

IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
&
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA No.12/Mum/2019
(Assessment Year: 2013-14)

DCIT, Central Circle-3(2) Room No.1913, Air India Building Nariman Point Mumbai-400 021	Vs.	Doshi Medical Service 19, 5 th Khetwadi Lane Lehri Building SVP Road Khetwadi Mumbai-400 004
PAN/GIR No.AAAF0236F		
Appellant)	..	Respondent)

Revenue by	Shri. Abhijit Patankar, CIT,DR
Assessee by	None
Date of Hearing	22/01/2020
Date of Pronouncement	29/01/2020

आदेश / O R D E R

PER G.MANJUNATHA (A.M):

This appeal filed by the revenue is directed against, the order of the Ld. Commissioner of Income Tax (Appeals)-51, Mumbai, dated 09/10/2018 and it pertains to Assessment Year 2013-14.

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

1. *On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in restricting the addition to the extent of 12.5% of the bogus purchases of Rs. 77,18,604/- booked by the assessee from purchase parties M/s Arch Marketing and M/s Overseas Impex.*
2. *On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in restricting the addition to the extent of 12.5% of bogus purchase amount instead of 100% of bogus amount made by the*

assessing officer without considering the decision of Hon'ble Apex Court in the case of N K Proteins Ltd Vs DCIT SLP CC No. 769 of 2017 on similar facts of case, when the assessee failed to prove the genuineness of transactions or produced the purchase parties.

3. The brief facts of the case are that the assessee is a partnership firm, which is engaged in the business of trading in medicines and drugs. A search action u/s 132 of the I.T.Act, 1961 was carried out at the premises of M/s. Shrigun Pharmachem Pvt.Ltd., on 26/11/2015. Consequent to search, the case was centralized and notice u/s 153C of the Act, dated 20/12/2017 was issued and duly served on the assessee. In response, the assessee vide letter dated 21/12/2017 stated that return filed u/s 139(1) may be treated as return filed in response to notice u/s 153C of the Act. The case was selected for scrutiny and during the course of assessment proceedings, the Ld. AO noticed that the assessee has obtained accommodation entries of bogus purchases bills from M/s Arch Marketing and M/s Overseas Impex, for an amount of Rs. 77,18,604/- and after considering relevant submission of the assessee, he has made additions of Rs. 77,18,604/- to the total income.

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 submission on the issue, which has been reproduced at para 6.1 on page 4 to 13 of Ld.CIT(A) order. The sum and substance of the arguments of the assessee before the Ld.CIT(A) are that purchases from the above parties are genuine in nature, which are supported by necessary evidences. The Ld. AO has made additions towards purchases, without pointing out any discrepancy in books of accounts or made out a case of sales

outside books of accounts. The Ld.CIT(A) after considering relevant submission of the assessee and also, by relied upon the decision of Hon'ble Gujarat High Court, in the case of Simith P.Sheth vs CIT 356 ITR 451 (Guj) has scaled down additions made by the Ld. AO towards alleged bogus purchases to 12.5% profit on non genuine purchases. The relevant findings of the Ld.CIT(A) are as under:-

*6.4 It is observed that the Hon'ble Gujarat High Court has adjudicated **the case of Simit P. Sheth (ITA No 3238 & 3293/Ahd/2009]**, wherein the assessee was engaged in trading in steel. The Hon'ble Gujarat High Court in this case was seized with an issue where the A,O, had found that some of the alleged suppliers of iron & steel to the assessee had not supplied any goods but had only provided sale bills and hence, purchases from the said parties were held to be bogus. The AO in that case added the entire amount of purchases to gross profit of the assessee, Ld. CIT(A) having found that the assessee had indeed purchased though not from named parties but other parties from grey market, partially sustained the addition as probable profit of the assessee- The Tribunal however, sustained the addition to the extent of 12.5%, Taking Into account the above facts, the Hon'ble Gujarat High Court held that since the purchases were not bogus, but were made from parties other than those mentioned in books of accounts, only the profit element embedded in such purchases could be added to the assessee's Income and as such no question of law arose in such estimation. The Tribunal while estimating the profit embedded In the transactions @ 12,5% held as under:*

"Having heard the submissions of both the sides, we have been informed that the malpractice of bogus purchase is mainly to save 10% sales tax etc., it has a/so been informed that in this industry about 2.5% is the profit margin. Therefore, respectfully following the decisions of the co-ordinate bench pronounced on identical circumstances, we hereby direct that the disallowance is required to be sustained at 12.5% of the purchase from those parties. With these directions, we hereby decide the grounds of the rival parties which are partly allowed."

*6.5 Moreover, the Hon'ble ITAT, Mumbai had an occasion of adjudicate this issue in the case of M/s **Ratnagiri Steels (SO taxmann.com 265)** which was engaged In the business of trading in steel. During the year, information was received from the Sales Tax Authorities about purchases from alleged hawala/bogus suppliers. After due consideration of all the relevant facts, the Hon'ble ITAT confirmed the addition of profits arising from the alleged hawala/bogus purchases by adopting a rate of 12.5%. It was further held by the Hon'ble ITAT that the AO should give credit for the book GP shown by the assessee in respect of the alleged*

hawala/bogus purchases against the said GP rate of 12.5%. The relevant portion of the order of the Hon'ble /TAT is reproduced as under:

*"The authorities below in the instant case did not make any industry comparisons to arrive at fair, honest and rational estimation of GP ratio, rather applied GP ratio of 12,5% on alleged bogus purchases which estimation was in addition to the normal GP ratio declared by the assessee in return of income filed with Revenue. The Revenue made aforesaid additions relying on the material was in fact purchased from grey market at a Lower rate and to cover deficiencies on record, the invoices were produced **from** these entry operators to reduce the profit, it was also considered that **there will** be savings on account of taxes while procuring material from grey market. The authorities below relied upon decision of Hon' ble Gujarat High Court in the case of C!T v. Simit P. Sheth {2013} 356 ITR 451/219 taxman 85 Mag./38 taxmann.com 385, which has estimated disallowance @12.5% of the disputed bogus purchases to meet the end of justice. The authorities below has not brought on record industry comparables nor any rational comparability vis a vis preceding years GP ratio are brought on record. There is no allegation brought on record by Id.DR that similar additions were also made in the immediately preceding year. The assesses earned GP ratio as detailed hereunder for fast three years;-*

<i>Financial! Year</i>	<i>%GP</i>
<i>2007-08</i>	<i>4.3%</i>
<i>2008-09</i>	<i>5.45%</i>
<i>2009-10</i>	<i>4.9%</i>

The books of accounts were not rejected u/s. 145(3) of the 1961 Act by the Revenue. In the immediately preceding year, i.e A. Y. 2008-09, the assesses earned GP ratio of 4.3% on total turnover, while for the year under consideration GP ratio earned was 5.45%. In our considered view and based on facts and circumstances of the case as discussed by us in details above, end of justice will be met in this case if GP ratio of 12.5% on alleged bogus purchases is added to income of the assessee against which credit for the declared GP ratio on the alleged bogus purchases will be granted by the AO after verification by the AO because of failure of the assessee to come forward to discharge primary onus cast upon him as detailed above for which assessee is to be blamed and in the midst of afore-stated un-rebutted allegation against the assessee and non-discharge of primary onus, the declared lower GP ratio of 5.45% in the instant previous year under appeal cannot be accepted. Thus, in nut-shell we are inclined to adopt GP ratio of 12.5% on alleged bogus purchases in the instant case which in our considered view is fair, reasonable and rational! keeping in view the factual matrix of the case, while the assessee shall be granted credit of GP ratio declared on this bogus purchases in the return of income fified with the Revenue. The assessee gets part relief. We order accordingly,"

*6.6 From the aforesaid cited decision of Gujarat High Court in the case of **Simit P. Sheth** (supra), it can be observed that the appropriate GP percentage for computing the unaccounted profits from the purchases*

*from the alleged hawala/bogus suppliers should factor the savings of taxes etc due to the unaccounted sales and the GP already shown in the regular books. It is observed that the ratio of the decision of the Gujarat High Court in the case of Simit P Sheth (supra) cannot be squarely applied to the facts of the case of our assessee since the sales tax rate prevalent in Gujarat was much higher than applicable in Maharashtra for the relevant period. The facts of the case of the assessee are however, some what similar to that of Ratnagiri Steels (supra). In the case of Ratnagiri Steels (supra), the Hon'ble ITAT after considering the healthy GP shown of 5.45%, directed the AO to allow set off of the book GP against the said rate of 12.5% while computing the additional profits from the purchases from the alleged hawala /bogus suppliers. In the instant case, it is observed that the assessee has also shown a good GP of 15.22%. Therefore, as was done by Hon'ble ITAT, Mumbai in the case of Ratnagiri Steel (supra), it will be appropriate rate of 12.5% is applied for computing the unaccounted profits related to purchase! Rs. 77,18,604/- from M/s. Arch Marketing and M/s. Overseas Impex and against this set off of the GP shown in the regular books in respect of the purchases from the said bogus parties is allowed. Accordingly, the AO is directed to compute the additional profits in respect of the purchases from the alleged bogus supplier by adopting rate of 12.5%. However, the AO will allow a set off of the GP already shown by the assessee in the regular books in respect of the purchases from the said alleged bogus suppliers. Accordingly, **the only 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 has 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 12.50% 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. Admittedly, the assessee is in the business of trading in drugs and medicins and the retail profit margin in this kind of business is ranging between 10% to 20%. 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 view that the Id. CIT(A) has taken one of the possible method to settle dispute between the parties and estimated 12.50% gross profit on alleged bogus purchases. 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: 29 /01/2020

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated 29/01/2020
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