

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.7790/M/2019
Assessment Year: 2009-10**

Shri Himmatlal G. Thakkar, 55-E, Kedarnath Chawl, Dr. Ambedkar Road, Khar West, Mumbai – 400 052 PAN: AAAPT4805A	Vs.	Income Tax Officer, Ward – 22(1)(5), Piramal Chambers, Lal Baug, Parel, Mumbai - 400012
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri Rajat Mittal, D.R.

Date of Hearing : 04 . 05 . 2022
Date of Pronouncement : 31 . 05 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, Shri Himmatlal G. Thakkar (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 17.09.2019 passed by Commissioner of Income Tax (Appeals)-34, Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2009-10 on the grounds inter alia that :-

“Being aggrieved by the Assessment Order of the Learned Income Tax officer, Ward 22(1)(5), the Learned Assessing officer, hereinafter referred to as "LAO", subsequently partly allowed by the Appeal Order of the Learned Commissioner of Income Tax (Appeals)

34 (Hereinafter referred to as the "CIT(A)'), this appeal petition is submitted on the following grounds: -

1. The Learned Assessing Officer hereinafter known as LAO, has erred in law, facts and circumstances of the case by disallowing the full purchase of Rs. 4,24,997/- made from M/s K C Enterprises and 15.72% of Purchases of so called bogus purchases of Rs. 42,06,771/- amounting to Rs.6,61,304/- on the ground that on account of suppression of profits by the assessee by making non-genuine purchases.

2. Under the circumstances and facts of our case, the LAO failed to appreciate that all the details of purchases such as copies of invoices, copies of bank accounts reflecting relevant payment made to suppliers and ledger accounts etc. therefore, appellant prays that the adhoc disallowance is without any justification and liable to be deleted.

3. The CIT(A) has reduced the above addition from 15.72% to 12.5% of purchases so-called as bogus purchases of Rs. 42,06,771/- on adhoc basis and upheld disallowance of full purchase of Rs.4,24,997/- made from M/s K C Enterprises.

4. The order under appeal is not only bad in law and invalid, but also against the natural law of Equity and justice and needs to be cancelled.

5. Appellant craves leave to add, amend, alter, delete and / or modify the above Grounds of Appeal on or before the final date of hearing.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : the assessee filed its return of income for the year under consideration on 29.09.2009 declaring total income of Rs.1,76,653/- and it was found by the Assessing Officer (AO) that assessee has income from business and other sources. Subsequently on receipt of information from the Sales Tax Department to the Director General of Investigation, Mumbai that assessee has availed of accommodation bills from 18 entities to the tune of Rs.46,31,768/- without taking supply of the goods. Consequently the AO recorded reasons for reopening, issued notice under section 148 of the Income Tax Act, 1961 (hereinafter referred

to as the 'Act') and requisitioned complete details qua the purchases particularly the purchases from the suspicious dealers. Assessee provided certain details viz. purchase bill, copy of ledger account etc. AO also issued notice to verify the genuineness of such purchases under section 133(6) of the Act. All the verifications came back unserved except in case of one party namely M/s. K.C. Enterprises, who vide letter dated 15.07.2015 denied having any transaction with the assessee during A.Y. 2009-10. On failure of the assessee to supply requisite details to prove the genuineness of the parties and payment made, the AO made addition of Rs.10,86,301/- (Rs.4,24,997/- being the full claim of purchase from M/s. K.C. Enterprises and Rs.6,61,304/- being the 15.72% i.e. @ gross profit of the assessee of balance claim of the purchases from hawala dealers i.e. Rs.42,06,771/-) on account of suppression of profit of the assessee by making non genuine purchase and thereby framed the assessment under section 143(3) read with section 147 of the Act.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has restricted the disallowance to the extent of 12.5% of the purchases made from the suspicious dealers by following the decision rendered by Hon'ble Gujarat High Court in case of Simit P. Seth 356 ITR 461 (Guj.). Feeling aggrieved the assessee has come up before the Tribunal by way of filing present appeal.

4. Despite issuance of the notice to the assessee none appeared on behalf of him, so the Bench decided to decide this appeal on the

basis of material available on record with the assistance of the Ld. D.R. for the Revenue.

5. We have heard the Ld. Departmental Representative for the Revenue, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and case law relied upon.

6. Perusal of the findings returned by the Ld. CIT(A) goes to prove that the issue in controversy has been decided by thrashing the facts on the basis of law laid down by the Hon'ble Gujarat High Court in case of Simit P. Seth (supra) by returning following findings:

“4.6, In view of the above, it is an admitted fact that Sales Tax Department has conducted search and seizure operation and has established large number of companies/firms/partnership concerns as hawala dealers who are engaged in accommodation entries without actually supplying the goods. The appellant is one of the beneficiary and has received such accommodation bills from 18 hawala operators totaling to Rs. 46,31,76S/-. The A.O. attempted to verify such parties by making independent enquiries u/s. 133(6) of the I.T. Act, 1961. However, all these verification letters came back unserved except in one party namely, M/s. K.C Enterprises. M/s. K.C Enterprises vide its letter dated 15.07.2015 denied of having any transaction with the appellant during the AY 2009-10. The onus shifted on the appellant particularly in the background of finding of Sales Tax Department, Mumbai, The appellant filed certain details such as purchase bills, ledger account, bank statement etc. However, some of the specific details required to establish the genuineness of purchase such as evidence of transportation of goods, entry of goods in the stock register, one to one consumption pattern of alleged purchase items, confirmation from the parties concerned etc could not be submitted before the AO. Nor the Principle Officer of these concerns was produced before the AO for examination. However, it is also a fact that the AO has not questioned the total sale component and if there is a sale, there should be purchase. The appellant being a trading concern, has indulged in using such accommodation entry. As evident from catena of judgments on bogus purchases, only the benefit derived by using such accommodation entries has to be brought to tax. The advantages from using such bogus bills are in the form of saving VAT, saving of transportation 'charges and various

taxes etc. The AO has rightly disallowed part of the purchases claimed such hawala dealers. However, in my opinion, the ratio of the judgment of Hon'ble Gujarat High Court in the case of Simit P. Seth 356 ITR 461 (Guj.) is applicable to the facts and circumstances of the appellant's case. Here, the Hon'ble Court has held that disallowance of 12.5% of the purchases from such hawala dealers will be justified based on the premise that the appellant have derived benefit to this extent based on his nature of business. Thus the disallowance of purchase is upheld in principle but it should be based on ratio of Simit P. Seth 356 ITR 461 (Guj.) as the appellant is a trader not manufacturer. Thus the A.O. is directed to restrict the disallowance to the extent of 12.5% of purchase from suspicious dealers.”

7. So we are of the considered view that when the entire addition has been made on the basis of information received from the investigation wing of Sales Tax Department, Government of Maharashtra and no independent enquiry has been conducted by the AO but it has otherwise come on record that the entire alleged purchases have been made by the assessee from hawala dealers and in these circumstances the principle laid down in case of Simit P. Seth (supra) that gross profit to be earned by the assessee in case purchases were to be from actual dealer against supply and on the basis of past gross profit earned by the assessee in his business. The Ld. CIT(A) has rightly restricted the addition to the extent of 12.5% of the purchases from the suspicious dealer. So finding no illegality or perversity in the impugned order passed by the Ld. CIT(A), the appeal filed by the assessee is hereby dismissed.

Order pronounced in the open court on 31.05.2022.

**Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 31.05.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.