

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai**

Before Shri R.C. Sharma, Accountant Member

ITA Nos. 1426 to 1428/Mum/2019
(Assessment Years: 2009-10 to 2011-12)

Abhijeet Plastic (India) P. Ltd. 38-C Government Indl. Estate Charkop, Kandivali (W) Mumbai 400067	Vs.	DC I T - 12(1)(1) Room No. 223, 2nd Floor Aayakar Bhavan, M.K. Road Mumbai 400020
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PAN – AAGCA5929F

Appellant

Respondent

Appellant by: Shri Vimal Punmiya
Respondent by: Shri Dharamveer Singh

Date of Hearing: 12.03.2020
Date of Pronouncement: 13.07.2020

ORDER

Per R.C. Sharma, AM

These are appeals filed by the assessee against the order of the CIT(A) for assessment years 2009-10 to 2011-12 in the matter of orders passed under Sections 1343(3)/147 of the Income Tax Act, 1961 (hereinafter "the Act").

2. In all the appeals the assessee is aggrieved for upholding 100% deduction on account of bogus purchase.

3. Rival contentions have been heard and record perused. Brief facts of the case are that the assessee is a company engaged in the business Manufacturer of mould and its articles. The case was re-opened on the information received by Income tax Mumbai from Sales Tax Department through DGIT(Inv.), Mumbai that assessee was engaged in the practice of inflating the purchases through the hawala parties by taking bogus bills without delivery of goods from parties. On the basis of information from Sales Tax Department, Ld. A.O. made addition at 100% of alleged Purchase and Ld. CIT(A) confirmed the same at 100% of alleged purchase. By the impugned order the CIT(A) confirmed the action of the AO against which the assessee is in further appeal before the Tribunal.

4. It was argued by the learned A.R. that the assessee has filed all documentary evidences before the AO to prove the genuineness of the purchases and that the AO merely relied on Sales Tax Department's information and made the addition. As per the learned A.R. in view of the decision of the Mumbai Benches in the case of G.V. Sons no addition can be made merely only basis of information from Sales Tax Department. As per the learned A.R. assessee has made purchases from various parties. After making these purchases from them, the assessee sold these and offered the income arising from the said sales for tax purposes. It is a universal truth that sales cannot take place if there are no purchases. When the sales are accepted, the same arises by virtue of foremost purchases made, hence such purchases by no means are questionable or to be disputed. The Ld. AO cannot use one aspect of the matter (i.e. accepting sales) while ignoring the other equally relevant and necessary aspects, (i.e. disputing purchases). Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and turn around and say it is void for the purpose of securing some other advantage. The assessee had purchased goods from these parties and payments thereof were made vide account payee cheque. The learned counsel for the assessee also filed complete books of account of transactions, purchase bills, acknowledgement of goods to prove the genuineness of purchase. With regard to the observation of the AO that the supplies of the goods have given statement to the effect that they have only given bills without supply of goods, the contention of the learned counsel for the assessee is that the alleged statements of the owners of the said concerns are not provided to the assessee, if any recorded. The Assessing Officer is a quasi judicial authority. He must exercise an independent mind while framing an assessment. While doing so, he must act in the best interest of the assessee. Any documents or material or evidence which the Assessing officer wishes to rely on for the purpose of making an assessment must be

provided to the assessee so that the assessee can present an argument against the same, if any, thus giving a reasonable opportunity of being heard. The assessment order thus is bad in law and requires to be quashed. For this purpose reliance was placed on the following judicial precedents: -

- 1) SC Judgment in case of PCIT, Surat Vs. Tejua Rohitkumar Kapadia.
- 2) ITAT judgment in the case of M/s Shree Sundha Steels Pvt. Ltd. Vs. ITO 5(3)(2).
- 3) ITAT judgment in the case of ITO 25(3)(4) v/s Shri Sunil B Doshi.
- 4) ITAT judgment in the case of M/s Miraj Electrical & Mechanical Co.Pvt Ltd v/s DCIT-10(2)(2).
- 5) ITAT judgment in the case of Asst.CIT 19(3) v/s M/s Steel Line (India).
- 6) ITAT judgment in the case of Shri Tejraj Manroop Chand Tak v/s ITO RG 18(3)(4).
- 7) ITAT judgment in the case of Nageshwar Steel House v/s ITO 19(2)(4).
- 8) ITAT judgment in the case of Kanak Steel India v/s ITO 18(2)(1).
- 9) ITAT judgment in the case of Shri Bhansali Metal & Alloys v/s ITO 19(1)(2).
- 10) ITAT judgment in the case of Asian Chemtech Pvt. Ltd. v/s ITO 9(1)(4).
- 11) High court judgment in the case of PCIT-32 Vs. M/s Uni Packs (India).
- 12) ITAT judgment in the case of Chaganlal Pukhraj Parmar v/s ITO 29(1)(2).
- 13) ITAT judgment in the case of Amit Mody v/s ITO 25(2)(1).

5. On the other hand, the learned D.R. relied on the orders passed by the authorities below and contended that the AO has made detailed enquiry with regard to the genuineness of purchases and thereafter came to the conclusion that only to reduce the profit assessee has taken purchase bills without actual delivery of goods. He contended that the orders the authorities below should be upheld.

6. I have considered the rival contentions and carefully gone through the orders of the authorities below. I have also deliberated on the various judicial pronouncements referred to by the lower Authorities in their respective orders as well as cited by the learned A.R. during the course of

hearing before me. From the record I found that on the information from Sales Tax Department the AO had added the entire purchases in assessee's income. The gross profit shown by the assessee in the respective years are as under: -

A.Y. 2009-10 – 16.47%

A.Y. 2010-11 – 12.75%

A.Y. 2011-12 – 14.88%

I also found that the assessee has paid VAT on the goods so purchased. Looking to the gross profit ratio declared by the assessee it is clear that the assessee has shown very reasonable gross profit ratio in all the years under consideration. There are various judicial pronouncements to the fact that in case gross profit shown by the assessee is 15% or more no addition is warranted. In the instant case the assessee has declared gross profit of 16.47% in A.Y. 2009-10, accordingly I direct the AO not to make any addition. However, in assessment years 2010-11 and 2011-12 the gross profit shown by the assessee is 12.75% and 14.88%, which are lower than 15%. Accordingly I direct the AO to make addition to the extent of shortfall in gross profit in these two years as compared to the gross profit of 15% i.e. 2.25% in A.Y. 2010-1 & 0.12% in A.Y. 2011-12. I direct accordingly.

7. In the result, the appeal for A.Y. 2009-10 is allowed whereas appeals for A.Y. 2010-11 and A.Y. 2011-12 are allowed in part, in terms indicated hereinabove.

Order pronounced on 13th July, 2020 under Rule 24(4) of ITAT Rules. Marginal delay in pronouncement of judgement is due to complete dock down under Covid 19.

Sd/-
(R.C. Sharma)
Accountant Member

Mumbai, Dated: 13th July, 2020

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -20, Mumbai*
4. *The Pr.CIT - 12, Mumbai*
5. *The DR, "SMC" Bench, ITAT, Mumbai*

By Order

//True Copy//

*Assistant Registrar
ITAT, Mumbai Benches, Mumbai*

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