

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

**ITA No.471/Mum/2019
(Assessment Year: 2009-10)**

ITO-32(1)(5) Room No.203, 2 nd Floor C-11, Bandra Kurla complex Bandra(E) Mumbai-400 051	Vs.	Harish Kantilal Jain 404, Bhakti Apartment Opp. Jain Temple Jambli Galli Borivali (West) Mumbai-400 092
		PAN/GIR No.AAHPJ0490Q
(Appellant)	..	Respondent)

Revenue by	Shri Ashish Kumar, DR
Assessee by	None
Date of Hearing	27/01/2020
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 05/10/2018 and it pertains to Assessment Year 2009-10.

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

i. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition to Rs.38,180/- (@ 1 2.5% of Rs.3,05,438/-) on account of bogus purchases, without appreciating that the fact that the Sales Tax Department has proved beyond doubt that the parties declared as hawala traders were involved in providing accommodation entry of purchases and the assessee was one of the beneficiary of accepting accommodation for the purchase "

ii. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the ratio of the decision of Gujarat High

Court in the case of N.K Proteins Ltd. Wherein it was confirmed that in the event of bogus purchases , the addition on the whole of such purchases was required to be made and this particular ratio was confirmed by the Hon'ble Supreme Court in SLP No. CC No. 769 of 2017 dated 16.01.2017, by dismissing the SUP of that assessee."

iii. "The appellant prays that the order of the Ld.CIT(A) on the above grounds be set aside and that of the AO be restored "

3. The brief facts of the case are that the assessee is an individual and carrying on the business of trading in Ceramic Tiles, decorative tiles, Stones, Marble & Granite, under two proprietary concerns in the name of M/s Adinath Impex and M/s Shailesh Enterprise. The assessee has filed his return of income for AY 2009-10 on 29/09/2009, declaring total income of Rs. 3,71,220/- and said return was processed u/s 143(1) of the I.T.Act, 1961. 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 Samarth Enterprises amounting to Rs. 3,05,438/-. 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 18/03/2015 and determined total income of Rs. 6,76,660/-, after making 100% additions towards alleged bogus purchase from those parties and made additions of Rs. 3,05,438/-.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has reiterated his arguments made before the Id. AO. 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:-

4.1 I have considered the assessment order and the submissions of the appellant. The AO held that the appellant produced the details with regard to purchases made from the parties including copy of bank statement indicating the payment made to the seller parties. It is noticed that on account of non availability of the suppliers at the given address and non production of transportation bills, the AO added 100% bogus purchases as unexplained expenditure under section 69C of the Act, Section 69C reads.

"Where in any financial year an assessee has incurred any expenditure and he offer, no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the AO, satisfactory, the amount covered by such expenditure or part thereof, off the case may be, may be deemed to be the income of the assessee for such financial year.

*As can be seen from the provision, for applying the section 69C, what is important is that there should be no explanation about the source of expenditure or that the explanation offered is not found satisfactory. In other words, the **source** of expenditure incurred for the expenditure in question is the heart of section 69C Here in this case, the appellant furnished an explanation of source for purchases from his bank account along with supporting evidence of purchase invoices and payment made for the said purchases by cheques. Therefore, in this case, the source of expenditure for purchases stands explained through the bank account. Therefore invoking of section 69C in the present case is not proper.*

4.2 In such circumstances many Benches of ITAT 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 assessee. Reliance is placed on Nikunj Eximp Enterprises (P.)Ltd. v. CIT 216 Taxman 171 (Bom.), CJT v. Nangalia Fabrics (P.)Ltd. 220 Taxmann 17 (Guj.), CIT v. M.K. Bros. 163 ITR 249 (Guj.), Asstt. CIT v. Akruti Dyeing & Printing Mills (R)Ltd, Dy. CIT v. Adinath Industries [2001] 252 ITR 476 (Guj.), CIT v- Precious Jewels Corpn. 17 taxmann.com 264 (Raj.), CTT v. Rajesh P, Soni [Tax Appeal No. 1107 of 2006, dated 27-2-2012].

4.3 Though, the appellant was not able to produce the concerned parties before the Assessing Officer, fact remains that the appellant produced bank account statement, purchase bills, etc., to prove the genuineness of the purchases. It is also a fact on record that the Assessing Officer has not doubted the sales affected by the appellant. Thus, it is logical to conclude that without corresponding purchases being affected, the appellant could not have made the sales. Relying only on the information received from the Sales Tax Department the Assessing Officer could not have treated the 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 there is no evidence before the AO that the payments made were again routed back to the appellant, the addition of bogus purchases is not sustainable in law and facts. Only corollary that follows in such situation is that the appellant could have obtained the accommodation bills for the material purchased locally. In other words the entities may not be the actual supplier but may have provided the bills for the material purchased locally. This is not case in which the signed blank cheque books etc. found with the buyer to say that the purchase of material were not at all made but entered in the stock to inflate the raw material. Therefore the decision of the Supreme Court in the case of M K Proteins Ltd 250 taxman 0022(SC) would not apply to the case. 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. Therefore the AO is directed to estimate the 12.5% on the actual purchases Rs.3,05,438 which works out to Rs.38,180. The AO is directed to modify the addition accordingly and the appellant gets part relief. This ground is partly allowed.

5. None appeared for the assessee. We have heard the Ld. DR, perused the material available on record and gone through orders of the authorities below. We find that the Ld. AO has made 100% addition 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.

6 Having considered arguments of the Ld. DR 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 towards alleged bogus purchases, 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. In this case, the assessee is into the business of trading in Ceramic Tiles and other products. 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 view that the Id. CIT(A) has taken a fair view and estimated 12.50% gross profit on alleged bogus purchases to settle dispute between the parties and 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