

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

**ITA No.6514/Mum/2018
(Assessment Year: 2011-12)**

Mahesh Vasant Raut 6B/104, Chandivali Sun View CHS Ltd., Mhada Colony Chandivali Andheri(East) Mumbai-400 072	Vs.	ACIT-26(2) Room No.510, 5 th Floor C-10, Pratyakshkar Bhawan BKC, Bandr(E) Mumbai-400 051
PAN/GIR No.ADPPR2310E		
(Appellant)	..	Respondent)

**&
ITA No.7051 & 7052/Mum/2018
(Assessment Years: 2010-11& 2011-12)**

ACIT-26(2) Room No.510, 5 th Floor C-10, Pratyakshkar Bhawan BKC, Bandr(E) Mumbai-400 051	Vs.	Mahesh Vasant Raut 6B/104, Chandivali Sun View CHS Ltd., Mhada Colony Chandivali Andheri(East) Mumbai-400 072
		PAN/GIR No.ADPPR2310E
(Appellant)	..	Respondent)

Revenue by	Ms. Kavitha P. Koushik, DR
Assessee by	None
Date of Hearing	17/02/2020
Date of Pronouncement	13/03/2020

आदेश / O R D E R

PER G.MANJUNATHA (A.M):

These cross appeals filed by the assessee, as well as
the revenue for the Asst. Year 2011-12 are directed against the

order of the Ld. Commissioner of Income tax (Appeals)-38, Mumbai, dated 28/06/2018. The revenue has filed appeal against the order of the Ld. Commissioner of Income tax (Appeals) - 38, Thane, dated 28/06/2018 for AY 2011-12. Since, the facts and issues involved in these appeals filed by the assessee, as well as the revenue are identical, for the sake of convenience, these appeal were heard together and are disposed -off by this consolidated order.

2. The assessee has raised the following grounds of appeal for Asst. Year 2011-12:

1. *The Ld. CIT(Appeals) has wrongly and unjustifiably relied on the Assessment Order of the Ld. Assessing Officer.*
2. *The Ld. Assessing Officer has failed to prove the alleged bogus purchases by the Appellant merely on the ground of having received information from the Sales Tax Department.*
3. *The Appellant had no moral or statutory responsibilities to produce the persons from the purchases were made.*
4. *The Ld. A.O, has failed to accept the genuine bank transactions made against the purchase of materials. The claim of the Ld. A.O, for the purchases being bogus is without any basis. Addition made on this account to the Total Income of the Appellant is fit to be deleted.*
5. *The Appellant has been denied the principles of Natural Justice by not accepting the genuine transaction for purchase of materials.*
6. *The Addition made by the Ld. A.O. is bad and arbitrary and is fit to be cancelled.*

3. The revenue has raised more or less common grounds of appeal for both Asst. Years. Therefore, for the sake of brevity, grounds of appeal filed for Asst. Year 2011-12 are reproduced as under:

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 25% of the total amount of bogus purchase transaction instead of 100% of the total amount Of bogus purchase made by the AO.*
2. *Whether on the facts arid 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 L. CIT(A) has erred in not considering that the assessee could not prove the genuineness and credit worthiness of the 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 the SLP(Civil) No. 769/2017 dated 16.01.2017 where 100% of addition made was confirmed by the Apex Court.*

6. *On the facts and in the circumstances of the case and in law, the Ld, CIT(A) erred in not appreciating the fact that applicability of provisions of section 40A(3) attracts 100% bogus purchases to be held as profit.*

4. The brief facts of the case extracted from Asst. year 2011-12 are that the assessee is engaged in the business of Manufacturing, processing, and packing Lift materials from one point to another point, filed his return of income for AY 2011-12 on 26/09/2011, declaring the total income at Rs. 21,22,211/- 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 5 of his assessment order amounting to Rs. 8,12,804/-. 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 21/01/2016 and determined total income of Rs. 29,35,020/-, after making 100% additions towards alleged bogus purchase from those parties and made additions of Rs. 8,12,804/-.

5. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has filed elaborate written submissions which has been summarised at para 5 on pages 7 to 12 of the Ld. CIT(A) order. 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 25% gross profit on total purchases from those parties.

6. 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 along with case laws cited by both parties. We find that the Ld. AO has made addition of 100% profit 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 Id. DR and also, considering relevant 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 has 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 100% additions, whereas the Id. CIT(A) has scaled down addition to 25% profit on alleged bogus purchases. 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 view that rate of profit adopted by the Id. CIT(A) is on higher side when compared to nature of business of the assessee and accordingly, we direct the Id. AO to estimate 12.50% profit on alleged bogus purchases.

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

ITA No. 7051/Mum/2018-ASST YEAR 2010-11

9. The facts and issues involved in this appeal are identical to the facts and issues, which we had considered in ITA No. 6514/Mum/2018 and ITA No. 7050/Mum/2018 for Asst. year 2011-12. The reasons given by us in preceding paragraphs in

6514/Mum/2018 and ITA No. 7050/Mum/2018 for Asst. year 2011-12 shall *mutatis-mutandis* apply to this appeal, as well. Therefore, for similar reasons, we direct the Ld. AO to estimate 12.50% profit on alleged bogus purchases.

10. As result, appeal filed by the Assessee for Asst. Year 2011-12 is partly allowed and appeals filed by the Revenue for Asst. years 2010-11 and 2011-12 are 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