

THE INCOME TAX APPELLATE TRIBUNAL
"G" Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Amarjit Singh (JM)

I.T.A. No. 3575/Mum/2019 (Assessment Year 2010-11)

ITO Ward-15(3)(4) Room No. 15B Ground Floor Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	M/s. Swastik Heavy Structural Pvt. Ltd. B-28, Minerva Industrial Estate P.K. Road, Mulund-W Mumbai-400 080. PAN : AAACS6799K
(Appellant)		(Respondent)

Assessee by	None
Department by	Shri T.S. Khalsa
Date of Hearing	22.02.2021
Date of Pronouncement	01.03.2021

ORDER

Per Shamim Yahya (AM) :-

This is an appeal by the Revenue wherein the Revenue is aggrieved that learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] has reduced the addition for bogus purchase of Rs. 2,48,44,349/- done @ 100% by the Assessing Officer by sustaining only 12.5% for the assessment year 2010-11 vide order dated 25.2.2019.

2. The grounds of appeal read as under :-

1. "On the facts and in the circumstances of the case and in Law, the Ld.CIT(A) erred in directing the Assessing Officer to estimate profit of 12.5% of the total alleged bogus purchases. The Ld.CIT(A) has further erred in not appreciating the fact that the said seller parties were found to be Hawala operators/Bogus billers."

2. "On the facts and in the circumstances of the case and in Law, the Ld.CIT(A) erred in directing the Assessing Officer to estimate profit of 12.5% on the total alleged bogus purchases. The Ld.CIT(A) has further erred in not appreciating the fact that the Hon'ble Supreme Court on the similar issue in the case of NK Proteins Ltd in SLP-CC No(s)-769 of 2017 vide dated 16.01.2017 directed to make addition to the entire bogus purchases."

3. "Without prejudice to the above, the Ld.CIT(A) ought to have made further enquiries himself or directed the AO to make further enquiries and furnish a report in view of the provisions of section 250 of the I.T. Act, if he was not satisfied regarding the enquiry made by the AO."
4. The appellant craves leave to add, amend or alter any grounds or add a new ground of appeal at any time before or at the time of hearing of appeal."
3. The assessee is in this case engaged in a manufacturing business. The assessment was reopened upon information from sales tax department that the assessee has made purchases from bogus dealers as under :-

Sr No	Name of hawala party	Hawala PAN	Hawala TIN	Amount (Rs.)
1	MACOS IRON AND STEEL PVT LTD.	AAGCM1142A	27430732692V	47,15,080
2	SACHI MERCANTILE PVT. LTD.	AAKCS8209A	27770610285V	11,250
3	CEEPORT IRON & STEEL PVT LTD	AADCC7117N	27720732387V	50,41,398
4	SHRAVAN IMPEX PRIVATE LIMITED	AAKCS9196G	27940670574V	1,50,76,621

The Assessing Officer noted that except for the bills of following parties the assessee has not provided any evidence.

MACOS IRON AND STEEL PVT LTD - Rs.47,15,080/-
 CEEPORT IRON & STEEL PVT LTD - Rs.50,41,398/-
 SHRAVAN IMPEX PRIVATE LIMITED - Rs.1,50,76,621/-

Also he noted that the assessee has not provided any proper material register, no details for utilisation of material was provided despite Assessing Officer's inquiry. The Assessing Officer has held as under :-

"Except bills/challans of three parties and ledger of two parties and extract of bank statement claimed to be showing payments to said hawala parties. It may be mentioned here that the DGIT(INV) had provided this information after carrying out investigations/enquiries that these parties are hawala parties/entry providers. Therefore, merely entries appearing in bank statement or showing bill/challans does not justify the claim that the purchases made are genuine. The assessee has not provided any other evidence except bills/challans of the said parties. The onus was on the assessee to prove that it had purchased the materials from the alleged parties and received the same and explain how the same was utilized in their business activities. The assessee has failed to do so inspite of many

opportunities and time given. No evidence regarding actual receipt of material has been provided by the assessee company. By obtaining hawala bills, the assessee has indulged in suppressing its profits. Therefore, the said hawala purchases of Rs. 2,48,44,349/-are disallowed and added back to the total income of the assessee company.”

4. Upon assessee’s appeal learned CIT(A) passed a very laconic order. He held that non-production of the parties was the only issue and that sales or consumption issues were not doubted. Accordingly he sustained 12.5% disallowance out of the bogus purchases.

5. Against the above order the Revenue is in appeal before the ITAT. We have heard learned Departmental Representative and perused the records.

6. We find that assessee in this case is a manufacturing concern. It has engaged into bogus purchases to the tune of Rs. 2.48 crores. Before the assessing officer only the purchase bills were produced. No material register was produced. No response about the enquiry with regard to consumption was given. Hence AO was constrained to make 100% addition. Learned CIT(A) has wrongly noted that the addition has been made only due to the non-production of suppliers. He has ignored the assessing officer's finding that assessee has not provided any evidence of the consumption.

7. Furthermore learned CIT(A) has noted that assessing officer has not found any discrepancy in sales or consumption ratio. We find that the assessing officer has given clear finding in this regard. The assessee has not provided any information on consumption/utilisation. Hence, learned CIT(A)’s order is without application of mind. It is settled law that powers the duties of the CIT(A) are coterminous with that of the assessing officer. In this view of the matter the laconic and erroneous order of learned CIT(A) is not at all sustainable. In the interest of justice we remit the issue to the file of learned CIT(A). Learned CIT(A) is directed to pass the proper and speaking order after duly considering all aspects of the case. He shall bear in mind our observations as above.

8. In the result, this appeal by the Revenue stands allowed for statistical purposes.

Pronounced in the open court on 1.3.2021.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 01/03/2021

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS