

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 345/Srt/2022 (Assessment Year: 2011-12)

(Virtual hearing)

A.C.I.T., Circle-1(1)(1), Surat.	Vs.	Enviro Control Pvt. Ltd., Enviro House, Opp. Bank of Maharashtra, Ghod Dod Road, Surat-395007. PAN No. AAACE 8700 C
Appellant/ assessee		Respondent/ revenue

Department represented by	Shri Ashok B Koli, (CIT-DR)
Assessee represented by	Shri Ankur Shah, CA
Date of hearing	27/02/2023
Date of pronouncement	05/04/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the revenue is directed against the order of National Faceless Appeal Centre, Delhi (Id. NFAC)/ learned Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A) dated 13/10/2022 for the Assessment year 2011-12. The revenue has raised following grounds of appeal:

“(i) On the facts and circumstances of case and in law, the Ld. CIT(A) has erred in restricting the addition at 6% of bogus purchases as against disallowance made by the AO at the rate of 100% of bogus purchases amounting to Rs.7,99,56,728/- ignoring the facts that these purchases from three concerns namely M/s. Ceeport Iron & Steel Pvt. Ltd., M/s. Pearl International and M/s. Vidhi Metal Industries, are non-genuine transactions as the assessee failed to substantiate his claim of genuine purchase during assessment proceedings by producing the said parties.

- (ii) On the facts and circumstances of case and in law, the Ld. CIT(A) has erred in not appreciating the fact that the purchases of the assessee amounting to Rs.7,99,56,728/- was found to be non-genuine as proved from verification made by AO during assessment proceedings and also ignored the fact that these purchases transactions are nothing but accommodation entries by way of transaction from the hawala dealers and thereby increasing its expenses.*
- (iii) On the facts and circumstances of case and in law, the Ld. CIT(A) has erred in not appreciating the fact that the as per data as found in the website of "**Department of Goods and Services Tax Maharashtra Government**" of updated list of non-genuine dealers as on July 2018, the seller parties were also appearing in the bogus entities list as provided by the Maharashtra Government and the bills/invoices as submitted by the assessee were of same VAT TIN no. i.e. 27700175327V for the all seller parties, which is not only sufficient but concrete evidence to establish that these parties were bogus (hawala operator) and the transaction made with these parties were not genuine.*
- (iv) On the basis of the facts and circumstances of the case and in law, the Ld. CIT (A) ought to have upheld the order of the Assessing Officer.*
- (v) It is therefore prayed that the order of the Ld. CIT(A) may kindly be set aside and that of the Assessing Officer be restored.*
- (vi) The appellant craves leave to add, alter, amend and/or withdraw any grounds of appeal either before or during the course of hearing of the appeal.*

2. Brief facts of the case are that the assessee is a company engaged in the business of development, operation, maintenance of infrastructure facility, development and maintenance of sewage treatment plants. The assessee filed its return of income for A.Y. 2011-12 on 28/09/2011 declaring income of Rs. 3,36,70,590/-. The case of assessee was selected for scrutiny and assessment was completed under Section 143(3) of the Income Tax Act, 1961 (in short, the Act) on 30/10/2013 determining total income at Rs. 6.55 crores. Thereafter, the Assessing

Officer received information from the DDIT(Inv.), Mumbai that the assessee has availed accommodation entry in the form of purchases from bogus concerned, which were engaged in the business of providing bogus bills without actual delivery of goods in exchange of cash or commission basis. The assessee is one of the beneficiary of availing bogus bills from such Hawala dealers. On the basis of such information, the Assessing Officer recoded reasons that the assessee has shown purchases of Rs. 7.99 crores from three concerns namely Ceeport Iron & Steel Pvt. Ltd. of Rs. 1.50 crores, Pearl International of Rs. 2.63 crores and Vidhi Metal Industries of Rs. 3.85 crores aggregating to Rs. 7.99 crores. The Assessing Officer after recording such reasons, issued notice under Section 148 of the Act dated 26/03/2018. The Assessing Officer after serving notice under Section 143(2) and 142(1) of the Act proceeded for reassessment. During reassessment, the Assessing Officer recorded that he has seen from the list provided by Maharashtra VAT Department that the assessee is a beneficiary of bogus bills aggregating of Rs. 7.99 crores from such hawala dealers. The Assessing Officer also recorded the modus operandi of Hawala dealers and issued show cause notice dated 14/12/2018 as to why purchases aggregating amount of Rs. 7.99 crores should not be disallowed and added back to the income of assessee.

3. The assessee filed its reply dated 17/12/2018. The contents of reply is recorded in para 5 of assessment order. The assessee in its reply contended that their assessment was completed under Section 143(3) on 30/10/2013. During the course of assessment proceedings, they had provided complete details of trading and purchases made during subject year, which includes the purchases made from parties under dispute. Complete details of trading sales made during the subject year was also provided. Account confirmation of concerned three parties which includes the confirmation of impugned parties also. The assessee further stated that the Assessing Officer has believe that the assessee engaged in alleged Hawala transactions with the said parties, is absolutely misplaced. No specific evidence is provided to the assessee. The reopening is not valid. To substantiate the purchases, the assessee stated that they made genuine purchases and to support such purchases, copy of ledger account, relevant extract of bank statement reflecting the payment, account confirmation of parties, their PAN numbers, copies of bill issued by the sales parties were furnished. The assessee made trading of impugned item purchased from such parties and offered income in the form of trading sales. The trading of sale is genuine so prayed to accept the purchases. The assessee reiterated that all purchases are supported by invoices, payments are made by account payee cheques and name of payees are also reflected in the

bank statement. Account confirmation was already filed and were filed again. There is no evidence that the purchase consideration has return back to the assessee. Sales out of the purchases have been accepted as the same are not doubted. Account confirmation justified that the purchases are genuine. The assessee also relied all various case laws wherein some percentage on account of similar bogus purchases were restricted or confirmed instead of disallowances of entire amount of purchases.

4. The Assessing Officer after considering the submissions of assessee, accepted that the assessee filed copy of audit report, audited Profit & Loss Account (P&L Account), balance sheet with return of income and other relevant documents where various information and materials were disclosed in the original assessment proceedings. However, the requisite full and true disclosure of all material facts necessary for assessment has not been made, thus, justified the reopening. On substantiation of purchases, the Assessing Officer accepted that the assessee furnished confirmation, bills, ledger account, but mere production of such details is not sufficient to cover this surrounding circumstances. Such fact does not reflect the genuineness of transaction. Maharashtra VAT department proved that such entities were involved in providing bogus and non-genuine bills to its beneficiaries which is also apparent that those bogus entry providers

made transactions with the assessee. Notice under Section 133(6) of the Act was issued to all three parties at their addresses. However, all the notices were returned back with the remark of postal authorities "unclaimed/not known". The assessee was asked to produce the parties to substantiate the transaction with them. The assessee did not produce them and took its stand that they have already furnished all ledger copies, bank statements, bills, account confirmation etc. The Assessing Officer further recorded that during the course of assessment, the assessee submitted that the material purchased from three parties were directly delivered to the seller to whom the assessee made such sale. The Assessing Officer recorded that the assessee has shown sale to Payal enterprises, Savri Enterprises and Nisha Enterprises. Notice under Section 133(6) of the Act was issued to both the parties, however, no reply was received or the notices were returned back. The Assessing Officer also examined various bank accounts calling the information under Section 133(6) to whom the assessee made purchases and recorded that the amounts were returned back into two or more bank accounts as has been recorded in para 7 of the assessment order. On the basis of such details, the Assessing Officer recorded that the entire amounts were returned back within short span of time. The Assessing Officer also referred the statement recorded by DDIT(Inv.), Mumbai, Himanshu Dilip Kumar,

Neul Amanna and Pankaj Pratap Singh who were allegedly managing the hawala parties for providing such entry. The Assessing Officer on recording such fact, noted that the purchases shown by the assessee are not genuine. The parties have confessed in their statement recorded by the Sales Tax Authorities that they are not doing any genuine business as well as no actual delivery of goods. The onus was on the assessee that books of account of assessee are true and genuine. The assessee failed to prove the onus lie upon them. The assessee failed to prove that the purchases are genuine. The Assessing Officer treated the entire purchases from all three parties aggregating of Rs. 7.99 crores as bogus purchases and made addition under Section 69C of the Act on account of unexplained expenditure.

5. Aggrieved by the additions in the assessment order, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee filed its detailed written submissions. The submission of assessee is recorded in para 3 of order of Id. CIT(A). In the submission, the assessee besides reiterating the submissions made before the Assessing Officer also raised issue that during the assessment, the assessee vide reply dated 16/05/2018 asked the Assessing Officer to provide all based, on which reopening was done and also provide opportunity of cross examination of the parties mentioned in the notice from which bogus purchases is alleged to have been made. However, no such document

or opportunity was granted and the assessment was made in violation of principles of natural justice. The assessee again reiterated its demand to provide copy of investigation report of Sales Tax Department Government of Maharashtra and other documents relied by the Assessing Officer. To support such contention, the assessee relied upon the decision of Hon'ble Supreme Court in Andaman Timber Industries Vs CCE (2015) 62 taxmann.com 3 (SC) and Dhakeswari Cotton Mills Ltd. Vs CIT (1954) 26 ITR 775 (SC), Hon'ble Delhi High Court in CIT Vs SFIL Stock Broking Ltd. (2010) 325 ITR 285 (Del), Hon'ble Gujarat High Court in Harikishan Sunderlal Virmani Vs DCIT (2017) 88 taxmann.com 548 (Guj). The assessee it is without prejudice contention, submitted that in various decisions by the Higher Courts, it has been held that addition for bogus purchases should be restricted to certain percentage of profit in alleged bogus purchases and entire purchases cannot be added to the income. To support such contention, the assessee relied on the decision of Hon'ble Bombay High Court in PCIT Vs Rishabhdev Technologies Ltd. (2020) 115 taxmann.com 333 (Bombay), Hon'ble Gujarat High Court in CIT Vs Gujarat Ambuja Export Ltd.in Tax Appeal No. 840/2013, Mayank Diamonds Private Limited Vs ITO in Tax Appeal No. 200/2003 and ITAT Mumbai in Shri Sanjay H Shah Vs ITO in ITA No. 5063 to 5065/Mum/2017. The assessee also

furnished details of trading of purchases of various items purchased and sold to the parties in the form of Annexure.

6. The Id. CIT(A)/NFAC after considering the assessment order and the submissions of assessee held that on perusal of submission, he find that the assessee submitted certain trading activities undertaking during the year. The trading item purchased during the year were sold with mark up and the profit from sale trading was offered to tax. It was also submitted that the amount mentioned by the Assessing Officer as bogus expenditure was not consumed in any other business activities but it was sold in its trading activities. The assessee furnished details of trading purchases and trading sales with the details of goods, bills number, amount, VAT amount and total amount of purchases and sales. The Id. CIT(A) noted that in such trading of purchases of Rs. 7.99 crores vide trading sale is of Rs. 8.05 crores, therefore, the gross profit of Rs. 6,35,407/- has been shown by the assessee from such trading activities. Thus, the gross profit rate of 0.788% has been shown by the assessee on such purchase and sale trading. The stand of assessee is that during the assessment, he has furnished ledger account, bank statement, account confirmation with the said bogus entities. The Assessing Officer on appreciation of facts noted that during the year under consideration, the assessee has done trading. No such trading was done in earlier years. Whole trading items were

purchased and sold during the year itself. The Assessing Officer has accepted the sale as correct, the corresponding purchases against those sales has been treated as unexplained expenditure. Once the sales have been accepted as correct, the whole amount of corresponding purchases cannot be treated as unexplained. Further, once the sale and embedded profit in those sales are accepted, the whole amount of corresponding purchases cannot be disallowed as unexplained. It was also held that there cannot be sale without purchase. When sales are accepted then whole purchases cannot be disallowed and only profit element embedded and purchases would be subject to tax and not the entire amount. To strengthen his view, the Id. CIT(A) relied on various case laws as recorded in para 4.20 of his order.

7. The Id. CIT(A) after referring the submission of assessee, held that the sales and profit in the impugned purchases have been accepted by the Assessing Officer while corresponding purchases have been disallowed in whole. The Id. CIT(A) ultimately by following the decision of Hon'ble Jurisdictional High Court in CIT Vs Bholanath Poly Fab Private Limited (2013) 40 taxmann.com 494 (Guj) and Hon'ble Bombay High Court in PCIT Vs Rishabhdev Technologies Ltd. (supra) restricted the disallowance to gross profit @ 6% of the total purchases of Rs. 7.99 crores. The Id. CIT(A) quantified such disallowance at Rs. 47,97,404/-,

as the assessee has already declared gross profit of Rs. 6,35,407/- in its P&L account, on such trading items, hence, the addition to the extent of Rs. 41,61,997/- (47,97,404 – 6,35,407) was confirmed, thereby granted substantial relief to the assessee. Further aggrieved by the order of Id. CIT(A)/NFAC, the revenue has filed the present appeal before this Tribunal.

8. We have heard the submissions of learned Commissioner of Income Tax-Departmental Representative (Id. CIT-DR) for the revenue and the learned Authorised Representative (Id. AR) of the assessee and have gone through the orders of the lower authorities carefully. The Id. CIT-DR for the revenue submits that the order of Id. CIT(A) is not accepted by revenue, for the reasons that during the assessment, notice issued under Section 133(6) of the Act to the parties from whom the assessee has shown purchases, were returned back with the remark of postal authorities "unclaimed/not known". The assessee was asked to produce the parties to substantiate the transaction. The assessee failed to produce the parties. The assessee simply furnished the ledger copy, bank statement, bills and account confirmation. The fact remains the same, such parties are bogus which was involved in providing bogus bills to its beneficiaries. Such fact has been proved before the VAT department of Government of Maharashtra. The assessee claimed that the material purchased from such parties were sold to three different

parties. Notices under Section 133(6) of the Act issued to such purchases parties were also returned back. The Assessing Officer brought sufficient material on record that the amount paid by assessee were returned bank to assessee after 3-4 layer of transactions. The Id. CIT-DR prayed to reverse the order of Id. CIT(A) and to restore the finding of Assessing Officer.

9. On the other hand, the Id. AR of the assessee supported the order of Id. CIT(A). The Id. AR of the assessee submits that the assessee is a private limited company carrying its business of development, operation and maintenance of infrastructure facility mainly relating to water and sewage treatment plants. Development, operation and maintenance of infrastructure facilities are carried out pursuant to agreement with various local authorities and government departments. Besides its regular business activities, the assessee also undertaken trading activities during the year under consideration. All the trading items purchased during the year were sold with mark up and eventually the profit was taxed in the hands of assessee. The Assessing Officer reopened the case on the basis of third party information and purchases shown from various entities which was identified as Hawala parties by Maharashtra VAT department, the Assessing Officer disallowed the entire purchases ignoring sales of same items. The Assessee furnished complete details of purchases and its subsequent

sales. Such details were provided to the Assessing Officer as well as Id. CIT(A). Such details are also to be filed before Tribunal for appreciation of the facts. During the assessment, the assessee furnished copy of ledger account of parties. Relevant extract of bank statement showing the payment made to such parties, account confirmation and their PAN number. Copy of bills issues by these parties and the delivery challan. The Assessing Officer brushed aside the entire documentary evidence and relied upon the third party information without providing copy of it to the assessee. The assessee also asked for supply of all such documents and report on the basis of which the case of assessee was reopened. The assessee vide its application and reply dated 16/05/2018 asked to provide opportunity of cross examination of the parties mentioned in the show cause notice. Copy of such application is also filed. No documents whatsoever available with the Assessing Officer was provided. No opportunity of cross examination was provided to the assessee. The Id. AR of the assessee submits that the Assessing Officer disallowed the entire purchase from all three parties. The corresponding sales was not disputed by the Assessing Officer. The sale is not possible in absence of purchase. The Id. AR submits that the entire purchase was to be allowed as genuine. However, the Id. CIT(A) on appreciation of submission of assessee, restricted the disallowance to the extent of 6% of the disputed purchases by following the decision

of Hon'ble Gujarat High Court in CIT Vs Bholanath Poly Fab Pvt. Ltd. (2013) 40 taxmann.com 494 (Guj). The Id. AR of the assessee submits that it has been settled by various High Courts that even if the purchases are not fully substantiated against the allegation of bogus purchases, in such cases only profit element embedded in such transaction may be taxed and not the entire transaction. The Id. CIT(A) while restricting the disallowance of impugned purchases, restricted such addition to the extent of 6% and also allowed set off of the profit declared by the assessee on such purchases. The Id. AR submits that he fully supports the order of Id. CIT(A). On his various submissions, the Id. AR of the assessee also relied upon the following decisions:

- (i) Andaman Timber Industries Vs CCE (2015) 62 taxmann.com 3 (SC)
- (ii) CIT Vs SFIL Stock Broking Ltd. (2010) 325 ITR 285 (Del)
- (iii) Deepraj Hospital Vs ITO 41/Agra/2017
- (iv) Harikishan Sunderlal Virmani Vs DCIT (2017) 88 taxmann.com 548 (Guj)
- (v) Dhakeswari Cotton Mills Ltd. Vs CIT (1954) 26 ITR 775 (SC)
- (vi) CIT Vs Nangalia Fabrics P Ltd. (2014) 220 Taxman 17 (Guj)
- (vii) ITO Vs Karsan Nadu (2017) 77 taxmann.com 275 (Mum Trib)
- (viii) CIT Vs Nikunj Eximp Enterprises (P) Ltd. (2013) 216 Taxman 171 (Bom).

10. We have considered the rival submissions of both the parties and have gone through the orders of the lower authorities. We have also deliberated on various case laws followed by the Id. CIT(A) as well as

the case laws relied upon by the Id. AR of the assessee. We find that the Assessing Officer after reopening of the case asked the assessee to substantiate the genuineness of purchases shown from three parties which were identified by Maharashtra VAT Department as Hawala dealers. No such report or documents were provided to the assessee. The assessee in order to substantiate his purchases, filed various documents consisting of ledger account, invoices, proof of payment and proof of subsequent sales to various parties. The assessee furnished such details in the form of Annexure showing complete details with description of goods, quantity, bill number, amount, VAT paid and the subsequent trading sale. The assessee furnished one to one correlation of purchases and sales. The Assessing Officer not accepted the explanation of assessee and relied upon the report of Maharashtra VAT Department which was furnished to DDIT (Inv.), Mumbai. Such report of investigation was also not provided to the assessee. The Assessing Officer issued notice under Section 133(6) of the Act to all the three parties. The Assessing Officer noted that such notices were returned back unclaimed and not known. The Assessing Officer also made investigation with various banks and concluded that the amount of purchases was returned back within short span of time. Such report, prepared on the basis of his investigation was not shared with the assessee for their explanation. The assessee right from the beginning

took stand that the material purchased from parties were directly delivered to the subsequent purchaser. The sale of such items were made with a small mark up of margin. The Id. CIT(A) restricted the addition to the extent of 6% of the aggregating of purchases by following the decision of Hon'ble Gujarat High Court in CIT Vs Bholanath Poly Fab Private Limited (supra) and Hon'ble Bombay High Court in PCIT Vs Rishabhdev Technologies Ltd. (supra). It is settled position under income tax proceedings that the entire transaction is not liable to be taxed and only profit of the transaction is to be brought to tax. We find that the Hon'ble Jurisdictional High Court in CIT Vs Bholanath Poly Fab Private Limited (supra) held that only profit element embedded in disputed purchases would be subject to tax. Considering the facts and circumstances of the case we are also of the opinion that to avoid the possibility of revenue leakage, a reasonable profit on the impugned transaction could be taxed and not the entire transaction.

11. We may also note that the sales of assessee was not disputed by the Assessing Officer. No sale is possible in absence of purchase. The assessee has shown the purchase items in its trading activities. The profit on trading activities are already offered by assessee for taxation. Thus, in view of its additional observation, we affirm the order of Id. CIT(A). In the result, all the grounds of appeal raised by the revenue are dismissed.

12. In the result, this appeal of the revenue is dismissed.

Order pronounced in the open court on 05th April, 2023 in open court.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 05/04/2023

**Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

Sr. Private Secretary, ITAT, Surat