

**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 Nos.7481 & 7482/Mum/2018
(Assessment Years: 2009-10 & 2010-11)**

Hariram R. Parmar 48/50, Hingwal Bldg Offc No.8 3 rd Floor, Near Gulawadi C.P. Tank Road Mumbai-400 004	Vs.	ITO-19(1)(5) Mumbai
PAN/GIR No.ABOPP8624Q		
(Appellant)	..	(Respondent)

Assessee by	Shri Nishith Gandhi, AR
Revenue by	Shri. Akhtar Hussain Ansari – JCIT, Sr. DR
Date of Hearing	18/06/2020
Date of Pronouncement	18/06/2020

आदेश / O R D E R

PER BENCH:

These two appeals filed by the assessee are directed against separate, but identical orders of the Ld. Commissioner of Income tax (Appeals)-52, Mumbai, both dated 31/10/2018 and they pertain to AY 2009-10 and 2010-11. Since, facts and issues involved in these appeals filed by the assessee are identical, for the sake of convenience, these appeals were heard together and are disposed-off by this consolidated order.

2. The assessee 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 2009-10 are reproduced as under:

- 1.1 *In the facts and circumstances of the case and in law, the learned CIT (A)-52, Mumbai [“the CIT(A)”for short] erred in confirming the order passed u/s 144 r.w.s. 263 by the learned Income tax Officer-19(1)(5), Mumbai, [“the AO”for short] in violation of the principles of natural justice in as much as.*
- (i) No proper, effective and reasonable opportunity of being heard was granted to the Appellant neither at the Assessment nor during the Appellant Stage;*
 - (ii) The assessment was actually taken up for hearing only at the fag end of the limitation period; and;*
 - (iii) The order has been passed without providing the Appellant a copy of the information and documents relied upon by the AO and without providing an opportunity to cross examine the person on whose statements reliance has been placed by the AO.*
- 1.2 *It is submitted In the facts and circumstances of the case and in law, the order is liable to be held as bad and illegal for breach of principles of natural justice.*
- 2.1 *In the facts and circumstances of the case and in law, the Ld. AO erred in framing the assessment of the Appellant u/s 144 of the Act and the Ld.CIT(A) erred in confirming the same.*
- 3.2 *While doing so, he completely failed to appreciate that the necessary pre-conditions for initiating and completing the assessment u/s 144 of the Act were not fulfilled in the present case.*
- 4.1 *In the facts and circumstances of the case and in law, the order passed by the AO is void and illegal for want of jurisdiction and in any case deserves to be quashed since the same has been passed relying on certain statements of some third parties recorded without the knowledge of the Appellant and without providing on opportunity to cross-examine them.*
- 5.1 *In the facts and circumstances of the case and in law, the Ld.CIT(A) erred in confirming the action of the AO making a disallowance of Rs.3,34,000/- being 15% of the total purchases amounting to Rs.22,29,336/- of the Act treating the same as alleged tainted purchases without appreciating the facts and evidences in the present case.*

3. The brief facts of the case are that the assessee has filed his return of income for AY 2009-10 on 26/09/2009, declaring total income at Rs. 1,83,722/-. The assessment has been completed u/s

147, rws 143(3) of the Income Tax Act, 1961 on 04/03/2014, determining the income at Rs. 13,40,030/-. 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 beneficiaries who had taken accommodation bills of bogus purchases from various parties as listed by the AO in para. 3 of his assessment order amounting to Rs. 22,29,336/-. 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 23/12/2016 and determined total income of Rs. 16,74,430/-, after making additions of 15% gross profit on alleged bogus purchase from those parties and made additions of Rs. 3,34,000/- to total income of the assessee.

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 grounds of appeals which has been reproduced at para 3 on page 2 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 upheld addition made by

the Id. AO towards alleged bogus purchases to 15% gross profit on total purchases from those parties.

5. We have heard both the parties and 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 15% 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 parties 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 15% profit, which has been upheld by the Id. Ld.CIT(A). Although, both authorities have taken 15% 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 profit rate adopted by both authorities appears to be on higher side and accordingly, we direct the Id. AO to estimate 5% gross profit on total alleged bogus purchases.

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

ITA No. 7482/Mum/2018

8. The facts and issue involved in this appeal are identical to facts and issues, which we had considered in ITA No. 7481/Mum/2018 for Asst. year 2009-10. The reasons given by us in preceding paragraphs in ITA No.7481/Mum/2018 shall mutatis mutandis apply to these appeals, as well. Therefore, for similar reasons, we direct the AO to estimate 5% profit on alleged bogus purchases for Asst. years 2010-11.

9. In the result, appeals filed by the assessee for Asst. year 2010-11 is partly allowed.

10. As a result, appeals filed by the assessee for Asst. years 2009-10 and 2010-11 are partly allowed.

Order pronounced in the open court on this: 18 /06/2020

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated: 18/06/2020

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