

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

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

**ITA No. 6412/Mum/2018
(Assessment Year: 2011-12)**

M/s Golden Dyechem
Unit No. 17, Ratnajyot Industrial Estate,
Vile Parle (W),
Mumbai – 400 056

Income Tax Officer – 25(2)(3),
Pratyaksha Kar Bhavan,
Vs. Bandra Kurla Complex, Bandra (E),
Mumbai – 400 051

PAN – AAAFG1255H

(Appellant)

(Respondent)

Appellant by: Ms. Ketki Rajeshirke, C.A.
Respondent by: Shri N. Padmanaban, Sr. A.R

Date of Hearing: 08.01.2020
Date of Pronouncement: 10.01.2020

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-53, Mumbai, dated 30.08.2018, 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 04.03.2016. The assessee has assailed the impugned order on the following grounds of appeal before us:

- “1. On the facts and in the circumstances of the case, the Appellant submits that the Honorable Commissioner of Income Tax (Appeal) erred in upholding the addition of Rs. 7,97,954/- being 12.5% of the value of alleged bogus purchases of Rs. 63,83,629/- made from three parties, made by the Learned Assessing Officer (AO) without considering the details and documents submitted by the Appellant to substantiate the genuineness of purchases by co-relating of the said purchases with corresponding sale, quantitative details of sale-and purchase, excise gate passes from supplier and excise gate passes given to customer to claim cenvat , purchase & sales invoices, proof of delivery of goods, proof of payment to parties by way of account payee cheque, produced during the assessment proceeding and appeal proceeding and without considering the fact that the Assessment officer has accepted books of accounts and also corresponding sale.

The Appellant submits that the purchase of Rs.63,83,829/- to be treated as genuine.

2. On the facts and circumstances of the case, the Appellant submits that the Honorable Commissioner of Income Tax (Appeal) treated the said purchases as bogus on the basis of the assessment order passed by the Learned Assessing Officer which is passed without giving copies of documents relied upon by the Learned Assessing Officer and without giving any opportunity to the Appellant to cross examine before treating the said purchases as bogus purchases.

The Appellant submits that the copies of documents relied upon be given to the Appellant and opportunity to cross examine the said parties be given.

3. On the facts and in the circumstances of the case, the Appellant submits that the Honorable Commissioner of Income Tax (Appeal) has erred in the upholding the addition of Rs.7,97,954/- made by the Learned Assessing Officer on the basis of the case of Gujarat High Court in case of CIT V/s Simit P Sheth ignoring the various judgments of Jurisdictional Income Tax Appellate Tribunal and Jurisdictional Honorable High Court wherein the addition made in the similar circumstances are deleted on the basis of quantitative tallying of sale and purchase, proof of delivery of goods and payment through normal banking channels.

The Appellants submits that the addition of Rs.7,97,954/- be deleted.

4. The appellant craves leave to add, alter & amend any group of appeal.”

2. Briefly stated, the assessee firm which is engaged in the business of trading of dyes, chemicals and solvents and import of paraffin wax had filed its return of income for A.Y. 2011-12 on 28.09.2011, declaring its income at Rs.53,15,990/-. On the basis of information received by the A.O from the DGIT(Inv.), Mumbai that the assessee as a beneficiary had procured bogus purchase bills without actual delivery of goods, the case of the assessee was reopened under Sec. 147of the Act.

3. In the course of the assessment proceedings it was observed by the A.O that the assessee had claimed to have carried out purchases from the following three tainted parties:

Sr. No.	Name of party	Amount
1.	DHRUV SALES CORPORATION	Rs. 788/-
2.	SHREE GANESH TRADING CO.	Rs.1611629/-
3.	DEV ENTERPRISES	Rs.6383629/-

In order to verify the genuineness and veracity of the aforesaid purchase transactions, the A.O called upon the assessee to place on record supporting documentary evidence viz. copy of bank statements, purchase bills, stock register, quantitative details of purchases with the corresponding sales, delivery challans etc. Also, the A.O in order to verify the authenticity of the aforesaid purchase transactions issued letters under Sec. 133(6) of the Act to the aforementioned parties. However, the aforesaid letters were returned back by the postal authorities with the remarks “not known” or that the party was not existing at the stated address. On the other hand, the assessee in order to substantiate the authenticity of the aforesaid purchase transactions emphasised on the fact that the payments to the aforementioned parties were made vide account payee cheques. Also, the assessee in order to fortify the genuineness of the impugned purchase transactions filed with the A.O the copies of invoice bills, ledger extracts and the bank statements. It was observed by the A.O that the assessee despite specific direction had failed

to furnish the latest address and whereabouts of the aforesaid dealers/sellers. Apart there from, it was observed by the A.O that the assessee had also failed to produce the aforesaid parties for necessary examination before him. Also, it was noticed by the A.O that the delivery challans evidencing the movements of the goods pertaining to the impugned purchase transactions were also not filed by the assessee. As regards the reliance placed by the assessee on the fact that the payments to the aforementioned parties were made by account payee cheques, the A.O was of the view that the same could not be treated as sacrosanct for substantiating the genuineness of the impugned purchases claimed by the assessee to have made from the aforementioned tainted parties. As is discernible from the assessment order, the assessee had tried to substantiate the authenticity of the purchase transactions by placing on record the copies of the excise modvat passes of M/s Padma Polymers, which was claimed to have delivered the goods to two of the aforementioned parties viz. (i) M/s Dev Enterprises; and (ii) M/s Shree Ganesh Trading Company. However, the A.O was not inclined to accept the genuineness of the purchases claimed by the assessee to have been made from the aforementioned parties on the basis of the aforesaid documentary evidence which were filed before him. In the backdrop of the aforesaid facts, the A.O being of the view that the books of accounts of the assessee were not reliable, therefore, rejected the same under Sec. 145(3) of the Act. At the same time, the A.O taking cognizance of the facts that the assessee had reconciled the impugned purchases with the corresponding sales that were duly accounted for in its books of accounts, therein held a conviction that the addition in respect of the aforesaid unverified purchases could only be restricted to the extent of the profit which the assessee would have made from purchasing the said goods at a discounted value from the unidentified dealers operating in the open/grey market. On the basis of his aforesaid deliberations the A.O disallowed 12.5% of the aggregate value of the impugned purchases and made an addition of Rs.7,97,954/- (12.50% of Rs.63,83,629/-) in the hands of the assessee firm.

4. Aggrieved, the assessee assailed the matter in appeal before the CIT(A). However, the CIT(A) after necessary deliberations was not persuaded to subscribe to the contentions advanced by the assessee. Observing, that no infirmity did emerge from the order of the A.O, the CIT(A) dismissed the appeal.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Id. Authorised Representative (for short 'A.R') for the assessee at the very outset of the hearing of the appeal submitted that as the assessee had duly substantiated the genuineness and veracity of the purchases made from the aforementioned three parties, therefore, the lower authorities were in error in making/sustaining an addition of 12.5% of the aggregate value of the aforesaid purchase transactions. It was the claim of the Id. A.R that the assessee in the course of the assessment

proceedings had furnished clinching documentary evidence which duly substantiated the authenticity of the purchases made by the assessee from the aforementioned parties. In order to drive home her aforesaid contention the Id. A.R took us through the relevant pages of the assessee's paper book (for short 'APB'). However, on a specific query by the bench as to whether 'delivery challans' pertaining to the aforesaid purchase transactions were furnished before the assessing authority, it was answered by the Id. A.R in negative. Also, it was admitted by the Id. A.R that the notices issued to the aforementioned parties by the A.O under Sec. 133(6) of the Act were returned unserved. Alternatively, it was submitted by the Id. A.R that the disallowance of 12.5% of the aggregate value of the impugned purchases was highly exorbitant. It was averred by the Id. A.R that the addition, if any, in the case of the aforesaid unverified purchases may be sustained to the extent of the normal profit rate of the assessee in respect of its remaining purchase transactions. In support of her aforesaid contention, the Id. A.R had relied on the judgment of the Hon'ble High Court of Bombay in the case of Pr. CIT Vs. M/s Mohommad Haji Adam & Company (ITA No. 1004 of 2016, dated 11.02.2019).

6. Per contra, the Id. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities. It was submitted by the Id. D.R, that as the assessee had failed to substantiate the genuineness of the purchases claimed to have been made from the aforesaid tainted parties, therefore, the lower authorities had rightly made/sustained addition to the extent of 12.5% of the aggregate value of the impugned purchase transactions.

7. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. On a perusal of the orders of the lower authorities, we find, that the assessee had failed to substantiate the authenticity of the impugned purchases which were claimed to have been made from the aforementioned parties on the basis of clinching documentary evidence. As observed by us hereinabove, the assessee despite specific directions of the A.O had failed to substantiate the movement of the goods in the course of the impugned purchase transactions by placing on record the 'delivery challans'. Also, the assessee despite on being called upon to produce the aforementioned parties for necessary examination by the A.O, had failed to do the needful. Also, the letters which were issued by the A.O under Sec. 133(6) of the Act to the aforementioned parties were returned unserved by the postal authorities with the remarks "not known" or that the party was not existing at the stated address. In our considered view, in the backdrop of the information received by the A.O from the DGIT(Inv.), Mumbai that the assessee had not made any genuine purchases from the aforementioned parties and had only procured bogus purchase bills from them, a very heavy onus was cast upon the assessee to substantiate the authenticity of the aforesaid purchase transactions and dispel all doubts

as regards the authenticity of the said purchases transactions. However, we find that the assessee except for relying upon certain self suiting documentary evidence viz. purchase bills, bank statements etc., and harping on the fact that the payments to the aforementioned parties were made by account payee cheques, had however, failed to place on record any such clinching evidence which would conclusively prove the genuineness of the impugned purchase transactions.

8. We have given a thoughtful consideration to the facts involved in the case before us and are in agreement with the view taken by the lower authorities that as the assessee had correlated the purchases under consideration with the corresponding sales, therefore, the addition in its hands was liable to be restricted only to the extent of the profit element which he would have generated by making such purchases from the unidentified dealers operating in the open/grey market. Insofar the quantification of such profit element is concerned, we find that the **Hon'ble High Court of Bombay** in its recent judgement in the case of **Pr. Commissioner of Income Tax-17 Vs. M/s Mohhomad Haji Adam & Company (ITA No. 1004 of 2016, dated 11.02.2019)** while upholding the order of the Tribunal, had observed, that the addition in the hands of the assessee as regards the bogus/unproved purchases was to be made to the extent of bringing the G.P rate of such purchases at the same rate of other genuine purchases. The Hon'ble High Court while concluding as hereinabove, had observed as under:

"8. In the present case, as noted above, the assessee was a trader of fabrics. The AO found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sale declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trade. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases. The decision of the Gujarat High Court in the case of N.K. Industries Ltd. (supra) cannot be applied without reference to the facts. In fact in paragraph 8 of the same Judgment the Court held and observed as under-

"So far as the question regarding addition of Rs.3,70,78,125/- as gross profit on sales of Rs.37.08 Crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular books during Financial Year 1997-98 is concerned, we are of the view that the assessee cannot be punished since sale price is accepted by the revenue. Therefore, even if 6 % gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as a result of which profit comes to 5.66% Therefore, considering 5.66 % of Rs.3,70,78,125/- which comes to Rs.20,98,62 1.88 we think it fit to direct the revenue to add Rs.20,98,621.88 as gross profit and make necessary deductions accordingly. Accordingly, the said question is answered partially in favour of the assessee and partially in favour of the revenue."

9. In these circumstances, no question of law, therefore, arises. All Income Tax Appeals are dismissed, accordingly. No order at costs.”

As such, the Hon'ble jurisdictional High Court had observed that the addition in respect of purchases which were found to be bogus in the case of the assessee before them, who was a trader, was to be worked out by bringing the G.P. rate of such bogus purchases at the same rate of other genuine purchases. We thus respectfully following the aforesaid judgment of the Hon'ble High Court direct the A.O to restrict the addition insofar the bogus/unproved purchases aggregating to Rs.63,83,629/- in the case before us are concerned, by bringing the G.P. rate on the amount of such bogus purchases at the same rate as that of other genuine purchases. Needless to say, the assessee in the course of the 'set aside' proceedings shall furnish the requisite details before the A.O, who shall after making necessary verifications restrict the additions in terms of our aforesaid observations. The order passed by the CIT(A) is 'set aside' and the matter is restored to the file of the A.O to give effect to our aforesaid directions.

9. Resultantly the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 10.01.2020

Sd/-
(Manoj Kumar Aggarwal)
ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक 10.01.2020
Ps. Rohit

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

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//
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आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai