

**IN THE INCOME TAX APPELLATE TRIBUNAL "H", BENCH MUMBAI
BEFORE SHRI R.C.SHARMA, AM
&
SHRI RAVISH SOOD, JM**

**ITA No.4563/Mum/2015
(Assessment Year :2010-11)**

Haresh A. Rohra 4/A, Shalimar Society Kopri Colony, Thane	Vs.	ITO WD 1(4), Thane - 400604
PAN/GIR No.		ADVPR3257J
Appellant)	..	Respondent)

**ITA No.4551/Mum/2015
(Assessment Year :2010-11)**

ITO WD 1(5), Thane	Vs.	Haresh A Rohra Prop. M/s. Mahavir Corporation, Flat No.4, Shalimar Society, Kopri Colony, Thane - 400603
PAN/GIR No.		ADVPR3257J
Appellant)	..	Respondent)

Assessee by	Shri Ashwin Kashinath
Revenue by	Shri M.C. Omi Ningshen
Date of Hearing	17/05/2017
Date of Pronouncement	05/06/2017

आदेश / O R D E R

PER R.C.SHARMA (A.M):

These cross appeals are filed by the assessee and revenue against the order of CIT(A)-1, Thane dated 29/05/2015 for the A.Y.2010-11 in the matter of order passed u/s.143(3) r.w.s.147 of the IT Act.

2. The following grounds have been taken by the assessee:-

1. *On the facts and circumstances of the case and in law, the CIT(A) erred in partially upholding the action of the AO in making an addition of Rs.51 ,08,901/- u/s 69C of the Act being alleged bogus purchases from alleged hawala dealers by confirming the same at 25% of the original addition amounting to Rs.12,77,226/-.*

2 *On the facts and circumstances of the case and in law, the CIT(A) erred in confirming the chargeability of Interest u/s 234A, 234B & 234C.*

3. The following grounds have been taken by the revenue:-

1.1 *Whether on the facts and in the circumstances of the case, and in law, the Hon'ble CIT(A) erred in not confirming addition at 100% of bogus purchases of Rs.51,08,901/- out of total purchases of Rs. 1,49,41,933/- despite holding that the purchases of Rs. 51,08,901/- were not genuine and the assessee failed to prove the genuineness of the transactions even after giving ample opportunities.*

1.2 *Whether on the facts and in the circumstances of the case, and in law, the Hon'ble CIT(A) erred in deleting the above addition despite the fact that the assessee failed to discharge his onus of proving the purchases.*

1.3 *Whether on the facts and in the circumstances of the case, and in law, the Hon'ble CIT(A) erred in deleting the above addition despite the fact that the assessee failed to even furnish quantitative tally of the stock as stated by CIT(A) in para 5 of his order.*

2. *The order of the CIT(A) may be vacated and that of the Assessing Officer may be restored.*

4. Rival contentions have been heard and record perused.

5. Facts in brief are that the assessee is a proprietor of M/s. Mahavir Corporation and engaged in the business of manufacturer, importer, and exporter of all types of bearings. Information was received by the Assessing Officer that few of the parties, from whom the assessee had purchased the material / goods, were suspicious. This information was

received from the Sales Tax Department, which had declared in public domain that these parties were mere 'hawala' givers. Sales Tax Department also claimed that these parties had stated on oath before them that they have merely provided entries to the beneficiaries and no goods were actually delivered by them. The AO, therefore, concluded that the assessee had suppressed the income to the extent of Rs.51,08,901/-, by debiting these bogus bills, in the Profit & Loss account. Accordingly, a notice u/s. 148 of the I.T. Act, 1961, was issued, after recording reasons to believe that the income of the assessee, for A.Y.2010-11, has escaped the assessment. During the course of re-assessment proceedings, in order to justify the genuineness of purchases, the notices u/s.133(6) of the I.T. Act, 1961, were issued on given addresses, but returned back unserved with a remark "not known". In view of these facts, the AO disallowed entire hawala purchases, amounting to Rs.51,08,901/- and added back to the total income of the assessee.

6. By the impugned order CIT(A) restricted the addition to the extent of 25% of bogus purchases after observing as under:-

5.6. I have carefully considered the submissions of the Ld. AR and noticed that the claim of the appellant i.e. sales against hawala purchases have also been credited in the P & L a/c., appears to be in order, keeping in view the GP / NP rates, shown in past and in subsequent years. Therefore, this is not a case where the entire amount has been siphoned off, by way of debiting bogus purchases. In my considered opinion, it is a case where, at the most, purchases might have been inflated. Considering the decision of Honble Gujarat HC in the case of Sanjay Oil Cake Mills and Vijay Proteins etc., as above, in my opinion, 25% disallowance, out of hawala purchases, will be reasonable.

Accordingly, I hereby confirm 25% disallowance of above purchases i.e., Rs.12,77,225/- (25% of Rs.51,08,901/-) and delete the balance amount of Rs.38,31,676/- (Rs.51,08,901- 12,77,225/-) out of total disallowance of Rs.51,08,901/-. Both the grounds of appeal are, therefore, decided accordingly.

7. Against the above order of CIT(A), both assessee and revenue are in appeal before us.

8. From the record, we found that AO has made addition on the plea that suppliers were not traceable. However, the CIT(A) found that assessee has made sales in respect of alleged bogus purchases, therefore, it is not a case where entire amount has been siphoned off by way of obtaining bogus purchases. Therefore, after applying the judicial pronouncements by Gujarat High Court in case of Sanjay Oil Cake Industries 316 ITR 274 and Vijay Proteins Ltd., 58 ITD 428 restricted the addition to the extent of 25%.

9. It was 'the contention of learned AR that facts of Sanjay Oil Cake Industries (supra) were entirely different. Our attention was invited to the ledger account of all the suppliers in the assessee's books, invoice issued by them, relevant extract of the bank statement showing payment made in respect of purchases made from these parties. Our attention was also invited to the statement showing movement of stocks as maintained by the assessee. We found that assessee has maintained stock register with regard to the purchase and sale of goods.

10. Learned AR placed on record the order of the Tribunal in assessee's own case for the A.Y.2009-10 and 2011-12 dated 14/09/2016 in ITA

No.4562 & 4564/Mum/2015, wherein similar addition made on account of bogus purchases which was upheld by CIT(A) at 25%, was reduced by the Tribunal to the extent of 12.5%. We had carefully gone through the order of the Tribunal in assessee's own case, wherein Tribunal have restricted the addition to the extent of 12.5% after having the following observation:-

“3. I have heard the rival submissions, carefully considered the same along with the orders of the tax authorities below. I am of the view that once the assessee is not able to prove the purchases but the assessee has actually consumed the raw material, this proves that the assessee might have got the raw material not from the parties which the assessee has shown but from other parties that may be without bills. The assessee in this manner would have saved at least VAT on such purchases. So far the gross profit earned on the goods which were manufactures out of these purchases would have already been accounted for in the profit & loss account. It is the saving in the excise or the VAT which the assessee would have saved. I, therefore, keeping in view this fact, am of the view that the estimation of disallowance @25% is on higher side and accordingly, I reduce the addition to 12.5% of such bogus purchase. Thus, the disallowance in the assessment year 2009-10 is sustained to the extent of 12.5% of Rs.37,53,464/- and in the assessment year 2011-12 @12.5% of Rs.17,98,936/-. Thus, ground No. 1 in both the years is partly allowed.

11. As the facts and circumstances during the year under consideration are *parametria*, respectfully following the order of the Tribunal in assessee's own case, we direct the AO to restrict the addition to the extent of 12.5%.

12. In the result, appeal of Revenue is dismissed whereas appeal of assessee is allowed in part.

Order pronounced in the open court on this 05/06/2017

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 05/06/2017
Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai