

आयकर अपीलीय अधिकरण “एफ” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./I.T.A. No. 2660/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2007-08)

M/s. Meru Impex 15, 1 st Floor, Agiary Lane, Osman Manzil, 2 nd Floor, Mumbai-400 003	बनाम/ Vs.	ACIT-Circle 17(2), Aayakar Bhavan, M. K. Road, Mumbai-400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAAPFM 6289 K		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	None
प्रत्यर्थी की ओर से/Respondent by	:	Shri T. A. Khan
सुनवाई की तारीख / Date of Hearing	:	17.10.2017
घोषणा की तारीख / Date of Pronouncement	:	01.11.2017

आदेश / ORDER

Per Shamim Yahya, A. M.:

This Appeal by the Assessee is directed against the Order by the Commissioner of Income Tax (Appeals)-28, Mumbai (‘CIT(A)’ for short) dated 19.01.2017 and pertains to the assessment year (A.Y.) 2007-08.

2. The issue raised is that the Id. CIT(A) erred in sustaining disallowance of 10% of bogus purchase amounting to Rs.4,99,55,341/-.
3. The grounds of appeal read as under:

1) On the facts and circumstances of the case, the learned CIT(A) erred in confirming the action of the AO by sustaining the addition of Rs.4,99,55,341/-. The order of the Id. CIT(A) is bad in law, against the principle of natural justice, void ab initio and the sustaining of the re-opened assessment is also liable to be quashed.

2) On the facts and circumstances of the case, the learned CIT(A) erred in confirming the addition of alleged purchases from bogus hawala parties amounting to Rs.4,99,55,341. The appellant did not enter into any transaction with the bogus hawala parties at all and therefore the said addition of Rs.4,99,55,341 is liable to be deleted.

4. In this case addition was made by the Assessing Officer for bogus purchases on the basis of information received from Sales Tax Department as well his own enquiry as under:

Information was received in office of DGIT (Inv.), Mumbai and subsequently, from the Sales Tax Department, Mumbai, regarding suspicious parties who are only providing accommodation entries without doing any actual business.

On going through the aforesaid list, it was found that the following party/parties are appearing in the list of bogus parties from whom the assessee is shown to have made purchases.

S.No.	Name	Amount (Rs.)
1.	M/s. Mihir Diamonds (Prop. Gautam B Jain)	2,34,44,142
2.	M/s. Krishna Diamonds Pvt. Ltd.	2,65,11,199

4.2 It is seen that the assessee has claimed total purchases of Rs.4,99,55,341/- from the above-said parties. It is pertinent to mention here that the Sales Tax Department has conducted independent enquiries in each of the Hawala parties and conclusively proved that these parties are engaged in the business of providing accommodation entries only. These enquiries establish beyond doubt that the aforesaid party did not supply any goods to the assessee. All these hawala parties are issuing bills without delivering any goods or services. The payments received by these parties are returned to the assessee in cash after deducting small commission.

4.3 Subsequently, during the course of assessment proceedings, the assessee was also asked to furnish all relevant evidence to establish that goods have actually been delivered/supplied. The assessee was also asked to furnish its explanation on the purchases purported to have made from the aforesaid parties and the details of brokers/agents through whom purchases were claimed to have been made by the assessee including Name, Address, Contact Number etc. to prove the genuineness of the transaction. The assessee was also asked to show cause as to why the expenditure claimed in respect of purchases shown to have made from the aforesaid dealers should not be disallowed.

4.4 The assessee in his reply has furnished copies of (a) ledger a/c's of the purchase party; (b) Purchase Bill; and (c) payment details to purchase parties. However, till date, the assessee has not produced the details of the broker/agents or the suppliers before the undersigned as stated above, including a monthly cash flow statement.

4.5 Subsequently, notices u/s. 133(6) were issued to the above-said parties calling for all the details of all the transactions that these parties had with the assessee for the relevant assessment year, a copy of the ledger of the account of the assessee as appearing in parties' books of account, mode of receipt of payment, copy of Bank Statement reflecting the transactions made with the assessee, highlighting the same, Income tax return and full set of financial statements of parties etc. However, these notices returned unserved, thus confirming the fact that the afore-mentioned parties are bogus.

4.6 The submissions of the assessee as also the documents furnished have been carefully perused. However the same are not found to be acceptable for the following reasons:

- (i) The onus was upon the assessee to prove the genuineness of the expenditure claimed as it was the assessee, which has made the claim,
- (ii) It is well-settled law that strict rules of evidence do not apply to I.T Act and the real test with regard to genuineness of the transaction is "Preponderance of Probabilities" and not "Beyond reasonable doubt". Reliance is placed on C. Vasantlal & Co. Vs. CIT (1962) 45 ITR 206 (SC), Chaturbhuji Panauj AIR 1969 (SC) and Sumati Dayal Vs. CIT (1995) 214 ITR 801 (SC). One has to consider the totality of facts, surrounding circumstances and human probability for arriving at a conclusion as held in CIT Vs. Durga Prasad 82 ITR 540 (SC) and Sumati Dayal Vs. CIT (1995) 214 ITR 801 (SC).
- (iii) The purchases from hawala operators falls within the ambit of the term 'colourable devices' and the Hon'ble Supreme Court observed in the case of McDowell and Co. Ltd. Vs. CTO 154 ITR 148 that "*Tax planning may be legitimate provided it is within the framework of law. Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the*

payment of tax by resorting to dubious method. It is obligation of every citizen to pay the taxes honestly without resorting to subterfuges."

(iv) The DGIT (Inv.), Mumbai made a finding and forwarded the information to this office of the name of entities which are involved in giving bogus bills only after carrying out a detailed enquiry & investigation.

5. On the above reasoning, the Assessing Officer made 10% addition for bogus purchase amounting to Rs.4,99,55,341/-.

6. Against the above order, the assessee appealed before the Id. CIT(A) challenging both the reopening as well as merits of addition. The Id. CIT(A) dismissed both the issue raised.

7. We have heard both the counsel and perused the records. We find that credible and cogent information was received in this case by the Assessing Officer that certain accommodation entry provider/bogus suppliers were being used by certain parties to obtain bogus bills. The assessee was found to have taken accommodation entry/bogus purchase bills during the concerned assessment year from different parties. Based upon this information, the assessment was reopened. The Id. CIT(A) placed reliance on various case laws including the Hon'ble Apex Court decision in the case of *CIT(A) Vs. Rajesh Jhaveri Stock Brokers P. Ltd*, 291 ITR 500, which is quite relevant and fully justify the reopening. The credibility of information relating to reopening remains un-assailed. In such factual scenario, the assessing officer has made the necessary enquiry. The issue of notice to all the parties have returned unserved. Assessee has not been able to provide any confirmation from any of the

party. Assessee has also not been able to produce any of the parties. Necessary evidence relating to transportation of the goods was also not on record. In this factual scenario, it is amply clear that assessee has obtained bogus purchase bills. Mere preparation of documents for purchases cannot controvert overwhelming evidence that the providers of these bills are bogus and non-existent.

8. The Sales Tax Department in its enquiry have found the parties to be providing bogus accommodation entries. The assessing officer also issued notices to these parties at the addresses provided by the assessee. All these notices have returned unserved. Assessee has not been able to produce any of the parties. Neither the assessee has been able to produce any confirmation from these parties. In such circumstances, there are no doubt that these parties are non-existent. We find it further strange that assessee wants the revenue to produce assessee's own vendors, whom the assessee could not produce. The Purchase bills from these non-existent the/bogus parties cannot be taken as cogent evidence of purchases. In light of the overwhelming evidence, the revenue authorities cannot put upon blinkers and accept these purchases as genuine. This proposition is duly supported by Hon'ble Apex Court decision in the case of *Sumati Dayal* 214 ITR 801 and *Durga Prasad More* 82 ITR 540. In the present case, the assessee wants that the unassailable fact that the suppliers are nonexistent and thus bogus should be ignored and only the documents being produced should be considered. This proposition is totally unsustainable in light of above apex court decisions.

9. In these circumstances, the Id. Departmental Representative has referred to Hon'ble Gujarat High Court decision in the case of Tax Appeal No. 240 of 2003 in the case of *N K Industries vs. Dy CIT*, order dated 20.06.2016, wherein 100% of the bogus purchases was held to be added in the hands of the assessee and tribunals restriction of the addition to 25% of the bogus purchases was set aside. It was expounded that when purchase bills have been found to be bogus 100% disallowance was required. The special leave petition against this order along with others has been dismissed by the Hon'ble Apex Court vide order dated 16.01.2017.

10. We further note that Hon'ble Rajasthan high court has similarly taken note of decisions of the apex court on the issue of bogus purchases in the case of CIT Jaipur vs Shruti Gems in ITA No. 658 of 2009. The Hon'ble High Court has referred to the decision of CIT Jaipur vs. Aditya Gems, D. B. in ITA No. 234 of 2008 dated 02.11.2016, wherein the Hon'ble Court had *inter alia* held as under:

"Considering the law declared by the Supreme Court in the case of Vijay Proteins Ltd. Vs. Commissioner of Income Tax, Special Leave to Appeal (C) No.8956/2015 decided on 06.04.2015 whereby the Supreme Court has dismissed the SLP confirmed the order dated 09.12.2014 passed by the Gujarat High Court and other decisions of the High Court of Gujarat in the case of Sanjay Oilcake Industries Vs. Commissioner of Income Tax (2009) 316 ITR 274 (Guj) and N.K. Industries Ltd. Vs. Dy. C.I.T., Tax Appeal No.240/2003 decided on 20.06.2016, the parties are bound by the principle of law pronounced in the aforesaid three judgments.

11. However, we 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* (supra). In this case, the Hon'ble High Court has upheld 100% allowance 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 our considered opinion, on the facts and circumstances of the case, 12.5% disallowance out of the bogus purchases meets the end of justice. Accordingly we direct disallowance of 12.% of the bogus purchases.

12. In the result, this appeal filed by the assessee stands partly allowed.

परिणामतः निर्धारिती की अपील आंशिक स्वीकृत की जाती है ।

Order pronounced in the open court on 01.11.2017

Sd/-

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated : 01.11.2017

व.नि.स./Roshani, Sr. PS

Sd/-

(Shamim Yahya)

लेखा सदस्य / Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai