

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH,
MUMBAI

BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.7480/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2010-11)

ITO 17(2)(5) Room No.123A, 1 st Floor, Aayakar Bhawan, Churchgate, Mumbai- 400020.	बनाम/ Vs.	Parindra Harshad Bhuta 37, Ismail Building, Nagdevi Street, Masjid Bunder, Mumbai-400003.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAQPB4539D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri Akhtar Ali Ansari (DR)	
Assessee by:	None	

सुनवाई की तारीख / Date of Hearing: 07/01/2020
घोषणा की तारीख /Date of Pronouncement: 15/01/2020

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 05.10.2018 passed by the Commissioner of Income Tax (Appeals) -58, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2010-11.

2. The revenue has raised the following grounds: -

- " 1. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) justified in restricting the addition made by the A.O. to 10% of Rs.20,67,806/- against the addition made at 12.5% of the bogus purchases, ignoring that the assessee was unable to prove the genuineness of the purchases either by



producing the supplier for examination or by furnishing other substantiating documents which were required by the Assessing Officer?"

2. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in overlooking the fact that the addition made by the A.O. was based on the details of the scam unearthed by the Sales Tax Department, wherein it was established that the assessee has taken mere accommodation entries/bogus bills from the suppliers without actually making purchase from them?"*

(This case Jails under the exception 10(e) of the Circular No.03/2018 dated 11.07.2018 as amended on 20.08.2018

3. *"The appellant craves leave to amend or alter any ground or add a new ground which may be necessary".*

3. The brief facts of the case are that the assessee filed his return of income on 08.10.2010 declaring total income to the tune at Rs.14,87,749/- for the A.Y.2010-11. The case of the assessee was reopened u/s 147/148 of the Act by issuance of notice dated 24.03.2015. Thereafter, notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee has taken the bogus purchase entries in sum of Rs.20,67,806/-. The AO by applying the decision of **Hon' ble Gujarat High Court in the case of CIT Vs. Bholanath Ply Fab Pvt. Ltd. (2013) (355 ITR 290/40 Taxmann.com 494 (2014) 220 Taxmann 82 (Mag. (Guj) (High Court)** has restricted the addition to the extent of 12.5% of the bogus purchase in sum of Rs.20,67,806/-. The total income of the assessee was assessed to the tune of Rs.17,46,230/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who restricted the addition to the extent of 10% of the bogus purchase. The revenue was not satisfied, therefore, the revenue has filed the present appeal before us.



4. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. The Ld. Representative of the revenue has argued that the assessee has taken the bogus purchase entries in sum of Rs.20,67,806/- but the CIT(A) has restricted the addition to the extent of 10% which is not justifiable, therefore, the finding of the CIT(A) is not justifiable and is liable to be set aside and whole bogus purchase entry is liable to be added to the income of the assessee in accordance with law. However, on the other hand, the Ld. Representative of the assessee has strongly relied upon the order passed by the CIT(A) in question. Before going further, we deemed it necessary to advert the finding of the CIT(A) on record: -

“5. *Ground I reads as under:*

Making addition of Rs.2,58,476/- as suppressed income from alleged unproved purchases when full details filed for reopening objection based on mere "suspicion" cross verification of parties, quantitative tally statement purchase sale disposal with Transport receipts, account payee bank statements etc. numerous case laws of Supreme courts, HC and Jurisdictional HC and ITAT were furnished during the course of assessment.

6. *The ground. incoherently worded lacks clarity. Since the ground w. with "making addition of Rs. 2,58,476/-it is considered as one against the addition as such. Hence. I adjudicate only the addition portion against the ground.*

7. *The issue is disallowance of sums represented by bogus accommodation entries. These entries are debited to Profit and Loss Account having effect in determination of taxable profit. The disallowance made is Rs.2,58,476 being 12.5% of total value of accommodation entries of which Assessing Officer had received information. Its a settled legal position that the onus is on assessee to prove the expense is genuineness Here Assessing Officer made effort to verify genuineness of transaction and failed. The or, therefore shifts to assessee, who failed to discharge the same. As clearly brought out in it, assessment order, the evidence produced are copy of purchase bills,*



purchase ledger and edger account. A transaction has two parts being payment for goods/services and transfer goods/rendering of service. Only if both are proved it can be said that the transactions genuine. The evidence furnished covers only the limb of payment but nothing on actual transfer of goods. Here the case is that the evidence is, factitious and hence evidence transfer of goods only substantiate the case. The assessee has failed transaction be same. The contents of paragraph 4.5 of assessment order is highly relevant in this case.

8. *The statement of facts lists a series of case decisions of Hon. ITAT, Mumbai, the jurisdictional ITAT. However, it is not proved that the facts and circumstances of the case decisions are identical as in case of Appellant. The Appellant states that "Purchase bills; use of sale stock account payee payment details, bank statements. The case is that assessee, A is between X and Y. Only if X procures or manufacture the can transfer to A. Only if A gets the product he can transfer the product to Y. The sequence is X Y. No satisfactory evidence regarding the link X -- A link in the chain proving that the goods were produced/manufactured by X and transferred to A is before me. Therefore, these documents, even if produced, is of not much relevance.*

9. *Ground 2 and 3 reads as under:*

When appellant procures first order and then effect purchase and execute the order and when there is one to one correlation of sale, further estimation of 12.50% extra income on alleged suspicious Purchase of Rs.20,67,806/- amounting 100% increase in Gross profit. And 325% increase in net profit which is unwarranted and unjustified.

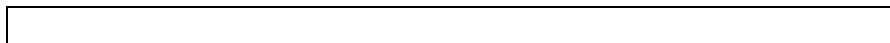
Without prejudice to above based on identical issues settled by various judiciaries the estimation be kept between 3% to 5% level to meet the end of justice.

The above is explained in statement of facts as under:

Without prejudice to above

3. *Estimation of 12.50% on allowed suspicious purchases - amounts to 100% addition to gross profit and 325% increase in net profit when 12.50% GP in traciin2_of competitive product already accounted.*

3.1 *The net profit before salary and interest to partners all the time below 2% and further levy of 12.50% on purchase amounts to 600% addition which is very high.*





	FY09-10	FY08-09	FY07-08	
average				
Sales	40480403	28486704	20053888	
G.p.%	12.49	14.62	13.70	13.61
Netprocha	1623013	1223202	644486	
% gae	4.02	4.29	3.21	3.84
addition 12.50% shows	325 % increase in Average net profit			

3.2 Since all Lorry receipts for sale directly from the warehouse of purchaser / place of delivery and all account payee cheques and full details were given and when assessee first getting the orders and effecting purchases thereafter when margin is known 'such exorbitant increase in income is exorbitant excessive and capacious.

3.3 Many judiciaries have fixed the lower levy of addition

a. Hariram Bhambhani dated 04.02.2015

Tax Appeal No.313 of 2013

Tax 4% net profit on sales of Rs.35 lakhs when no evidence of purchases

Recent Gujarat and others

b. (2014) 43 taxmann.com 244 (Gujarat) dated 10.02.2011

5% addition confirmed as against 25%

c. 2005 (A.Y. 1998-99) (Mum.) (Trib.)

The ITAT ultimately held that only G.P.

addition of 3.2% should to be taken on the sales made against these purchases

d. DCIT v. Shri Jitendra s. Motani, ITA Nos. 3024 to 3028 Bench "J" dt 04.08.2009

(AYs 2000-01 to 2005-06) and ITA no 6178/M/2007 dt. 30.11.2011 Bench "J"

(AY. 2004-05) (Mum) (Trib.)



The ITAT held that addition restricted to 3% on tainted purchases only (i.e. where

No confirmation was obtained or doubtful in nature)

10. Ordinarily once purchase is held bogus, entire purchase is to be disallowed as a book entry having effect of reducing profit is created solely for reducing normal profit. However judicial decisions need to be followed by which a fixed per cent of same i.e bogus Entry/accommodation entry is added to income [eg: DCIT, 14(1)(2), Mumbai vs M/s Fagioli India Pvt. Ltd. (ITA No. 4557 & 4558/Mum12015 dated 28.07.2017, which inter alia considered decision of Hon. Supreme Court in N K Proteins vs DOIT (SLP 759 to 2017) dated 16.01.2017). In the cited case of M/s Fagioli India Pvt. Ltd. gross profit was 37% and ITAT decided that estimate of profit be 12.5% on the figure of accommodation entry or bogus purchase. Further in Shri Mehul K. Mehta Prop. Vaishnavi Enterprises vs Income Tax Officer 15(1)(3), Mumbai in I.T.A. No.3 227/Mum12016 dated 14.03.2017 in the context of the case the Hon. ITAT ordered as under:

We do not find any infirmity in the well-reasoned appellate order of Ld. CIT(A) which we are inclined to affirm/sustain except that, in our considered view, the end of justice will be met in the instant case if GP is estimated to tune of 12.5% of the purchase from these alleged hawala operators which will cover any leakage of Rover way of VAT, commission etc. Thus, as compared to the GP ratio at 7.11% declared assessee, we are estimating GP ratio at the rate of 12.5% on the said bogus purchases wherein the assessee will be allowed credit of declared GP ratio of 7.11% and net addition to GP ratio shall be to the tune of 5.39% on bogus purchases, hence, we allow relief to the assessee. We order accordingly. It can be seen that in the above the Hon ITAT has reduced addition further vis-a-vis le originally accepted figure of 12.5%, 7a.

11. All submissions of the appellant is duly considered. The gross profit rate of assessee is 12.49%. The disputed transactions concerns reselling of chemicals The Assessing Officer disallowed 12.5% of the alleged amount of accommodation entries. On facts and circumstances of the case, and considering strength of evidence, brought to record (I note that Assessing Officer has not issued any notice to the alleged accommodation entry providers) decision is to be taken in a balanced manner. In note that despite Assessing Officer not conducting necessary enquiry, requisite and relevant particulars are not produced neither before me nor the Assessing Officer. Hence, I after considering all aspects, hold that disallowance be kept at 10% of transactions covered by accommodation entries."



5. On appraisal of the above mentioned order, we find it justifiable to restrict the addition to the extent of 10% of the bogus purchase. The CIT(A) has also considered the gross profit rate which was @ 12.49%. The sale is not disputed. Taking into account all the facts and circumstances, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with at this appellate stage. Accordingly, all these issues are decided in favour of the assessee against the revenue.

6. In the result, the appeal filed by the **revenue is hereby ordered to be dismissed.**

Order pronounced in the open court on 15/01/2020

Sd/-

(SHAMIM YAHYA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 15/01/2020

Vijay Pal Singh/Sr.PS

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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



ITA No. 7480/M/2018
A.Y.2010-11