

आयकर अपीलिय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य,
एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।

BEFORE SHRI D. KARUNAKARA RAO, AM
AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.2076/PUN/2016
निर्धारण वर्ष / Assessment Year : 2009-10

ACIT (OSD), Ward-1,
Jalna

.....अपीलार्थी / Appellant

बनाम / V/s.

Shri Akshay Rajesh Samdariya,
Prop. M/s. Shree Osiya Traders,
1-28-76/3, SRPF Road,
Yadav Nagar, Jalna – 431 203

PAN : BMKPS2012M

.....प्रत्यर्थी / Respondent

C.O. No.58/PUN/2018
निर्धारण वर्ष / Assessment Year : 2009-10

Shri Akshay Rajesh Samdariya,
Prop. M/s. Shree Osiya Traders,
1-28-76/3, SRPF Road,
Yadav Nagar, Jalna – 431 203

PAN : BMKPS2012M

.....Cross Objector

बनाम / V/s.

ACIT (OSD), Ward-1,
Jalna

.....Appellant in the appeal

Assessee by : Shri K. Srinivasan
Revenue by : Ms. Sabhana Parveen

सुनवाई की तारीख / Date of Hearing : 11-10-2018
घोषणा की तारीख / Date of Pronouncement : 31-12-2018

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-1, Aurangabad dated 27-06-2016 for the assessment year 2009-10 in restricting the addition on account of the bogus purchases to 3% of the total bogus purchases. The assessee has filed cross objections against the order of Commissioner of Income Tax (A)-1, Aurangabad in confirming the addition of Rs. 8,35,680, i.e. 3% of the alleged Hawala purchases.

2. Briefly, the facts of the case, as emanating from records are; the assessee is an individual engaged in the business of trading in MS Steel, MS Scrap, MS Ingots, MS bars, etc. The assessee filed his return of income for the impugned assessment year on 23-09-2009 declaring total business income of Rs.3,10,520/-. The assessment order under section 143(3) was passed in the case of assessee on 12-12-2011 determining the total income at Rs.5,49,701/-. Thereafter, the Department received information from the Maharashtra Sales Tax Department that the assessee has indulged in bogus purchases from Hawala operators. On the basis of said information received, the Assessing Officer reopened the assessment and issued notice under section 148 of the Income Tax Act, 1961 (hereinafter referred to as, "the Act") on 23-04-2013. In the re-assessment proceedings, the assessee failed to substantiate that the purchases made from the alleged Hawala dealers were infact genuine. The Assessing Officer made independent enquiries and collected information under section 133(6) of the Act. On the basis of information collected and the information received from the Sales Tax Department, the Assessing Officer held that the assessee has indulged

in bogus purchases to the tune of Rs.2,78,55,984/- from the following parties :

Sr.No.	Name of hawala dealer from whom purchases made	Amount
1	Samco Steel & Alloys, Prop. Shri Shankarlal Narsingmal Jain	Rs.26,04,992/-
2	M/s. Rajratan Metal Industries	Rs.51,32,946/-
3	M/s. Anmol Industries	Rs.19,10,064/-
4	M/s. Manav Impex	Rs.36,53,286/-
5	M/s. Alliance Steel Industries	Rs.1,45,54,696/-
	Total	Rs.2,78,55,984/-

3. The Assessing Officer vide assessment order dated 27-03-2015 passed under section 144 r.w.s. 147 made addition of the entire amount held to be bogus purchases. Aggrieved against the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) after taking into consideration the submission of the assessee, documents on record and various case laws restricted the addition to Rs.8,35,680/-, i.e. 3% of the total bogus purchases.

Against the findings of the CIT(A), the Revenue is in appeal. assailing deleting of the addition made and the assessee in Cross Objections has also assailed the order of CIT(A) in confirming the addition to the extent of 3%.

4. Ms. Sabhana Parveen representing the Department submitted that the CIT(A) has erred in granting substantial relief to the assessee without taking cognizance of the fact that during re-assessment proceedings the assessee failed to furnish documentary evidences substantiating purchase of material from the Hawala operators. The Assessing Officer had carried out independent enquiries which revealed that the Hawala operators never carried out any business.

The income-tax Department received information from the Sales Tax Department along with the affidavits of the sellers wherein they have confirmed that they have infact not made any purchases and consequently have not sold any goods to the assessee. In the backdrop of these facts, the Assessing Officer rightly made addition of the entire bogus purchases. The assessee has taken accommodation entries from the dealers merely to reduce the profits. The ld. Departmental Representative prayed for setting aside the impugned order and restoring the findings of the Assessing Officer.

5. On the other hand, Shri K. Srinivasan, appearing on behalf of the assessee submitted that the Assessing Officer has erred in coming to the conclusion that the assessee has indulged in procuring accommodation entries. The ld. Authorized Representative pointed that in scrutiny assessment proceedings the assessee had furnished complete set of books along with supporting sale bills, purchase bills, bank statements, vouchers etc., and the same were test checked by the Assessing Officer before passing the assessment order. The Assessing Officer never doubted the books of account at any stage. Even in the reassessment proceedings, the books of assessee have not been rejected. The books of assessee are subject to audit and the assessee has furnished audited books before the lower authorities. The ld. Authorized Representative submitted that the sales have not been doubted by the authorities below. Without purchases there cannot be sales. The ld. Authorized Representative further submitted that since all the supporting documents substantiating purchase of goods were furnished by the assessee, no addition is called for. The ld.

Authorized Representative prayed for modifying the impugned order by deleting the addition made to the extent of 3% of bogus purchases.

6. We have heard the rival submissions and have perused the orders of the authorities below. The solitary issue raised in the appeal by the Revenue and Cross objections by the assessee is against addition deleted/confirmed on account of bogus purchases. The Assessing Officer in re-assessment proceedings made addition of Rs.2,78,55,984/- as bogus purchases purportedly made by the assessee. In first appeal proceedings, the CIT(A) restricted the addition to 3% of the said purchases, i.e. Rs.8,35,680/-. A perusal of the impugned order shows that the assessee has failed to produce documentary evidence in the form of Lorry receipts, weighment slips, Octroi receipts etc. The assessee has failed to substantiate movement of goods from the suppliers to the assessee. The Assessing Officer during assessment proceedings has not discarded total sales of the assessee. In other words, the sales of the assessee have been accepted by the Department. Without purchases, there cannot be sales. Thus, entire alleged bogus purchases cannot be added in the hands of the assessee. Under such circumstances, the possibility of assessee purchasing the goods from grey market and procuring bills from the Hawala dealers cannot be ruled out. The CIT(A) after considering catena of judgments on various facets including the GP ratio to be applied in different set of industries estimated 3% of GP addition on account of bogus purchases in the hands of the assessee. We find the impugned order is reasoned and hence, requires no interference. Taking into consideration entirety of facts, the impugned order is

upheld. The appeal of the Revenue and the Cross Objections filed by the assessee are dismissed being devoid of any merit.

7. In the result, the appeal of Revenue and the Cross Objections filed by the assessee are dismissed.

Order pronounced on Monday, the 31st day of December, 2018.

Sd/-
(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 31st December, 2018
Satish

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)-1, Aurangabad
4. आयकर आयुक्त / The Pr.CIT 1, Aurangabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	27-12-18	Sr.PS
2.	Draft placed before author	28-12-18	Sr.PS
3.	Draft proposed & placed before the second member		AM
4.	Draft discussed/approved by Second Member.		AM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		