

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT),
'C' BENCH MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI RAVISH SOOD, JUDICIAL MEMBER**

**ITA No.3138/Mum/2017
(Assessment Year :2011-12)**

The Dy. Commissioner of Income Tax-27(2), Room No.420, 4 th Floor Tower No.6, Vashi Railway Station Complex Vashi, Navi Mumbai – 400 703	Vs.	M/s. Poonam Enterprises Chandrika Prasad Plot No.61, House No.C-72A Station Avenue Road Chembur, Mumbai-400071
PAN/GIR No. AA EFP5113H		
(Appellant)	..	(Respondent)

**ITA No.7215/Mum/2018
(Assessment Year :2011-12)**

M/s. Poonam Enterprises Chandrika Prasad Plot No.61, House No.C- 72A Station Avenue Road Chembur, Mumbai-400071	Vs.	The Dy. Commissioner of Income Tax-27(2), Room No.420, 4 th Floor Tower No.6, Vashi Railway Station Complex Vashi, Navi Mumbai – 400 703
PAN/GIR No. AA EFP5113H		
(Appellant)	..	(Respondent)

Revenue by	Ms. Shreekala Pardeshi
Assessee by	Shri Sanjay Shah
Date of Hearing	04/03/2021
Date of Pronouncement	24/03/2021

आदेश / ORDER**PER M. BALAGANESH (A.M):**

These cross appeals in ITA No.3138/Mum/2017 & ITA No.7215/Mum/2018 for A.Y.2011-12 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-25, Mumbai in appeal No.CIT(A)-25/IT-363/14-15 dated 13/02/2017 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 29/03/2014 by the Id. Jt. Commissioner of Income Tax, Range 22(2), Mumbai (hereinafter referred to as Id. AO).

ITA No.3138/Mum/2017

2. The only effective issue to be decided in this appeal is with regard to disallowance made on account of bogus purchases.


3. We have heard rival submissions and perused the materials available on record. We find that assessee is a partnership firm engaged in civil contracting business. The return of income for the A.Y.2011-12 was filed on 29/09/2011 declaring total income of Rs.1,11,74,693/-. It is not in dispute that assessee had made purchases from four parties listed in page 2 of the assessment order whose names appear to be tainted dealers as per the website of Sales Tax department of Government of Maharashtra. The total purchases made by the assessee from those four parties amounted to Rs.62,81,676/-. The Id. AO based on the information gathered from Sales Tax department and which was eventually passed on to him through the office of DGIT Investigation, Mumbai, rejected all the

contentions raised on behalf of the assessee and proceeded to disallow the entire purchases of Rs.62,81,676/- u/s.37(1) of the Act. The Id. AO however, did not dispute the sales made out of such tainted purchases. The main reason for the disallowance was that though the assessee had produced all the relevant documents before him, the Id. AO observed that assessee could not produce the above parties physically before him for examination. The Id. CIT(A) however, observed that assessee produced the ledger extracts of all the parties thereby stating that all the payments to these parties were made through account payee cheques. The Id. CIT(A) also observed that relevant bills were also filed by the assessee. The Id. CIT(A) observed that the entire disallowance was made merely based on the information received from sales tax authorities without carrying on further independent investigation. He held that the entire purchases cannot be held to be bogus in the instant case. Since, the sales made out of corresponding purchases has not been disputed by the Id. AO by placing reliance on the decision of the Gujarat High Court in the case of Simit P Sheth reported in 356 ITR 451, he resorted to estimate the profit element embedded in such purchases @25% and gave partial relief to the assessee.

4. Aggrieved by this order, the assessee is in appeal before us for deletion of 25% addition confirmed by the Id. CIT(A) and the Revenue is in appeal for deletion of 75% of the addition by the Id. CIT(A).

5. At the outset, we find that there is a delay of 609 days in filing of appeal by the assessee. On going through the affidavit filed by the partner of the assessee firm and on hearing the Id. Counsel for the assessee as well as the assessee partner who was also present at the time of hearing, we are not convinced with the reasoning given in the affidavit by the

partner of the firm. The affidavit is reproduced for the sake of convenience.




AFFIDAVIT

I, **Mr. Sachin Chemburkar**, residing at **Chandrika Prasad, Plot 61, House No. C 72A, Station Avenue Road, Chembur, Mumbai - 400071**, Son of **Bhalchandra Chemburkar**, do hereby make following declaration on solemn affirmation: -

- 1) I am a Partner of **Poonam Enterprises** (hereinafter referred to as 'the said firm') having registered office at **Chandrika Prasad, Plot 61, House No. C 72A, Station Avenue Road, Chembur, Mumbai - 400071**
- 2) Said firm is engaged in the business of Civil Contracting since last 27 years.
- 3) The Partners of the said firm, including myself, are technical persons and do not have any background on taxation related matters. In other words, we were completely dependent on our CA, Mr. Ravindra A. Bhalekar as far as Income Tax Matters were concerned.
- 4) Said firm had made certain purchases of Rs. 62,81,676/- during the FY 2010-11, from various dealers which were subsequently declared as Hawala dealers by Maharashtra Sales Tax Department.
- 5) Based on said information received by Income Tax Department from Maharashtra Sales Tax Department, Ld. AO made additions of Rs. 62,81,676/- being 100% of the alleged Bogus Purchases vide Order u/s 143(3) r.w.s 147 of the Act dated 29th March 2014 for AY 2011-12.

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6) Said firm decided to file appeal before Hon'ble Commissioner of Income Tax against the additions made by Ld. AO in his aforesaid Order as advised by our Chartered Accountant, Mr. Bhalekar.

7) Hon'ble CIT (A) partly allowed the appeal in favour of the said firm and restricted the additions to Rs. 15,70,419/- being 25% of alleged bogus purchases vide his Order dated 13th February 2017 as against addition of 100% made by Ld. AO.

8) At that point in time, our CA, Mr. Bhalekar, did not foresee any chances of further relief before higher appellate authority in case of alleged Bogus purchases and therefore he suggested us not to file an appeal before Hon'ble ITAT.

9) Accordingly, based on his advice, no appeal was filed by the said firm before Hon'ble Tribunal.


10) Thereafter, we changed our chartered accountant and appointed a new Chartered Accountant, Mr. Sanjay C. Shah, for handling Income Tax matters.

11) After going through the aforementioned Order of Hon'ble CIT (Appeals), Mr. Sanjay C. Shah, Chartered Accountant, accordingly suggested to file an appeal before ITAT as addition of 25% of alleged bogus purchases is on a higher side in view of the facts and circumstances of the case.


12) Hence, we immediately filed an appeal on 14th December, 2018 in case of the said firm.

I, Mr. Sachin Chemburkar, the above-named deponent, do hereby verify that the contents of Paragraphs 1 to 12 are true to my personal knowledge and nothing has been concealed and no part of it is false.

Verified at Mumbai on this 18th day of June 2019.


(Mr. Sachin Chemburkar)

Solemnly affirmed by the said Mr. Sachin Chemburkar at 18th day of June 2019.


SANTOSH MISHRA
ADVOCATE & NOTARY
Govt. of India
18.6.19

5.1. From the reading of the aforesaid affidavit, we find that admittedly the assessee had reposed faith on Mr Bhalekar , erstwhile consultant of assessee, who had advised assessee not to prefer further appeal. But in that scenario, an affidavit from Mr Bhalekar should have been brought on

record. When this was put to assessee's counsel and the partner of the firm, they expressed their inability to furnish the same. In these circumstances and for the reasons stated in the affidavit, we are not inclined to condone the delay of 609 days in filing of appeal of the assessee and accordingly, we hold that appeal of the assessee is dismissed as unadmitted and not maintainable.

ITA No.7215/Mum/2018

6. The only issue involved in revenue appeal is relief granted by the Id. CIT(A) to the extent of 75% to the value of total purchases. We find that the sales is not disputed by the Id. AO. The break-up of sales is given in page 7 of the paper book. We find that the gross profit declared by the assessee is 13.98%. The workings of which are enclosed in page 13 of the paper book. Hence, we find that assessee had made purchases from the grey market in order to have saving in indirect taxes and incidental profit element thereon together with cash discounts. The Id. CIT(A) had estimated the said profit element to be at 25%. Since assessee appeal has already been dismissed as not maintainable, though we find that profit percentage estimated by the Id. CIT(A) at 25% to be excessive, we are not inclined to interfere in the said order. Accordingly, the grounds raised by the Revenue are dismissed.

7. In the result, appeal of the assessee is dismissed and appeal of the Revenue is dismissed.

Order pronounced on 24/03/2021 by way of proper mentioning in the notice board.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 24/03/2021
KARUNA, *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.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai