

आयकर अपीलिय अधिकरण "SMC" न्यायपीठ मुंबई में।

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

श्री सी एन प्रसाद , न्यायिक सदस्य एवं श्री राजेश कुमार लेखा सदस्य के समक्ष ।

BEFORE SRI C N PRASAD, JM AND SRI RAJESH KUMAR, AM

आयकर अपील सं./ ITA No. 1045/Mum/2019

(निर्धारण वर्ष / Assessment Year 2011-12)

ACE Electronics Tower's Industrial Estate, Gabril Rd Near Rizvi, Mumbai-16	बनाम/ Vs.	The Income Tax Officer Ward-48
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAFA4042L		

अपीलार्थी की ओर से / Appellant by	:	None
प्रत्यर्थी की ओर से / Respondent by	:	Shri R Bhoopathi, DR

सुनवाई की तारीख / Date of hearing:	12.02.2020
घोषणा की तारीख / Date of pronouncement:	12.02.2020

आदेश / ORDER

राजेश कुमार, लेखा सदस्य /
PER RAJESH KUMAR, AM:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-48, Mumbai in Appeal No. CIT(A)-48/IT-78/ITO-21(1)(1)/2018-19 dated 31.12.2018.



2. At the time of hearing neither the assessee nor his authorized representative was present to attend the hearing despite service of notice through RPAD. We are, therefore, deciding the appeal on merits after hearing the Id. DR.

3. The only issue in on merits, in this appeal of assessee is against the order of CIT(A) confirming the addition made of the AO on the bogus purchases.

4. Briefly stated facts are that the assessee is engaged in the business of manufacturing in excisable goods. The AO received information from DGIT (Investigation), who in turn received information from Sales Tax Department, Mumbai that the assessee has made purchases from hawala parties, as listed in hawala dealers by the Maharashtra Sales Tax Department who are providing bogus bills of purchase amounting to Rs. 46,644/- as admitted by these hawala dealers in their deposition before the authorities. The same reads as under: -

<i>"Sl No.</i>	<i>Name of party</i>	<i>Amount</i>
<i>1.</i>	<i>Naman Enterprises</i>	<i>46,644</i>

5. The AO issued noticed under section 133(6) to the parties which returned back as unserved and assessee failed to produce these parties. According to information received the name of this party was appearing in the list of hawala entry operators as supplied by sales Tax Department of Maharashtra. The hawala traders admitting before the sales tax authorities in their



deposition that they were providing only accommodation purchase bills on commission basis without being actual purchase/ sale of goods. The AO during the course of scrutiny assessment proceedings required the assessee to file the details of purchase. The assessee filed copies of purchase bills from the above said parties, copies of ledger extract and copies of bank statements to prove the payments by cheque. The AO required the assessee to produce these parties for verification but assessee expressed his inability to do so. According to the AO, the assessee failed to establish the genuineness of the purchase and accordingly, he made addition of unproved purchase at ₹46,644/- to the return income of the assessee.

6. Aggrieved, assessee preferred the appeal before CIT(A), who confirmed the disallowance of the bogus purchases by observing in para 5 as under: -

"5. I have perused the details and the written submission of the assessee. The appeal is disposed of as below: -

5.1 The only ground is regarding the addition of Rs.46,644/- made by assessing officer on account of bogus purchases by assesses from MIs. Om Traders. The argument of assessee is that assessee had produced relevant purchase bill and

had shown the proof of payment through bank account and that the purchases were genuine. The facts of the case are discussed in detail in the assessment order and the submissions made by assessee were also brought into the assessment order elaborately. In this case the assessment was reopened by assessing officer on the basis of information received from the other evidences regarding accommodation entry bills received by assesses from this party. Subsequently assessing officer issued notice u/s 133(6). In response to this notice Shri Harshit Mehta, proprietor of MIs. Om Traders only submitted ITR-V filed by him and stated that since the raid was conducted by the Sales Tax Department, so he is unable to produce the same. The assessee has made purchases of Rs. 46,644/- from MIs. Om Traders. Accordingly, the assesses has also been given

opportunity of being heard vide show cause dated 22.08.2016.

5.2 Therefore assessee could not substantiate his claim of purchase from this party to any of the corroborative internal evidences like stock register, consumption register or details regarding the godown where the stock was kept. Since the purchases could not be substantiated either from assessee or from the party, assessing officer disallowed the same as bogus purchases and made a addition of Rs.46,644/-.

5.3 In the appeal proceedings also, apart from the reiteration of the same argument. assessee could not substantiate any of the details. Assessee relied upon a plethora of case laws however the fact is that each case has its specific facts and it is only in the light of those facts that a particular decision is taken. Therefore, the case laws decided

upon by various tribunals and courts are in the context of the specific facts and cannot be same really relied upon by assessee. Assesses is not a mere trader of goods where, in the absence of any disturbance in the sales of assessee, the purchases cannot be questioned. Assesses is in the business of manufacturer of the spare parts and is also doing the labour jobs and the processing. Therefore, it is not a simple case of a trade where, whatever is purchased by assesses is subsequently sold as such. In case of assessee, being a manufacturer, the purchases subsequently have to be utilized in the manufacturing process and unless assessee successfully demonstrates through the internal record-keeping as to where this particular disputed item was utilized or consumed. The onus cannot be held to be discharged and assessing officer can very well make the addition of bogus purchase as

assessee has not been able to substantiate the genuineness of purchases specifically in the light of various circumstantial evidences that the party from whom the purchases are shown is not genuine supplier of goods.

In view of above facts of assessee's case, the addition made by assessing officer is upheld and the ground of appeal of assessee is dismisses in entirety."

7. After hearing the Id DR and perusing the materials on records we note that the assessee is undisputedly beneficiary of hawala purchase entries to the extent of Rs. 46,644/-. The Id CIT(A) upheld the order of AO on the ground that the assessee could not substantiate the consumption of materials in manufacturing process. We also note that assessee has filed purchase bills, challan for receipt of goods, details of payment through cheque and bank statement etc. The notice 133(6) the Act was also issued but the supplier relied that due to raid by the department the information could not be furnished. Under these facts and circumstances we cannot sustain the order of CIT(A) upholding the order of AO wherein 100% bogus purchases were added. In our opinion, a percentage can be



applied to bring to tax the profit element in the said purchases. Accordingly we direct the AO to apply rate of 12.50% on the said purchases.

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

Order pronounced in the open court on 12.02.2020.

Sd/-
सी एन प्रसाद /C N PRASAD
(न्यायिक सदस्य/ JM)

Sd/-
(राजेश कुमार /RAJESH KUMAR)
(लेखा सदस्य / AM)

मुंबई, दिनांक/ Mumbai, Dated: 12.02.2020

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file

आदेशानुसार / BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai