

**आयकर अपीलीय अधिकरण "SMC-II" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC-II" BENCH, MUMBAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजूनाथ जी, लेखा सदस्य के समक्ष ।  
BEFORE SRI MAHAVIR SINGH, VP AND SRI MANJUNATHA G, AM

आयकर अपील सं./ ITA No. 1647/Mum/2019

(निर्धारण वर्ष / Assessment Years 2010-11)

<b>Shri Ganpat Ghevarchand Mutha</b> 59-A, Ardeshar Dady Street, Near Alankar Cinema, Opp Sundar Transport, Mumbai (अपीलार्थी / Appellant)	बनाम/ Vs.	<b>The Income Tax Officer</b> Ward 19(1)(3) Mumbai (प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AIUPM0210G		

अपीलार्थी की ओर से/ Appellant by	:	None
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Akhtar Ansari, DR

सुनवाई की तारीख / Date of hearing:	16.06.2020
घोषणा की तारीख / Date of pronouncement:	16.06.2020

**आदेश / ORDER**

महावीर सिंह, उपाध्यक्ष /

**PER MAHAVIR SINGH, VP:**

This appeal filed by the assessee is directed against the order of the Ld. Commissioner of Income Tax (Appeals)-30 [in short CIT(A)], Mumbai, dated 19.09.2018 and it pertains to Assessment Year 2010-11.

2. The assessee has raised the following grounds of appeal: -

*"1. On the facts and in the circumstances of the case in law the Hon'ble CIT(A) erred in upholding the Assessing Officer's action of reopening of the*



*completed assessment under section 147 of the IT Act 1961 and the reason assigned for doing so are wrong and contrary to the provision of Income Tax Act and rules made there under.*

*2. On the facts and in the circumstances of the case and in law the Hon'ble CIT(A) wrongly erred in sustaining GP @12.5% of the alleged bogus purchase as unexplained income and the reasons assigned for doing so are wrong and contrary to the provision of Income Tax ....."*

3. The brief facts of the case are that the assessee is an individual and engaged in the business of trading in Industrial Electronic Components, filed his return of income for AY 2010-11 on 30/09/2010, declaring total income of Rs. 3,12,971/-. The case has been subsequently, reopened under section 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. 1,03,51,101/-. 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 30/12/2015 and determined total income of Rs. 16,06,860/-, after restricting the addition at



the rate of 12.5% towards alleged bogus purchase from those parties and made additions of Rs. 12,93,888/-.

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 appeal, on the issue, which has been reproduced at Para 2.1 on page 3 of 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), sustained the addition made by the AO towards alleged bogus purchases to 12.50% gross profit on total purchases from those parties. The relevant findings of the Ld.CIT(A) are as under:

*"5. I have given my careful consideration to the material on record and duly considered the factual matrix of the case as also the applicable legal position for arriving the following decision.*

*6. It is seen from the assessment order that even after giving sufficient opportunity by Assessing Officer, the assessee could not substantiate his claim of genuine purchases from 10 parties*



*from whom accommodation entries were obtained. During the course of appellate proceedings, even after affording opportunity for 4 times, appellant could not made any submissions nor attend the hearing in person or through A.R. to present his case, hence appeal is decided on merits of the case.*

*7. The ground No.1 is against the reopening of the case of the appellant.*

*7.1 Re-assessment proceedings for the year under consideration were initiated by issue of notice under section 148 dated 10.09.2014 by the Assessing Officer. Contentions of the appellant is that on the facts and circumstances of the case and in law Assessing Officer erred in issuing notice under section 148 of the I.T. Act, 1961 and the reason assigned for the same are contrary to the provision of Income Tax Act and Rules.*

*7.2 Hon'ble Supreme Court in the case of ACIT vs. Rajesh Jhaveri Stock Brokers (P) Ltd. (291 ITR 500) observed that the word 'reason' in the expression 'reason to believe' would mean cause or justification and if the Assessing Officer has cause or*



*justification to know or suppose that income had escaped assessment, it can be said to have reasons to believe that income had escaped assessment. It is further observed by the Supreme Court that expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. At the initiation stage, what is required is "reason to believe", but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisition belief that income has escaped assessment. In the present case, it is evident from the reasons recorded that the DGIT (Inv.), Mumbai, has communicated to the Assessing Officer the information received by it, from the Sales Tax Department, that the assessee is involved in taking entries of non genuine purchase from four parties amounting to ₹1,03,51,101/- during the financial year relevant to Assessment Year 2010-11. Based on this precise information, the Assessing Officer issued*



*notice under section 148 of the Act as he had prima-facie reasons to believe that income chargeable to tax had escaped assessment within the meaning of sec. 147 of the I.T. Act. Thus, there was cause or justification for the Assessing Officer to invoke provisions of sec. 147 and issue notice under section 148. As already mentioned, at the initiation stage, what is required to be seen is whether there are prima-facie 'reasons to believe' but not the established fact of escapement of income. The Assessing Officer also recorded proper reasons for formation of the belief that income has escaped assessment. All the condition necessary for reopening of the assessment under the provisions of sec 147, for issue of notice under section 148, and passing the reassessment order are satisfied for the year under appeal. Resultantly, Ground No.1 of the appeal is 'Dismissed'.*

*8. The Ground No.2 is against the addition of estimated profit 12.5% in respect of non-genuine purchase from 10 parties amounting to ₹1,03,51,101/-. Contentions of the appellant against the addition made in the ground are that on*



*the facts and circumstances of the case and in law Assessing Officer erred in estimating profit @12.5% on alleged non genuine purchases of ₹1,03,51,101/- and thereby added to the total income of the appellant.*

*8.1 I have carefully considered the rival contentions of the issue on hand. In making addition, Ld. AO relied on the deposition and affidavit by the some of the entities before the Sales Tax Authorities as per which they have stated to have only given bogus bills without supplying any goods. The Sales Tax Department has conducted independent enquiries in each of the hawala parties and conclusively proved that these parties are engaged in the business of providing accommodation entries only. Therefore, the Assessing Officer considering the purchase are recorded in the books of account, profit element embedded in such purchases are recorded in the books of account, profit element embedded in such purchases is taken as the profit earned from purchases shown to have been made from the 10 parties and estimated the profit @ 12.5% of the total non genuine*



*purchase of ₹1,03,51,101/-, added to the total income of the appellant. To arrive at the conclusion, Assessing Officer placed his reliance on the cases of the Hon'ble Gujarat High Court in CIT vs. Smith P. Sheth, in ITA No. 553 of 2012 dated 06-01-2013.*

*8.2 During the course of appellate proceedings, no submission were filed in spite of the fact that sufficient time and opportunity was given to the appellant. In view of the facts of the case, I have nothing to deviate from the decision of the Assessing Officer and the addition made is confirmed. In view of the same, respectfully following the above cited decision, the addition made by the Assessing Officer @12.5% of the purchases of ₹1,03,51,101/-, made from 10 parties, is confirmed. The appeal on Ground No.2 is treated as 'Dismissed'.*

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, reopening of assessment, we find that the Id. AO has formed reasonable belief of escapement of income on the basis of report of Investigation Wing, which is



further supported by the report of Sales Tax Department, Govt. of Maharashtra. Further, in our considered view, information relied upon by the Id. AO constitutes a fresh tangible material which is sufficient to reopen the assessment. We, therefore, are of the opinion that there is no merit in grounds taken by the assessee challenging reopening of assessment and hence, we reject grounds raised by the assessee, challenging of reopening assessment.

6. As regards addition towards alleged bogus purchases, we find that the Ld. AO has made 12.5% addition towards 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, 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 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 12.50% additions, which has been affirmed by the Id. CIT(A) on total alleged bogus purchase. Although, both authorities have taken uniform 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. Further, the rate of profit adopted by the AO is appears to be on higher side when compared to nature of business of the assessee. 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 profit adopted @ 12.50% on alleged bogus purchases is on higher side going by the nature of business of the assessee and hence, we order the Assessing Officer to restrict the addition at the rate of 5% on alleged bogus purchases.

**8. In the Result, the appeal of the assessee is partly allowed.**

Order pronounced in the open court on 16.06.2020.

Sd/-

(मंजूनाथ जी/ MANJUNATHA G)

(खा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 16.06.2020

सुदीप सरकार, व. निजी सचिव/ *Sudip Sarkar, Sr.PS*

Sd/-

(हावीर सिंह /MAHAVIR SINGH)

(पाध्यक्ष / VICE PRESIDENT)



**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार

(Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai