

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

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

आयकर अपील सं. / ITA No. 1088/PUN/2017
निर्धारण वर्ष / Assessment Year : 2011-12

Ashoka Buildcon Limited
Ashoka House, S. No.861,
Ashoka Marg, Wadala,
Nashik-422 011
PAN : AABCA9292J

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
Central Circle-1, Nashik

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No. 1135/PUN/2017
निर्धारण वर्ष / Assessment Year : 2011-12

The Deputy Commissioner of Income Tax,
Central Circle-1, Nashik

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Ashoka Buildcon Limited
Ashoka House, S. No.861,
Ashoka Marg, Wadala,
Nashik-422 011
PAN : AABCA9292J

.....प्रत्यर्थी / Respondent

Assessee by : Shri Pramod Shingte
Revenue by : Shri S.P Walimbe

सुनवाई की तारीख / Date of Hearing : 04.10.2021

घोषणा की तारीख / Date of Pronouncement : 04.10.2021

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM:

These cross-appeals preferred by the assessee and Revenue emanates from the common order of the Ld. CIT(Appeals)-12, Pune dated 02.02.2017 for the assessment year 2011-12 as per the grounds of appeal on record.

2. The assessee in ITA No.1088/PUN/2017 has raised following grounds of appeal:

“In view of the facts of the case, evidences on record, submissions made and the provisions of law-

1. *The learned CIT(A) erred in holding the initiation of proceedings u/s.147 and thereby issue notice u/s.148, for the reasons recorded by the AO as valid in law. Therefore, it is prayed to hold the initiation of proceedings u/s.147 as bad in law and thereby annul the assessment order passed u/s.143(3) r.w.s.147.*
2. *The learned CIT(A) erred in disallowing purchases to the extent of Rs.51,85,086/-, being 25% of the purchases made from following parties, disregarding the explanations furnished and the evidences brought on record by the appellant :*

<i>M/s. National Trading Company</i>	<i>Rs.1,25,08,910/-</i>
<i>M/s. Rumeet Enterprises</i>	<i>Rs.30,16,000/-</i>
<i>M/s. Millenium Enterprises</i>	<i>Rs.36,162/-</i>
<i>M/s. Shah Enterprises</i>	<i>Rs.51,79,270/-</i>
<i>Total Purchases</i>	<i>Rs.2,07,40,342/-</i>

Therefore, it prayed to delete the said addition.

3. *The learned CIT(A) erred in not accepting appellant's plea of directing the learned AO to levy interest u/s.234C on tax due as per original ROI. Therefore, it is prayed to accept the said plea of appellant and restrict the levy of interest u/s.234C at Rs.44,76,162/-.*
4. *The appellant craves leave to add/amend/alter any grounds of appeal and/ or prayers before or at the time of hearing.”*

3. The Revenue in ITA No.1135/PUN/2017 has raised following grounds of appeal:

“1) Whether the ld CIT(A) was justified in deleting the addition of Rs.1,55,55,256/- by failing to appreciate that the burden of proving genuineness of purchase lies on the assessee, which the assessee had failed to discharge.

2) Whether the ld CIT(A) was justified in deleting the addition of Rs.1,55,55,256/- by ignoring the fact that the assessee failed to produce transport receipts to establish the movement of goods for which the onus lies on the assessee.

3) Whether the ld CIT(A) was justified in deleting the addition of Rs.1,55,55,256/- by failing to appreciate the fact that all four sellers viz (1) National Trading Co, Mumbai,(2) M/s Rumeet Enterprises, Mumbai,(3) M/s Millennium Minerals & (4) Shah Enterprises, Thane have already been declared as accommodation entry providers by Maharashtra Sales tax Department and hence expenses stand established as non-genuine and bogus.

4) Whether the ld CIT(A) was justified in deleting the addition of Rs.1,55,55,256/- by ignoring the fact that cash had been withdrawn by some of the sellers after receipt of money through banking channel which established that cash had been withdrawn for returning to such person/assessee to give such transaction a color of genuineness and thus, it clearly establishes that the expenses are non-genuine.

5) Any other ground that may be urged at the time of hearing.

4. This is a case of contractor where he had engaged in hawala purchases from reported hawala dealers. During assessment proceedings, the Assessing Officer added 100% of such hawala purchases to the total income of the assessee and this was reduced by the Ld. CIT(Appeals) to 25%. The Revenue wants in their appeal that 25% as restricted by the Ld. CIT(Appeals) should be reversed and that the addition of 100% made by the Assessing Officer should be upheld, whereas, the assessee submitted that whatever were these hawala purchases made, they were consumed and this fact is not disputed even in the order of the Ld. CIT(Appeals) and hence, suitable relief may be provided.

5. Since facts and circumstances involved in these appeals are similar and grounds of appeal are common in respect of the issues involved for both the appeals before us, these appeals were heard together and disposed of vide this consolidated order.

6. The facts in brief are that search action u/s.132 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') was conducted in the case of the assessee on 20.04.2010 and in response of u/s.153A of the Act, the assessee disclosed income of Rs.93,28,87,430/-. During the course of search assessment proceedings, the assessee approached the Hon'ble Settlement Commission offering additional income of Rs.2,01,31,625/- resulting in determination of total income after giving effect to the order u/s.245D(4) at Rs.95,30,19,055/-. Subsequently, Maharashtra Sales Tax Department conducted investigation on various parties who had not remitted VAT to the Department. Office of the DGIT (Inv.) informed the Assessing Officer that the assessee was one of the beneficiary availing bogus purchase bills of Rs.2,07,40,342/- from four different hawala dealers namely M/s. National Trading Company (Rs.1,25,08,910/-), M/s. Rumeet Enterprises (Rs.30,16,000/-), M/s. Millenium Enterprises (Rs.36,162/-) and M/s. Shah Enterprises (Rs.56,79,270/-). In view of this information, the Assessing Officer recorded the reasons to believe that income to the extent of Rs.2,07,40,342/- had escaped assessment and issued notice u/s.148 of the Act.

7. During the course of assessment proceedings, the Assessing Officer asked the assessee to furnish copies of purchase bills, octroi receipts, transportation receipts, weighing slips related to purchases made from the impugned dealers. Before the Assessing Officer, the assessee submitted that the material purchased from alleged hawala dealers was used either in power project sites not falling within any area attracting octroi levy or used in manufacturing of RMC within city of Mumbai and no octroi was required to be paid on the same. That as regards, transportation details, it was submitted that transport charges were borne and paid by the supplier, hence no transport receipts could be available. Thereafter, the Assessing Officer

issued notice u/s.133(6) of the Act on 03.08.2015 to all the four parties and all the notices were returned back by the postal authorities with the remark 'NOT KNOWN'. Similarly, the summons issued u/s/131 of the Act were also returned back with same remark.

8. The Assessing Officer, thereafter, asked the assessee to produce above parties along with relevant documents. The assessee again failed to produce supplier and contended that all the evidences to support genuineness of purchases have already been submitted and purchase prices were paid through banking channels. The Assessing Officer, however, enquired with the banks of these suppliers and noted that immediately after the deposit of cheques issued by the assessee, the cash was either withdrawn immediately or amount was transferred to similar paper entities engaged in paper transactions and entire purchase of Rs.2,07,40,342/- was held as bogus and was disallowed.

9. That before the Ld. CIT(Appeals), the assessee had made detailed written submissions which are on record. That on consideration of such written submissions and the assessment order, the Ld. CIT(Appeals) has held and observed as follows :

"16.4 I have considered the submission made by the appellant and same is not acceptable in toto. All the four impugned suppliers were declared as Hawala dealers by the Maharashtra Sales Tax Department and were allegedly engaged in supplying of accommodation bills. This fact gets further strengthened as the notices/summons issued by the AO were returned back by the postal authorities with the remarks 'Not Known'. Therefore, entities were not genuinely and regularly engaged in business of trading of MS channel etc. Further, the AO carried out enquiries from which it was noted that out of the cheques of Rs.15,00,000/- and Rs.15,16,000/- credited on 28.06.2010 and 29.06.2010 respectively in the accounts of M/s. Rumeet Enterprises Rs.5,00,000/- and Rs.8,00,000/- were withdrawn immediately in cash and Rs.10,00,000/- was transferred to another party M/s. Shah Enterprises which is also one of the Hawala dealer as per the information of VAT department. The AO further gathered that Rs.10,00,000/- transferred to M/s. Shah Enterprises was immediately withdrawn in cash. Remaining amount of Rs.7,00,000/ - was transferred immediately to other similar concern

M/s. Neil Enterprises. MS channels are purchased either from original manufacturer or its authorised dealer. Amounts transferred by M/s. Rumeet Enterprises to other paper entities established that these parties have only issued accommodation bill and thereafter absconded. No genuine dealers having such prestigious client like appellant could have disappeared like this. Therefore, purchases from these parties are not established as genuine. The appellant failed to rebut the findings of the AO demonstrating that these hawala dealers were not the genuine suppliers. However, the appellant's claim that MS channels, GI nuts, cables etc. totalling to Rs.2,07,04,180/- purchased (except sand of Rs.36,162/- from M/s. Millenium Minerals) from three suppliers were used at Power Project sites for which contracts were awarded to it by MSEDCL and its Project Consultant vouched physical receipt of each material at the site cannot be brushed aside. The AO did not controvert the claim that material received at power Project site was verified and for each instance there were material receipt cum handling voucher (MRHDV) signed by the agent of the electricity company. In the circumstances, it can be concluded that material was purchased and used by the appellant at the power project site but same was not supplied by the impugned hawala dealers who had merely issued accommodation bills. Books of accounts of the appellant are not reliable for the reason of debiting accommodation bills and therefore liable to be rejected u/s 145(3) of the Act. In the circumstances when accommodation bills were procured, possibility of inflation of purchases cannot be ruled out. Considering facts and circumstances of the case, it would meet ends of justice if for the year under consideration 25% of purchases made from hawala suppliers are held to be inflated 1 bogus. Similar view has also been taken by the Gujarat High Court in the case of Sanjay Oilcake Industries V. CIT (316 ITR 274) and later on followed in case of CIT Vs. Bholanath Poly Fab Pvt. Ltd. (355 ITR 290). This would result in disallowance of Rs.51,85,086/- on account of non-genuine purchases. Appellant gets relief of Rs.1,55,55,256/- and the ground raised by the appellant is partly allowed."

10. The Ld. CIT(Appeals) in his order observed that the assessee's claim that MS channels, GI nuts, cables etc. totaling to Rs.2,07,04,180/- purchased (except sand of Rs.36,162/- from M/s. Millenium Minerals) from three suppliers were used at power project sites for which contracts were awarded to its by MSEDCL and its project consultant vouched physical receipt of each material at the site which cannot be doubted. The Ld. CIT(Appeals) further observed that the Assessing Officer did not controvert the claim that material received at power project site was verified and for each instances there were material receipt cum handling voucher signed by the agent of the electricity company. In this circumstances , it could be concluded that material was purchased and used by the assessee at the power project site but same was not supplied by the impugned hawala dealers who had

merely issued accommodation bills. Therefore, the Ld. CIT(Appeals) has given finding that materials were purchased and it was also consumed by the assessee at power project sites but for the fact that those materials purchased were not supplied by the impugned hawala dealers who had merely issued accommodation bills and therefore, to meet ends of justice, 25% purchases made from hawala suppliers were held to be bogus and the assessee was given partial relief.

11. We have heard both sides and gone through the relevant material available on record. It is observed that the assessee allegedly purchased raw materials through the Hawala purchase bills and thereafter consumed the same in the power project sites. In such a situation, it cannot be said that the entire amount of hawala purchase bills requires addition. The Hon'ble jurisdictional High Court in **Pr.CIT Vs. Paramshakti Distributors Pvt. Ltd., vide its judgment dated 15.07.2019 in ITA No.413/2017**, has sustained the addition @ 10% of the amount of purchases, being, the profit element involved therein. The relevant extracts of the Hon'ble High Court's decision reads as follows:

"2. The first question pertains to restricting the addition of Rs.23.16 Lakhs to Rs.2,21,600/- by the Tribunal. The Assessing Officer had made the said addition on the ground that the assessee's purchases were found to be bogus. The entire purchase amount was therefore, added to the assessee's income. The Tribunal, however, restricted to the said sum of Rs.2,21,600/-. The Tribunal recorded that the Assessing Officer has not rejected either the purchases or the sales made out of the said purchases. The Tribunal therefore, was of the opinion that the addition should be restricted to 10% of the total purchases. The Revenue strongly disputes this proposition.

3. Without elaboration, what the Tribunal by the impugned Judgment held is that the Department had not rejected the instance of the purchases since the sales out of purchase of such raw material was accounted for and accepted. With above position, the Tribunal applied the principle of taxing the profit embedded in such purchases covered by the bogus bills, instead of disallowing the entire expenditure. We do not find any error in the view of the Tribunal. No question of law arises."

In view of the decision of the Hon'ble Jurisdictional High Court, we are of the considered view that it would be reasonable to sustain addition @ 10% of the amount of bogus purchases, being profit element involved therein. Thus, **grounds of appeal raised by the assessee are partly allowed.**

12. Since the Ld. CIT(A) as per reasoning given in his order has restricted the addition to 25%, which is higher than that approved in the above judicial precedent and therefore, in our considered opinion, there can be no grievance at the end of the Revenue.

13. In the result, **appeal of the assessee in ITA No.1088/PUN/2017 is partly allowed and appeal of the Revenue in ITA No.1135/PUN/2017 is dismissed.**

Order pronounced on 04th day of October, 2021.

Sd/-
R.S.SYAL
VICE PRESIDENT

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 04th October, 2021.

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-12, Pune.
4. The Pr. CIT, Central, Nagpur.
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	04.10.2021	Sr.PS/PS
2	Draft placed before author	04.10.2021	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		