

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER**

**AND**

**RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No. 263/M/2024  
Assessment Year: 2009-10**

<b>Milan Manubhai Sheth</b> Shop No.1, Patanwala Compound, Next to Fitness Club, LBS Marg, Maharashtra- 400086. <b>PAN: AAMPS3459B</b>	Vs.	<b>Income Tax Officer,</b> <b>Circle 27(2)</b> IT Office, Vashi Railway Station Building, Navi Mumbai.
(Appellant)		(Respondent)

**Present for :**

**Assessee by** : None

**Revenue by** : Ms. Kakoli Ghosh, SR. D.R.

Date of Hearing : 26 . 06 . 2024

Date of Pronouncement : 26 . 07 . 2024

**O R D E R**

**Per : Ratnesh Nandan Sahay, Accountant Member:**

The appellant has filed this appeal against the order of the Ld. CIT (Appeals), passed u/s. 250 of the Income Tax Act [the ‘Act’ in short] vide DIN & Order No. ITBA/APL/S/250/2023-24/1058112444(1) Dated 21/11/2023 for the Assessment Year 2009-10.

2. Following grounds of appeal have been raised by the appellant:

*“The Appellant appeals against the impugned order dated 21<sup>st</sup> November, 2023 passed by the Joint Commissioner of Income-tax (Appeals), Varanasi under section 250 of the Income-tax Act (the Act) received by the Appellant on 21<sup>st</sup> November, 2023 on the following amongst other grounds each of which is in the alternative and without prejudice to any others:*

- 1. The learned Joint Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.10,62,906/- as bogus purchases.*
- 2. The learned Joint Commissioner of Income Tax (Appeals) erred in confirming that reopening is correct.*
- 3. The learned Joint Commissioner of Income Tax (Appeals) ought to have passed a separate speaking order on reopening issue.*
- 4. The learned Joint Commissioner of Income Tax (Appeals) ought to have considered the case records and the details furnished during the course of assessment proceedings which includes full details and explanations, copies of purchase bills, payment details and corresponding sales details.*
- 5. The Appellant submits that the addition is excessive and unreasonable.*
- 6. Without prejudice and in alternate, the matter may be restored to the Office of Joint Commissioner of Income Tax (Appeals) for deciding the case on merits.*
- 7. The Appellant craves leave to alter, amend and/or add any other ground of appeal.”*

3. The facts of the case, in brief, are that the appellant is an individual, deriving income from the business of offset printing & designing, manufacturing printed box cartoons labels etc. Return of Income was filed voluntarily on 16/09/2009 declaring income at Rs.7,54,333/-. The

AO received information from the sale tax department that some suspicious dealers who had issued accommodation entries without actual delivery of the goods and assessee is one of the beneficiaries of that from whom purchases of Rs.10,62,906/- were alleged to have been purchased from Hawala Dealers.

4. Therefore, the AO reopened the case and the notice u/s. was issued to the assessee and served. The Ld. AO added the entire purchases of Rs.10,62,906/- to the total income of the assessee on the ground that the sale tax department had ordered the list of suspicious dealers who had issued accommodation entries without actual delivery of the goods on the official website of the Sales Tax Department, Government of Maharashtra. The sale tax department had conducted independent enquiries in each of the Hawala parties including those parties from whom the assessee had taken accommodation entries of bogus purchases amounting to Rs.10,62,906/-. The sale tax department had conducted independent enquiries and found out that these parties were indulged into activities like issuing only bills and doing non genuine business, not maintaining stock and not keeping stock registered, not effecting any purchase, there was no transaction of goods and entries were provided to the parties for commission the AO during the course of assessment proceedings also issued notice u/s. 133(6) to this parties.

5. However, the notices were returned un-served with the postal remark “Left”. Subsequently, the AO also deputed the inspector of his office to make enquiry but he also could not locate the whereabouts of this parties. Then, the assessee was asked to produce these parties to establish that he had made purchases from the genuine parties. In response to that, the assessee submitted before the AO that all purchases were genuine as the payment to these parties were made through account payee check. It was also stated by the assessee before the AO that the assessee had made payment of VAT liability in order to avoid litigation and penalty and therefore the entire transaction cannot be considered as bogus.
6. The AO then considered the submission made by the assessee. However, he was not convinced with the explanation offered by the assessee on the ground that assessee failed to furnish any evidence such as delivery challans, transportation details, etc. to substantiate the genuineness of the purchases made from the said parties.
7. *”The submissions/explanations given by the assessee have been examined, but the same has not been found tenable and acceptable as the assessee failed to furnish evidence, such as, delivery challans, transportation details etc. to substantiate his claim of purchases from aforesaid party. The assessee has furnished copies of bank statements and has tried to substantiate that the purchases made are genuine as the payments have been made through banking channel. This endeavor does*

*not help the assessee, as the payment through banking channel does not give certificate to the assessee that the purchases made by him were from genuine and existing parties. Support is drawn from the decision of the the Hon'ble ITAT, Jaipur in the case of M/s. Kachwala Gems vs. JCIT [ITA No.134/JP/2002 dated 10.12.2003], affirmed by the Hon'ble Supreme Court in the case of M/s. Kachwala Gems vs. JCIT (2006) 206 CTR (SC) 585 : 288 ITR 10 (SC), it has been held that even payment by account payee cheque is not sufficient to establish the genuineness of purchases. As stated above, no contemporaneous record establishing the receipt of goods purported to have been purchased from the aforementioned party have been produced by the assessee. Further, as is evident from the Audit Report accompanying the return of income, no stock register has been maintained by the assessee. More over the assessee also failed to produce the party in spite of ample opportunity to given to it.*

- 8. It is settled law that onus lies on the assessee to prove the genuineness of any expenditure which is claimed as deduction in computing its taxable income. Therefore, the onus in the instant case squarely lays on the assessee to prove the genuineness of the purchases which is said to have been made from the hawala party which had been held to be bogus parties by the departmental authorities. It was incumbent upon the assessee to prove that the supplier was genuine supplier and they really*

*supplied material to the assessee and the assessee really made payments by cheques, to this very party and none else. Such a burden had to be discharged by the assessee with very strong and clinching evidence. No serious efforts were made by the assessee to discharge such burden of proving the genuineness of transactions with these parties. In this regard, reliance is placed on Calcutta High Court decision in the case of CIT v. Korlay Trading Co. Ltd. reported in 232 ITR 820 where the Hon'ble Court has held that the initial burden is on the assessee to prove the genuineness of purchases.*

9. *The assessee failed to produce any of the suppliers, brokers or transporters before the undersigned in spite of opportunity being granted. It was unimaginable that all the suppliers and all the brokers suddenly vanished from the scene soon after the enquiries were started by the department. In view of the detailed findings discussed above, it is held that the assessee has failed to establish the genuineness of the purchase shown to have made from the above mentioned party. The assessee has not given any evidence which leads to conclusion that there were actual purchases from above mentioned party and this party actually exists. The inescapable conclusion one draws from above is that the purchase from the above party is bogus and not genuine. Hon'ble Delhi High Court in the case of CIT Vs. La Medica 117 Taxman 628 (2001) has held that once it is accepted that the supplies were not made by the bogus party to whom*

*the payments were alleged to have been made, the question whether the purchases were made from some other source ought not to have weighed with the Tribunal as a factor in favour of the assessee. From the above transactions, I am satisfied that the assessee has intentionally inflated the purchases to reduce his taxable income.*

*10. Further, the facts indicate that the suspected sales tax hawala parties are non-existent and never supplied any material to the assessee and therefore, the purchases made from the said party cannot be genuine. The goods were not received from the party from whom it has shown to have purchased. The assessee has just filed the copies of the purchase bills, and payment details. However, the party from whom purchases were claimed to have been made was not available and not found existing at the addresses given by the assessee. When the existence of party has not been proved at all, the so-called purchases made from the said party remains non-genuine. Cumulatively considering all the facts and circumstances of the case, the only fair conclusion that can be drawn is that the assessee has been a beneficiary of the accommodation bills issued by the aforesaid non existing parties, wherein, there was no actual delivery or physical delivery of goods. These facts lead to the conclusion that the assessee has intentionally inflated the purchase by taking accommodation bills to reduce the gross profit and thereby reduce the taxable income. It is absolutely clear from the facts, material and*

*evidence brought on record that the assessee has taken accommodation entries from the bogus parties. It emerges from the above that:-*

- a. The assessee has neither produced the party nor could notice be served upon it as the party was non-existent at the given address.*
- b. The onus of proving the genuineness of purchases was on the assessee which assessee has failed to discharge.*
- c. in this case there is uncontroverted evidence from an impeccable source which has the primary duty of taxing a purchase-sale transaction in the form of admission of the so-called seller about issuing bogus bills of purchase/sale.”*

11. Aggrieved by the order of the Ld. assessing officer, the assessee filed the appeal before the Ld. CIT(A) who confirmed the order of the AO on the ground that on the basis of the facts analysed by the AO and settled legal position. It is clear that the purchases made by the assessee from said two parties i.e. Ansa Sales Agency Pvt. Ltd. and Bhavi Sales Agency Pvt. Ltd. amounting to Rs.3,07,278 and Rs.7,55,628 were not genuine and treated as bogus. It was also mentioned by the Ld. CIT(A) that during the course of appellant proceedings before the Ld. CIT(A), the assessee did not appear before him and did not make any representation or submission before him against the additions made by the AO and therefore, the Ld. CIT(A) decided the appeal on the basis of the merit of the case.

12. Aggrieved by the order of the Ld. CIT(A), this appeal has been filed before us. We find that the issue has already been examined in detail both by the AO and the Ld. CIT(A) and the appellant has failed to discharge its onus to establish that the entire purchases are genuine. Before us also, no one appeared from the appellant side. We have considered the material available on record and the order of the Ld. CIT(A) and found that there is no infirmity in the order of the Ld. CIT(A). Thus, there is no reason to interfere with his order. Hence, the appeal is dismissed.

13. In the result, the appeal is dismissed.

**Order pronounced in the open court on 26.07.2024.**

**Sd/-  
AMIT SHUKLA  
JUDICIAL MEMBER**

**Sd/-  
RATNESH NANDAN SAHAY  
ACCOUNTANT MEMBER**

Mumbai, Dated: 26.07.2024.  
*Snehal C. Ayare, Stenographer*

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

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.