

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI
Before Shri Shamim Yahya(A.M.) & Shri Pawan Singh (JM)
ITA No. 1113/Mum/2019(Assessment year : 2010-11)

ITO-20(1)(1), Mumbai	vs	Shri Aliakbar Haiderali Mukhi 22, Akharwa Galli Opp Anjuman Islam College Maulana Azad Road Mumbai 400 008 PAN : AGKPM4793N
APPELLANT		RESPONDEDNT

Appellant by	Shri Michael Jerald (DR)
Respondent by	Shri R.B. Popat
Date of hearing	06-02-2020
Date of pronouncement	10-02-2020

ORDER

PER PAWAN SINGH, JM :

1. This appeal by revenue is directed against the order of CIT(A)-32, Mumbai dated 19-12-2018 for assessment year 2010-11. The revenue has raised the following grounds of appeal:-

“1. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in granting relief of Rs.68,12,694/- by restricting the addition to 3% of alleged bogus purchases from hawala parties."

2. "On the facts and in the circumstances of the case and in law, the CIT(A) failed to appreciate the fact that onus is on the assessee to explain and substantiate the genuineness and true nature of the transaction.

3. "On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not considering that the hawala dealers admitted on oath before Sales Tax Authorities that they have not sold any material to anybody."

4. "On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating the fact that purchases were made from some other parties which were not recorded in the

books of accounts and only accommodation bills were obtained from hawala parties and thereby attracting provisions of section 40A(3) of the Income-tax Act."

2. Brief facts of the case are that assessee is an individual and is running its business in the name of proprietary concern, viz. Metal Profile. The assessee is engaged in trading of iron and steel. The assessee filed its return of income for assessment year 2010-11 on 29-09-2010 declaring income of Rs.3,55,280/-. Initially, the return of income was processed u/s 143(1). Subsequently, the assessment was reopened u/s 147. The notice u/s 148 dated 29-03-2017 was served upon the assessee. The assessment was reopened on the basis of information received from sales-tax department through DIT(Inv) that assessee's name was appearing in the list of beneficiaries of hawala traders. Based on the information, the AO formed his belief for reopening of the assessment. After serving statutory notice, the AO proceeded to complete the assessment. During the assessment, the assessee was asked to substantiate the purchases shown from following parties:-

S.No.	Name of the party	F.Y.	Amount(inRs.)
1	Dhruv Sales Corporation	2009-10	7,69,142
2	Siddhivinayak Trading Co	2009-10	3,36,425
3	National Trading Co	2009-10	17,71,999
4	Deepali Enterprises	2009-10	35,06,056
5	Rekha Trading Co	2009-10	13,95,145
6	Renuka Sales Corporation	2009-10	17,13,675
7	Naman Enterprises	2009-10	5,87,695
8	Shyam Corporatyion	2009-10	35,58,429

9	K.K. Traders	2009-10	9,54,336
10	R.K. Traders	2009-10	10,86,093
11	Prayosha Trading Co	2009-10	13,74,611
12	Hiten Enterprises	2009-10	6,32,873
13	Anshu Mechantile Pvt Ltd	2009-10	5,76,538
14	Dhiren Mechantile Pvt Ltd	2009-10	8,97,979
15	Om Enterprises	2009-10	25,67,106
16	Simandhar Trading Corpn	2009-10	2,43,334
17	Shree Yamuna Impex	2009-10	21,70,673
18	Shah Industries	2009-10	3,87,55
19	Tube India	2009-10	25,94,886
20	Rupani & Co	2009-10	25,94,886
21	Darshan Sales Corpn	2009-10	28,79,665
22	Matoshree Traders	2009-10	84,973
	TOTAL		3,09,66,789

3. The assessee furnished the copy of invoices from the parties and other supporting documents. In order to verify the purchases, the AO issued notices u/s 133(6) to all the parties to provide details of transactions alongwith supporting evidences. The notices sent to the parties were returned with the remark of postal authorities “left / not known / unclaimed” . The assessee was confronted with the report of postal authorities. The assessee claimed that he had already furnished necessary details, payments were made through crossed cheque, corresponding sales and reconciliation of purchases and consumption was also furnished. The AO concluded that the assessee failed to furnish the supporting documents about the transportation of goods. The AO, on the basis of information through the DIT(Inv) concluded that assessee failed to produce the parties. The purchase bills were from the suspicious parties. It is

conclusive prove that purchases were made from suspicious parties as parties were not available at their given addresses. The assessee has not maintained stock register nor was any proof of transportation of goods furnished. The AO, on the basis of decision of Hon' ble Gujarat High Court in Simit P Sheth 356 ITR 451 (Guj) concluded that assessee failed to establish genuineness of transaction, but assessee has shown sales which cannot be ignored and these facts lead to conclusion that assessee purchased the material in the grey market and sources of funds used for purchases from grey market had not been explained. On the basis of these observations, the AO treated 25% of such purchases as unexplained. The AO accordingly disallowed Rs.77,41,679/- being 25% of aggregate of Rs.3,09,66,789. On appeal before CIT(A), the disallowance was restricted to 3% of the aggregate of alleged bogus purchases. Aggrieved, the revenue has filed the present appeal.

4. We have heard the Ld. departmental representative (ld. DR) for the revenue and the Ld. authorised representative (ld.AR) of the assessee and perused the record. The Ld. DR supported the order of AO and submitted that Investigation Wing of Income tax department made full-fledged enquiry about the modus operandi of hawala operators. The hawala operators used to issue bogus bills

and vouchers without actual delivery of goods. The assessee was one of the beneficiaries of such hawala traders. The assessee has shown purchases only to inflate the expenses and to reduce the gross profit. The Ld. DR submits that finding of AO be restored by setting aside the finding of Ld. CIT(A).

5. On the other hand, the Ld.AR of the assessee submits that in AY 2009-10 similar addition was made; however, on further appeal before the Ld.CIT(A), the disallowance was restricted to 3% of the alleged bogus purchases. The Ld. CIT(A) while passing the order for the present year followed the order of his predecessor. The revenue has not filed any further appeal against the order of Ld. CIT(A). The Ld.AR submits that the revenue must follow the consistency once the order for AY 2009-10 was accepted. The revenue should have accepted the decision of Ld.CIT(A) for this year, as well. On merit the ld. AR for the assessee submits that the AO has not disputed the sale of the assessee. The books of accounts of assessee were not rejected. The AO solely relied on the report of sales tax and investigation wing without any corroborative evidence. The ld AR prayed for dismissal of the appeal.
6. We have considered the submissions of both the parties and have gone through the orders of lower authorities. We have noted that

while passing the re-assessment, the AO made disallowance of 25% of aggregate of purchases. The AO has not rejected the books of account of the assessee. The sales of assessee were accepted. The Ld CIT(A), after following the decision of his predecessor for AY 2009-10, restricted the disallowance to 3%. During the course of hearing, the Ld. DR accepted that no appeal was filed against the order of Ld. CIT(A) for AY 2009-10. The Ld. CIT(A), while passing the order for the year under consideration, has followed the order for AY 2009-10. No contrary material or law is brought to our notice for taking any view. Therefore, we do not find any merit in the grounds of appeal raised by the revenue, which are hereby dismissed.

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

Order pronounced in the open court on 10-02-2020.

Sd/-

Sd/-

(Shamim Yahya)	(Pawan Singh)
ACCOUNTANT MEMBER	JUDICIALMEMBER

Mumbai, Dt : 10th February, 2019

Pk/-

Copy to :

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

/True copy/

By order

Asstt. Registrar, ITAT, Mumbai