

IN THE INCOME-TAX APPELLATE TRIBUNAL "SMC" BENCH MUMBAI
BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH JUDICIAL MEMBER

ITA No. 1327/Mum/2019 (Assessment Year 2009-10)

ITO 28(3)(5) Room No. 323, 3 rd Floor, Tower No.6, Vashi Railway Station Complex, Vashi, Navi Mumbai-400705.	Vs.	Umesh Manoharlal Chawla Prop M/s. J.M. Agencies (India), Shop No.2, Plot No. 72, Sector 19, Vashi, Navi Mumbai-400705. PAN: AAAPC9614N
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Appellant

Respondent

Appellant by : Mohammed Rizwan (Addl. CIT)

Respondent by : None

Date of Hearing : 05.03.2020

Date of Pronouncement : 05.03.2020

ORDER UNDER SECTION 254(1) OF INCOME TAX ACT

PER PAWAN SINGH, JUDICIAL MEMBER;

1. This appeal by revenue is directed against the order of Id. CIT(A)-26, Mumbai dated 17.12.2018 for Assessment Year 2009-10 The revenue has raised the following grounds of appeal:

1) "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in directing the A.O. to restrict the addition or bogus purchases to 12.5% as against 100% addition of Rs. 1,66,370/- made by the assessing officer on account of bogus purchases without appreciating the fact that parties from whom these purchases were made proven accommodation entry providers, as concluded by Sales Tax Authorities pursuant to the investigation carried out by them?"

(2) "Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in not considering the latest Apex Court decision in the case of N.K. Proteins Ltd Vs D CIT (769 of 2017), wherein the Hon 'ble

Supreme Court has confirmed 100% addition made on account of bogus purchases?

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

2. Brief facts of the case are that the assessee is engaged in the business of Wholeseller/Dealer in tractors parts and allied items, filed his return of income for Assessment Year 2009-10 on 29.09.2009 declaring total income of Rs. 2,82,944/-. 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. 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. The notice under section 148 dated 25.03.2014 was served upon the assessee. The assessee in response to the notice under section 148 filed its reply dated 18.04.2014 stating therein that return filed on 29.09.2009 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 of Rs. 1,66,370/- from the following parties, which were declared as hawala dealers by the Sale Tax Department, Government of Maharashtra.

	Name of the party	Bill amount (Rs.)
1	Palak Enterprises	26,287/-
2	Repute Enterprises	66,603/-
3	V.S. Enterprises	73,480/-
Total		1,66,370/-

3. The Assessing Officer in order to verify the transaction issued notice under section 133(6) to all the parties. The notice sent through registered post was returned back unserved. The assessee was asked to show-cause as to why the purchases shown from all the parties should not be treated as non-genuine. The assessee in order to substantiate the purchases stated that the goods were delivered by the said parties and are reflected in the books of account. The payments were made through cheques only. After considering the submission of assessee, the Assessing Officer concluded that the assessee not been able to furnish evidence of transportation details and delivery challans. The assessee furnished the Books of account, purchases bills. The Assessing Officer after considering the reply of assessee, copies of bills and on the basis of report of Investigation Wing of Sale Tax Department disallowed 100% of aggregate of purchases shown from the said hawala parties in

the assessment order dated 27.02.2015 passed under section 143(3) r.w.s 147.

4. On appeal before the addition was restricted to the extent of 12.5%. The ld. CIT(A) while restricting the disallowances relied upon the decision of Hon'ble Gujarat High Court in case of Simith P. Seth (356 ITR 451). The ld. CIT(A) held that only profit element in the impugned purchases is liable to be disallowed. Thus, aggrieved by the order of ld. CIT(A), the revenue has filed the present appeal before us.
5. None appeared on behalf of assessee. The notice of hearing sent through registered AD is returned back with the remark of postal authorities "Left". Hence, we left no option to decide the appeal after hearing the submission of ld. DR for the revenue and material available on record. The ld. DR for the revenue supported the order of Assessing Officer. The ld. 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 ld. DR for the revenue submits that the Assessing Officer has brought sufficient material on record to prove that the purchases shown by assessee were bogus. The assessee is not entitled for any relief. The ld. DR for the revenue

prayed for setting-aside the order of Id. CIT(A) and to restore the order of Assessing Officer.

6. We have considered the submissions Id. DR for the revenue and perused the record. The Assessing Officer made the disallowance of 100% of the alleged bogus purchases. The Assessing Officer has not disputed the sales of the assessee nor rejected the books of assessee. The Assessing Officer solely relied upon the report of Investigation Wing of Sale Tax Department. Before the Id. CIT(A), the assessee urged that the purchases shown by assessee are genuine. The payments of purchases were made through account payee cheques. The goods were received by assessee and quantitative details and corresponding sales of shown. The assessee also urged that Assessing Officer has not considered the various documentary evidences furnished by assessee. The assessee relied upon the decision of Hon'ble Gujarat High Court in Simith P. Seth (supra). The Id. CIT(A) after considering the material placed before him and the ratio of the decisions including the decision of Simith P. Seth concluded that only profit element embedded in the bogus purchase are liable to be disallowed and not the entire purchases. The Id. CIT(A) accordingly restricted the disallowance to 12.5% of alleged bogus purchases. No contrary fact or material is brought to our notice to take other view. We are also of the view that under Income

Tax Act, the revenue is entitled to tax the profit element only and not the entire transaction, therefore, we affirm the order of ld. CIT(A).

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

Order pronounced in the open court on 05/03/2020.

Sd/-
R.C. SHARMA
ACCOUNTANT MEMBER

Sd/-
PAWAN SINGH
JUDICIAL MEMBER

Mumbai, Date: 05.03.2020

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Copy of the Order forwarded to :

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

2. Respondent
4. The concerned CIT

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai