying on various decisions restricted the disallowance at 12.5% of the tainted/ bogus purchase. Thus, we do not find any illegality or infirmity in the order passed by Id CIT(A), which we sustained."

Apart from that, the miscellaneous application filed by the revenue in M.A. No. 88/Mum/2019 had been dismissed by the Tribunal vide its order dated 05.07.2019. In the backdrop of the aforesaid facts, we are of the considered view that the order passed by the Tribunal while disposing off the appeal of the assessee for the year under consideration i.e A.Y. 2009-10 had attained finality. We thus respectfully following the view taken by the Tribunal while disposing off the assesses appeal for A.Y. 2009-10, therein uphold the sustaining of the disallowance to the extent of 12.5% of the aggregate value of the impugned purchases of Rs. 42,95,62,364/-

by the CIT(A). Accordingly, in terms of our aforesaid observations the appeal filed by the revenue is dismissed.

9. Resultantly, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 08.01.2020

Sd/-
(Manoj Kumar Aggarwal)
ACCOUNTANT MEMBER

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 08.01.2020
Ps. Rohit

आदेश की 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