

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

**ITA No.6523/Mum/2018
(Assessment Year: 2010-11)**

ITO-33(1)(3) C-12, 7 th Floor Room No.707 Pratyakshkar Bhawan BKC, Bandra(E) Mumbai-400 051	Vs.	Chetan Arvind Shah B/305, Veena Sur Co-op. Hsg. Society Mahavir Nagar Kandivali (W) Mumbai-400 067
		PAN/GIR No.AAFPS3487E
(Appellant)	..	Respondent)

Revenue by	Shri Ashish Kumar, DR
Assessee by	Shri Paresh Shah. AR
Date of Hearing	29/01/2020
Date of Pronouncement	07/02/2020

आदेश / O R D E R

PER G.MANJUNATHA (A.M):

This appeal filed by the revenue is directed against, the order of the Ld. Commissioner of Income Tax (Appeals)-45, Mumbai, dated 02/07/2018 and it pertains to Assessment Year 2010-11.

2. The revenue has raised the following grounds of appeal:

1. *"On the facts and in circumstances of the case and in law, the Ld. CIT(A) erred in restricting the disallowance @ 12.5% of bogus purchase without appreciating the fact that the AO has held it to be non-genuine after carrying out proper independent investigation in the case".*

2. *"On the facts and in circumstances of the case and in law, the Ld. CIT(A) erred in restricting the disallowance made by AO to Rs. 504,560/- i.e. 12.5% of bogus purchases of Rs. 40,36,4767 - only on the basis that purchases were duly supported by bills and all the payments were made by account payee cheques by overlooking findings of the Sales Tax*

Department & DGIT (Inv.), Mumbai that during the year under consideration the assessee was the beneficiary of bogus purchases and billings from hawala dealers and there was no proof of delivery of products to the assessee".

3. "The appellant prays that the order of the Ld. CTT(A) on the above ground be set aside and that of the Assessing Officer be restored".

3. The brief facts of the case are that the assessee is engaged in the business of trading in Industrial Electronic Components, filed his return of income for AY 2010-11 on 14/10/2010, declaring total income of Rs.2,41,126/-. 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 various parties as listed by the AO in para 2.1 of his assessment order amounting to Rs. 40,36,476/-. 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 22/03/2016 and determined total income of Rs. 42,77,600/-, after making 100% additions towards alleged bogus purchase from those parties and made additions of Rs. 40,36,476/-.

4. Being 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 grounds of appeal, on the issue, which has been reproduced at Para 2.1 on pages 2 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) scaled down addition made by the AO towards alleged bogus purchases to 12.50% gross profit on total purchases from those parties. The relevant findings of the Ld.CIT(A) are as under:-

5.1 I have considered the assessment order and the submission of the appellant including the case laws cited. The AO observed in the assessment order in para 7.1 of assessment order that the AR of the assessee filed copy of ledger, copies of purchase bills, bank statements but as per the hawala parties' statement, the purchases were not made from them. During the appellate proceedings the appellant filed copies of purchase bills and copy of bank statements highlighting the payments made for purchases from the seller parties. It is noticed that on account of non-availability of the suppliers at the given address and non-production of delivery challans, lorry receipts, transportation details, the AO added entire alleged bogus purchases.

5.2 Though, it may be a fact that appellant was not able to produce the concerned parties before the Assessing Officer may be on account of time gap- fact remains that the appellant produced details to prove the genuineness of the purchases. Merely relying upon the information from the Sales Tax Department, the Assessing Officer could not have treated the entire purchases as bogus. The appellant has brought documentary evidences on record to prove genuineness of such transactions, the action of the Assessing Officer in ignoring them cannot be accepted. When the payment to the concerned parties are through proper banking channel and because that there is the payments made were again routed back to the assessee, it doesn't mean that the assessee did not make any purchase, so that the addition of entire purchases is not sustainable in law and facts. Only corollary that follows in such situation is that the appellant could have obtained the bills in lieu of the material purchased locally. In this regard it is found that many Benches of HAT and Hon'ble High Courts have held that when purchases are supported by sufficient documentary evidences, then merely because of non-appearance before the AO, one cannot conclude that the purchases were not made by the appellant. Therefore, the saving on account of VAT and other incidental charges made by the appellant on the said bogus purchases can be brought to tax as additional profit, Keeping in view the totality of facts and circumstances of the case, the disallowance made by the AO is restricted to 12,5% of such purchases of Rs,40,36,476 which comes to

Rs,5,04,56Q, The AO is directed to modify the addition accordingly and the appellant gets part relief. This ground is partly allowed.

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 100% addition towards 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.

6 Having considered arguments of both 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 100% additions, whereas the Ld.CIT(A) has scaled down addition to 12.50% gross profit on total alleged bogus purchase. Although, both authorities have taken different rate of profit for estimation of income from alleged bogus purchase, but no one could support said rate of gross profit with necessary evidences or any comparable cases. 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. CIT(A) has fairly adopted 12.50% profit on alleged bogus purchases

and such estimation is supported by number of decisions of courts and Tribunal. Hence, we are inclined to uphold order of the Id. CIT(A) and dismiss appeal filed by the Revenue..

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

Order pronounced in the open court on this 07/02/2020

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated 07/02/2020
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