

IN THE INCOME TAX APPELLATE TRIBUNAL  
"F" Bench, Mumbai  
Before Shri Shamim Yahya (AM) & Shri Saktijit Dey (JM)

I.T.A. No.6843 & 6117/Mum/2019  
(Assessment Years 2010-11 & 2011-12)

DCIT, Circle-33(1) Room No.849, 8 <sup>th</sup> Floor Kautilya Bhavan G Block, BKC, Bandra(E) Mumbai-400 051	Vs.	Viashal Praful Mehta A-305, Sairaj Garden CHS Ltd., Iraniwadi Road Kandivali(W), Mumbai-400 067  PAN : AFGPM0875G
(Appellant)		(Respondent)

Assessee by	Shri Akash Kumar
Department by	Shri S.N.Kabra
Date of Hearing	11.11.2021
Date of Pronouncement	12.11.2021

O R D E R

Per Shamim Yahya (AM) :-

These are appeals by the revenue, wherein the revenue is aggrieved that the learned Commissioner of Income Tax (Appeals)-45, dated 05.08.2019 has reduced the addition for bogus purchase done @100% by AO, by sustaining only 12.5% for the assessment years mentioned above.

2. The addition made by the AO and that sustained by Ld.CIT(A) are

A.Y	AO	CIT(A)
2010-11	Rs.2,34,93,259	Rs. 29,36,657
2011-12	Rs. 13,62,577	Rs. 1,70,322

3. Since facts are similar, we are referring to AY 2010-11 facts and figures

4. Brief facts of the case are that Shri Vishal Praful Mehta (hereafter referred to as the assessee or the appellant) is an individual, carrying on the business of Trading in

Iron and Steel in his proprietary concern M/s. Ispat Steel Supplier. The appellant filed his original return of income on 24.09.2010 declaring total income of Rs.52,93,655. The return was processed u/s 143(1) of the I.T. Act, 1961 and case was selected for scrutiny by CASS and order u/s 143(3) was passed on 23.12.2012 assessing total income of the appellant at Rs.4,29,80,520. The appellant filed an appeal before First Appellate Authority and the decision of appeal came in favor of appellant and income of appellant was reduced to Rs.53,96,226. Subsequently, the AO received information from DGIT(Inv.), Mumbai/Sales Tax Department that the appellant had taken bogus purchase entry from various parties during F.Y.2009-10 relevant to A.Y.2010-11 amounting to Rs.5,66,10,977. The assessment was completed u/s 143(3) r.w.s 147 on 18.12.2015 assessing total income at Rs.2,88,86,490 considering the said bogus purchases as non-genuine purchases.

During the assessment proceedings, information was received from the DGIT(Inv.) Mumbai that during the year under consideration the appellant had entered into hawala transactions for purchases amounting to Rs.5,66,10,977 from seven parties. On verification, it was noticed that the TIN status of these parties were found to be "Cancelled". In the original assessment order u/s 143(3) was passed the purchases from four parties only amounting to Rs.3,31,17,718 was already added but the purchases from other three parties of Rs.2,34,93,259 were not considered as bogus purchase in original assessment order. Through order sheet notings, the appellant was asked to furnish details like copy of ledger account of the purchase party, copy of purchase bills, copy of transportation proofs, copy of bank statement, stock / purchase register, etc. In response to the same, the A.R. made written submissions and produced various details. The submission of the appellant was considered but it was not acceptable to the AO for the reasons mentioned in para 4,10 of the assessment order. Hence, the AO held that the appellant failed to prove that the

purchases were genuine and he made the addition 100% of disputed purchases being Rs.2,34,93,259 as bogus purchases.

5. The reasons given by AO in para 10 is as under:-

- a. The assessee submitted invoices from the alleged bogus parties but failed to produce delivery challan. On perusing the record it was found that No supporting document for acknowledgement of receipt of goods was produced by the assessee to confirm that the goods purchased were actually delivered to him.
- b. Mere mention of the purchase in a notebook maintained as stock register does not transpire much confidence in the claim of the assessee that the purchase was genuine.
- c. The production of invoice is of no help to the assessee, since in the activity of accommodation entry; such documents are meticulously maintained both by the entry provider and the entry seeker.
- d. The contention that the payment was made by account payee cheque is not a full-proof method of substantiating assessee's claim as it was already accepted by persons on whom enquiry was done by sales tax department that cash is given back after deduction of commission once the cheque is realized. Further the payment through banking channel does not give certificate to the assessee that the purchases made by him were from, genuine and existing parties. Support is drawn from the decision of the Hon'ble ITAT, Jaipur in the case of M/s Kachwala Gems vs JCIT (ITA No 134/JP/2002 dated 10.12.2003) affirmed by the Hon'ble Supreme Court in the case of M/s Kachwala Gems vs JCIT (2006) 206 CTR (SC) 585:288 ITR 10(SC), it has been held that even payment by account payee cheque is not sufficient to establish the genuineness of purchases.

e. Assessee did not produce the purchase party for verification, The onus to prove the genuineness of existence of the party lies on the assessee. The assessee failed to discharge this responsibility. No serious efforts were made by the assessee to discharge such burden proving the genuineness of the transaction with these parties. In this regard reliance is place on decision of Calcutta High Court in the case of CIT vs Korlay Trading Co. Ltd reported in 232 ITR 820 where the Hon'ble court has held that the initial burden is on the assessee to prove the genuineness of purchases.

6. Upon assessee's appeal Ld.CIT(A) restricted the addition to 12.5% by holding as under:-

“ I have gone through the assessment order. The AO held in the assessment order that even though the appellant produced the details (para 4.7), on account of non- production the parties the AO added 100% of bogus purchases. It is surprising that the AO himself in para 4.9 discussed the case of Vijay Proteins vs ACIT 58 ITD 428 and also admitted that the sales were genuine on the ground that without receiving material corresponding sales would have not been possible. Despite coming to the conclusion that the assessee may have purchased from grey market for making some extra profit, he added 100% of the purchases which is illogical. It is seen that many Benches of ITAT and Hon'ble High Courts have held that when purchases are supported by sufficient documentary evidences then one cannot conclude that the purchases were not made by the assessee. This is not a case in which the signed blank cheque books etc. found with the buyer to say that the purchases of material were not at all made but entered in the stock to inflate the raw material. Therefore the decision of the Supreme Court in the case of N K Proteins Ltd 250 taxman 0022(SC) would not apply to the case. In the case of Nangalia Fabrics 40 taxmann.com 206, Gujarat High Court has held that where purchases were supported by the bills, entries were made in the books of accounts and payment was made by cheque, the said purchases could not be held as bogus. In many decisions the jurisdictional ITAT, Mumbai, has upheld addition of a percentage of alleged bogus purchases under similar facts.

It is also a fact on record that the Assessing Officer has not doubted the sales affected by the appellant. When the payment to the concerned parties are through proper banking channel and there is no evidence before the AO that the payments made were again routed back to the appellant, the addition of entire alleged bogus purchases is not sustainable in law and facts. Only corollary that follows in such situation is that the appellant could have obtained the accommodation bills from the said party for the materials purchased by it locally in grey market as correctly observed by the AO in para 4.9 of the order. Therefore the saving on account of VAT

and other incidental charges made by the appellant on the said bogus purchases can be brought to tax as additional profit. Keeping in view the totality of facts, the disallowance made by the AO is restricted to 12.5% of such purchases. The AO is directed add 12.5% of Rs. 2,34,93,259/- working out to Rs. 29,36,657/- and modify the addition accordingly.”

7. Against the above order, revenue is in appeal before the ITAT. We have heard both the parties and perused the record.

8. We find that in this case, the sales and other working have not been doubted. It is settled law that when sales and other working are not doubted, 100% disallowance for bogus purchase cannot be done. The rationale being no sales is possible without actual purchases. This proposition is supported from Hon'ble jurisdictional High Court decision in the case of Nikunj Eximp Enterprises( in Writ Petition No.2860, order dated 18.06.2014). In this case, the Hon'ble High Court has held that 100% disallowance for the purchases said to be bogus cannot be done, when sales are not doubted. Furthermore, Hon'ble Jurisdictional High Court in the case of Shapourji Pallonji & Co. Ltd. (supra) vide order dated 4.3.2020 has held as under:-

"18. Thus, we find that according to the Tribunal the assessing officer had merely relied upon information received from the Sales Tax Department, Government of Maharashtra without carrying out any independent enquiry. Tribunal had recorded a finding that assessing officer had failed to show that the purchased materials were bogus and held that there was no justification to doubt genuineness of the purchases made by the respondent - assessee.

19. We are in agreement with the views expressed by the Tribunal. Merely on suspicion based on information received from another authority, the assessing officer ought not to have made the additions without carrying out independent enquiry and without affording due opportunity to the respondent - assessee to controvert the statements made by the sellers before the other authority. Accordingly, we do not find any good ground to entertain this question for consideration as well.

20. Consequently, we find no merit in the appeal preferred by the Revenue. Appeal is dismissed."

9. However, the facts of the present case indicate that assessee has made purchase from the grey market. Making purchases through the grey market gives the assessee savings on account of non-payment of tax and others at the expense of the exchequer. In such situation, in our considered opinion on the facts and circumstances of the case the 12.5% disallowance out of the bogus purchases done by the Ld.CIT(A) meets the end of justice. Accordingly, we uphold the order of Ld.CIT(A).

10. The decision of N.K.Protiens relied by the revenue was a dismissal of SLP by the Hon'ble Supreme Court and has already been explained and distinguished by Hon'ble Bombay High Court in the case of Mohammad Hazi Adam & Co in ITA No.1004 of 2006, dated 11.02.2019.

11. In the result, these appeals filed by the revenue are dismissed.

12. Before parting, we may add that if the assessee has filed a cross-appeal or cross-objection, and the same has remained unheard, either party may apply for recall of this order so that the appeals can be heard together.

Pronounced in the open court on 12.11.2021.

Sd/-  
(SAKTIJIT DEY)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 12/11/2021  
*Thirumalesh, Sr.PS*

Copy of the Order forwarded to :  
The Appellant

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

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai