

IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

ITA No.875/PUN/2019
Assessment Year : 2009-10

Rajesh Prakash Singhavi, Plot No.D-3, N-4, CIDCO, Singhavi House, Aurangabad Maharashtra – 431 003 PAN : ADFPS5764B	Vs.	ITO, Ward-3(2), Aurangabad
Applicant		Respondent

ITA Nos.876 to 878/PUN/2019
Assessment Years : 2009-10 to 2011-12

Shailesh Bansilal Singhavi, Plot No.D-3, N-4, CIDCO, Singhavi House, Aurangabad Maharashtra – 431 003 PAN : AMDPS4446D	Vs.	ITO, Ward-3(2), Aurangabad
Applicant		Respondent

ITA No.879 to 881/PUN/2019
Assessment Years : 2009-10 to 2011-12

Lalita Sharad Singhavi, Shailesh Bansilal Singhavi, Plot No.D-3, N-4, CIDCO, Singhavi House, Aurangabad Maharashtra – 431 003 PAN : AEPPS9522N	Vs.	ITO, Ward-3(2), Aurangabad
Applicant		Respondent

Assessee by Shri Hari Krishan
Revenue by Shri Piyush Kumar Singh Yadav

Date of hearing 04-01-2023
Date of pronouncement 04-01-2023

आदेश / ORDER

PER R.S. SYAL, VP:

This batch of 7 appeals involves three different but connected assessees having assessment years 2009-10 to 2011-12. Since a

common is raised in these appeals, I am, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

2. These are recalled matters inasmuch as the earlier *ex parte* order passed by the Tribunal was subsequently recalled vide its orders dated 09-12-2022 and 21-10-2022 respectively.

3. The facts concerning *Shri Rajesh Prakash Singhavi* in *ITA No.875/PUN/2019 for the A.Y. 2009-10* are that the Assessing Officer (AO) got information from Maharashtra Sales Tax Department about unearthing racket more than 1935 Hawala dealers and 33,700 beneficiaries. The assessee was one of the beneficiaries of the Hawala transactions. The information pertaining to the assessee indicated Hawala purchases from six parties totalling to Rs.95,49,023/-. Re-assessment proceedings were initiated on the basis of such information. The assessee filed return declaring total income of Rs.3,06,880/-. The AO found that the assessee was engaged in trading of Steel bars on wholesale and semi wholesale basis. Considering the assessee's gross profit at 4.63%, the AO applied the same on such unproved Hawala purchases (excluding VAT) amounting to Rs.91,81,757/-, which resulted into an addition of Rs.4,25,115/-. The assessee challenged the addition before the Id. CIT(A), who after

applying with procedural formalities, enhanced the addition to 10% gross profit rate as against the lower rate applied by the AO. Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

4. Similar is the position regarding *Shri Shailesh Bansilal Singhavi - ITA Nos.876 to 878/PUN/2019* for A.Yrs. 2009-10 to 2011-12. For A.Y. 2009-10, the assessee had made Hawala purchases of Rs.86,59,126/-. The AO applied gross profit rate of 3.81% shown for the year by the assessee on unproved Hawala purchases (excluding VAT) at Rs.83,26,083/- for making an addition of Rs.3,17,224/-. The Id. CIT(A) enhanced it to 10% gross profit rate as against 3.81% applied by the AO. For the A.Y. 2010-11, the AO made addition with the gross profit rate shown by the assessee at 5.21% for the year on unproved Hawala purchases (excluding CAT) at Rs.49,62,372/-, which resulted into an addition of Rs.2,58,540/-. For the A.Y. 2011-12, the AO made addition with the gross profit declared by the assessee at 4.83% on unproved Hawala purchases (excluding VAT) amounting to Rs.97,14,495/-, which resulted into an addition of Rs.4,69,210/-. The Id. CIT(A) for these two years as well enhanced the addition to 10% GP rate as against lower rate applied by the AO.

5. The position regarding the third assessee *Smt. Lalita Sharad Singhavi* for the A.Y. 2009-10 is that she had made Hawala purchases to the tune of Rs.61,37,953/-. The AO applied the gross profit rate of 4.89% declared by the assessee on unproved Hawala purchases (net of VAT) at Rs.59,01,876/- for working out the addition at Rs.2,88,601/- For the A.Y. 2010-11, the AO applied the declared gross profit rate of 6.05% on unproved Hawala purchases (excluding VAT) at Rs.42,64,420/- for working out the addition of Rs.2,57,997/- and for the A.Y. 2011-12, the AO applied the declared gross profit of 5.34% on unproved Hawala purchases (excluding VAT) of Rs.52,20,868/- for making an addition of Rs.2,78,794/-. The Id. CIT(A) enhanced the addition to 10% gross profit rate for all the three years under consideration.

6. This is how all the three assesseees have approached the Tribunal.

7. I have heard the rival submissions and perused the relevant material on record. The assail is to the making of addition(s) on the basis of bogus purchase bills received by the assessee(s) as accommodation entries from hawala dealers. It is seen that the issue of bogus purchases has come up for consideration before the Hon'ble Bombay High Court in *Pr.CIT Vs. Mohommad Haji Adam & Co.* Vide its judgment dated 11-02-2019 in ITA No.1004 of 2016 and

others, the Hon'ble jurisdictional High Court has held that no *ad hoc* addition for bogus purchases should be made. It laid down that the addition should be made to the extent of difference between the gross profit rate on genuine purchases and gross profit rate on hawala purchases. Respectfully following the precedent, I set-aside the impugned orders and remit the matter to the file of the respective AOs for applying the *ratio* laid down by the Hon'ble jurisdictional High Court in the above noted case and then recompute the amount of additions, if any, after allowing a reasonable opportunity of hearing to the assessee.

8. In the result, all the appeals are allowed for statistical purposes.

Order pronounced in the Open Court on 04th January, 2023.

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 04th January, 2023
Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A) concerned
4. The Pr.CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,
SMC, Pune / DR, ITAT, Pune
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

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

		Date	
1.	Draft dictated on	04-01-2023	Sr.PS
2.	Draft placed before author	04-01-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
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.		

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