

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI
Before Shri Pawan Singh (JM) & Shri S. Rifaur Rahman (A.M.)

ITAs 7017 & 7018/Mum/2018(AY : 2011-12 & 2010-11)

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| ITO, Wd.2(4), Kalyan | Vs | Smt. Shanta Anil Garad, Prop. Shivshakti Trading Co 1518/ 1 & 2, MIDC Shed, Morivali Village, Ambernath PAN : AGLPG8260F |
| APPELLANT | | RESPONDEDNT |

ITAs 7212 & 7213/Mum/2018(AY: 2010-11 & 2011-12)

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| Smt. Shanta Anil Garad, Prop. Shivshakti Trading Co 1518/ 1 & 2, MIDC Shed, Morivali Village, Ambernath PAN : AGLPG8260F | Vs | ITO, Wd.2(4), Kalyan |
| APPELLANT | | RESPONDEDNT |

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|-----------------------|----------------------------|
| Appellant by | Shri V Vinodkumar Sr DR |
| Assessee by | Shri S.M. Makhija Advocate |
| Date of hearing | 20-01-2020 |
| Date of pronouncement | 20-01-2020 |

ORDER

PER PAWAN SINGH, JM :

1. This set of four appeals two cross appeals each for AYS 2010-11 2011-12 are directed against the independent orders of the CIT(A)-3, Thane dated 24-03-2018. In all the appeals, the respective party has raised certain common grounds of appeal. Facts for both the assessment years are same except for variation in figure of addition on account of bogus purchases. Therefore, all four appeals were clubbed, heard and

are decided by this consolidated order. For appreciation of facts, appeal for AY 2010-11 are treated as lead case.

2. The brief facts of the case are that assessee is in the business of supply of chemical pigment and solvents, filed her return of income for AY 2010-11 on 04-10-2010 declaring income of Rs.6.00 lakhs (Aprrox). The return was initially accepted u/s 143(3) on 04-05-2011. Subsequently, the case was reopened on the basis of information received from sales-tax department Government of Maharashtra. The information was received that certain parties were involved in providing accommodation entries without actual delivery of goods. The sales tax department also forwarded a list of beneficiary of such hawala dealers and its beneficiary. The name of assessee appeared in the list of such persons, who have availed such hawala entries. On the basis of such information, the AO reopened the assessment order u/s 147. Notice u/s 148 was issued to the assessee during the re-assessment proceedings. The AO noted that the assessee has availed / shown following purchases from the parties whose names were shown in the list of hawala dealers.

| No. | Name of the entry provider | Amount in the bills taken by the assessee in |
|-----|----------------------------|--|
| 1 | Adinath Enterprises | 11,77,889/- |

| | | |
|----|---------------------------------|---------------|
| 2 | Saj Enterprises | 9,23,386/- |
| 3 | Shah Industries | 7,020/- |
| 4 | Ramdev Trading | 9,69,800/- |
| 5 | Magnum Enterprises | 2,71,856/- |
| 6 | Monil Impex | 9,84,266 |
| 7 | Ankur Sales Corporation | 91,125/- |
| 8 | Moksh Trading Company | 14,65,947/- |
| 9 | Somnath International | 10,28,327/- |
| 10 | Shradhha Trading Co | 10,75,485/- |
| 11 | Ami Traders | 5,73,221/- |
| 12 | Meridian Sales Agency Pvt Ltd | 6,64,801/- |
| 13 | Marshal Enterprises | 16,26,302/- |
| 14 | Smartlink Trade Private Limited | 8,40,133/- |
| | Total | 1,16,00,558/- |

3. During the re-assessment, the assessing officer issued notices to all the parties under section (u/s) 133(6) of Income tax Act. However, notices were returned back with the remark, “not known”/”unclaimed”/ “refused”. The AO asked the assessee to produce the parties for verification, but the assessee failed to produce the parties. The AO, on the basis of information received from Investigation Wing of the department and sales-tax department, rejected the books of account of the assessee and disallowed 100% of such bogus purchases, in his assessment order dated 12-06-2014. On appeal before CIT(A), the Ld.CIT(A) restricted the addition to the extent of 12.5% of such bogus purchases. Thus, aggrieved by the order of Ld. CIT(A), both the parties have filed their respective appeal by raising the grounds of

appeal, which we have extracted below. The assessee its appeal in ITA No.7212/Mum/2018 has raised the following grounds of appeal:-

“1. The Ld. CIT (Appeals) has seriously erred in confirming the action of Assessing Officer in reopening validly completed assessment.

I) Only on the basis of information received from sales tax department to the effect that assessee had taken hawala bills from some parties instead of actually purchasing goods.

II) Without making any independent inquiries/ due application of mind.

III) In violation of principles of natural justice by not providing the copy of statement recorded/ affidavit filed before sales tax department and not allowing cross examination of the alleged hawala dealer.

2. Without Prejudice to the above appellant submits that Ld CIT (appeals) has seriously erred in confirming the addition @ 12.50% of the alleged bogus purchases without appreciating that

I) As decided by various Judicial forums under situations alike of the assessee what is to be added is the profit element embaded in the transaction which in assessee's case is 2.89% only.

II) That assessee has paid VAT on alleged bogus purchase to the Maharastra VAT Authorities @12.50%, deduction for which has to be allowed while making addition.

III) Assessee has already declared Gross Profit on all the purchase recorded including alleged bogus purchases @ 13.20% which sum also is requested to be reduced out of the estimated addition made by Ld. CIT (A) (5)12.50% proposed to be added as has been held by various Judicial authorities.”

4. The revenue in its cross appeal has raised following grounds of appeal:

(1) Whether on the facts and circumstances of the case, ld CIT-(A) has erred in law by not appreciating the fact that assessee could not establish the genuineness of the purchases from non-existent vendors as per the information received from sales-tax department agencies and established by the assessing officer.

- (2) Whether on the facts and circumstances of the case, the learned CIT (A) has erred in law by not appreciating the fact that the onus to justify the claim of expenses is on the assessee and the same has failed to discharge it in relation to changes made from the non-existent vendors ?
 - (3) Whether on the facts and circumstances of the case, learned CIT(A) has erred in law by ignoring the fact that the assessee could not substantiate its claim of purchase from non-existent vendors by means of supporting documents related to movements of goods, stock register etc, to arrive at disallowance at 12.5% of the purchase from the non-existent vendors ?
 - (4) Whether on the facts and circumstances of the case under law, the learned CIT(A) was justified in not appreciating the law correctly that once the purchases are unverifiable/not genuine/bogus, the same should have been disallowed in entirety, particularly in view of the ratio of decision of honourable Gujarat High Court in Tax Appeal No. 242of 2003 dated 20/06/2016 in the case of N. K. Proteins Ltd versus DCIT, against which the SLP was dismissed by honourable Apex Court.
 - (5) It is humbly requested that order of the learned CIT(A) may be vacated and that of AO may be restored.
5. We have heard the submissions of Ld.AR of the assessee and the Ld. DR for the revenue and perused the material available on record.
 6. At the outset of hearing, the Ld.AR of the assessee submits that the grounds of appeal raised by assessee as well as revenue are covered by the decision of Tribunal in assessee's own case for AY 2009-10 in ITA No.4961/Mum/2018 dated 07-11-2019.
 7. On the other hand, the Ld. DR for the revenue supported the order of assessing officer. The Ld. DR further submits that sales-tax department and Investigation wing of the department made full-fledged

enquiry about the modus operandi of hawala traders, who were indulging in providing accommodation entries without actual delivery of goods. In the case of the assessee, the assessee failed to prove the genuineness of transaction. The assessee was specifically asked to prove the transportation of goods. The assessee failed to bring any evidence on record to prove the transportation of goods to the assessee. The Ld. CIT(A) restricted the addition to the extent of 12.5% despite the fact that assessee failed to prove the genuineness of entire transaction. The Id DR for the revenue submits that the assessee has shown bogus purchases only to inflate the expenses for reducing the net profit.

