

आयकर अपीलीय अधिकरण पुणे न्यायपीठ एक-सदस्य मामला पुणे में

IN THE INCOME TAX APPELLATE TRIBUNAL

PUNE BENCH “SMC”, PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM

आयकर अपील सं. / ITA Nos. 1641 & 1642/PUN/2016

निर्धारण वर्ष / Assessment Years : 2010-11 & 2011-12

Smt. Meenakshi Raghunath Chaure,
M/s Om Stamping, 17, Maharudra Apartment,
Mate Park, Gangapur Road,
Nashik-422 013

.....अपीलार्थी / Appellant

PAN : AFBPC 0394M

बनाम / V/s.

Income Tax Officer,
Ward- 1(2),
Nashik.

.....प्रत्यर्थी / Respondent

Appellant by : Shri Sanket Joshi.
Respondent by : None

सुनवाई की तारीख / Date of Hearing : 25.05.2017	घोषणा की तारीख / Date of Pronouncement : 02.06.2017
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

Both the appeals filed by the assessee are against consolidated order of the CIT(A)-I, Nashik, dated 09.05.2016 relating to assessment years 2010-11 and 2011-12 against respective orders passed under section 143(3) r.w.s 147 of the Income Tax Act, 1961 (in short ‘ the Act’).

2. Both the appeals relating to the same assessee on similar issue were heard together and are being disposed of by this consolidated order for the sake of convenience

3. The assessee in ITA 1641/PUN/ 2016 has raised the following grounds of appeal:-

"1) The Learned CIT(A) erred in confirming the disallowance of Rs.6,07,973/- out of the total disallowance of Rs. 24,31,891/- made by the A.O. in respect of purchase made from seven alleged hawala parties on the basis of information obtained from Maharashtra Sales Tax Dept.

2) The Learned CIT(A) erred in holding that 25% of the purchases made by the assessee from the above parties were to be disallowed without appreciating that no disallowance was warranted on facts of the case.

3) The Learned CIT(A) failed to appreciate that –

a) The entire purchases made by the assessee from the above party were supported by purchase invoices and detailed stock statement and the transportation/octroi receipts were also furnished in respect of some purchases and hence, there was no reason to doubt the genuineness of the said purchases.

b) The payments to the said parties were made through bank cheques and the A.O. had not brought any evidence on record to show that the payments made by the assessee to these parties were withdrawn by it and returned to the assessee in cash and hence, in the absence of any contrary evidence, there was no reason to doubt the genuineness of the payments made by the assessee to these parties.

c) The above suppliers had not paid VAT and hence, they had left their registered premises and hence, the addition made by ignoring the various documentary evidences furnished by the assessee was not justified merely because the assessee was not able to produce these parties.

4) The assessee submits that the learned A.O. has neither provided the copies of statements of the alleged hawala parties recorded by the Sales Tax Dept. nor has he granted the opportunity of cross examination of these parties and hence, the reliance placed on such statements of the suppliers is not justified in law.

5) Without prejudice, the assessee submits that the disallowances made @25% on alleged hawala purchases is very high considering the nature of business of the assessee and if at all, any addition is to be sustained, the same may be reduced substantially.

6) The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal."

4. The only issue raised in the present appeal is against the addition on account of bogus purchases in the hands of assessee.

5. The learned Authorized Representative for the assessee fairly pointed out that the alternate plea raised by the assessee vide ground of appeal No.5 i.e. estimation of profit on the alleged hawala purchases is now squarely covered by the order of Tribunal in M/s. Chetan Enterprises Vs. ACIT in ITA Nos.365 & 366/PN/2016, relating to assessment years 2010-11 and 2011-12 and in M/s. Patco Precision Components Pvt. Ltd. Vs. ACIT, relating to assessment year 2009-10, vide consolidated order dated 31.08.2016. The learned Authorized Representative for the assessee referred to the order of CIT(A) and pointed out that the trail of goods has been established, wherein the assessee had filed the copies of transportation receipts and Octroi receipts wherever applicable and had also produced the statement showing quantitative details of the material purchased and corresponding sales to prove the genuineness of purchases.

6. None was present on behalf of the Revenue when the matter was called and it is proceeded to decide the present appeal after hearing the learned Authorized Representative for the assessee since the issue raised in the present appeal is squarely covered.

7. Briefly, in the facts of the case, the Assessing Officer had received information from the Sales Tax Department that certain dealers had made bogus sales and had not deposited VAT against the said sales. The statements of some of bogus dealers were recorded. The Sales Tax Department also issued list of purchasers who had made the said purchases from the said

dealers. The assessee was one such purchaser of goods allegedly from the bogus dealers. The Assessing Officer during the course of assessment proceedings show caused the assessee as to why the purchases made from the hawala parties being bogus transactions should not be added in the hands of assessee. The assessee explained that against the said purchases, the payments have been made through banking channel and there is no merit in relying on the statements of said persons without giving an opportunity to cross-examine. The assessee also filed the trail of goods and even the copies of transportation receipts and Octroi receipts wherever available. The assessee also produced statement showing quantitative details of material purchased and corresponding sales in order to establish the genuineness of transactions. The Assessing Officer however, made addition on account of bogus purchases of Rs.24,31,891/- and Rs.11,85,773/- in assessment years 2010-11 and 2011-12.

8. The CIT(A) after taking note of various judicial precedents on the issue, restricted the addition to GP rate @ 25% on the said purchases.

9. The assessee is in appeal against the order of CIT(A).

10. The Pune Bench of Tribunal in the case of M/s. Chetan Enterprises Vs. ACIT (supra) has already deliberated upon the issue at length and has held that where the assessee is able to establish the trail of goods, then addition is to be restricted to GP rate of 10% on the bogus purchases over and above the GP rate shown by the assessee. The relevant findings of the Tribunal are as under:-

“9. On perusal of record and after hearing both the learned Authorized Representatives, the issue which needs adjudication in the present appeal is in relation to the purchases made by the assessee. The assessee claims that the purchases were made in the regular course of carrying on the business from parties who were registered with the Sales Tax Department and had VAT

number. However, the Sales Tax Department had declared them to be hawala dealers i.e. parties who were registered with the Sales Tax Department but had not paid the requisite VAT. Information in respect of aforesaid hawala dealers were sent to the Assessing Officer since the assessee had made purchases from six of the parties who were in the list of hawala dealers. The said dealers had collected VAT from the customers including the assessee but had not paid the same to the State Treasury. The Assessing Officer on receiving the aforesaid information had reopened the assessment in the case of assessee and had confronted the assessee with the aforesaid information. The Assessing Officer also issued summons under section 133(6) of the Act to the said six parties from whom purchases were made but the said notices were returned unserved since none of the parties were available on the given addresses. The assessee in this regard was asked to produce the said parties and confirm the transactions. The assessee in reply, claims that it had submitted purchase bills, consequent sale bills, weighbridge receipts and transportation receipts in order to establish that the transaction of purchases was genuine. The assessee further claims that the payments against these purchases were made through banking channel and the copy of bank statement was furnished in this regard. The assessee further claims that no case has been made by the Assessing Officer against the said payments made by the assessee to the said persons that cash had been withdrawn and handed over to the assessee. Another aspect which the assessee points out is that when he came to know that the VAT collected by the said dealers has not been deposited with the Sales Tax Department, he voluntarily revised his return under MVAT Act by withdrawing the set off of claim in the earlier return and paid the taxes with interest. Another exercise carried out by the assessee with regard to purchases and sales was that the same quantity of goods received were sold to their customers, wherein the quantity of goods purchased from so-called hawala dealers tallied with the supplies made by the assessee to its customers. The transportation expenditure in respect of goods purchased from the said parties was incurred by the assessee through account payee cheques. The bills of transportation including Octroi were made available by the assessee. In this regard, the assessee claims that the purchases made by it were genuine. The Assessing Officer had show caused the assessee to explain the purchases from six parties on the basis of information received from the Sales Tax Department. The list of parties totaling Rs.31,98,665/- is as under:-

Name of the Party	Amount
1) Sandoz Steel	10,79,483
2) Adijin Enterprises	2,39,460
3) Hiten Enterprises	2,30,583
4) Bhavani Trade Link	3,42,417
5) Mercury Enterprises	3,76,239
6) Amar Enterprises	9,30,483
Total	31,98,665

10. However, the Assessing Officer except for providing the statements of three parties i.e. proprietor of Hiten Enterprises, proprietor of Mercury Enterprises and proprietor of Bhavani Trade Link, wherein the purchases totaled to Rs.9,49,240/-. No documents or papers in respect of purchases from Amar Enterprises of Rs.9,30,483/-, Sandoz Steel of Rs.10,79,483/- and Adijin Enterprises of Rs.2,39,460/- has been confronted to the assessee. In the first instance, the basic principle of natural justice demand that in case any document is to be used against the assessee, then the same should be confronted to the assessee before it can be relied upon. The assessee admittedly, had asked for statements and / or any other documents which have not been supplied to the assessee. The learned Authorized Representative for the assessee before the Tribunal pointed out that the Assessing Officer had

provided statements of three parties from whom the purchases totaling Rs.9,49,240/- were made and no statements of other parties totaling purchases Rs.22,49,425/- were made available to the assessee. However, the perusal of list of the companies filed before the CIT(A), copy of which is filed along with Appeal Memo reflects that there is difference in the figures of purchases though the total is shown at Rs.31,98,665/-. Further, the assessee claims in the statement of facts that the Assessing Officer had not supplied any evidence in respect of purchases of Rs.13,18,943/- to prove that the same were non-genuine. It is further stated that in respect of remaining purchases of Rs.18,79,722/-, the Assessing Officer has relied on statements of four suppliers, whose bills were supplied to the Tribunal. In the Paper Book, the assessee has filed the copies of statements of three parties at pages 106 to 122 but in the statement of facts, the assessee admits to have received the statement of four suppliers. Before the CIT(A) also, the claim of assessee was that no statements or evidence in respect of impugned purchases to the extent of Rs.14,32,856/- has been provided. This aspect came to the knowledge of Tribunal only while deciding the present appeal and in view thereof, the matter needs to be set aside to the file of Assessing Officer for verifying the copies of statements supplied to the assessee and thus, the total amount of purchases in this regard. In case the basic documents are not available with the Assessing Officer, then merely on the basis of allegation of impugned purchases from hawala dealers, no addition is warranted in the hands of assessee. However, in case the Assessing Officer has copies of statements, the same needs to be supplied to the assessee in order to give chance to the assessee to prove his case. In case any of the statements are not available with the Assessing Officer, no addition to the extent of purchases made from the said parties is warranted in the hands of assessee, in the absence of any evidence.

11. Now, coming to the claim of assessee vis-à-vis the impugned purchases, where the said purchases are backed by purchase bills and the assessee is able to establish the transportation of goods by way of weighbridge bills, copies of transportation bills and further, where the assessee has also made available the evidence of sale of said goods which were purchased from six parties, then prima facie the assessee has established its case. Another aspect to be kept in mind is that the assessee has also on its own motion not claimed the benefit of VAT which has not been deposited by hawala dealers and has revised its return of income filed under MVAT Act. The factum of purchases being made by the assessee stands established in view of such circumstances. However, the benefit of purchases being made from grey market, needs estimation in the hands of assessee. In this regard, the order of CIT(A) is confirmed in estimating the addition @ 10% of alleged hawala purchases. The quantum of hawala purchases would be worked out by the Assessing Officer after giving reasonable opportunity of hearing to the assessee, in line with the directions hereinabove.

12. Now, coming to the ratio laid down by the Tribunal in *Kolte Patil Developers Ltd. Vs. DCIT (supra)*, wherein the statements of hawala suppliers were recorded by the Assessing Officer and were confronted to the assessee and the opportunity of cross-examination is also granted. However, the assessee did not avail the same. Further, transportation receipts could not be furnished in respect of any of the suppliers and in this view, the purchases made from the said parties were added as income of the assessee. Another proposition which has been laid down by the Tribunal in the case of *ITO Vs. Shri Purushottam Shankar Kulkarni* in ITA No.991/PN/2012, relating to assessment year 2009-10, order dated 07.04.2016, wherein the Assessing Officer has noted the payments in respect of alleged bogus purchases were outstanding even as on the date of completion of assessment. Further, the assessee was not able to furnish any evidence relating to transportation of goods. Further, in the case of *Mukeshkumar Pushkaraj Mehta Vs. ITO (supra)*, the assessee himself admitted before the Assessing Officer that the purchases made from the impugned

hawala dealers was treated as bogus and added to its income. In this regard, there was no question of granting opportunity to cross-examine and the plea of assessee regarding genuineness of sales was not made before the Assessing Officer and further, no evidence in the form of delivery challans furnished by the assessee and hence, the purchases were added in the hands of assessee.

13. *The facts of the present case as pointed out in the paras hereinabove are at slight variance. The first aspect was the said parties are hawala dealers and the assessee has made purchases from such hawala dealers, who though collected VAT but had not deposited in the Government Treasury, is common in respect of the cases. However, in the present case before the Tribunal, the assessee claims that it had made available the evidence proving the genuineness of purchases made by it by way of copies of transportation receipts, weighbridge receipts and also the bills of transportation. Another aspect which is at variance from the other cases is that the payment in the case has been made by cheque. In view of the above said circumstances, where the assessee can establish its case of delivery of goods and its onward transmission by way of sale bills of nearly the same quantity, the entire purchases cannot be disregarded. In the paras hereinabove, the addition to the extent of 10% of the quantum of hawala purchases has been added in the hands of assessee and the said addition would meet the ends of justice, as the purchases are admittedly made from hawala parties. The Assessing Officer is directed to compute the quantum in respect of evidences furnished by him to the assessee in the form of statements recorded of the other persons. Where no such statements or any other evidence in respect of any person is made available to the assessee, then such quantum is not to be included in the hands of assessee for computing addition on this count. The grounds of appeal raised by the assessee in both the appeals are allowed as indicated above.*

ITA No.695/PN/2016 (Assessment Year : 2009-10)

14. *The present appeal was also heard along with other two appeals. The learned Authorized Representative for the assessee fairly pointed out that the issue arising in the present appeal is identical to the issue in the said appeals except for the fact that in the present case, the alleged purchases were made from one party M/s. Vitrag Traders Pvt. Ltd., Mumbai to the tune of Rs.13,48,537/-. The assessee had asked for copies of statements recorded by the Sales Tax Department of the suppliers and to allow cross-examination. The Assessing Officer in the present case has also not supplied the said statements to the assessee and the case of the assessee though was that, the first aspect in the present case is the availability of statements recorded by the Sales Tax Department and in case no such evidence is available, then there is no basis for making aforesaid addition. As directed in the above appeals, the matter is set aside to the file of Assessing Officer to verify the contention of assessee in this regard. In case, no document is available with the Assessing Officer, then no addition is warranted on account of hawala purchases. Otherwise, the addition has to be restricted to 10% of quantum of purchases as directed in the earlier appeals."*

11. The issue arising in the present appeals is identical to the issue before the Tribunal in M/s. Chetan Enterprises Vs. ACIT (supra) and following the same parity of reasoning, the addition in the case is restricted to addition by applying the GP rate of 10% on the bogus purchases over and above the GP rate shown

by the assessee. The Assessing Officer is directed to re-compute the addition in the hands of assessee in the respective years. Accordingly, grounds of appeal raised in both the appeals are partly allowed.

12. In the result, both the appeals of assessee are partly allowed.

Order pronounced on this day of 2nd June, 2017.

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 2nd June, 2017.
GCVSR

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-I, Nashik.
4. The Pr.CIT-I, Nashik.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “ एक-सदस्य” बेंच,
पुणे / DR, ITAT, “SMC” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार / Assistant Registrar,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune