

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri Shamim Yahya, Accountant Member

I.T.A. No. 591/Mum/2021
(Assessment Year 2009-10)

ITO, Ward-3(1) Kalyan(W) Mumbai-421 301	Vs.	Bharat Chunilal Doshi 2 nd floor, Shriniwas bldg Op.Mahajan Printing Press Shiv Mandir Road Dobmivali(E) Mumbai-421 201 PAN : AASPD3146Q
(Appellant)		(Respondent)

Assessee by	None
Department by	Shri T.Sankar, Sr.AR
Date of Hearing	10.01.2022
Date of Pronouncement	23.03.2022

O R D E R

Per Shri Shamim Yahya (AM) :-

This appeal by the revenue is directed against the order of learned Commissioner of Income Tax (Appeals)-1 dated 06.02.2020 and pertains to assessment year 2009-10.

2. Grounds of appeal read as under:-

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A)-1, Thane erred in deleting the addition of Rs. 8.94.261/- out of the total addition of Rs. 10,96,581/- made on account of bogus purchases, despite holding that the purchases were not genuine and the assessee failed to prove genuineness of the transactions.
2. On the facts and in the circumstances of the case and in law, Ld. CIT(A)-1, Thane erred in deleting the above addition despite the fact that the assessee failed to discharge his onus of proving the purchases.

3.The appellant prays that the order of the Ld. CIT(A)-1, Thane, may be set-aside and that of the Assessing Officer be restored.

3. Brief facts of the case are that in this case the AO had received information from Sales Tax Department, through higher authorities that the assessee had affected purchases amounting to Rs. 8,40,975/-, from M/s. Ashok Metal & Tubes(Rs. 2,58,700/-) and Laxmi Trading Co (Rs. 5,82,275/-). These parties in their statements/on the basis of spot verification/survey action, etc., duly admitted the fact that they have not actually delivered any goods, but had merely provided the bills and refunded back cash to the buyers, after deducting nominal commission.

In view of the above facts, the AO, after recording necessary reasons/satisfaction for reopening, as per provisions of Sec 147 of the I T Act, 1961, had issued notice u/s 148 of the Act, which was duly served upon assessee. In compliance the assessee submitted a copy of return of income along with audit report and requested to treat the said return as return in response to notice u/s 148 of the Act. During the course of reassessment proceedings, the assessee was requested to furnish names & addresses of parties from whom purchases/sales were made, ledger account extract of purchases made from alleged hawala dealers along with their confirmation, purchase bills, delivery challan, lorry receipts, stock register, requisite certificate from Excise department to transport hazardous chemical etc. On verification of the purchase bills and ledger extract, the AO observed the purchase amounting to Rs 2,55,606/- made from Dimple Metal Industries was also suspicious. The AO deputed inspector of Income tax to ascertain the whereabouts of Dimple Metal Industries, who in-turn reported that the said vendor could not be traced.

In order to verify the purchases claimed by the assessee, the A.O. deputed an inspector to verify and serve letters u/s 133(6) of the Act issued to these vendors from whom assessee had claimed certain purchases, but the notices issued by the AO were

returned un-served by the Inspector with remarks that these vendors are not available at the given address and on enquiries where about of these operators is not known. In view of the above fact, the AR of the assessee was requested to produce the above hawala parties for verification in person In compliance the assessee vide written submission contended that he had received the bills as well as goods for manufacturing purpose and also paid the amount by account payee cross cheques and there is no bogus purchase or hawala transaction. The assessee further contended that no sales were likely to be affected if there were no purchases. The assessee further stated that to avoid litigation and to buy peace of mind and save money and time on litigation and to use said time for constructive purpose and due to other personal reasons, the assessee agreed for addition of 100% of alleged bogus purchases of Rs 10,96,581/-. Moreover the AO on verification of the audit report, noticed that the assessee was not at all maintaining stock register in his business, therefore, the AO rejected the books of account u/s 145(3) of the Act by holding that the books of account of assessee cannot be stated as correct and complete. The AO, therefore, treated the entire purchases as unproven purchases and added Rs. 10,96,581/- to the income of the assessee by disallowing the entire investment in such alleged bogus purchases, u/s 69C of the Act,

4. Upon assessee's appeal, Id.CIT(A) held as under:-

“I have considered the facts of the case and the submission of the appellant. As the relevant purchases have been debited to the P&L Account and claimed as deduction in computing the profits of the business chargeable to tax, the onus was on the appellant to prove the genuineness of the purchases with satisfactory evidences. It is observed that the appellant, during the course of assessment proceedings has produced the copies of bills, showing material purchased from the alleged hawala parties. However, the fact remains that information called for from the alleged bogus parties u/s 133(6) of the Act by the AO, remained un-served and was returned by the ward inspector who was deputed to serve these notices. The AO requested the appellant to produce the parties but the appellant failed to do so. It is noted that the AO was in possession of information received from the Sales Tax Department, indicating strongly that the supplier concerned was only providing accommodation

entries and was not carrying out any real business. Thus, the onus that was cast on the appellant was of a greater degree to prove the genuineness of the party as well as these purchases. Under these circumstances the claim of the appellant that the said purchases are genuine cannot be accepted in totality.

There cannot be any dispute about the well settled legal proposition that tax can be levied only on real income. It is elementary rule of accountancy as well as of taxation laws that the profit from business cannot be ascertained without deducting cost of purchase from sales, otherwise it would amount to levy of income tax on gross receipts or sales. Such recourse is not permissible unless it is specifically authorized under any provisions contained in the Act. The Hon'ble Jurisdictional High Court in the case of Harima Bharubhai - ITA No. 313 of 2013) has held that only the profit attributable to the unaccounted sales can be brought to tax. It is further observed that the Hon'ble Gujarat High Court in the case of Simit P Seth (38 taxmann 385) has held that not the entire purchases but only the profit element embedded in such purchases can be added to the income of the assessee. Similar view has been taken by the Gujarat High Court in the cases of Vijay M Mistry Construction Pvt Ltd(355 ITR 498), Bholanath Polyfab(P) Ltd (355 ITR 290) and Vijay Proteins Ltd. (58 taxmann 44)

Considering the facts of case and in view of various decisions as discussed above, it is held that only profit element of 18.45% embedded in the bogus purchases of Rs. 10,96,581/- that is Rs. 2,02,320/- is to be added to the income of appellant. Accordingly, the addition of Rs. 2,02,320/- is confirmed and balance amount of Rs. 8,94,261/- is deleted and the above grounds of appeal are partly allowed.”

5. Against the above order, revenue is in appeal before ITAT. I have heard the Ld. DR and perused the record.

6. I find that in this case, the sales have not been doubted it is settled law that when sales 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 upheld 100% disallowance for the purchases said to be bogus, when sales are not doubted. 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 my considered opinion on the facts and circumstances of the case, the disallowance out of the bogus purchases done by the Ld.CIT(A) meets the end of justice. Accordingly, I uphold the order of Ld.CIT(A).

7. 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.

8. In the result, this appeal filed by the revenue stands dismissed.

Pronounced in the open court on 23.03.2022

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 23 .03.2022

Thirumalesh, Sr.PS

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai