

IN THE INCOME-TAX APPELLATE TRIBUNAL "D" BENCH MUMBAI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER

ITA No. 4748/Mum/2019 (Assessment Year 2010-11)

ITO 27(2)(3) Room No. 417, 4 th floor, 6 th Tower, Income Tax Office, Vashi Station Complex, Vashi-400703.	Vs.	Mr. Mumtaz Ali Nasruddin Kapoor, Plot No. 174, Hill No. 04, Azad Nagar, LBS Marg, Ghatkopar (W), Mumbai-400086 PAN: AKCPK4335N
Appellant		Respondent

C.O. No. 282/Mum/2019 (Assessment Year 2010-11)

Mr. Mumtaz Ali Nasruddin Kapoor, Plot No. 174, Hill No. 04, Azad Nagar, LBS Marg, Ghatkopar (W), Mumbai-400086 PAN: AKCPK4335N	Vs.	ITO 27(2)(3) Room No. 417, 4 th floor, 6 th Tower, Income Tax Office, Vashi Station Complex, Vashi-400703.
Appellant		Respondent

Appellant by : Shri Bharat Anghle (CIT-DR)
Respondent by : None

Date of Hearing : 09.03.2021
Date of Pronouncement : 31.05.2021

ORDER

PER RAM LAL NEGI, JUDICIAL MEMBER;

These are the appeal and cross objection filed by the revenue and assessee respectively against the order dated 27.05.2019 passed by the Id. CIT(A)-25, Vashi for Assessment Year 2010-11, whereby the Id. CIT(A) has partly allowed the appeal filed by the assessee against the assessment order passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that the assessee filed its return of income for the A.Y. under consideration declaring the total income of Rs. 2,72,430/-. The said return was processed under section 143(1) of the Act. Subsequently on the basis of information received from Investigation Wing of the Department through Maharashtra Sales Tax Department to the effect that the assessee had obtained accommodation bills showing purchases from bogus parties, the case was re-opened by issuing notice under section 148 of the Act. The AO also issued notice under section 143(2) and 142(1) of the Act. In response thereof, the Authorized Representative of the assessee appeared before the AO and submitted the relevant details.

3. It was noticed that during the previous year the assessee had claimed to have made total purchases of Rs. 42,88,096/- and out of the said amount the assessee had shown purchases amounting to Rs. 11,51,558/- from four bogus parties whose names exist in the list of suspicious dealers prepared by the Sales Tax Department, Maharashtra. Since the assessee failed to prove the genuineness of the transaction with regard to the purchases from the said parties to the satisfaction of the AO, AO made addition of Rs. 2,87,890/- being 25% of the total amount of bogus purchases and determined the total income at Rs. 5,60,320/-.

4. Aggrieved by the action of the AO, the assessee filed appeal against the assessment order before the Id. CIT(A). The Id. CIT(A) after hearing

the assessee restricted the addition to 12.5% of the total amount of bogus purchases. Against the said findings of the Id. CIT(A), the revenue has preferred the present appeal.

5. The revenue has challenged the impugned order passed by the Id. CIT(A) by raising the following effective grounds:

(i) On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in directing the AO to restrict the addition to 12.5% of Rs. 11,51,558/- as against addition @25% of Rs. 11,51,558/- made by the Assessing Officer on account of bogus purchase, without appreciating the fact that the assessee had failed to discharge the onus to establish the genuineness of the transactions and also failed to furnish corroborative evidences in support of the claim.

(ii) On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in estimating the profit from Hawala Purchases by disallowing only Rs. 1,43,945/- being 12.5% of the bogus purchases as even the basis onus of producing delivery challans, transportation details etc. were not fulfilled by the assessee.

6. This case was fixed for hearing on 09, 03.2021. However, on the said date none appeared on behalf of the assessee. Accordingly, we decided to dispose of these cases on the basis of material on record after hearing the Id. Departmental Representative (DR). Accordingly, we asked the Id DR to argue the case of the revenue.

7. Before us, the Id. DR supporting the action of AO submitted that the Id. CIT(A) has wrongly restricted the addition from 25% to 12.5% of the total amount of bogus purchases as the assessee had failed to establish

the genuineness of the purchases in question to the satisfaction of the AO.

Accordingly, the Id. DR submitted that the impugned order may be set-aside and the assessment order passed by the AO may be restored.

8. We have heard the rival submissions and also perused the material on record. The only grievance of the revenue is that the Id. CIT(A) has wrongly restricted the addition to 12.5% of the total amount of bogus purchases determined by the AO as against addition of 25% made by the AO. The Id. CIT(A) has restricted the addition to 12.5% holding as under:

“6. The grounds of appeal no 1.1, 1.2, 1.3, 1.4 and 2 relate to the addition of Rs. 2,87,890/- on account of extra profit embedded in purchases ostensibly made from hawala dealers. These are decided together. It is noted that the assessee had made purchases of Rs. 11,51,558/- from 4 hawala dealers as mentioned above. The AO has relied upon the inquiries conducted by the Sales Tax Department to hold that these parties were only issuing bills and were not engaged in any genuine business activity. The AO also made inquiries at his level but the notices issued u/s 133(6) were returned back the postal authorities and the local inquiry by the Inspector attached to his office could not trace the hawala dealers. The assessee was also not able to give the latest address of the hawala dealers and could not produce them also. In the appellate proceedings also, the assessee has not been able to substantiate his claim. It has however been pointed out by the assessee that a similar addition had been made in his case in A.Y. 2009-10 and the matter had travelled upto ITAT. In ITA no. 1171/M/2018 dated 25.09.2018 the ITAT in the case of the assessee for A.Y. 2009-10 has given the following finding:

“3. The facts in brief are that the case of the assessee was reopened by issue of notice dated 26.03.2014 after receiving information from the DGIT (Inv.), Mumbai who in turn got information from Sales Tax Department, Government of Maharashtra that assessee is a beneficiary of accommodation entries to the tune of Rs.11,41,661/- from five parties as stated in para 3 of the assessment order. Thereafter, the assessee vide letter dated 05.05.2014 submitted that the return filed originally may kindly be treated as return filed in response to notice under section 148 of the Act. The reasons recorded u/s 148(2) of the Act forming a belief on the issue of reopening was also supplied to the assessee. During the course of assessment proceedings, the assessee supplied the

information as desired by the AO in the form of purchase invoice, bank statements evidencing the payment by account payee cheques etc. However, the notice issued under section 133(6) by the AO in order to verify all these parties were returned unserved. Finally, the AO not being satisfied with the explanation of the assessee came to the conclusion that the assessee has taken accommodation entries from the hawala parties as are brought out by the Sales Tax Department as stated in para 3 of the assessment order and added the entire purchases to the tune of Rs.11,41,661/by framing the assessment under section 143(3) r.w.s. 147 of the Act vide order dated 25.03.2015.

4. The Ld. CIT(A) also affirmed the addition as made by the AO by observing that the assessee is a beneficiary of hawala entry operator and the necessary verification by the AO could not be carried out due to non service of notices under section 133(6) of the Act as the parties were not available at addresses supplied by the assessee. The Ld. CIT(A) further observed that it is not enough that copies of purchase bills and bank statements to substantiate the said purchases and thus the assessee has not discharged the onus cast upon him to prove the genuineness of the purchases. Further, the assessee has also not maintained the stock register. Finally, the addition of Rs.11,41,661/- was affirmed on account of non genuine purchases.

5. We have heard the rival submissions of both the parties and perused the material on record. The undisputed facts are that the assessee is a beneficiary of hawala entries and could not produce the necessary evidences as required by the AO for the purpose of carrying out the verification as to genuineness of the said purchases. Though the assessee produced the purchase bills, invoices and copies of bank statement but in absence of any stock register by the assessee, the verification could not be carried out. The Ld. CIT, (A) affirmed the order of AO treating the entire purchases as non genuine. Normally in the business of hawala purchases the modus operandi of the beneficiary is that the accommodation bills are obtained from the hawala operator whereas the material is procured from the grey market and thus the assessee makes savings of VAT and other incidental charges thereon. In such a scenario the coordinate benches of the Tribunal have taken a consistent view that entire purchases cannot be added to the income of the assessee and it is only the profit element embedded in the said alleged bogus purchases which has to be brought to tax. During the year the assessee has shown a gross profit of 14.93% vis-a-vis the GP in the preceding year of 10.34%. Therefore, we are of the opinion that adding 100% purchases to the income of the assessee is not justified and has to be deleted. However, at the same time, we are of the view that some reasonable profit has to be added to the income of the assessee, In view of the decisions of the co-ordinate benches of the Tribunal, we

are of the view that it would be reasonable if these purchases are brought to tax @ 12.5%. Accordingly, we set aside the order of Ld. CIT(A) and direct the AO to add 12.5% of the purchase instead of 100%.

6. In the result, the appeal of the assessee is partly allowed".

6.1 The facts of the case in the present AY. 2010-11 are similar to the facts obtaining in A.Y.2009-10. The GP rate declared by the assessee in A.Y. 2009-10 was 14.93% and the GP rate in the present AY 2010-11 is 14.75% which is nearly the same. In view of the above, it is held that the assessee is a beneficiary of hawala entities and the extra profit element embedded in such hawala purchases is required to be brought to tax. Keeping the appellate history of the case in mind, this extra profit is taken as 12.5% of the bogus purchases of Rs. 11,51,558/-. Accordingly the addition of Rs. 1,43,945/- is confirmed and the balance is deleted. The grounds of appeal are part allowed."

9. The ld. CIT(A) has restricted the addition to 12.5% of the total amount of bogus purchases determined by the AO by following the decision of the co-ordinate bench of the ITAT in assessee's own case ITA No. 1171/Mum/2018 for the AY 2009-10. The ld. CIT(A) has further mentioned in its order that the facts of the present case are similar to the facts of the case of the assessee pertaining to the AY 2009-10. The ld. CIT(A) has further pointed out that GP rate declared by the assessee in the AY 2009-10 was 14.93% and the GP rate in the present case is 14.75% which is nearly the same. Since, the ld. CIT(A) has passed the impugned order by following the decision of the co-ordinate bench, we do not find any reason to interfere with the findings of the ld. CIT(A). Hence, we uphold the decision of the ld. CIT(A) and dismissed the appeal of the revenue.

10. So far as the C.O. filed by the assessee is concerned, there is a delay of 13 days in filing the same and the assessee has filed an application for condonation of delay supported by an affidavit. We further notice that the assessee has supported the order of the Id. CIT(A) in its C.O. Since, we have upheld the order passed by the Id. CIT(A), the C.O. filed by the assessee has become academic. Hence, we do not consider it necessary to adjudicate the grounds of the present C.O. Accordingly, we dismissed the C.O. filed by the assessee.

In the result, the appeal filed by the revenue and the C.O. filed by the assessee are dismissed.

Order pronounced on 31.05.2021 under Rule 34 of the ITAT Rules.

Sd/-
SHAMIM YAHYA
ACCOUNTANT MEMBER

Sd/-
RAMLAL NEGI
JUDICIAL MEMBER

Mumbai, Date: 31.05.2021

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Copy of the Order forwarded to :

1. Assessee
3. The concerned CIT(A)
5. DR "D" Bench, ITAT, Mumbai
6. Guard File

2. Respondent
4. The concerned CIT

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai