

**IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI**

**BEFORESHRI KULDIP SINGH, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

ITA No.1801/Mum/2020- (A.Y 2010-11)

Sanjay Hirachand Dhokad 401, Adeshwar Apts Sayani Road, Khed Gally, Prabhadevi, Mumbai – 400025	Vs.	ITO, Ward 32(3)(3) Kautilya Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai - 400051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :ADFPD2155F		
Appellant	..	Respondent

Appellant by :	Bhupendra Shah
Respondent by :	B.K. Bagchi

Date of Hearing	10.02.2022
Date of Pronouncement	28.03.2022

आदेश / ORDER

PER AMARJIT SINGH, AM:

The present appeal filed by the assessee is directed against the order passed by the CIT(A), Mumbai, which in turn arises from the assessment order passed by the A.O u/s 143(3) r.w.s 147 of the Income Tax Act, 1961, dated 11.03.2016 for A.Y. 2010-11. The assessee has assailed the impugned order on the following grounds:

- “1. *In the facts and the circumstances of the case and in law, the learned AO erred in passing the order u/s 143(3) r.w.s 147 by reopening the assessment for a second time u/s 148 by mere change of opinion which is bad in law as per the judgement of SC in the case of Kelvinator of India Ltd (320 ITR 561 SC) even though objections were raised in this regard by the appellant u/s 292BB and therefore rendering the whole re assessment bad in law, also on the basis of borrowed satisfaction, presumption and surmises.*

2. *In the facts and circumstances of the case and in law, the Assessing Officer erred disallowing Rs.36,41,544/- as alleged non genuine purchases being 12.5% of the total purchases amounting to Rs.2,91,32,359/-.*
 - a) *In the facts and the circumstances of the case and in law, the learned AO erred in disallowing 36,41,544/- as alleged non genuine purchases being 12.5% of the total purchases amounting to Rs.2,91,32,359/- even though the payment for purchases is made from the books by A/C payee cheques and cannot be termed as non-genuine even though the same has been fully allowed by the jurisdictional Mumbai Tribunal in his own case of Shri Sanjay Dhokad [9297/Mum/2015] & [ITA 5243/Mum/2013] and in the case of sister concern Hi Rock Construction Company [ITA 9607Mum72015].*
 - b) *In the facts and the circumstances of the case and in law, the learned AO erred in disallowing Rs.36,41,544/- as alleged non genuine purchases being 12.5% of the total purchases amounting to Rs.2,91,32,359/- only on the basis of the information on the website www.mahavat.gov.in about 4 suspicious dealers whose copy of statement recorded were not furnished to the applicant.*
 - c) *In the facts and the circumstances of the case and in law, the learned AO erred in disallowing Rs.36,41,544/- as alleged non genuine purchases without appreciating the fact that no addition can be made if the suppliers are not traceable as per the judgment of the Bombay High Court.*
 - d) *In the facts and the circumstances of the case and in law, the learned AO erred in disallowing Rs.36,41,544/- as alleged non genuine purchases even though the payments were made by A/C payee cheques from the disclosed bank accounts.*
3. *In the facts and the circumstances of the case and in law, the learned AO erred in levying penalty u/s 271(1)(c) and charging interest u/s 234A,B & C.*
4. *In the facts and circumstances of the case and in law, the Commissioner of Income Tax(A) erred in confirming the above grounds.”*

2. Fact in brief is that return of income declaring total income of Rs.37,60,430/- was filed on 27.09.2010. The case was subject to scrutiny and assessment u/s 143(3) of the Act was finalized on 27.02.2013 determining total income at Rs.5,36,88,100/-. Subsequently, the assessment was reopened u/s 147 of the Act by issuing of a notice

u/s 148 of the Act on 17.10.2014. The assessee is an individual and engaged in the business of civil contractor. The A.O received information from the sales tax department, DDIT(Inv.), Mumbai, that assessee had made bogus purchases from hawala parties who were indulged in providing accommodation bills to the needy parties. As per the information received assessee has obtained bills of bogus purchases from the following parties:

TIN	Name of the party	Amount (in Rs.)
27420506930V	Anmol Industries	13,12,895/-
27060536519V	S.V. Trader	66,49,341/-
27380556131V	Sam Enterprises	9,45,667/-
27770700786V	Prince Trading co.	1,86,68,835/-
27720714054V	Kumar Enterprises	2,50,128/-
	Total	3,00,78,026/-

It is also stated that no actual goods or services were delivered by these parties to their customer and they have issued only bogus bills after charging small commissions. The assessing officer observed that assessee had obtained accommodation entries of amount of Rs.3,00,78,026/- to inflate the purchases. Therefore, proceeding u/s 147 of the Act were initiated after recording valid reasons and notice u/s 148 of the Act was issued on 17.10.2014. The assessee has objected to the reopening of the case stating that the reassessment on the basis of material which was considered during the original assessment cannot be made as it amounts to mere a change of opinion. The A.O has disposed off the objection raised by the assessee by written communication elaborated at Page 5 to 6 of the assessment order. It is stated that new information was received regarding the bogus purchases except one party which were not considered earlier. During the course of reassessment the assessee has furnished copies of purchase bill and detail of payment made through account payee cheques and have also

submitted that the material purchases was used for the civil contract work executed during the year under consideration. The assessee has also furnished confirmed copy of account of concerned parties. The assessee has also submitted that without purchases of goods the contract work cannot be completed. To verify the genuineness of purchases made from the aforesaid parties, the A.O issued notices u/s 133(6) of the Act and stated that notice was either received back unserved or no information was received from the parties. The A.O issued summons in the name of the parties and asked the assessee to serve so that they can attend before the A.O for investigation however the A.R of the assessee expressed inability to produce the parties. On query the authorized representative of the assessee vide letter dated 03.03.2016 agreed before the A.O to make addition of 12.50% of the purchases made from these parties. Notices issued were not delivered and inquiry conducted by the inspector established that the parties were not existed on the address mentioned in the bills furnished by the assessee. After taking into consideration the submission of the assessee the disallowance of bogus purchases was restricted to the extent of 12.5% of bogus purchase which comes to Rs.36,41,544/- (12.5% of Rs.2,91,32,559/-).

3. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The ld. CIT(A) held that assessee himself offered 12.5% of the disputed purchases to tax by filing a letter on 03.03.2016 during the course of assessment proceedings, therefore, the ground of appeal of the assessee was dismissed.

4. During the course of appellate proceedings the ld. Counsel contended that reopening of the case is not justified as the same was

reopened merely by change of opinion as the same material was examined by the assessing officer at the time of original assessment completed u/s 143(3) of the Act. The ld. Counsel has also referred detail and copies of document placed in the paper book furnished during the course of assessment and also referred the judicial pronouncement.

On the other hand, the ld. D.R has supported the order of the lower authorities.

Ground No. 1

5. Heard both the side and perused the material on record. The assessment u/s 143(3) of the Act in the case of the assessee was completed on 31.03.2017. Subsequently, the case was reopened by the assessing officer on the basis of information received from the DGIT(Inv.), Mumbai, (Sales Tax Department) that the assessee had obtained accommodation bills from parties who were indulged in providing bogus bills of purchases without supplying any material. As elaborated in the findings of the ld. CIT(A) at para 3.3 of the order that new information was received in respect of bogus purchases made from some new parties which were not examined earlier by the A.O. The A.O has categorically stated in para 2.1 of his order that one party Sam Traders was covered under the original assessment and purchases from said party was not considered in the reassessment order. After recording satisfaction and demonstrating that there existed reason to believe the A.O had issued notice u/s 148 of the Act. On perusal of the above it is clear that there was prima facie some material on the basis of which the case was reopened. Looking to the above facts and circumstances we don't find any force in the contention of the assessee that the same issue was examined by the assessing officer at the time of original assessment proceedings. Therefore, we are of the considered view that there was

prima facie some new material i.e information received from DGIT(Inv.) and Sales Tax Department, regarding obtaining accommodation bills of purchases from the hawala parties on the basis of which the case was reopened, therefore, we do not find any merit in the ground of 1 of the assessee, therefore, the same stand dismissed.

Ground 2a to 2d

6. Without reiterating the fact as discussed supra in this order, the case was reopened u/s 147 of the Act to verify the genuineness of bogus purchases alleged to be made from same parties on the basis of new information received. The A.O asked the assessee to furnish all the relevant evidences to establish that goods were actually purchased. The assessee submitted copies of purchase invoices, ledger account, bank account, statement highlighting the payment etc. However, notice issued by the A.O u/s 133(6) of the Act returned unserved and no replies were received from the sale parties. Thereafter, assessing officer has issued summons in the name of the parties and asked the assessee to serve so that such parties can attend before the assessing officer for verification and examination of the claim of purchases made by the assessee. Thereafter, the assessee expressed inability to produce the parties and filed a letter dated 03.03.2016 and offered 12.5% of unproved purchases from these parties for addition to total income. The Id. CIT(A) has elaborated in his finding that neither during the time of assessment proceeding nor during the course of appellate proceedings, the assessee could submit the evidences of actual movement of goods under consideration from such party i.e no lorry receipt not any proof of transportation was submitted. The Id. CIT(A) has rightly stated that in absence of any third party evidences it cannot be held that assessee has proved that the material under consideration were purchased from the

parties whose name were appearing in the books. The Id. CIT(A) has also rightly stated that facts and circumstances of the case suggest that the assessee had purchased goods under consideration not from the referred party but from some other supplier in grey market may be without bills, therefore, purchase prices mentioned in the alleged accommodation purchase bills cannot be accepted because, the assessee had made purchases at a lower price and inflated its purchases by showing at higher prices from the alleged hawala entry provided parties. The judicial pronouncement referred in the paper book are distinguishable from the facts of the case of the assessee since, assessee himself has not proceeded for further investigation in the case by producing the said parties and offered that disallowance be made at 12.5% of the such purchases, therefore, we do not find any infirmity in the decision of Id. CIT(A). Accordingly, this ground of appeal of the assessee stand dismissed.

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

Order pronounced in the open court on 28.03.2022

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated 28.03.2022

PS: Rohit

आदेश की प्रतिलिपि ढ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,
सत्यापित प्रति //True
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(Asst. Registrar)
ITAT, Mumbai