



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

BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER

ITA NO.437/MUM/2019 : A.Y : 2010-11

ITO 27(1)(4),
Room No.409, 4th Floor
Tower No.6, Vashi Railway
Station Complex, Vashi
Navi Mumbai – 400703

vs. Shri Eknath Shankar Pednekar
6/A-7, Gujarat Mandir Road
Behind Post Office
Pant Nagar
Ghatkopar (E)
Mumbai – 400 075
Maharashtra

PAN NO: AKCPP9616P

Revenue by : Shri Anoop Hiwase
Assessee by : None

Date of Hearing : 27/01/2020
Date of Pronouncement : 28/01/2020

ORDER

PER R.C. SHARMA, ACCOUNTANT MEMBER

This appeal filed by the revenue is against the order of CIT(A) for the A.Y.2010-11 in the matter of addition upheld on account of bogus purchases, order passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961.

2. In this appeal revenue is aggrieved for upholding addition in respect of bogus purchases to extent of 12.5% as against 100% made by the AO.

3. I have gone through the orders of the authorities below and found that AO has made addition of 100% in respect of purchases found to be bogus.

4. By the impugned order, CIT(A) confirmed the addition to the extent of 12.5% after observing as under:-

“2.4.1 The only effective Ground is in respect of the action of the Ld. AO in not accepting the purchases of Rs.5,65,968/- as genuine purchases based on the information received from Income Tax authorities. Briefly stated, the appellant is a company engaged in the business of manufacturing of industrial knife. Ld. AO made the addition on the basis of information received from the investigation wing of Income Tax Department, Mumbai that the Sales Tax Department had recorded the statements of certain hawala operators who had confirmed to have given bogus bill to certain assessee including the appellant company. The bogus bill was in respect of 1 party. The appellant company was asked to submit the details of purported purchases made and to show cause why the same should not be disallowed as bogus purchases. The appellant filed their reply stating that purchases were made from regular parties supported by proper bills and the accounting entries and the payments were made by account payee cheques. The Ld.AO was not in agreement with the submissions of the appellant and observed that the appellant failed to furnish the supporting documentary evidence to establish that the purchase was actually made by them from this party such as transportation documents, inward register etc. The investigation Wing of Mumbai had provided a list of hawala bill racketeers who were involved in issuing bills and also the list of beneficiaries. The Sales Tax Department of Mumbai had investigated all these cases thoroughly and prepared a list of such hawala operators and their beneficiaries which have been uploaded in their Website. The Ld.AO observed that these hawala operators were providing only accommodation " entries and the appellant was also in the list beneficiaries. Accordingly, the Ld. AO treated the amount of Rs.5,65,968/- as bogus purchase and added the same to the total income of the appellant.

Under similar circumstances the Hon'ble High Court of Gujarat in the case of Simit P Seth, 2013 (356 ITR 451) had on occasion to deliver judgement by confirming the decision of the ITAT which has estimated the disallowance at 12.5% of the disputed bogus purchases.to meet the end of Justice! The head-note of the decision is reproduced as under-

"Section 145 of the Income-Tax Act, 1961- Method of Accounting-Estimation of Profits [Bogus Purchases]- Assessment year 2006-17- assessee was engaged in business of trading in steel on wholesale basis-Assessing Officer having found that some alleged suppliers of steel to assessee had not supplied steel to assessee but had only

provided sale bills, held that purchases made from said parties were bogus -He accordingly, added entire amount purchases to gross profit of assessee-Commissioner (Appeals) having found that assessee had indeed made purchases though not from named parties but other parties from grey market, sustained addition to extent of 30% of purchase cost as probable profit of assessee- Tribunal however, sustained addition to extent of 12.5%-Whether since purchases were not bogus but were made from parties other than those mentioned in books of account, only profit element embedded in such purchases could be added to assessee's income- Held, yes Whether hence, order of tribunal needed no interference- held, yes [Paras 6,7 &9] [in favour of assessee]". [emphasis supplied]

Based on the evidence in hand in the form of a report from DIT (Inv), Mumbai the AO has asked the assessee to produce the party along with evidence in order to verify the genuineness of the purchase transactions. The assessee instead submitted the ledger accounts of the above party and bank statements extracts evidencing the payments through bank cheque. In this case, the onus lies on the assessee to prove the genuineness of the purchases and the assessee had to prove that the suppliers were genuinely existing. The assessee has not made any efforts to discharge the onus and failed to produce the said party, in spite of the opportunities given by the Ld.AO. The assessee could not satisfactorily substantiate and establish the fact that there were genuine purchases from these parties. There was a report from SIT(inv) stating that all the seller parties as per the list supplied by them are bogus including the parties appearing in the books of the appellant and as stated above, the assessee has not made counter submission to show that this party is really existing. The AO has brought to tax the bogus purchases by adopting the method @ 100% of such purchases keeping in view the gain made by the appellant due to purchases of material in grey market without bills and adjusting the purchases with the invoices taken from the hawala traders under discussions. Under These circumstances the AO cannot be found fault on this count. Even though the AO could not prove substantively that the amounts given to the sellers in cheque from have come back to the appellant, the activities of accommodation entries in the trading community is not unheard of. Further, the investigations carried out by the Sales Tax Department, another Government Agency, with regard to VAT violation cannot be lost sight of. Further, as some of the names of the so-called bogus sellers out of the list supplied by the Sales Tax Department are appearing in the books of the appellant, the link of involvement of appellant getting bogus bills is established. Even though there are catena of cases decided by the jurisdictional ITAT which have decided the issue in favour of the assessee, they are not uniform in

all the cases as they were decided as per facts and circumstances of that particular case before them.

I am of the opinion that the facts and circumstances of the present case are more akin to the case decided by the Hon'ble Gujarat High Court in the case of Simit P Seth (Supra). Therefore, I hereby confirm the disallowance to the extent 12.5% amounting to Rs.70,746/- of the so-called bogus purchases made by the Ld AO. This ground is partly allowed.

2.5 In the result, the appeal is partly allowed.”

5. It is clear from the order of CIT(A) that after controverting the findings of the AO and applying judicial pronouncements in the case of Simit P Sheth by the Hon'ble Gujarat High Court has upheld the addition to the extent of profit element in the alleged bogus purchases to the extent of 12.5%. The detailed findings so recorded by CIT(A) has not been controverted by bringing any positive material on record. Accordingly, I do not find any reason to interfere in the findings of CIT(A) for upholding the addition to the extent of 12.5%.

6. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on this 28/01/2020

**Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER**

Mumbai; Dated 28/01/2020
Karuna 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