

IN THE INCOME-TAX APPELLATE TRIBUNAL “F” BENCH MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
ITA No. 6430/Mum/2018 (Assessment Year 2009-10)

ITO 27(1)(5), Room No. 410, 4 th Floor, Tower No.6, Vashi Railway Station Complex, Vashi, Navi Mumbai-400703.	Vs.	Shri Jignesh R. Kapasi, 1, Hansa Apartment, 126/127, Garodia Nagar, Ghatkopar (E), Mumbai-400077. PAN: AABPK2503R
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Appellant

Respondent

Appellant by : Mrs. Samatha Mullamudi (DR)

Respondent by : Shri M.R. Tanna (AR)

Date of Hearing : 19.02.2020

Date of Pronouncement : 19.02.2020

ORDER UNDER SECTION 254(1) OF INCOME TAX ACT
PER PAWAN SINGH, JUDICIAL MEMBER;

1. This appeal by revenue under section 253 of Income-tax Act (‘Act’) is directed against the order of Id. Commissioner of Income-tax (Appeals)-26, Mumbai [hereinafter referred as Id. CIT(A)] dated 16.08.2018 for Assessment Year 2009-10. The assessee has raised the following grounds of appeal:

- 1) *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 1,84,367/- on account of bogus purchases without appreciating that the onus was on the assessee to establish the genuineness of such purchases by providing documentary evidence before the Assessing Officer and the assessee, failed to discharge its onus?*
- 2) *The appellant prays that the order of CIT(A) on the above grounds be reversed and that of the Assessing Officer restored.*

2. Brief facts of the case are that the assessee is a proprietor of M/s Fear Deal Corporation engaged in the business of trading in hardware, filed his return of income on 18.08.2009 declaring total income of Rs. 5,02,017/- for Assessment Year 2009-10. The return of income was processed under section 143(1). The assessment was re-opened under section 147 on the basis of information received from Sale Tax Department, Government of Maharashtra that certain hawala operators are indulging in providing accommodation bills without actual delivery of goods. The Sale Tax Department, Government of Maharashtra referred the list of such hawala dealers and the beneficiary to the DGIT (Investigation), Mumbai. The name of assessee appeared in the list of beneficiary. The assessee allegedly made the purchases of Rs. 67,37,966/- from such hawala dealers. On the basis of information, the Assessing Officer made a belief that the income of the assessee escaped assessment, therefore, re-opened the assessment under section 147. Notice under section 148 was issued on 30.03.2014 to the assessee. The assessee in response to the notice under section 148 filed its reply dated 19.08.2014 and stated that original return filed on 28.08.2009 under section 139(1) by assessee be treated as return in response to the said notice. The Assessing Officer after serving notice under section 143(2) proceeded for re-assessment. During the assessment, the Assessing Officer noted that the assessee has shown purchases from the following

parties, which was declared as hawala dealers by the Sale Tax Department, Government of Maharashtra.

Name of the parties	Amount Rs.)
New Steel (India)	11,40,772
Payal Enterprises	28,988
Bhumi Enterprises	83,449
K.V. Trading Co.	34,283
Cosmos Enterprises	18,405
Citizen Enterprises	52,238
Jainam Enterprises	7,36,084
Girnar Sales Corporation	7,38,857
Dharmi Enterprises	39,04,890
Total	67,37,966

3. The Assessing Officer in order to verify the transaction issued notice under section 133(6) of the Act to all the parties. The notice was returned back unserved by the Postal Department with the remark 'Not known or Left', except to Dharmi Enterprises. The proprietor of Dharmi Enterprises filed his affidavit confirming the transaction. The assessing officer accepted the confirmation filed by Dharmi Enterprises. The assessee was confronted with the facts about the return of notices. The assessee was asked to produce the parties for verification. The assessing officer recorded that the assessee failed to produce the parties. The onus to prove the genuineness of purchases was on assessee, the assessee failed to discharge his onus. The

assessee was asked to substantiate the purchases and to furnish the delivery challans, transport bills etc. The assessing officer recorded that the assessee failed to bring enough evidence to prove the existence of the parties. The assessee merely filed copies of the bills and payments through cheques. No evidence regarding the transportation of goods was filed. The Assessing Officer after considering the material before him and report of investigation wing and sales tax department concluded and by following the decision of Gujarat High Court in Simith P Sheth 356 ITR 451(Guj) took his view that it would be just fair and proper to make addition of profit element embedded in such bogus purchase. The assessing officer accepted the confirmation filed by Dharmi Enterprises and allowed the purchases of Rs. 39,37,066/-. The assessing officer disallowed 12.5% of the aggregate of total purchases of remaining eight parties non-genuine/alleged hawala purchases of Rs. 28,33,076/-. The Assessing officer worked out the disallowance of Rs. 354,135/-, in the assessment order passed under section 143(3) r.w.s 147 dated 27.03.2015.

4. On appeal before the Id. CIT(A), the addition on account of purchases shown from Girnar Sales Corporation and Jainam Enterprises was also deleted. The Id CIT(A) deleted the additions/ disallowance by considering the facts the assessing officer in subsequent years i.e. 2010-11 & 2011-12 allowed purchases from both the parties. Aggrieved by the order of Id. CIT(A), the revenue has filed the present appeal before us.

5. We have heard the submission of Id. Departmental Representative (DR) for the revenue and the learned authorised representative (Id AR) for the assessee and perused the material available on record. The Id. Departmental Representative (DR) for the revenue supported the order of lower authorities. The Id. DR further submits that Investigation Wing of Income-tax Department has made full-fledged investigation in respect of hawala traders. The hawala traders were/are engaged in providing bogus bill without actual delivery of goods. The assessee has shown bogus purchases only to inflate the profit. The Id. DR for the revenue submits that the Assessing Officer has given sufficient relief. The Assessing Officer has reasonably estimated the disallowances. The assessee is not entitled for any further relief. On re-opening the Id. DR submits that there was sufficient tangible material/information in the form of information from DGIT (Investigation) that Sale Tax Department, Government of Maharashtra has unearthed the scheme about the hawala entry provider, who were engaged in providing bogus bills, therefore, the Assessing Officer has sufficient reason for making belief that the income of the assessee has escaped assessment.
6. On the other hand the Id AR for the assessee supported the order of the Id CIT(A). the Id AR for the assessee submits that the assessing officer himself allowed the similar purchases from Girnar Sales Corporation and Jainam Enterprises in subsequent years i.e. 2010-11 & 2011-12 allowed

purchases from both the parties in the assessment order passed under section 143/147 dated 29.01.2019 and 20.10.2016 respectively.

7. We have considered the submissions of Id. DR for the revenue and perused the record. Ground No.1 relates to disallowance of 12.5% of the bogus purchases from Girnar Sales Corporation and Jainam Enterprises. The Assessing Officer made addition to the extent of profit element embedded in such transactions and restricted the disallowance to the extent of 12.5% of the alleged non-genuine purchases of eight parties by following the decision of Hon'ble Gujarat High Court in CIT vs. Simith P. Seth [356 ITR 451 (Guj.)]. Before Id CIT(A) the assessee stated that the proprietor of Girnar Sales Corporation and Jainam Enterprises Sh. Rajesh Doshi expired on 04/05/2012. Rajesh Doshi was propitiator of Girnar Sales Corporation and Karta of Rajesh Doshi HUF, being proprietor Jainam Enterprises. The assessee filed copy of death certificate of Rajesh Doshi. It was further contented that similar purchases was allowed by assessing officer in AY 2010-11 & 2011-12 allowed purchases from both the parties in the assessment order passed under section 143/147 dated 29.01.2019 and 20.10.2016.
8. The Id CIT(A) after considering the submissions of the assessee concluded that the assessing officer allowed purchases from both the parties in the assessment order passed under section 143/147 dated 29.01.2019 and 20.10.2016. Moreover the requirement of producing the proprietor of

Girnar Sales Corporation and Jainam Enterprises is impossible, accordingly Id CIT(A) directed the assessing officer to allow the purchases from both the parties. In our view that Id CIT(A) has taken a correct view and directed the Assessing officer to allow the purchases. We are also of the view that the assessing officer must follow the consistency on same set of facts. Thus, we do not find any infirmity in the order of Id CIT(A). No contrary facts or law is brought to our notice to take other view. In the result the order of the Id CIT(A) is affirmed.

9. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 19/02/2020.

Sd/-

S. RIFAUR RAHMAN
ACCOUNTANT MEMBER

Mumbai, Date: 19.02.2020

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Copy of the Order forwarded to :

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "F" Bench, ITAT, Mumbai
6. Guard File

Sd/-

PAWAN SINGH
JUDICIAL MEMBER

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai