

**IN THE INCOME TAX APPELLATE TRIBUNAL, NAGPUR BENCH,
NAGPUR**

BEFORE SHRI SANDEEP GOSAIN, JM & SHRI ARUN KHODPIA, AM

ITA No. 472/NAG/2016
Assessment Year: 2009-10

The ITO Ward 2(2) Room No. 315, 3rd Floor Aayakar Bhawan Telangkhedi Road, Civil Lines, Nagpur	Vs.	Ramsingh Balbirsingh Swanni Prop: Industrial Supply Syndicate BF-2, Amar Vihar, Kamptee Road Nagpur
PAN No.:AYBPS 9233 L		
Appellant		Respondent

Revenue by :Shri Vitthal M Bhosle JCIT-DR
Assessee by: Shri Abhay Agarwal, Advocate

Date of Hearing: 26/04/2022
Date of Pronouncement: 21/07/2022

ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal has been filed by the Department against the order of the Id. CIT (A)-4, Nagpur dated 17/05/2016 passed u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 for the A.Y. 2009-10 wherein the Department has raised the following grounds of appeal.

- (1) Whether on the facts and circumstances of the case, the Id. CIT(A) is justified in deleting the addition of Rs.1,16,60,724/- made by the Assessing Officer on account of bogus purchases through Hawala Dealers.
- (2) Whether on the facts and circumstances of the case, the Id. CIT(A) is justified in deleting the addition of Rs.;2,16,60,724/-

without appreciating that the purchase bills, delivery memos produced by the assessee were signed by the unauthorized and unknown persons as proprietor as discussed in details in the assessment order.

(3) Whether on the facts and circumstances of the case, the Id. CIT(A) is justified in deleting the addition of Rs.2,16,60,724/- on the ground that the assessee was not informed by the Assessing Officer about the denials made by the two Hawala Dealers whereas it is clearly mentioned in the assessment order that the same was confronted to the assessee.

(4) Whether on the facts and circumstances of the case, the Id. CIT(A) is justified in deleting the addition of Rs 2,16,60,724/- without appreciating the fact that the Assessing Officer has provided a number of opportunities to the assessee to substantiate the validity of those bogus purchase bills but the assessee never asked to cross examine the Hawala Dealers nor asked any affidavit copy submitted by Hawala Dealers in this regard.”

2.1 The brief facts of the cases are that the assessee is an individual and engaged in the business of trading in Bitumin, furnace oil, LDO, Lubricants etc. under the name and style of M/s, Industrial Supply Syndicate, Nagpur. The return of income declaring total income of Rs.4,80,390/- was filed on 24-09-2009 by the assessee. The AO had received certain information from DGIT(Inv.), Pune that the assessee was one of the beneficiaries of hawala transactions as per enquiry made by the Sales Tax Department and that the assessee had claimed purchases of Rs.2,16,60,724/- from various parties whereas no corresponding material was received in respect of such purchases. Consequently, the AO carried out a survey u/s 133A of the Act at the business premises of the assessee on 11-02-2013. The

AO subsequently issued a notice u/s 148 of the Act on 19-02-2014 after recording the reasons for reopening the case. During the course of assessment proceedings, it was noted by the AO that the total purchases of the assessee for the year under consideration was to the tune of Rs.3,77,17,500/-. This purchase included purchases from 12 parties amounting to Rs.2,16,60,724/- which were identified by the Sales Tax Department as hawala dealers. The AO issued notice u/s 133(6) of the Act to each of the 12 parties. Two parties out of the same i.e. M/s. Chirag Corporation and Shree Yamuna Impex replied back through the letter to the AO and confirmed that they have not done any business transactions with the assessee. Letters issued to 08 parties were returned back by the Postal Department with the remarks "Not found". During the course of assessment proceedings, detailed submissions were filed by the assessee before the AO and it was submitted that the transactions were genuine and the goods were actually received by the assessee. The assessee had also filed various documentary evidences in support of its contentions before the AO who considered the submissions of the assessee but finalized the assessment after making an addition of Rs.2,16,60,724/- on account of bogus purchases.

2.2 Aggrieved by the order of the AO, the assessee filed an appeal before the ld. CIT(A) wherein the assessee had reiterated its submissions as made before the AO. The AO had made additions towards alleged bogus purchase only on the basis of

the report of DGIT(Inv.) without bringing on record any contrary evidences to prove that purchases from 12 parties were bogus in nature despite the assessee having furnished complete set of documentary evidences in support of genuineness of purchases. The assessee had also filed complete stock details. However, the AO neither rejected the books of accounts nor pointed out any defects in the books. It is also noted that in first appeal, the Id. CIT(A) has deleted the addition of Rs.2,16,60,724/- by giving a detailed finding as under:-

"6. I have perused the submissions made and have gone through the statement recorded. I have also perused the various judicial pronouncements on this issue. There is substantial merit in the submissions made. The main arguments taken up by the appellant are as under:-

- 1) Complete quantitative details were produced before the Id. AO.
- 2) The sale side of the appellant has never been doubted and hence purchases cannot be held to be bogus.
- 3) Findings of the Survey further strengthen the case of the appellant.
- 4) No opportunity was given to cross-examine various sellers or the findings of the Sales Tax Department.
- 5) There are valid reasons for absence of Octroi receipts and transportation receipts.

7. Each of the above arguments of the appellant shall now be considered on greater detail. The first argument of the appellant is that it furnished before the Ld. AO complete quantitative details in respect of each of the items in which the appellant had traded during the year under consideration. The appellant has also furnished detailed quantitative details in respect of each of the items on a daily basis showing the daily position of stock of each item. On perusal of the above quantitative details, it is evident that the appellant has been able to properly explain, with supporting evidences, that it can submit complete item-wise quantitative tally. As a matter of fact during the course of Survey also this issue was raised by the Ld. AO, and it was explained by the appellant that though it

ITO, WARD 2(2), NAGPUR VS RAMANSINGH BALBIRSINGH SWANNI was not maintaining a daily stock register, his computer did contain all quantitative details and that the same would be furnished during the course of assessment proceedings. The relevant questions and answers are reproduced hereunder for ready reference:

प्र.१७: क्या आप अपने व्यवसाय से संबंधित जो भी माल खरीदी किये हैं उसका विवरण आइटम वाइज (Item wise) दिनवार (Day wise) तथा मूल्यानुसार (Value wise) वर्ष २००८-०९ के लिए बता पायेंगे जबकि आप के फर्म में स्टॉक रजिस्टर नहीं बना था?

उ. जी हां, उक्त विवरण हम दिनवार आइटम वाइज एवं मूल्यानुसार (Value wise) डिपार्टमेंट को एक सप्ताह के अंदर दे देंगे स्टॉक रजिस्टर नहीं था तो कम्प्युटर में दर्ज प्रविष्टियों के आधार पर हम इसे तैयार कर सकते हैं।

प्र.18- आप जो विवरण देंगे उसे वर्ष २००८-०९ के लिए ठीक-ठीक (सटीक) विवरण क्यों माना जायेगा जबकि यह विवरण और डाटा आप आज कल में तैयार करेंगे?

उ. हमारे कम्प्युटर में वित्त वर्ष २००८-०९ के खरीद-बिक्री के डाटा है जिसके आधार पर उक्त विवरण तैयार होंगे।

7.1 Thus the appellant consistently maintained that it had quantitative details and same were subsequently submitted before the Ld. AD-also. Since the quantitative details were presented before the Ld. AO during the assessment proceedings since no fault has been pointed out by the Ld. AO in respect of the same, no addition on account of bogus purchases can be made. Books of account of the appellant have not been rejected. The Ld. AO cannot take the quantitative details on record and accept the correctness of the same and at the same time make additions in respect of bogus purchases

