

IN THE INCOME TAX APPELLATE TRIBUNAL "G", BENCH MUMBAI
BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER
&
SHRI RAVISH SOOD, JUDICIAL MEMBER

ITA No1485 & 1486/Mum/2017
(Assessment Years: 2010-11 & 2011-12)

Solo Hardware Private Limited Shop No.03, Shastri Nagar 90ft Rd., Nr.Ambedkar Chowk Opp.Pant Nagar Police Station Ghatkopar(E) Mumbai-400 075	Vs.	ACIT,Circle-5(3)(2) Aaykar Bhawan, M.K.Road Mumbai-400 020
PAN/GIR No.AAJCS0760R		
Appellant)	..	Respondent)

Assessee by	Shri Dharan Gandhi, Advocate
Revenue by	Shri V.Vinod Kumar, Jt. CIT-DR
Date of Hearing	26/02/2020
Date of Pronouncement	20/05/2020

आदेश / O R D E R

PER G.MANJUNATHA, Accountant Member:

These two appeals filed by the assessee are directed against common order of the Ld. Commissioner of Income Tax (Appeals)-10, Mumbai, dated 16/11/2016 for the Asst. Years 200-11 & 2011-12. Since, facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are disposed-off by this consolidated order.

ITA.No.1485/Mum/2017 for AY 2010-11:-

2. The assessee has, more or less raised common grounds of appeal for both assessment years. Therefore, for the sake of brevity, the grounds of appeal filed for the AY 2010-11 are reproduced as under:-

1. *That on the facts and in the circumstances of the case as well as in law, the Ld. C.I.T.(A) has erred in holding that the re-assessment order under section 147 of the Income Tax Act, 1961('the Act') is valid in law. Reasons assigned by him for doing the same are wrong and insufficient. Appellant contends that the issuance of notice under section 148 of the Act for reopening of the assessment was itself illegal and unjustified and consequently the reassessment order so passed liable to be quashed.*
2. *On the facts and in the circumstances of the case as well as in law, the Ld. C.I.T.(A) has further erred in upholding the addition made by Learned AO @12.5% of the alleged bogus purchases aggregating to Rs. 6,23,19,2897- from two parties under section 69C of the Act. Reasons assigned by him for doing the same are wrong and insufficient.*
3. *That the order of the Ld. C.I.T. (Appeals) being arbitrary and bad in law, the same should be quashed and your appellant be given such relief or reliefs as prayed for.*
4. *That the appellant craves the leave to add, amend and modify the above grounds at the time of hearing of the appeal.*

3. The brief facts of the case are that the assessee is engaged in the business of trading in Hardware items, filed its return of income for AY 2010-11 on 06/10/2010, declaring total income at Rs.29,77,205/- under normal provisions of the I.T.Act, 1961 and book profit of Rs.29,56,171 u/s 115JB of the I.T.Act, 1961. The assessment was completed u/s 143(3) of the I.T.Act, 1961 on 23/03/2013 and the total income of the assessee was determined at Rs.29,77,205/-. 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, the 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 Victor Intertrade Pvt Ltd and Aanchal Enterprises amounting to Rs. 6,23,19,289/-. 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 27/01/2016 and determined total income of Rs. 1,07,67,116/-, after making addition of 12.50% profit on alleged bogus purchase from those parties and made additions of Rs. 77,89,911/-.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has reiterated its arguments made before the Ld. AO. The assessee further submitted that purchases from those parties are supported by necessary evidences, including purchase bills and payments for such purchases have been made through proper banking channels. Therefore, the Ld. AO was incorrect in coming to the conclusion that purchases from above parties is non genuine, merely for the reason that the Sales Tax Department has taken a view that certain dealers are involved in the activity of *hawala* transactions by issuing bogus /accommodation entries of purchase bills to certain parties. The Ld.CIT(A), after considering relevant submissions of the assessee and also by taken note of various facts, including by following the decision of Hon'ble Gujarat High Court, in the case of CIT vs Simith P.Sheth (2013) 356 ITR 451 has upheld the additions made by the Ld. AO towards 12.5% profit on alleged bogus purchases. The relevant findings of the Ld.CIT(A) are as under;-

5.2 I have carefully considered the facts of the case and submissions of the Id.AR. I have also gone through the decisions relied on by the Ld.AR and the AO. As seen from the facts of the case the AO has reopened the assessment based on the information received from the Sales Tax Department through DGIT(nv.), Mumbai with regard to non-payment of VAT by some of the sellers whose registration was cancelled later, having observed that those are the non-existent sellers and they have not made any sales except the bogus invoices issued in their name. When the Sales Tax Department has made enquiries the sellers have admitted before them that they have not made any sales but given the invoices. However, the assessee have argued before the Income Tax Authorities that they have made the payments through Bank cheques to the sellers and received the material. Their argument was that unless the AO proves positively that the material was not delivered to the assessee and the payment made through the Bank channels have been bogus or the amounts paid in the names of the suppliers have come back to the purchaser-assessee, the AO cannot make any addition. Further, as the AO has not doubted the sales disclosed by the appellant he has to allow the purchases since there cannot be any sales without the purchase of the material. The only possibility is that the appellant might have inflated its purchases by taking into account the invoices in the names of the bogus suppliers. The presumption is that the material might have been purchased from grey market at a lower rate and made good the entries with bogus bills to reduce the profits. Under similar circumstances the Hon'ble High Court of Gujarat in the case of Simit P Seth, 2013 (356 ITR 451) had an occasion to deliver its judgment by confirming the decision of the ITAT which has estimated the disallowance at 12.5% of the disputed bogus purchases to meet the ends of justice. The head-note of the decision is reproduced as under-

"Section 145 of the Income-tax Act, 1961 - Method of accounting - Estimation of Profits (Bogus purchases) ~ Assessment year 2006-07 - Assessee was engaged in business of trading in steel on wholesale basis - Assessing Officer having found that some of alleged suppliers of steel to assessee had not supplied steel to assessee but had only provided sale bills, held that purchases made from said parties were bogus - He, accordingly, added entire amount of purchases to gross profit of assessee - Commissioner (Appeals) having found that not from named parties but other parties from grey market, sustained addition to extent of 30 per cent of purchase cost as probable profit of assessee - Tribunal however, sustained addition to extent of 12.5 per cent - Whether, since purchases were not bogus .but were made from parties other than those mentioned in books of account, only profit element embedded in such purchases could be added to assessee's income -Held, yes - Whether hence, order of Tribunal needed no interference - Held, yes [Paras 6, 7 & 9] fin favour of assessee" (emphasis supplied).

5.2.1. In the instant case notices issued by the amount u/s 133(6) have come back unserved. The appellant has failed to produce any independent evidence to prove the purchases and failed to produce the so-called suppliers for examination of the AO. With regard to the information received from DIT(Inv.) Mumbai the summary of the communication was already passed on to the appellant while communicating reasons for reopening. Even though the AO could not prove substantively that the amounts given to the sellers in cheque form have come back to the appellant, the activities of accommodation entries in the trading community is not unheard of. Further, the investigations carried out by the Sales Tax Department, another Government Agency, with regard to VAT violation cannot be lost sight of. Even though there are catena of cases by the jurisdictional ITAT which have decided the issue in the favour of the assessee, they are not uniform in all the cases as they were decided as per the facts and circumstances of that particular case before them. I am of the opinion that the facts and circumstances of the present case are more akin to the case decided by the Hon'ble Gujarat High Court in the case of Simit P Seth (supra.). In my considered opinion the AO has rightly followed this decision and worked out the possible gain which the appellant has suppressed by incorporating bogus bills. Accordingly I confirmed the addition made under section 69C of the Act, The ground is dismissed.

5. 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 addition of 12.50% 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.

6. Having considered arguments of both the sides and also, considering the 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. 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. Under these circumstances, it is difficult to accept arguments of both the sides. Further, in a case where purchases are considered to be effected 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 been 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 addition of 12.50% profit on alleged bogus purchases, and which has been upheld by the Id. CIT(A). Although, both authorities have taken 12.50% 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. On the other hand, the Id. AR for the assessee claims that the rate of profit in this kind of business is at 2% to 3% depending upon volume of trade and for this he has relied upon the decision of ITAT, Mumbai F Bench in the case of DCIT vs. Veritas India Ltd, in ITA No. 6383/Mum/2016 and other cases, where under identical facts, the Tribunal has estimated 2% profit on alleged bogus purchases. 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. AO and the Id. CIT(A) seems to be excessive when compared to nature of business of the assessee and accordingly we direct the Id. AO to estimate 2% profit on alleged bogus purchases.

7. In the result, appeal filed by the assessee is partly allowed.

ITA No.1486/Mum/2017 for AY 2011-12

8. The facts and issues involved in this appeal are identical to the facts and issues, which we had considered in ITA No. 1485/Mum/2017. The reasons given by us in preceding paragraphs in ITA No.1485/Mum/2017 shall *mutatis-mutandis* apply to this appeal, as well. Therefore, for similar reasons recorded in ITA No.

1485/Mum/2017, we direct the Ld. AO to estimate net profit of 2% on alleged bogus purchases.

9. In the result, appeal filed by the assessee is partly allowed.

10. As a result, appeals filed by the assessee for both Asst.Years are partly allowed.

Order pronounced in the open court on this 20/05/2020

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated: 20/05/2020
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