

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC”, BENCH MUMBAI
BEFORE HON’BLE SHRI MAHAVIR SINGH, VICE PRESIDENT
&
HON’ BLE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER
ITA No.1907/Mum/2019 and ITA No. 1908/Mum/2019
(Assessment Year: 2010-11 and 2011-12)**

Income Tax Officer, 30(3)(1) Mumbai-400 051	Vs.	Mr. RAKESH INDER BACHANI B-603, Himachal Building, S V Road, Malad, Mumbai-400 064
		PAN/GIR No.AEYPB3889C
(Appellant)	..	Respondent)

Assessee by	None
Revenue by	Shri. Akhtar Hussain Ansari – JCIT, Sr. DR
Date of Hearing	17/06/2020
Date of Pronouncement	17/06/2020

आदेश / O R D E R

PER BENCH:

These are two appeals filed by the Revenue are directed against, common order passed by the Ld. Commissioner of Income tax (Appeals)-41, Mumbai, dated 31/01/2019 and they pertain to AY 2010-11 and 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.

2. The Revenue has, more or less raised common grounds of appeal for both assessment years. Therefore, for the sake of convenience, grounds of appeals filed for the Asst. year 2010-11 are reproduced as under:

1. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition from Rs. 5,97,061/- being 6%

to Rs. 1,99,020/- being 2% of the bogus purchases of Rs. 99,51,030/- without any basis"

2. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition from Rs. 5,97,061/- being 6% to Rs. 1,99,020/- being 2% of the aforesaid bogus purchases from Hawala parties without appreciating the fact that the assessee failed to produce the parties."*
3. *"The appellant prays that the order of Ld. CIT(A) on the above grounds be set aside and that order of the Assessing Officer be restored."*

3. The brief facts of the case as culled out from Asst. Year 2010-11 are that the assessee is engaged in the business of Trading in Ferrous and Non- Ferrous metals filed his return of income for AY 2010-11 on 28/09/2011, declaring total income at Rs. 7,57,250/- and said return was processed u/s 143(1) of the Income Tax 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. 99,51,308/-. 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 04/03/2016 and determined total income of Rs. 13,54,310/-, after making 6% gross profit addition on alleged bogus purchase from those parties and made additions of Rs. 5,97,061/- to the returned income.

4. Being 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 reproduced at para 3 on pages 3 to 7 of the Id. 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 Id. AO to 2% profit on alleged 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 along with case laws cited by both parties. As regards, addition made by the Id. AO towards alleged bogus purchases, we find that the Ld. AO has made addition of 6% 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 Id. DR and also, considering 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 for us 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 addition of 6% profit, whereas the Id. CIT(A) has scaled down addition to 2% 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. In this case, the assessee is involved in the business of trading in ferrous and non-ferrous metals. The rate of VAT is 4% on ferrous and non-ferrous metals in the State of Maharashtra. Further, the assessee has declared approximately 4% gross profit in regular books of accounts. 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 rate of profit adopted by the Id. CIT(A) appears to be reasonable and accordingly, 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.

ITA No. 1908/Mum/2019

8. The facts and issue involved in this appeal filed by the Revenue are identical to facts and issues which we had considered in ITA No. 1907/Mum/2019 for Asst. year 2010-11. The reasons given by us in preceding paragraphs shall mutatis and mutandis

apply to these appeals, as well. We, therefore, for detailed reasons given in previous paragraphs, in ITA No. 1907/Mum/2019, inclined to uphold Id. CIT(A) order and dismiss appeal filed by the Revenue.

9. In the result, appeal filed by the Revenue for Asst. year 2011-12 is dismissed.

10. As a result, appeals filed by the Revenue for Asst. years 2010-11 and 2011-12 are dismissed.

Order pronounced in the open court on this: 17/06/2020

Sd/-

(MAHAVIR SINGH)
VICE PRESIDENT

Sd/-

(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated:17/06/2020

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