8. In rejoinder submission, the Ld.AR of the assessee submits that during the first appellate stage, the Ld.CIT(A) sought the remand report from the AO. The AO furnished his remand report which is duly recorded by Ld. CIT(A) at para 6.1 of the impugned order wherein the AO has categorically mentioned that the goods were transported through Govind Transport, Bhiwandi.
9. While hearing the submission of the assessee we had noted that Id CIT(A) in his order has referred the decision of Tribunal in ITA No. 6161 & 6162/Mum/20117 dated 12-01-2018 and 24-07-2018 for AY

2009-10 in assessee's husband case, thus, we directed the ld AR for the assessee to place those decision of co-ordinate bench. In compliance of our direction, the ld. AR for the assessee placed the decisions on record.

10. We have considered the submissions of the parties and perused the material available on record. The AO during the re-assessment proceedings issued notices to the hawala parties u/s 133(6) of the Act. All the notices were returned unserved with the remark of postal authorities "not known"/"unclaimed"/ "refused". The assessee was asked to produce the parties. The AO recorded that assessee failed to produce the parties. The AO rejected the books of account without specifying any reason and disallowed 100% of the purchases.
11. The assessee is in the business of chemical pigments and supplier of solvents, i.e trader in chemicals. The AO has not doubted the sales of assessee. It is settled law that no sale is possible without purchases. The AO has not examined the previous and subsequent year's gross profit on similar transactions. Before the Ld. CIT(A), the assessee stated that they have shown GP of 13% and GP on the business carried out by the assessee is 10% to 15%. The assessee has shown net profit of 2.89%. The Ld. CIT(A) restricted the addition to the extent of

12.5%. The Ld. AR of the assessee has strongly relied upon the decision of Tribunal in assessee's own case for AY 2009-10.

12. We have noted that in AY 2009-10, the assessee has shown GP @13.30% and NP of 4.9%. However, for the year under consideration, the assessee has shown gross profit @13.20% and net profit of 2.89%. The main contention of Ld. DR for the revenue is that the assessee has shown bogus purchases only to inflate the expenses for reducing the net profit. We have noted that the net profit for the year under consideration is decreased substantially. Therefore, the fact for the year under consideration is at variance to assessment year 2009-10.

13. In our view that in case the purchases are unverifiable due to any reason, either the facts were not investigated properly by AO or the assessee failed to discharge his onus. The revenue is entitled to tax the real income component and not the entire transaction. Considering the fact that for the year under consideration the assessee has shown net profit @ 2.89% and in AY 2009-10 the assessee has shown net profit at 4.90% and in AY 2008-09 at 3.52%; in AY 2007-08 at 4.12%. Therefore, in our view a reasonable percentage of disallowance will be sufficient to fulfil the possibility of revenue leakage. Considering the facts and circumstances of the case and the decision of Tribunal on

identical set of facts in assessee's husband's case, who is also doing similar business activity, the co-ordinate bench restricted the addition to 8% of the total bogus purchases. Therefore, we direct the AO to restrict the disallowance @8% of the total alleged / disputed / bogus purchases.

In the result, the appeal of the assessee is partly allowed.

ITA No.7213/Mum/2018(AY 2011-12)

14. The assessee has raised identical grounds of appeal as has been raised in appeal for AY 2010-11 wherein we have restricted the disallowance to 8% of the alleged bogus purchases. Therefore, keeping in view the principle of consistency, the disallowance for the year under consideration is also directed to be restricted to 8%.

15. In the result, appeal of the assessee is partly allowed.

ITAs 7018&7017/Mum/2018(AYs 2010-11 & 2011-12 by revenue)

16. Considering the fact that we have restricted the disallowance on account of bogus purchases to 8% in assessee's appeal, the appeals filed by revenue have become infructuous and are dismissed as infructuous.

17. As a result, the appeals filed by the assessee are partly allowed and the appeals filed by the revenue are dismissed.

Order pronounced in the open court on 20 -01-2020.

Sd/-

Sd/-

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| (S. Rifaur Rahman) | (Pawan Singh) |
| ACCOUNTANT MEMBER | JUDICIALMEMBER |

Mumbai, Dt : 20th January, 2019

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

/True copy/

By order

Asstt. Registrar, ITAT, Mumbai