

**IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
&
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.7019/Mum/2018
(Assessment Year: 2011-12)**

ITO, Ward-2(1) 2 nd Floor, Mohan Plaza Bldg Wayle Nagar Khadakpada Kalyan (W)-421 301	Vs.	Anil Dadarao Garad Prop. Of M/s Shivjeet Chemicals W-34, Morivali, MIDC Ambarnath Thane-421 501
		PAN/GIR No.AAZPG8732G
(Appellant)	..	Respondent)

&
**ITA No.7214/Mum/2018
(Assessment Year: 2011-12)**

Anil Dadarao Garad Prop. Of M/s Shivjeet Chemicals W-34, Morivali, MIDC Ambarnath Thane-421 501	Vs.	DCIT, Circle-2 Mohan Plaza, Khadakpada Kalyan (W)-421 301
		PAN/GIR No.AAZPG8732G
(Appellant)	..	Respondent)

Revenue by	Shri Michael Jerold, DR
Assessee by	Shri S.M.Makhija, AR
Date of Hearing	13/02/2020
Date of Pronouncement	13 /03/2020

आदेश / O R D E R

PER G.MANJUNATHA (A.M):

These cross appeals filed by the revenue, as well as the assessee are directed against order of the Ld. Commissioner of Income tax (Appeals)-3, Thane, dated 24/09/2018 for the AY 2011-12. Since, facts are identical and issues are common, for the sake

of convenience, the appeal filed by the Revenue and Cross Objection filed by the assessee were heard together and are disposed-off by this consolidated order.

2. The revenue has raised the following grounds of appeal:

1. *Whether on the facts and circumstances of the case, the id. CIT(A) has erred in law by not appreciating the foci that the assessee could not establish the genuineness of the purchases to the tune of Rs, 2,28,49,151/- from the non-existent vendors as per the information received from Sales Tax Law Department Agencies and established by the Assessing Officer?*

2. *Whether on the facts and circumstances of the case, the Ld, CIT(A) has erred in law by not appreciating the fact that the onus to justify the claim of expenses is on the assessee but he has failed to discharge it in relation to the purchases made from the non-existent vendors?*

3. *Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in law by ignoring the fact that the assessee could not substantiate his claim of purchases from non-existent vendors by means of supporting documents related to movement of good, stock register, etc., to arrive at disallowance at 8% of the purchases from the non-existent vendors?*

4. *Whether on the facts and circumstances of the case and in law, the Ld, CIT(A) was justified in not appreciating the law correctly that once the purchases are un verifiable /not genuine/bogus, the same should have been disallowed in entirety, particularly in view of the ratio of the decision of the Hon'ble Gujarat High Court in Tax Appeal No. 242 of 2003 dated 20/06/2016 in the case of N. K, Proteins Lid. Vs DCIT, against which the SLP was dismissed by the Hon'ble Apex Court?*

5. *It is humbly requested that the order of the Ld, CIT(A) may be vacated and that of the AO may be restored.*

6. *The department craves leave to add, amend, alter or delete any grounds of appeal.*

3. The assessee has raised the following grounds of appeal:

The Ld. CIT (Appeals) has seriously erred in confirming the action of Assessing Officer in reopening validly completed assessment,

I) Only on the basis of information received from sales tax department to the effect that assessee had taken hawala bills from some parties instead of actually purchasing goods,

II) Without making any independent inquiries/ due application of mind.

III) *In violation of principles of natural justice by not providing the copy of statement recorded/ affidavit filed before sales tax department and not allowing cross examination of the alleged dealer.*

2. *Without Prejudice to the above appellant submits that Ld CIT (appeals) has seriously erred in confirming the following additions of the alleged bogus purchases without appreciating that As decided by various Judicial forums under situations alike of the assesses what is to be added is the profit element embedded in the transaction which in assessee's case is 3.76% only.*

1) *The addition of Rs. 17, 36,860- being 8% of the alleged bogus purchases amounting to Rs.2,17,10,751/-*

II) *An amount of Rs.11,38,400/- being alleged bogus purchases made from M/s. Ami Traders.*

III) *The Ld. CIT (A) has erred in confirming the additions / disallowance of Rs.28,75,260/- without appreciating that assessee has paid [on alleged bogus purchase to the Maharastra VAT Authorities @12.5%, deduction for which has to be allowed while making addition-*

IV) *The Ld.CIT (A) has erred in confirming the additions / disallowance of Rs.28,75,260/-' without appreciating Assesses has already declared Gross Profit on all the purchase recorded including alleged bogus purchases £[p 16.19% which sum a/so Is requested to be reduced out of the estimated addition made by the Ld. DT (A), as has been held by various Judicial authorities.*

3. *The appellant craves leave to add, amend, after and/or any of the grounds at the time of or before the hearing of appeal.*

4. *The appellant therefore prays that initiation of reassessment proceedings may please be held as illegal, order passed in pursuance thereto may be quashed or alternatively addition made/confirmed may be suitably reduced.*

4. The brief facts of the case are that the assessee is an individual and engaged in the business of Manufacturing & Resellers of Dyes and Chemicals. The assessee has filed his return of income for AY 2011-12 on 27/09/2011, declaring total income of Rs. 19,49,540/- and said return was processed u/s 143(1) of the I.T.Act, 1961. The case has been selected for scrutiny and during the course of assessment proceedings, the AO, on the basis of information received from DGIT, investigation, Mumbai, noticed that the assessee has obtained bogus purchase bills from Hawala/Suspicious dealers. The AO further noted that as per details available, 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 his assessment order at para 4 on page 3, amounting to Rs. 2,28,49,151/-. The assessment has been completed u/s. 143(3) of the I.T.Act, 1961 on 25/03/2014 and determined total income of Rs. 2,50,23,690/-, after making 100% additions towards alleged bogus purchase from those parties and made additions of Rs. 2,28,49,151/-.

5. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has reiterated his arguments made before the Id. 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 ITAT, Mumbai in assessee own case for earlier year has scaled down addition made by the AO towards alleged bogus purchases to 8% gross profit on total purchases from those parties, except in case of M/s Ami Traders, where he has confirmed 100% addition on the ground that no payment has been made to the party against purchases. Aggrieved by the Id. CIT(A) order, the assessee as well as the Revenue are in appeal before us.

6. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. We find

that the Ld. AO has made 100% 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.

7 Having considered arguments of both the parties and also, considered 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 dispute 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 100% additions, whereas the Ld.CIT(A) has scaled down addition to 8% gross profit on total alleged bogus purchase, except in the case of M/s AMI Traders. 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. However, the rate of profit adopted by the Ld. CIT(A) is supported by the findings of the Tribunal in assessee own case for Asst. Year 2009-10, in ITA

No. 6161/Mum/2017. Therefore, considering facts and circumstances of this case and consistent with view taken by the Co-ordinate Bench in number of cases, including in assessee own case, we are of the considered opinion that the Id. CIT(A) has taken a fair view and estimated 8% gross profit on alleged bogus purchases to settle dispute between the parties in respect of purchases from all parties, except M/s AMI Traders. Although, the Id. CIT(A) has given reason of non payment to party against purchases for confirming 100% addition in respect of M/s AMI Traders, but for that reason alone addition cannot be sustained at 100% profit on bogus purchases. We, therefore, upheld the findings of Id. CIT(A) insofar as 8% profit estimation on alleged bogus purchases in respect of all parties. Accordingly, we direct the Id. AO to estimate 8% profit on alleged bogus purchases from all parties, including purchases from M/s AMI Traders.

8. In the result, appeal filed by the revenue is dismissed and appeal filed by the assessee is partly allowed.

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

Sd/-
(SAKTIJIT DEY)
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