

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

**ITA No.5118/Mum/2018
(Assessment Year: 2010-11)**

Maganlal M.Patel 502, New Vishwajyoti Apartment Balaji Lane, Tilak Road Op. Balaji Mandir, Ghatkopar(E) Mumbai-400 077	Vs.	ITO-27(2)(2) 4 th Floor, Tower No.6 Railway Station Commercial Complex Vashi, Navi Mumbai Mumbai-400 703
PAN/GIR No.AABPP4490L		
Appellant)	..	Respondent)

Revenue by	Shri. Aktar.H.Ansari, DR
Assessee by	Ms. Ruchi Rathold, AR
Date of Hearing	20/01/2020
Date of Pronouncement	29/01/2020

आदेश / O R D E R

PER G.MANJUNATHA (A.M):

This appeal filed by the assessee is directed against, the order of the Ld. Commissioner of Income Tax (Appeals)–25, Mumbai, dated 14/06/2018 and it pertains to Assessment Year 2010-11.

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

1. *Learned CIT(Appeals) erred in confirming profit @ 12.5% on the purchases effected from registered dealers and erred in treating the same as bogus purchase ignoring the detailed evidences brought on record & further erred in levying interest thereon and Ignoring the judicial precedents brought to his knowledge.*
2. *Learned CIT(Appeal) erred in confirming the purchases profit @ 12.5% on the purchases on the basis of information received from Sales Tax Authorities which contrary to the material fact On record.*

- 3. Learned CIT(Appeals) erred In confirming the assessment order, though safes made by the Appellant were not in doubt end also Ignoring the quantitative details brought on record.*
- 4. The Appellant craves leave to add, to amend, to after, to modify or to delete any of [he above grounds of appeal.*

3. The brief facts of the case are that the assessee is engaged in the business of trading in Timber, filed his return of income for AY 2010-11 on 26/09/2010, declaring total income of Rs. 3,96,220/-. The case was subsequently reopened u/s 147, 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. As per list of beneficiaries, the assessee is one of the beneficiary, who had taken accommodation bills of bogus purchases from two parties as listed by the AO in his assessment order amounting to Rs. 39,34,288/-. 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 14/12/2015 and determined total income of Rs. 8,88,184/-, after making 12.50% additions towards alleged bogus purchase from above parties and made additions of Rs. 4,91,786/-.

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 page 3 to 6 of Ld. CIT(A) order. The sum and substance of the 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) has sustained addition made by the AO towards 12.50% profit on alleged bogus purchases from those parties. The relevant findings of the Ld.CIT(A) are as under:-

*5.2 Having considered the assessment order of the AO and the submissions of the assessee, it is seen that the main plank of assessee's arguments regarding the genuineness of the purchases was that the payment has been made by cheque/banking channels and which has not found favour with courts/Tribunal's pronouncements like in the case of M/s, **Konchwola** Gems vs. JCIT ITA No.134/JP/2002 dated 10.12.2003 by the Hon'ble FTAT, Jaipur wherein it is held that payment by account payee cheque is not sufficient to establish the genuineness of purchases. The said decision of the 1TAT, Jaipur has been affirmed by the Hon'ble Supreme Court in the case of M/s. Kachwala Gems vs. **JCIT (2006) 206 CTK (SC) 585: 2881TR 10 (SC)**. Thus, the main contention of the appellant does not hold much water. The AO has formed his views about the bogus nature of the purchases made by the appellant from the above party on the basis of statements recorded by the Sales Tax Authorities as well as further inquiries carried out by him independently. The information received from the Sales Tax authorities was only a piece of evidence to initiate in-depth independent investigation on the issue. The appellant has not been able to establish one to one relationship/nexus between the purchases and sales. The assessee has not been able to produce the party from whom purchases have been alleged to have been made. The appellant has also failed to produce corroborative evidence in the form of transportation bills etc. to establish that the alleged purchases were actually transported to its premises and entered in the stock register. It is also a fact that the AO has not confronted the assessee with all the information in his possession; like statements of the alleged **hawala** operators. **Further**, the AO stopped investigation with the return of his 133(6) notices and Inspector's filed inquiry and his report. He did not go ahead with money trail of cheques debited in appellant's bank account towards the alleged purchases though such investigation do not lead to concrete results in the case of hawala dealers and investigators often reach dead end in such cases. It is not the case of the AO that the impugned purchases have conclusively been established as not having been effected at all. The AO has only found the impugned supplier as a bogus party.*

