

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

ITA No.73/Mum/2019
(Assessment Year: 2011-12)

Jitendra S.Patel 202, Jolly Apartment Co-op Hsg.Soc, Kiral Road Ghatkopar (W) Mumbai-400 086	Vs.	ITO-27(1)(5) 4 th Floor, Tower No.6 Vashi Railway Complex, Vashi, Navi Mumbai-400703
PAN/GIR No.AAAPP5525F (Appellant)	..	Respondent)

&

ITA No.671/Mum/2019
(Assessment Year: 2011-12)

ITO-27(1)(5) 4 th Floor, Tower No.6 Vashi Railway Complex, Vashi, Navi Mumbai-400703	Vs.	Jitendra S.Patel 202, Jolly Apartment Co-op Hsg.Soc, Kiral Road Ghatkopar (W) Mumbai-400 086
(Appellant)	..	PAN/GIR No.AAAPP5525F Respondent)

Revenue by	Shri Ashish Kumar, DR
Assessee by	Ms. Ruchi Rathod, AR
Date of Hearing	30/01/2020
Date of Pronouncement	14/02/2020

आदेश / O R D E R

PER G.MANJUNATHA (A.M.):

These cross appeals filed by the assessee, as well as the revenue are directed against, the order of the Ld. Commissioner of Income Tax (Appeals)-26, Mumbai, dated 30/11/2018 for the AY 2011-12. Since, 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 the following grounds of appeal:-

1. *Learned CIT(Appeal) erred in adding profit @ 8% on the purchases effected from registered dealers and erred in treating the same as bogus purchase ignoring the detailed evidences brought on record & further erred in levying interest thereon and ignoring the judicial precedents brought to his knowledge.*

2. *Learned CIT(Appeal) erred in adding the purchases profit @ 8% on the purchases on the basis of information received from Sales Tax Authorities which contrary to the material fact on record and more particularly disallowance is contrary to the provisions of Section 69C since the source is in dispute and not the purchase expenditure.*

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

1. *On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in directing the AO to restrict the addition to 8% of Rs. 34,92,595/- as against addition @25% of Rs.34,92,595/- made by the Assessing Officer on account of bogus purchase, without appreciating the fact that the assessee had failed to discharge the onus to establish the genuineness of the transactions and also failed to furnish corroborative evidences in support of the claim.*

2. *On the facts and circumstances of the case and in law, the Ld CIT(A) erred in estimating the profit from Hawala purchases by disallowing only Rs.2,79,408/- being 8%of the bogus purchases as even the basic onus of producing delivery challans, transportation details etc, were not fulfilled by the assessee.*

3. *The appellant prays that the order of the CIT(A) on the above grounds be reversed and that of the Assessing Officer be restored.*

4. The brief facts of the case are that the assessee is an individual engaged in the business of trading in Timber and Plywood, filed his return of income for AY 2011-12 on 28/09/2011, declaring total income at Rs. 6,96,913/-. 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 5 of his assessment order amounting to Rs. 34,92,595/-. 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 20/10/2016 and determined total income of Rs. 15,70,060/-, after making additions of 25% gross profit towards alleged bogus purchase from those parties and made additions of Rs. 8,73,149/-.

5. 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 5 on pages 3 to 4 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) has scaled down addition made by the AO towards alleged bogus purchases to 8% gross profit on total purchases from those parties. The relevant findings of the Ld.CIT(A) are as under:-

6.1 Ground No.1 of the appeal is against addition of Rs 8,73,149/- as expenditure u/s.69C of the Act As per the investigations carried out by the Sales Tax Authorities. The aforementioned parties were found to be involved -n giving accommodation entries only without actually supplying the goods. The logical inference is that the purchases made by The appellant would also be in the nature of accommodation entries only. To verify the same, the AO had made enquiries by issuing notices u/s 133(6) which were returned unserved by the postal authorities. This party was found to be non-existent at the address given by (he appellant The appellant also failed to provide the latest address of the party During the scrutiny assessment the appellant furnished details of purchases and corresponding sales However, the appellant could not produce the party before the AO inspite of opportunity being given The appellant also failed to produce delivery challans or transportation details The onus of proving the genuineness of such purchases is on the appellant which the appellant had not been able to discharge fully When the hawala party had admitted on oath that It had given accommodation entries only without actually supplying the goods, the genuineness of purchases made from these parties will have la be considered taking this into consideration while examining the documentation submitted by the appellant in support of its claim The documentary evidences such as purchase bills, payments by cheques, etc would all have been orchestrated to present a facade of genuineness and does not necessarily mean that the purchases from these parties are genuine. The Courts have held that payment by cheque by Itself is not sacrosanct so as to prove genuineness of purchases when the surrounding circumstances are suspect. However, the appellant has shown onward safes which has not been doubled by the Assessing Officer, Since there can be no sales without corresponding purchases, the only logical explanation is that the appellant would have made purchases from undisclosed parties in the grey market at lower rates and purchases were shown as being made from the impugned parties to suppress its profits. In such a situation the venous Courts including the Hon'ble Gujarat High Court in the case Of CIT vs Simit P. Sheth, 356 ITR 451 have held that not the entire purchases but only the profit element embedded in these purchases was to be disavowed. The ITAT Mumbai SMC Bench Vide Order dated 0905/2018 for A.Y 2010-11 in assessee's own case has restricted the addition to 8% Respectfully following ITAT's order the profit margin is restricted to 8%. This ground of appeal is Partly allowed.

6. 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 of 25% 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.

7 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. Further, mere payment by cheque does not prove the genuineness of purchase, more particularly when other circumstantial evidence says otherwise. 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. The AO neither pointed out any discrepancies in books of accounts nor made out a case of sales outside books of accounts.

In fact, the AO did not disputed sales declared for the year. 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 25% profit additions, whereas the Id CIT(A) has scaled down addition to 8% profit on alleged bogus purchases. 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 taken one of the possible view and estimated 8% 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 assessee and the Revenue.

8. In the result, appeal filed by the assessee and appeal filed by the revenue are dismissed.

Order pronounced in the open court on this 14 /02/2020

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated 14/02/2020
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