

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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

&

SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA No.469 & 470/Mum/2019

(Assessment Years: 2009-10 & 2011-12)

Prithviraj S. Bhansali Shop No.1, Shivtirth Building 10-12, Singhi Lane Mumbai-400 004	Vs.	ITO-19(2)(5) Room No.210, Matru Mandir Tardeo Road Mumbai-400 007
PAN/GIR No.AAOPB6578N		
Appellant)	..	Respondent)

Assessee by	Shri Neel Khandelwal, AR
Revenue by	Shri Ashish Kumar, DR
Date of Hearing	27/01/2020
Date of Pronouncement	10/02/2020

आदेश / ORDER

PER G.MANJUNATHA (A.M.):

These two appeals filed by the assessee are directed against separate, but identical orders of the Ld. Commissioner of Income Tax (Appeals)-30, Mumbai, dated 11/05/2018 and 30/05/2018 and they pertain to AY 2009-10 and 2011-12. Since, the facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are disposed-off by this consolidated order.

2. The assessee has raised more or less common grounds of appeal for both AY's. Therefore, for the sake of brevity, grounds of appeal filed for AY 2009-10 are reproduced as under:-

1.a) *On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in confirming the addition of Rs.7,13,462/- made by the AO to the income of the Appellant on account of profit element @ 12.5% embedded in the so called un-proved purchases of Rs. 57,07,700/- the basis of information of the Sales Tax Department about suspicious dealers after rejecting the book result u/s. 145(3).*

b) *The Id. CITJA) failed to appreciate that :-*

i) *all the purchases are genuine beyond doubt and supported by sufficient materials and are backed by corresponding sales;*

ii) *the gross profit ratio shown by the Appellant is quite reasonable;*

iii) *the payment of purchases are made by account payee cheques only;*

iv) *nothing has been brought on record by the Id. AO that money has exchanged the hands in lieu of payment made for these purchases by account payee cheque; and*

v) *the Id. AO neither provided copy of materials and statements relied upon by him nor allowed any opportunity to the Appellant to cross examine those parties who have been alleged to have provided the alleged entries of such purchases.*

c) *The id. CIT(A) failed to appreciate that the books of account maintained by the Appellant are correct and complete in accordance with the method of accounting regularly and consistently followed by the Appellant.*

d) *In reaching to the conclusion and confirming such addition the Id. AO omitted to consider relevant factors, considerations, principles and evidences while he was overwhelmed, influenced and prejudiced by irrelevant considerations and factors.*

e) *Without prejudice, the rate of profit element embedded in such purchases is excessive and unreasonable on the facts of the case.*

2. *The CIT(A) erred in holding that ground raised disputing the initiation of the penalty proceedings u/s, 271(l)(c) of the Income Tax Act, 1961 is premature. The Appellant denies its liability for such penalty.*

3. *The Appellant was prevented by sufficient and reasonable cause from presenting the present appeal within the prescribed time and therefore prays your Honour to condone the delay in presenting the appeal and admit the appeal in the fairness of law.*

3. At the outset, the Ld. AR for the assessee submitted that there is a delay of 198 days in filing appeal for AY 2009-10 and 180 days delay for filing appeal for AY 2011-12, for which necessary petition for condonation of delay along with affidavit has been filed explaining reasons for delay in filing. The Ld. AR further submitted that the

delay in filing both appeals is due to mistaken of facts by the accountant of the assessee, which resulted in a short delay of less than 200 days for both years. Therefore, in the interest of the justice, the delay in filing appeals for both AY's may be condoned and the issues in appeal may be decided on merits. The Ld. DR, on the other hand did not opposed application filed by the assessee.

4. Having heard both the parties and considered, the reasons given by the assessee for not filing appeals in time, as prescribed under the Act, we deem it appropriate to condoned the delay in filing appeals for both AY's and admit the appeal for both years to decide the issues on merits

ITA No.469/Mum/2019

5. The brief facts of the case are that the assessee is an individual engaged in the business of trading in ferrous and non ferrous metals, under the name and style of M/s Parag Metals, filed his return of income for AY 2009-10 on 26/09/2009, declaring total income of Rs. 9,43,950 and such return was processed u/s 143(1) of the Act. The case has been subsequently reopened u/s 147 of the Act, 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 in Mumbai and other places. As per list of beneficiaries, the assessee is one of the beneficiary, who had taken accommodation bills of bogus purchases from M/s Shree Sundha Steels Pvt Ltd for Rs. 57,07,700/- . 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 13/03/2015 and determined total income of Rs. 16,57,410/-, after making 12.50% additions towards alleged bogus purchase from those parties and made additions of Rs. 7,13,462/-.

6. 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 pages 4 to 5 of Ld.CIT(A) order. The sum and substance of 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), upheld 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:-

9.8 Having gone through the case laws cited in support of the appellant in his submissions, it is seen that in none of those cases so much of investigation was done including those by another Government authority, viz., Maharashtra Sales Tax authority before whom affidavit was filed stating that any bogus bills were supplied without delivery of goods.

*9.9 Hon'ble Gujarat High Court in the case of CIT vs, **Simit Sheth (2013]** 38 Taxman. com 385 (Guj), Hon'ble Court (which was relied by the AO for making the addition) was seized with a similar issue where the AO had found that some of the alleged suppliers of steel to the assesses had not supplied any goods but had only provided sale bills and hence, purchases from the said parties were held to be bogus, The A.O. in that case added the entire amount of purchases to gross profit of the assesses. Ld. CIT(A) having found that the assesses had indeed purchased though not from named parties but other parties from grey market, partially sustained the addition as probable profit of the assesses.*

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. While arriving at the above conclusion, the Hon'ble Court also relied on the decision in the case of Vjjay M, Mistry Construction Ltd, 355 ITR 493 (Guj) and further approved the decision of Ahmadabad Bench, ITAT in the case of Vijay Proteins 53 1TD

9.10 As the AO concluded that the appellant has not purchased from those parties, but considering the facts of the case that the goods have been sold and the assessee offered the profit on sale for taxation, treated the purchases are from the grey market at a lower price which carries higher margin of profit than the one offered to tax. In the decision of Hon'ble Gujarat High Court in the case of CIT vs, Simtt Sheth 356 ITR 451 (Guj) wherein also it is found that some of the alleged suppliers of 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. Thee AO in that case added the entire amount of purchases to gross profit of the assessee. Ld. CFT(A) having found that the assesses 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.

9.11 In the present case also, AO concluded that the appellant has not purchased from the party and estimated the profit percentage @12.5% on such purchase amount. During the appellate proceedings, AR in his written submissions pleaded to delete the addition, though the AR also cited the above said decision in support of their case. I have carefully considered the submissions. It is true that as per the assessment order, the addition of estimation of profit @12,5% of the non-genuine purchases was made based on the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Simit Sheth (2013) 356 ITR 451 (Guj), Hon'ble Court adopted the percentage in view of the benefit the appellant is getting by purchasing the goods from the grey market without a bill. This is over and above the normal GP earned by the appellant in the business. Considering all the facts into consideration and the facts of the present case is similar to the above cited case and the AO adopted the same percentage in the present case which is in the same line of business, the addition made by the AO is confirmed. Appeal an these grounds is treated as 'Dismissed.'

7. 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 addition 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 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.

8 Having considered arguments of both the parties 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 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 addition towards 12.50% profit, which has been approved by the Ld.CIT(A). We, further, noted that rate of profit adopted by the AO as well as the Id. CIT(A) is quite reasonable having regard to the nature of business of the assessee. Insofar as the arguments of the Id. AR for the assessee in light of decision of Hon'ble Bombay High court in case of PCIT vs. Mohamed Haji Adam & Co in ITA No. 1004 of 2016 dated 11-2-2019 and few other Tribunal decisions that addition on alleged bogus purchases shall be required to bring on par with GP of normal purchase, we find that issue of alleged non genuine purchases is purely a factual matter which needs to be considered in light of its own case and hence, we are of the

considered view that it is incorrect on the part of the Id. AR for the assessee to place reliance on any case laws unless it is proved beyond doubt that facts of its case are similar to case laws relied upon by the parties. In this case, the AR for the assessee neither made any attempt to meet the facts of case cited by him nor filed any details about gross profit declared for normal purchases. Under these facts, we reject the case law cited by the Id. AR for the assessee. 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 opinion that the Id. AOP as well as the Id. CIT(A) have taken fairly reasonable view and estimated 12.50% profit of alleged bogus purchases. We, therefore are of the view that there is no reason to interfere with orders of the CIT(A) and hence, we are inclined to uphold order of the Id. CIT(A) and dismiss appeal filed by the assessee.

9. In the result, appeal filed by the assessee for AY 2009-10 is dismissed.

ITA No.470/Mum/2019 for AY 2011-12:-

10. The facts and issues involved in this appeal are identical to the facts and issues, which we had considered in ITA No. 469/Mum/2019 for AY 2009-10. The reasons given by us in preceding paragraphs in ITA No. 469/Mum/2019 for AY 2009-10 shall *mutatis mutandis* apply to this appeal, as well. Therefore, for similar reasons, we dismiss appeal filed by the assessee for AY 2011-12.

11. In the result, appeals filed by the assessee for both AY's are dismissed.

Order pronounced in the open court on this 10/02/2020

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated: 10/02/2020
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