5.2.1 In many judicial pronouncements on the issue, the Courts have taken a consistent view that in case of non-existent parties from which the purchases are shown to have been made, only a part of such purchases can be disallowed, particularly in such cases where the corresponding sales are not doubted. Alternatively, the profit embedded

in such sales against the alleged bogus purchases should be brought to tax.

5.2.2 In the case of **CU-1 Vs Simit P. Sheth, ITA no. 553 of 2012**, dated 16/01/2013, while deciding a similar issue, the Hon'ble High Court of Gujarat has held that:

"We. are broadly in agreement with the reasoning adopted by the Commissioner (Appeals) with respect to the nature of disputed purchases of steel It may be that the three suppliers from whom the assessee claimed to have purchased the steel did not own up to such sales. However, vital question while considering whether the entire amount of purchases should be added back to the income of the assessee or only the profit element embedded therein was to ascertain whether the purchases themselves were completely bogus and non existent or that the purchases were actually made but not from the parties from whom it was claimed to have been made and instead may have been purchased from grey market without proper billing or documentation the present case, CIT behaved that when as a trader in steel the assessee sold certain quantity of steel he would have purchased the same quantity from some source. When the total sale is accepted by the Assessing Officer, he could not have questioned the very basis of the purchases. In essence therefore, the Commissioner (Appeals) believed assessee theory that the purchases were not bogus but were made from the parties other than those mentioned in the books of accounts. That being the position, not the entire purchase price but only profit element embedded in such purchases can be added to the income of the assessee So much is clear by decision of this Court. In particular, Court has also taken a similar view in case of Commissioner of Income Tax-IV vs. Vijay M Mistry Construction Ltd. vide order dated 10.01.2011 passed in Tax Appeal No. 1090 of 2009 and in case of Commissioner of Income Tax-I vs. Bholanath Poly Fab Pvt. Ltd vide order dated 23.10.2012 passed in Tax Appeal Na 63 of 2012, The view taken by the Tribunal in case of Vijay Proteins Pvt. Ltd, Vs. CIT reported In 58ITD 428 came to be approved."

5.2.3 Similarly, while dealing with an identical issue, in the case of C1T, **Vs. Bholanath Poly Fab (P) Ltd-, I.TA No. 63 of 2012, in the order dated 23/10/2012, the Honble High Court of Gujarat has held as under: -**

"We are of the opinion that the Tribunal committed no error. Whether the purchases themselves were bogus or whether the parties from whom such purchases were allegedly made were bogus is essentially a question of fact. The Tribunal having examined the evidence on record came to the conclusion that the assessee did purchase the cloth and sell the finished goods. In that view of the matter, as natural corollary, not the entire amount covered under such purchase, but the profit element embedded would be subject to tax. This was the view of this court in the case of Sanjay Oilcake Industries v. CJT 120091 316 FTR 274 (Guj). Such decision is also followed by this court in a Judgment dated August 16,2011, in Tax Appeal No.679 of 2010 in the case of CJT

v. Kishor Amrutlal Patel In the result, tax appeal dismissed."(emphasis supplied)

5.24 In view of the facts and circumstances of the case and the judicial pronouncements cited above, what can be disallowed or taxed in the instant case, is the excess profit element embedded in such purchases shown to have been made from aforesaid party. As narrated earlier, the AO in this case has held that the parties from whom the Purchases were made by the appellant were found to be bogus, estimations ranging from 12.5% to 25% have been upheld by the Hon'ble Gujarat High Court, depending upon the nature of the business.

5.2.4.1 In a number/series of recent cases, involving the issue of bogus purchases carried out in a organized manner through some hawala operators and the modus operandi unearthed by the Maharashtra Sales tax department, the Hon'ble Mumbai Tribunal has estimated the G.P addition in the hands of the purchasers on account of such bogus purchases as 12.5%. Some of which are listed below:

- i) Smt. Kirvn Navin Doshi in FTA No. 2601/Mum/2016 18.01.2017.
- ii) Ashwin Purshotetm Rajaj & Am. Vs ITO & Anr., in 1TA No.736/Mum/2Q14,52Q7/Mum/2Q14,dated:14-12-2016.
- iii) ITO &Anr. Vs. Manish Kanji Patel &Anr~, in JTA No. 7299/Mum/2014, 7154/Mum/2012 & 7300/Mum/2014, 7627/Mum/2014, dated: 18-05-2017.
- iv) Metropolitan Eximchem Ltd., JTA No. 2935/Mum/2015, dated:29-03-2017
- v) Kanaka-Metal Industries vs. ITQ, TTA No. 722/Mum.2017 dtd 04.09.2017
- vi) I/TO vs. Jugraj **R. Jain**, TTA No. **2571/Mum/2016 A** 02.08.2017;
- vii) B. J. Exports vs. Assn. Commissioner of **Income tax**, **ITA No. 5442- 5444/Mum/2016** dated 13.09.2017;
- viii) Batliboi Environmental Engineering Ltd. vs. Deputy **Commissioner of Income-tax**, ITA No. 2840 & 3482/M/2015 dated 15-03.2017;
- ix) Deputy Commissioner of Income-tax & Anr. Vs. Remi Process Plant & Machinery Ltd. & Anr., ITA No. 1723/M/2015, 1817/M/2015 dated 21.03.2017.
- x) Smt. Usha B. Agarwal vs. ITO, ITA No. 7034/Mum/2016, dated 01.09.2017.

5.2.5 As far as assessee's reliance on the Gujarat High court decision in the case of Jagdish H Patel, supra, is concerned, it may be mentioned that the case of the assessee is factually distinguishable from the case sought to be relied upon by the assessee in as much as in the case of Jagdish H Patel supra, no scam of the nature involving issue of bills by hawala operators against no delivery of goods as unearthed by the Maharashtra Sales tax Department wherein the hawala parties issuing the bills without delivery of goods had admitted before the Sales tax authorities that they had only issued the bills and goods had not been

*delivered. The AO has carried out independent **investigations** as well. Therefore, the assessee does not get any help from the Gujarat high Court decision in the case of Jagdish H Patel supra.*

5.2.6 In view of the above discussed factual matrix and precedents, I am of the view that the AO is justified in estimating the profit element calculated @ 12.5% embedded in impugned purchases of Rs. 39,34,288/- shown from alleged hawala parties and adding the same to the total income returned. The assessment order of the AO is a well-reasoned and a speaking order giving in detail the reasons for his fair estimation and therefore, I do not see any reasons to take a view in the matter different from the one taken by the Ld. AO. The action of the AO in estimation of 12.5% GP is sustained. Thus, the ground of appeal No.1 is dismissed.

5. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. We find that the Ld. AO has made additions towards 12.50% profit on 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 party were returned un-served by the postal authorities. Therefore, he came to the conclusion that purchase from the said party is bogus in nature. It is the contentions of the assessee before the lower authorities that purchase 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 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 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 situation where purchase is made from alleged 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 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 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 estimated 12.50% profit, which was confirmed by the Id. CIT (A). In this case, the Tribunal for Asst Year 2009-10 has approved 12.50% profit on purchases, but reduced GP already declared for the year. Therefore,

considering facts and circumstances of this case and consistent with view taken by the Co-ordinate Bench in assessee own case for earlier year, we direct the AO to estimate 12.50% profit on alleged bogus purchases and allow further deduction towards GP already declared for the year.

7. In the result, appeal filed by the assessee is partly allowed.

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