

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI R.S.SYAL, VP AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No. 40/PUN/2017
निर्धारण वर्ष / Assessment Year : 2009-10

The Income Tax Officer,
Ward-2, Jalna.

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Govindam Metal & Alloys Pvt. Ltd.
Plot No.B-15, Addl. MIDC Area,
Jalna- 431 203.
PAN : AACCT9215F

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No. 81/PUN/2017
निर्धारण वर्ष / Assessment Year : 2009-10

M/s. Govindam Metal & Alloys Pvt. Ltd.
C/o. Sandeep Narendra Agarwal,
Bharat Nagar, Near Shivaji Statue,
Jalna-431 203.
PAN : AACCT9215F

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-2, Jalna.

.....प्रत्यर्थी / Respondent

Assessee by : None
Revenue by : Shri A M Mahadevan Krishnan

सुनवाई की तारीख / Date of Hearing : 10.05.2021
घोषणा की तारीख / Date of Pronouncement : 10.05.2021

आदेश / ORDER**PER PARTHA SARATHI CHAUDHURY, JM:**

These cross-appeals preferred by the Revenue and the assessee emanates from the common order of the Ld. CIT(Appeal)-1, Aurangabad dated 24.10.2016 for the assessment year 2009-10 as per the grounds of appeal on record.

2. At the time of hearing, neither the assessee nor his Authorized Representative was present. No adjournment application was filed by the assessee. Therefore, the submissions of the Ld. DR were recorded and cases were heard on merits.

First, we would take up Revenue's appeal in ITA No.40/PUN/2017 for the assessment year 2009-10 for adjudication.

ITA No.40/PUN/2017 (By Revenue)
A.Y.2009-10

3. In ITA No.40/PUN/2017, the Revenue has raised following grounds of appeal:

"1. Whether on the facts and in the circumstances of the case the CIT(A) was justified in to restrict the addition to Rs.16,95,879/- (10% of Rs.1,69,58,793/-) though AO noticed that assessee shown purchases in the books of accounts and whereas no material against the purchase bills had been received in reality.

2. Whether the CIT(A) was justified in not appreciating the fact that information under section 133(6) of the Income-tax Act,1961 from the hawala dealers and their bank accounts from the respective banks were called for which resulted into returning of envelopes with the remarks that, the said concern is not in existences. Further, banks have given in some of the cases their bank account which categorically indicates that, the monies have been deposited by cheque against the sales and withdrawn by self cheques in cash on the same date for returning to the purchaser by charging certain commission. In view of this situation, the assessee indulged into purchase of material unaccountedly in cash from undisclosed sources in contravention to the provisions of section 40A(3) and 69C of the IT Act,1961 from some other parties and obtained only the bills from the hawala dealers without movement of goods including

circumstantial evidences in the form of transportation, weightment slips and debiting the expenses into the cash book for such expenses.

3. The order of the AO be restored and that of the CIT(A) be vacated.

4. The appellant craves leave to add, amend or alter any grounds of appeal.”

4. The brief facts in this case are that the assessee is a private limited company incorporated on 16.04.2008 and is engaged in the business of trading in all types of iron and steel. During the course of assessment proceedings, it was noticed by the Assessing Officer that an information in a DVD containing information about unearthing a racket involving more than 1935 Hawala Operators who have issued fake purchase bills to more than 37000 business entities including the assessee was received from the Sales Tax Department, the assessee was one of the beneficiary claimed to have been purchased the goods to the extent of Rs.1,69,58,793/- from a hawala operator and shown in the books of account and whereas, no material against the purchase bills had been received in reality. The Assessing Officer had alleged that the assessee company had purchased 411.825 MT of goods from parties declared by Sales Tax as hawala parties and, accordingly, he made addition of Rs.1,69,58,793/- on account of following alleged hawala/inflated purchases :

Sr. No.	Party Name & Address	VAT TIN	Quantity	Basic	VAT	Total
1.	R.K Ispat	27430642191V	229.895	9764313	390572	10154885
2.	Shivam Trading Company	27490600351V	82.680	2387071	95483	2482554
3.	Rashmi Enterprises	27580657871V	99.250	4155148	166206	4321354
		Total	411.825	163,06,532	6,52,261	1,69,58,793

5. During the First Appellate Proceedings, the Ld. CIT(Appeals) confirmed the addition to Rs.16,95,879/- (10% of Rs.1,69,58,793/-) as per the reasons recorded in his order against which the Revenue is in appeal before us.

6. We have heard the submissions made by the Ld. DR and perused the materials available on record. We find that this is case of bogus purchases wherein information of hawala trading was furnished by Sales Tax Department and the Ld. CIT(Appeals) has confirmed 10% of the entire bogus purchases addition. On the other hand, the Assessing Officer has imposed 100% of the entire bogus purchases transaction. The Ld. DR has submitted for confirmation of order of Assessing Officer with 100% addition. We find that in the similar facts and circumstances and on identical situation, the Hon'ble Bombay High Court in the case of **Pr.CIT Vs. Mohammad Haji Adam & Co. vide its judgment dated 11.02.2019 in ITA No.1004 of 2016** wherein it has been held that no ad-hoc addition at the rate of 10% of bogus purchases is warranted. Rather, the addition should be made to the extent of difference between gross profit rate on genuine purchases and gross profit rate of bogus purchases. For example, if the GP percentage of genuine purchases comes to 8% whereas GP percentage of bogus purchases comes to 10%, then 2% of bogus purchases can be added to the income of the assessee.

7. Reverting to the facts of the present case and taking guidance from the said judgment of the Hon'ble Bombay High Court in the case of Pr.CIT Vs. Mohommad Haji Adam (supra.), we set aside the order of the Ld. CIT(Appeal) and restore the matter back to the file of the Assessing Officer for undertaking this exercise and finding out the excess gross profit rate earned from bogus

purchases and then making the addition accordingly after allowing reasonable opportunity of hearing to the assessee.

8. In the result, **appeal of the Revenue in ITA No.40/PUN/2017 is allowed for statistical purposes.**

ITA No.81/PUN/2017 (By Assessee)
A.Y. 2009-10

9. In ITA No.81/PUN/2017, the assessee has raised following grounds of appeal:

“1.CIT(A) has erred both on facts and in law in estimating and adding additional 10% gross profit on alleging unverifiable purchase bills from different party and purchase from different party. Additions confirmed by CIT(A) may be please be deleted.

2. Commissioner (Appeals) has erred in rejecting the books of accounts. Rejection of books is beyond his jurisdiction and appellant prays to reserve CIT(A) action of rejection of books.

3. Commissioner (Appeals)’s order is bad in law as he has not considered the submissions made before him and Assessing Officer and made unwarranted observations.

4. Assessment proceedings u/s.143(3) r.w.s.147 is bad in law. Also, Assessment order u/s.143(3) r.w.s.147 is bad in law.

5. Appellant prays for deletion of interest u/s.234B.

6. Appellant prays to add, alter, amend, clarify, modify take additional ground/s and or withdraw the ground/s during appellate proceedings.”

10. The Ld. DR submitted that facts and issues raised in this appeal are similar and identical to the facts raised in ITA No.40/PUN/2017. Therefore, our decision rendered in ITA No.40/PUN/2017 for the assessment year 2009-10 shall mutatis mutandis apply in this case also.

In view of thereof, we set aside the order of the Ld. CIT(Appeals) in this appeal also and remit the matter back to the file of Assessing Officer to

adjudicate the same in view of the directions given in ITA No.40/PUN/2017 after providing reasonable opportunity of hearing to the assessee.

11. In the result, **appeal of the assessee in ITA No.81/PUN/2017 is allowed for statistical purposes.**

12. In the combined result, **both, the appeal of the Revenue and the appeal of the assessee are allowed for statistical purposes.**

Order pronounced on 10th day of May, 2021.

Sd/-
R.S.SYAL
VICE PRESIDENT

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 10th May, 2021.
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Aurangabad.
4. The Pr. CIT-1, Aurangabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	10.05.2021	Sr.PS/PS
2	Draft placed before author	10.05.2021	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		