8. The second argument of the appellant is that complete details and confirmation of each of the sales parties was given to the Ld. AO during the course of assessment proceedings. The details submitted included their name and address, sales bills, ledger account and confirmation. On perusal of the assessment order it is seen that the Ld. AO has not found any mistake / fault with regard to sales details and sale party confirmations filed by the appellant. Thus evidently the Ld. AO has not doubted the veracity of the sales. Since the sales stand confirmed it is only logical that the appellant had purchased certain goods, which it sold to its sales parties. Thus it has to be concluded that the

ITO, WARD 2(2), NAGPUR VS RAMANSINGH BALBIRSINGH SWANNI purchases were in fact made. Merely because certain purchase parties did not respond to the notices u/s. 133(6) (or were not found at the given address or denied entering into any transaction with the appellant) one cannot conclude that the purchases were not made. The Ld. AO has made the disallowance merely on the basis of suspicion because the said parties have not confirmed the said transactions. Sight cannot be lost of the fact that goods have been purchased (since the sale of goods has not been doubted) and the payments have been made through banking account and are duly reflected therein. It is also a fact that the books of account of the appellant are subject to audit. Further no evidence has been brought on record by the Ld. AO to establish that the bank payments made to effect purchase have subsequently been withdrawn in cash and that the said cash has travelled back to the appellant. In such set of facts, the purchases cannot be held to be bogus. Various judicial pronouncements, "made in similar set of facts, support the case of the appellant and have been elaborately discussed in subsequent paragraphs.

9. Also there is merit in the fourth argument of the appellant that he was never given an opportunity to examine the various material collected by the Sales Tax Department/DGIT(Inv.), Pune on the basis of which the Ld. AO sought to come to the conclusion that the said purchase parties were bogus or were 'hawala dealers'. The Ld. AO cannot draw any adverse inference on the basis of any information alleged to have been received from the Sales Tax Department without confronting the appellant with the same and allowing appropriate cross examination of the said witnesses of the Department.

9.1 Also there is merit in the submissions of the appellant that if the two parties viz M/s. Chirag Corporation and Shree Yamuna Impex denied having entered into any transaction with the appellant, the Ld. AO should have informed the appellant about the same and an opportunity of cross examining the said two-parties should have been given to the appellant. However, it is seen that the appellant has not been provided even with a copy of reply received in response to notice u/s. 133(6) on the basis of which the Ld. AO came to the conclusion that the two parties did not enter into any transaction with the appellant. The Ld. AO cannot draw any adverse inference on the basis of some information alleged to have been received from the said two parties without confronting the appellant with the same and allowing appropriate cross examination of the said witnesses of the Department.

9.2 Also, not much credibility can be attached to the assertion of M/s. Chirag Corporation and Shree Yamuna Impex of not having entered into any transaction with the appellant. This is because both the parties have collected VAT on the said sales and have not deposited the same with the Sales Tax Department and in such circumstances is only logical for them to deny the said transactions. Further, since the quantitative tally matches perfectly, it is evident that the goods have been received from the said two parties. Also, it is not doubted that the payments made to both the said parties have been made through the proper banking channel. On similar logic, no credence can be attached to fact that certain notices were returned back unserved as the purchase parties were not found at the given address. Various judicial pronouncements, made in similar set of facts, support the case of the appellant and have been elaborately discussed in subsequent paragraphs.

10. With regard to the fifth argument of the appellant, there is merit in the submission made that there were valid reasons for absence of octroi receipts and transportation receipts in certain instances. The appellant has duly clarified these aspects during the course of survey proceedings itself. The relevant Q & A recorded during the course of survey proceedings are as under:

प्र.२३ आप है आप जो खरिद करते है उसके लिए पूरी प्रक्रिया समझाइए ?

उ. मेरे फर्म मे हम माल खरीदी मुम्बई या अन्य जगहों से टैंकर या ट्रक द्वारा माल ले जाते हैं। जिसे बाड़ी स्थित गोदाम में रखते हैं और वहीं से माल बेचा, (Delivery) किया जाता है।

प्र 24 आप जिनसे माल खरीदते हैं उनको Payment कैसे करते है तथा पार्टी के बारे में आपको जानकारी कहां से मिली?

उ: हम जिन पार्टियों से माल खरीदते है उसको भुगतान बैंक / डीडी द्वारा किया जाता है उन पार्टियों की जानकारी के सन्दर्भ में इससे पहले के एक और साल के जबाब में हम बता चुके है।

प्र.29. आपने कहा कि आप कहा कि अपने फर्म के लिए माल अन्य जगहों से गोदाम वाड़ी-वर्धम्ना पर माल मंगाते रहे हे जिसका माध्यम ट्रक/टैंकर था, तो इसके ट्रांसपोर्टेशन से संबंधित विवरण जैसे कि बिल्टी Truck Bity/Challan / Toll Taxi टोल टैक्स इत्यादी दे पायेंगे क्या ?

उ. कुछ माल जो ट्क/ टैंकर से हमारे फर्म के लिए गोदाम पर आये हैं उनके ट्रांसपोर्टेशन के विवरण जैसे कि बिल्टी, टोल टैक्स आदि हम नहीं दे पायेंगे किन्तु जो माल हमारे पास एक ओ आर डिलीवर हुआ है उसकी बिल्टी नहीं है।

प्र. 36. एफ ओ आर क्या होता है? तथा कितने मात्रा /रु. तक की वित्त वर्ष 2008-09 में खरीदी आपने एफ ओ आर के माध्यम से की ?

उ. यह एक बिजनेस का प्रासीजर है जिससे खरीद जिससे की जा रही है वह पार्टी जिसने खरीद किया उसके गोदाम /दरवाजे तक माल पहुंचाते है हमने एफ ओ आर से भी खरीदी किया है किन्तु मात्रा एवं रूप्ये अभी याद नहीं है जिसे बाद में रेकार्ड से देख कर बता सकेंगे।

प्र.37 क्या आपके गोदाम में वास्तव में माल आया है? वित्त वर्ष 2008-09 में खरीदी के एवज में?

उ. जी हाँ।

10.1 From the above answers of the appellant it becomes evident that the appellant has been able to logically explain the reasons for absence of Octroi receipts and transportation receipts. The appellant's godown is situated outside the Octroi limits and hence there is no question of payment of Octrol. Similarly certain goods are supplied on F, O. R basis and the expenses related to transportation (and other incidental expenses) were borne by the supplier himself, in such circumstances there is no question of the appellant being able to produce evidence of transportation. It may also be mentioned that this explanation given by the appellant is not an afterthought as the appellant had elaborated upon this aspect during the course the Survey proceedings itself.

11. It is also important to note that the Id. AO has not rejected the books of account of the appellant. Also, the GP% and NP for the year consideration is higher than the immediately preceding year.

12. Taking into consideration all the above totality of facts it is evident that there is no basis to come to the conclusion that the purchases made by the appellant from the 12 parties are bogus. There are several High Court and ITAT judgment wherein, on similar set of facts, additions have been deleted.

Para 13.....para 13.7.....

13.8 Thus it can be seen from the above judicial pronouncement that on similar facts the consistent view has been taken that where complete

quantitative details are available and the payment have been made through proper banking channel, additions cannot be made on account of bogus purchases even if the purchase parties cannot be produced. In all the above cases entire addition on account of bogus purchases has been deleted by the respective judicial authorities.

14. I shall now consider the various reasons on the basis of which the Ld. AO came to the conclusion that the bogus purchase addition was required to be made in the case of the appellant. The said reasons have been specified in para 2.5. The said reasons as well the corresponding refutation as to why they do not constitute a good reason to make a disallowance are discussed hereunder:

1) That during the course of Survey proceedings the appellant has accepted in his statement that the purchase bills are not genuine and appears to be bogus

Refutation: The Ld. AO is apparently referring to answer to question No. 42 to come to the conclusion that the appellant admitted that the purchases are bogus. However on perusal of the answer given it is seen that the appellant has merely stated that the said bills appears to be bogus but emphasised on the fact that the appellant did receive goods in respect of the said purchase bills. Further in subsequent answers the appellant further confirmed that it has received goods against all purchase bills, that quantitative details are available with the appellant and that all payment have been made through proper banking channel. Thus nothing emerges from the statement of the appellant to come to the conclusion. that the appellant made any bogus purchases.

2) Transportation expenses and lorry receipts are not available and the seller in their bills have not mentioned any details of transportation or included any transportation charges.

Refutation: The said issue has been discussed in detail in Para 10 and Para10.1.

3) Letters served u/s. 133(6) have either resulted in the same being returned) back un-served or has resulted in a denial by the purchase parties.

Refutation: The said issue has been discussed in detail in Para 9 to Para 9.2.

4) That the said parties have given affidavit to the Sales Tax Department that they have not delivered any goods and have issued sales bills for which they get commission.

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5. That the Sales Tax Department has identified all the 12 parties as hawala operators who are posing as the sellers and have issued fake bills to get the commission in return.

Refutation: The said issue has been discussed in Para 9 above. In any case copy of said affidavit given by the said parties to the Sales Tax Department has not been given to the appellant and the same has therefore no evidentiary value. The Ld. AO ought to have procured the said evidence and confronted the appellant with the same before drawing any conclusion the same has not been done.

15. In conclusion it may be stated that the appellant has brought sufficient evidence on record to establish that the purchases are not bogus. The books of accounts are audited, complete quantitative details were produced and the Id. AO has not rejected the books of account. The GP and NP % are higher than earlier year. Confirmation of sale parties were filed and the sales of goods is not doubted. Statement or assertions made by third party cannot be concluded adversely in isolation without confronting the appellant with the same. In such set of facts and in view of the findings of the various judicial pronouncement referred to above, the addition made of Rs. 2,16,60,724/ hereby deleted. These grounds are therefore allowed.”

2.3 During the course of hearing before us, the DR relied on the assessment Order but could not controvert the facts findings as made by the Id. CIT(A) in his appellate order. The Id. DR while making arguments relied upon the following case laws.

- (i) Pooja Paper Trading Co. Pvt. Ltd. Vs ITO-4(3), Mumbai (ITA No. 1972 of 2018 dated 25-02-2019 Mumbai High Court)
- (ii) Devi Construction Company vs DCIT, Circle-2 Pune (ITA No. 2405/Pune/2017 dated 7-08-2020)
- (iii) Pr. Commissioner vs Mohd. Haji Adam & Co. (ITA No. 1004 of 2016 dated 11-02-2019-Mumbai High Court)

2.4 On the other hand, the ld. AR of the assessee relied on the order of the ld. CIT(A) and further submitted that purchases cannot be rejected as bogus if it is supported by documentary evidences for which the ld. AR relied on the following cases laws.

1. CIT vs Nikuj Eximp Enterprises (P) Ltd. 372 ITR 619-Bombay H.C)
2. Pr. CIT vs Uni Packs (India) (108 taxmann.com 454-Bombay H.C.)
3. CIT vs Odeon Builders (P) Ltd. (418 ITR 215-SC)

2.5 We have heard the counsels for both the parties and perused the materials placed on record as well as the orders passed by the revenue authorities. The ld. AR of the assessee reiterated the submissions as made before the ld. CIT(A) and relied on the appellate order. It is noted from the ld. CIT(A) order that he has taken into consideration the facts of the entire case and the basis of the AO for making addition of Rs.2,16,60,724/- towards alleged bogus purchases. It is also noted that the ld. CIT(A) duly considered the audited accounts maintained by the assessee, complete quantitative details, confirmation of sale parties and bank statement evidencing the payments. The assessee has filed the paper Book Pages 1

to 78 wherein the submissions and documentary evidences filed before the lower authorities were placed on record. The Id. CIT(A) has given a finding that complete quantitative details in respect of each of the items on a daily basis was maintained by the assessee. The Id. CIT(A) observed that the assessee had explained during survey proceedings that the quantitative details were maintained in the computer and these details were presented during assessment proceedings and no fault had been pointed out by the AO. It is also noted that the payments for the goods purchases had been made through banking channels and the same is recorded in the audited books of accounts. It is also noted that the books of accounts of the assessee were not rejected by the AO. Thus there is a merit in the contention of the assessee that once the AO having not doubted the quantitative details and its correctness, cannot make addition in respect of bogus purchases. It is also noted that Id. CIT(A) has also given a finding that complete details and confirmation of each of the sale parties were submitted during the course of assessment proceedings and the AO did not find any mistake or fault with regard to the sales details and sale party confirmations were filed by the assessee. Thus it is evident that the AO has not doubted the veracity of the sales made during the year. It is further noted that the Id.CIT(A) has observed that once the sales stand confirmed it is only logical that the assessee had purchased certain goods which were sold to the sale parties. Merely because few purchase parties did not respond

to the notices u/s 133(6) or they are not found at the given address, once cannot conclude that the purchases were not made. The AO cannot make disallowance mainly on the basis of suspicion and ignoring the documentary evidences filed by the assessee. The Id CIT(A) has rightly observed that no credence can be attached to the statements to M/s. Chirag Corporation and Shree Yamuna Impex since the said parties have collected VAT on the sales and did not deposit the same with Sales Tax Department. Thus it was logical for them to deny the transactions. Similarly, no credence can be attached to the notices which were unserved. The Id. CIT(A) has also recorded a finding that the assessee was neither given an opportunity to examine the various material collected by the Sales Tax Department nor provided an opportunity to cross-examine the said witnesses of the department. There is a merit in the contention that one cannot draw an adverse inference merely on the basis of some information alleged to have been received from the parties without confronting the assessee with the same and allowing appropriate cross examination. It is also noted that the Id. CIT(A) has observed that the assessee was able to explain logically the reasons for absence of octroi receipts and transportation receipts. The Id. CIT(A) also observed that the books of accounts of the assessee was not rejected and GP & NP percentage for the year was higher than the immediately preceding year. It is also noted that Id. CIT(A) after taking into consideration the totality of facts has come to the conclusion that there was no

basis for the AO to treat the purchases from 12 parties as bogus. The Id.CIT(A) has relied on various decisions of Hon'ble Courts including Jurisdictional Bombay High Court wherein under similar circumstances the addition towards bogus purchases was deleted. The assessee has also relied on the decisions mentioned hereinabove which also support his contentions. Hence, it is clear from the order of the Id. CIT(A) and the evidences on record that there was no valid basis to treat the purchases amounting to Rs.2,16,60,724/- as bogus as was done by the AO. The order of the Id. CIT(A) is very explicit and it is a detailed speaking order wherein the Id. CIT(A) has discussed all the issues and given categorical findings. We did not find any infirmity in the fact findings of the Id, CIT(A). However, the Id. DR could not point out any defects in the documentary evidences filed by the assessee. The judicial precedents relied by the assessee and Id. CIT(A) support the contentions of the assessee. Therefore, we concur with the conclusion of the Id.CIT(A) that the assessee has been able to bring sufficient evidences on record to establish that the purchases were not bogus and assertions made by third party cannot be concluded adversely in isolation without confronting the same with the assessee. In these peculiar facts and circumstances of the case, we uphold the order of the Id. CIT(A) and direct the AO to delete the addition of Rs.2,16,60,724/-. Consequently, the grounds raised by the Revenue in this appeal are dismissed.

3.0 In the result, the appeal filed by the Department is dismissed.

Order Pronounced in the Open Court on 21/07/2022.

(ARUN KHODPIA)
Accountant Member

(SANDEEP GOSAIN)
Judicial Member

Nagpur

Dated:- 21/07/2022

*Mishra

Copy of the order forwarded to:

1. The Appellant- The ITO, Ward 2(2), Nagpur.
2. The Respondent- Shri Ramansingh Balbirsingh Swannni, Nagpur
3. CIT
4. The CIT(A)
5. DR, ITAT, Nagpur
6. Guard File (ITA No. 472/Nag/2016)

By order,

Asstt. Registrar