

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

**ITA No.7118/Mum/2018
(Assessment Year: 2011-12)**

ITO-26(1)(5) Room No.708, 7 th Floor Pratyakshakar Bhavan BKC, Bandra Mumbai-400 051	Vs.	Israr Ahmed J B Choudhary 23, Vallibhai Haiderbhai Compound, LBS Marg Kurla(W), Mumbai-400 070
		PAN/GIR No.AAAPI5555Q
(Appellant)	..	Respondent)

Revenue by	Ms. Kavitha P.Kaushik, DR
Assessee by	None
Date of Hearing	18/02/2020
Date of Pronouncement	13/03/2020

आदेश / O R D E R

PER G.MANJUNATHA (A.M):

This appeal filed by the revenue is directed against order of the Id. Commissioner of Income Tax (Appeals)-38, Mumbai dated 21/06/2018 and it pertains to the A.Y 2011-12.

2. 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 restricting the disallowance to 9.96% of the total amount of bogus purchase transaction instead of 15% of the total amount of bogus purchase made by the AO for 2011-12"

2."Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in not considering that the addition was made on the basis of information received from DIT(Inv.) and Sales Tax Department, Maharashtra with regard to bogus purchase made by the assesses from dealers without supply of actual goods?"

3. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in not considering that the hawala operators have admitted on oath before the Sales Tax Authorities that they have not sold any material to anybody?"*

4. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in not considering that the assessee could not prove the genuineness and credit worthiness of purchase transactions during the course of assessment proceedings?"*

5. *The Ld. CIT (A) failed to uphold the decision of Hon'ble Apex Court in the case of N K Proteins Ltd. vs. DCIT in SLP (Civil) No.769/2017 dated 16.01.2017 where 100% of addition was confirmed by the Apes Court?"*

6. *"On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in not appreciating the fact that applicability of provisions of section 440A(3) attracts 100% bogus purchases to be held as profit "*

3. The brief facts of the case are that the assessee is engaged in the business of Trading in Ferros and Non-Ferros Metals, filed his return of income for AY 2011-12 on 23/09/2011, declaring the total income at Rs. 4,37,348/- and said return was processed u/s 143(1) of the I.T.Act, 1961. 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 2 of his assessment order amounting to Rs. 39,17,678/-. 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 10/03/2016 and etermined total income of Rs. 10,45,000/-, after making addition of 15% profit on alleged bogus purchase from those parties and made additions of Rs. 5,87,652/-.

4. Aggrieved by the assessment order, the assessee has preferred an appeal before the Ld.CIT (A). Before the Ld.CIT (A), the assessee has reiterated his submissions made before the AO. 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 9.96% gross profit on total purchases from those parties.

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 15% addition 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.

6 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 15% additions, whereas the Ld.CIT(A) has scaled down addition to 9.96% gross profit 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 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 a fair view and estimated 9.96% 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 Revenue.

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

Order pronounced in the open court on this 13 /03/2020

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated 13 /03/2020
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