

IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH MUMBAI
BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER
&
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA No.6418/Mum/2018
(Assessment Year: 2009-10)

ITO-29(2)(4) Building No. C-10 2 nd Floor, Room NO.205, Pratyakshakar Bhawan BKC , Bandra(East) Mumbai-400 051	Vs.	Shri. Navin Jaichand Doshi D-705, Kalp Nagri Balrajeshwar Road Mulund West Mumbai-400 080
		PAN/GIR No.ADDPD0288P
(Appellant)	..	Respondent)

Revenue by	Shri Kailash Mangal, DR
Assessee by	None
Date of Hearing	19/12/2019
Date of Pronouncement	15/01/2020

आदेश / ORDER

PER G.MANJUNATHA (A.M.):

This appeal filed by the revenue is directed against, the order of the Ld. Commissioner of Income Tax (Appeals)-40, Mumbai, dated 25/07/2018 and it pertains to Assessment Year 2009-10.

2. The revenue has raised the following grounds of appeal:

1. "On the facts and circumstances of the case, the Ld.CIT(A) has erred in restricting the addition of Rs.4,26,84,231/- being 100% to Rs.53,35,529/- being 12.5% of the aforesaid bogus purchases from hawala parties ignoring the fact that the assessee had failed to produce the parties.

2. "On the facts and circumstances of the case, the Ld.CIT(A) has erred in restricting the addition of Rs.4,26,84,231/- being 100% to Rs.53,35,529/- being 12.5% of aforesaid bogus purchases in view of the decision of the Hon'ble Supreme Court in the case of N.K.Proteins Ltd., wherein the Apex court has dismissed the SLP filed against the High

Court decision of upholding the 100% addition made by the AO on account of Bogus purchases.

3. The brief facts of the case are that the assessee is engaged in the business of Wholesaler in Iron and steel, filed his return of income for AY 2009-10 on 25/09/2009, declaring total income of Rs.3,41,030/-. Thereafter, the case has been reopened u/s 147 of the Act, on the basis of information received from DGIT, investigation, Mumbai, as per which, Sales Tax Authorities of Government of Maharashtra had taken actions against number of Hawala dealers, who had issued bogus purchase bills to various parties in Mumbai and other places. As per list of beneficiaries, the assessee is one of the beneficiary, who had taken accommodation bills of bogus purchases from various parties as listed by the AO in para 5.1 of his assessment order amounting to Rs. 4,26,84,231/-. The case was selected for scrutiny and the assessment has been completed u/s. 143(3).r.w.s. 147 of the I.T.Act, 1961 on 27/03/2014 and determined total income of Rs. 4,36,07,456/-, after making 100% additions towards alleged bogus purchase from those parties and made additions of Rs. 4,26,84,231/-.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has filed elaborate written submissions, on the issue, which has been reproduced at Para 4 on pages 2 to 3 of Ld.CIT(A) order. The sum and substance of arguments of the assessee before the Ld.CIT(A) are that purchase from the above party is genuine, which is supported by necessary evidences. Therefore, no additions could be made on the basis of information received from third party. The

Ld.CIT(A), after considering relevant submission of the assessee and also, by following the decision of Hon'ble Gujarat High Court, in the case of CIT vs. Simith P. Sheth (356 ITR 451) scaled down addition made by the AO towards alleged bogus purchases to 12.5% gross profit on total purchases from those parties. The relevant findings of the Ld.CIT(A) are as under:-

"Since the facts of the assessee's case are similar respectfully following the decisions, the AO is directed to tax 12.5% of such purchases toward element of profit embedded In such purchases from the hawala parties. I am not in agreement with the action of the AO in taxing entire amount of hawala purchases u/s. 69C of the I.T. Act because the AO has not brought anything on record to show that purchases from grey market were made out of undisclosed funds and payments made by the appellant to the hawala dealers were not available for making purchases from grey market. Secondly, there la no exact quantification of purchases made from grey market which baa been taken by the AO equal to the amount of hawala bill. I am of the opinion that In absence of any evidence that grey market purchases were made out of undisclosed sources. It will be Justified to presume that payments made for hawala purchases were available for purchases from grey market and the best course of action would be estimation of additional profit from hawala purchases, as has been held In the decisions quoted Above. Similarly, there no cogent reason for presuming that the appellant had undisclosed stock of goods equal to bogus purchases made by him. In absence of cogent reasons, such a presumption will not stand the test of preponderance of probability. Thus, estimation of element of profit embedded in such purchases from the hawala parties will be the best course of action and the AO If directed to tax 12.5% of such purchases towards element of profit embedded in purchases from the hawala parties.*

Accordingly, first ground of appeal is partly allowed".

5. None appeared for the assessee. We have heard the Ld. DR, perused the material available on record and gone through orders of the authorities below. We find that the Ld. AO has made 100% additions towards alleged bogus purchases on the ground that the assessee is one of the beneficiary of accommodation entries of bogus purchase bills issued by Hawala dealers. According to the Ld. AO, although assessee has filed certain basic evidences, but failed to file further evidence in the backdrop of clear finding by the Sales Tax

Department, Maharashtra that those parties are involved in providing accommodation entries without actual delivery of goods. The Ld. AO had also taken support from the investigation conducted during the course of assessment proceedings, as per which notice issued u/s 133(6) to the parties were returned un-served by the postal authorities. Therefore, he came to the conclusion that purchases from the said parties are bogus in nature. It is the contentions of the assessee before the lower authorities that purchases from the above party are supported by necessary evidences. It has furnished all possible evidences, including books of accounts; stock details and bank statement to prove that payment against said purchases have been made through proper banking channels.

6 Having considered arguments of the Ld. DR and also, material available on record, we find that both the sides have failed to prove the case in their favour with necessary evidences. Although, assessee has filed certain basic evidences, but failed to file further evidences to conclusively prove purchases to the satisfactions of the Ld.AO. At the same time, the Ld. AO had also failed to take the investigation to a logical conclusion by carrying out necessary enquires, but he solely relied upon information received from investigation wing, which was further supported by information received from Maharashtra Sales Tax Department. Under these circumstances, it is difficult to accept arguments of both the sides. Further, in a case where purchases are considered to be purchased from suspicious/hawala dealers, various High Courts and Tribunals had considered an identical issue in light of investigation carried out by the Sales Tax Department and held that in case of purchases claims to have made from alleged hawala dealers, only profit

element embedded in those purchases needs to be taxed, but not total purchase from those parties. The Hon'ble Gujarat High Court, in the case of CIT vs Simith P.Sheth 356 ITR 451 had considered a similar issue and held that at the time of estimation of profit from alleged bogus purchases no uniform yardsticks could be adopted, but it depends upon facts of each case. The ITAT, Mumbai, in number of cases had considered an identical issue and depending upon facts of each case, directed the Ld.AO to estimate gross profit of 10% to 15% on total alleged bogus purchases. In this case, considering the nature of business of the assessee the Ld. AO has made 100% additions, whereas the Ld.CIT(A) has scaled down addition to 12.5% gross profit on total alleged bogus purchase. Although, both authorities have taken different rate of profit for estimation of income from alleged bogus purchase, but no one could support said rate of gross profit with necessary evidences or any comparable cases. Therefore, considering facts and circumstances of this case and consistent with view taken by the Co-ordinate Bench in number of cases, we are of the considered opinion that the Id. CIT(A) has taken one of the possible method and estimated 12.5% gross profit on alleged bogus purchases to settle dispute between the parties and hence, we are inclined to uphold order of the Id. CIT(A) and dismiss appeal filed by the Revenue..

7. In the result, appeal filed by the revenue is dismissed.

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

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated 15/01/2020
Thirumalesh Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai