

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH MUMBAI
BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
&
SHRI RAM LAL NEGI, JUDICIAL MEMBER

ITA No.5520 & 5521/Mum/2018
(Assessment Years :2010-11 & 2011-12)

ITO-17(1)(1) Room No.115, 1 st Floor Aaykar Bhawan, M.K.Road Mumbai-400 020	Vs.	M/s. Acme Tools Centre 1 st Floor, 38 Bibijan Street Mumbai-400 003
		PAN/GIR No.AAFA6499B
Appellant)	..	Respondent)

Assessee by	None
Revenue by	Akhtar H.Ansari
Date of Hearing	11/11/2019
Date of Pronouncement	29.11.2019

आदेश / O R D E R

PER S. RIFAUR RAHMAN (ACCOUNTANT MEMBER):

These two appeals filed by the revenue are directed against common order passed by the Ld. Commissioner of Income Tax (Appeals) -55, Mumbai, dated 17/07/2018 for the Assessment Years (AY) 2010-11 & 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 revenue has, more or less filed common grounds of appeal for both Assessment Year's. Therefore, for the sake of brevity, grounds of appeal filed for AY 2010-11 are reproduced as under:-

- 1.) *“On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in directing the AO to restrict the addition of Rs.160630/- being 12.5% of bogus purchase of Rs.12,85042/- to 8%, thereby giving a relief of Rs.57830/- to the assessee without considering the fact that the aforesaid addition to the total income of the assessee was made by the AO on the basis of information received from an authoritative external source i.e Maharashtra Sales Tax Department through DGIT (Inv.), Mumbai.*
- 2.) *The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.*

ITA.No.5520/Mum/2018:-

3. The brief facts of the case are that, the assessee is engaged in the business of supply of engineering tools of Jhalani Tools Everest Tools, Taparia Tools, etc. filed its return of income on 04/10/2010 for AY 2010-11, declaring total income of Rs.21,940/-. Thereafter, the case has been reopened u/s 147, 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 to reduce or suppress profits. 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 his assessment order amounting to Rs. 12,85,042/-. 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 12/02/2016 and determined total income of Rs. 1,82,300/-, after making additions towards alleged bogus purchase @ 12.56% of total purchases from those parties and made additions of Rs. 1,60,360/-.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has

made its submissions on the issue. The sum and substance of the 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, the addition can be restricted to 12.50% of the purchases. The Ld.CIT(A), after considering relevant submission of the assessee and also the facts and circumstances of the case, he came to the following conclusion, which is reproduced below:-

Decision on Ground Nos.1 & 2:

7. I have considered the facts of the case, appellant's submissions and AO's order. The above grounds mainly relate to the addition of Rs. 1,60,360/- and estimation of profit at 12.5% of purchases. On perusal of the AO's order, it is found that an information was received by the AO from the DGIT(Inv.), Mumbai that the appellant is involved in taking accommodation entries from 20 parties and also is a beneficiary of bogus purchases to the tune of Rs.12,85,042/- from the parties. Based on this information, the AO reopened the case by issuing notice u/s.148 to the appellant. In response to the same, the appellant requested for reasons to reopening the assessment, which were provided to the appellant. The appellant did not object to the reopening of the case during the assessment proceedings. Subsequently, statutory notices were issued to the appellant for furnishing of certain details. The AO also conducted independent enquiries by issuing notice u/s.133(6) to all the parties but the notices came back unserved. The appellant has failed in discharging his onus to present the parties before the AO for cross verification

and examination. The appellant has submitted that payments to suppliers were made through account payee cheques. In this regard, the AO relied on the decision of Hon'ble ITAT Jaipur in case of M/s.Kachwala Gems vs. JCIT [2006) CR (SC) 585 : 288 ITR 10 (SC), wherein it is held that even payment by account payee cheque is not sufficient to establish the genuineness of the transactions. The appellant has failed to corroborative evidence to prove the genuineness of the transactions. No contemporaneous record establishing the receipt of goods purported to have been purchased from the parties have been furnished by the appellant. The AO relied on various judicial decisions in this regard which are as under:

1. CIT vs. Precision Finance Private Ltd. (1994) [2) CTR 20) (Calcutta HC)
2. 2012 TIOL 726 (Kolkatta High Court)
3. CIT vs. Saravana Constructions P.Ltd. (2012) 72 DTR (Kar) 258
4. ACIT vs. Acharya Texturisers and Twisters (ITA No.29/MUM/02)
5. ITAT Mumbai in the case of Shri Madhukant B.Gandhi vs. ITO in ITA No.1950/Mum/2009 Gujarat HC in the case of CIT vs. Bholanath Poly Fab P.Ltd. (2013] (355 ITR 290/40 Taxmann.com 494 (2014) 220 Taxmann 82 (Mag.)(Guj)(HC)

Considering the facts and circumstances of the case, I am of the view that there is no infirmity in the action of the AO in reopening the case as the AO had received the information from DGIT(Inv.) about the bogus purchases to the tune of Rs.12,85,042/-for which the assessee could not furnish any corroborative evidence to prove the genuineness of the transaction by producing the alleged parties. Based on this, the AO had reason to believe that income of Rs.12,85,042/- has escaped assessment. Thus, the AO has rightly reopened the case and made the addition on account of bogus purchases @ 12.5% on purchases of Rs.12,85,042/-. Also I agree with the case laws relied on by the AO as quoted above. However I agree with the appellant that addition of 12.5% on account of bogus purchases over and above the existing gross margin of 15.95% is excessive and considering the same, I reduce the above addition to 8% on the total purchases of Rs.12,85,042/- which comes to Rs.1,02,800/-. Thus, the appellant gets relief of Rs.57,830/- (Rs.1,60,630 - Rs.1,02,800/-) and this ground is partly allowed. In nutshell, Ground No. 1 of the appellant is dismissed and Ground No.2 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 additions towards alleged bogus purchases @ 12.50% of such purchases, on the ground that the assessee 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 party were returned un-served by the postal authorities. Therefore, he came to the conclusion that purchase from the said party is bogus in nature. It is the contentions of the assessee before the lower authorities that a purchase from the above party is 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 revenue side 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 satisfactions of the Ld.AO. At the same time, the Ld. AO had also failed to take the investigation to a logical conclusion by carry 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, 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

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 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 estimated 12.50% profit, whereas the Ld.CIT(A) has scaled down estimation of profit to 8% 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, Ld. CIT(A) has considered that the addition of 12.5% is excessive in the case of assessee, since assessee has already declared 15.95% of Gross Profit. Hence, he restricted the disallowance to 8%, which is reasonable. Beyond that it will be excessive and harsh on the assessee. Therefore, we are inclined to uphold the order of Ld. CIT(A) and dismiss the appeal filed by the revenue.

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

ITA.No.5521/Mum/2018:-

8. The facts and issues involved in this appeal are identical to facts and issues, which we have already considered in ITA.No.5520/Mum/2018. The reasons given by us in preceding paragraph in ITA No. 5520/Mum/2018 shall mutatis mutandis apply to this appeal also. Therefore, for similar reasons, we dismiss appeal filed by the revenue.

9. As a result, both appeals filed by the revenue for AY's 2010-11 & 2011-12 are **dismissed**.

Order pronounced in the open court on this 29/11/2019.

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Mumbai; Dated 29/11/2019
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.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai