आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ, अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

BEFORE SHRI RAJPAL YADAV,
HON'BLE JUDICIAL MEMBER
AND
SHRI WASEEM AHMED
HON'BLE ACCOUNTANT MEMBER

ITA.No.91, 92 and 93/Ahd/2017
निर्धारण वर्ष/Asstt.Year : 2008-09, 2009-10 and 2010-11

Sonal Parekh legal heir of Late Shri Anupkumar Jayantilal Parekh 74, Sindhi Market, Revadi Bazar, Ahmedabad.	Vs	ITO, Ward-1(3)(1) Ahmedabad.

अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

Assessee by :	Shri Deepak R. Shah, AR
Revenue by :	Shri L.P. Jain, Sr.DR

सुनवाई की तारीख/**Date of Hearing : 05/12/2019**
घोषणा की तारीख /**Date of Pronouncement: 09/12/2019**

आदेश/O R D E R

PER RAJPAL YADAV, JUDICIAL MEMBER

Present three appeals are directed at the instance of the assessee against separate orders of the ld.CIT(A)-10, Ahmedabad dated 11.11.2016 for the assessment years 2008-09, 2009-10 and 2010-11. Issue agitated in all these appeals are common, therefore, we heard them together and deem it appropriate to dispose of all these appeals by this common order.

2. In the first ground of appeal, the assessee has challenged reopening of the assessment by issuance of notice under section 148 of the Income Tax

Act, 1961. The reasons recorded by the AO are verbatim same except variation in the quantum of escaped income. Therefore, for the facility of reference we take up reasons from the Asstt.Year 2008-09, which reads as under:

> *"This office Is in receipt of Information from the CIT-I, Ahmedabad vide letter dt.11/04/2013 along with the letter dt.-08/04/2013 of the DGIT (Investigation), Ahmedabad relating to the Hawala Dealers and beneficiaries of the accommodation entries, received from Maharashtra State Sales Tax department*
>
> *On verification of the data received ft Is found that the assessee has obtained entries of bogus purchases from the Hawala Dealers. During the F.Y. 2007-08 relevant to the A.Y, 2008-09 assessee has obtained accommodation entries of bogus purchases amounting to Rs. 43,04,579/-from various Hawala dealers and have inflated the purchases. Thereby, the assessee has reduced the profit to the extent of Rs.43,04,579/-for the year under consideration, which needs to be brought: to tax. :*
>
> *In view of the above, I am of the opinion and have reason to believe that the income chargeable to tax has escaped assessment for the year under consideration due to failure of the assessee to disclose fully and truly all the relevant material facts in. the Return of Income. I am, therefore, satisfied that this is a fit case for re-opening the assessment u/s.147 of the I.T ACT,*
>
> *Sd/-*
>
> *Date:* *(B.M.RATHOD)*
> *Income Tax Officer*
> *Ward- 3(2), Ahmedabad*

3. The ld.counsel for the assessee at the very outset submitted that this ground is being taken by the assessee by way of additional ground of appeal, because the assessee, Shri Anupkumar Jayantilal died in a road accident on 16.4.2016 at young age of 52 years. The ld.CIT(A) has decided the appeal on 11.11.2016, but there was none in the family to look after the tax matter, and submit complete details, and therefore, on account of sudden death of Shri Anup J. Parekh, the assessee failed to take appropriate legal advice and

specifically pleaded that the AO has erred in reopening of the assessment under section 147 of the Act.

4. After hearing both the sides, we find that it is a legal and jurisdictional ground. Therefore, we admit this ground in all three years, and proceed to decide them on merit.

5. The ld.counsel for the assessee at the very outset contended that if the details submitted by the VAT Department of Mumbai are looked into, then it would reveal that transaction of Rs.43,04,579/- has been stated to be taken place in this assessment year, for which the assessee has obtained tax bills from *hawala* dealers. He took us through page no.3 of the paper book, and pointed out that in the information given by VAT department, they are pertaining to F.Y.2008-09, meaning thereby, these are for A.Y.2009-10, and not for the Asstt.Year 2008-09, therefore, according to him, the assessment cannot be reopened. Similarly, with regard to the Asstt.Year 2009-10, he contended that since there is mismatch between information given by the VAT vis-à-vis formation of believe in the Asstt.Year 2009-10, the total transaction ought to be Rs.43,04,579/- whereas the AO has harboured a belief that income has escaped to the extent of Rs.59,09,015/-. Thus, according to him, there is no nexus between the information available with the AO vis-avis formation of belief showing escapement of income for taxation.

6. The ld.DR, on the other hand, produced original assessment record, and contended that there are lots of information compiled from dealer firm exhibiting the fact that benefit of bills from Hawala traders from Mumbai have been taken by the assessee. He drew our attention towards the letter of Chief Commissioner written to the Commissioner for taking cognizance of this fact for monitoring time barred assessment in connection with these

transactions. Along with this letter, details in tabular form have been compiled; they were possessed with the department. When we confronted these details to the ld.cousnel for the assessee, then, he submitted that as such the assessee did not press the ground for reopening of the assessment for all these three years, hence, the additional ground raised by the assessee is not admitted, as not pressed.

7. On merit first we take facts for the assessment year 2008-09. The assessee has filed his return of income on 30.9.2008 electronically declaring total income at Rs.2,18,880/-. The ld.AO has confronted the assessee as to show complete details of purchases. In response to the query of the AO, it was contended by the assessee that complete details of bills, which are being alleged as taken through *hawala* dealer be supplied to him. Thereafter, according to the AO, the assessee did not submit such details, and ultimately, the assessment was finalized. Before the ld.CIT(A), the assessee took a specific plea that details collected from the Sales-tax department are pertaining the assessment year 2009-10 and not 2008-09. This fact has specifically noticed by the ld.CIT(A) on page no.4, which reads as under:

> *".....However, in the grounds of appeal, it is mentioned by the appellant, it is mentioned by the appellant that the Sales Tax Department has conveyed to the Income Tax Department as the figures and havala entries made by the appellant on Financial year basis whereas the Learned ITO has taken/issued notice u/s. 148 on the basis of Assessment Year. The havala entries of Rs. 43,04,579/- is for Financial Year. The havala entries of Rs. 43,04,579/- is for Financial Year 2008-09 whereas the AO has framed the assessment for A. Y. 2008-2009. It should have been for A.Y. 2009-10. However, the contention of the appellant cannot be accepted as the appellant has not filed any evidence whatsoever in support of its contention. In fact, the appellant has never responded to the notices issued by the Department and did not bother to attend or file submissions."*

8. A perusal of the above would indicate that the ld.CIT(A) had put the onus upon the assessee to rebut *hawala* entry of Rs.43,04,579/- which was not taken by him in the accounting year relevant to the asstt.Year 2008-09. The details submitted by the Sales-tax Department are placed on page no.3 of the paper book, which shows that these details are for the Asstt.Year 2009-10 and not Asstt.Year 2008-09. It is for the Revenue to first prove the charge against the assessee, only thereafter the assessee will be required to explain his position about that matter. There is no negative onus upon the assessee to demonstrate that he has not taken *hawala* entries of Rs.43,23,460/- in the Asstt.year 2008-09. In other words, it is for the AO first to demonstrate with help of some reliable evidence that entries of Rs.43,04,579/- were taken by the assessee. There is no such evidence possessed by the Revenue. The details possessed by the Revenue pertains to the Asstt.Year 2008-09, and this is only an information collected by the Sales-tax Department during the search conducted on these *hawala* operators. There should be some corroborative evidence apart from these details alone. Therefore to our mind, this cannot be treated as bogus purchases of the assessee and be not added to the total income. We allow this ground of appeal of the Asstt.Year 2008-09 and delete the addition.

9. As far as Asstt.Year 2009-10 is concerned, assessee again reiterated his submissions. These are being noticed by the ld.CIT(A) and they read as under:

> *"However, in the grounds of appeal, it is mentioned by the appellant that the Sales Tax Department has conveyed to the Income Tax Department as the figures and hawala entries made by the .appellant on Financial Year basis whereas the Learned HO has taken/issued notice u/s. 148 on the basis of Assessment Year. The havala entries of Rs.59,09,015/- is for Financial Year 2009-10 whereas the AO has framed the assessment for A.Y. 2009-10. It should have been for A.Y. 2010-11. However, the contention of the appellant cannot be accepted*

as the appellant has not fled any evidence whatsoever in support of its contention. In fact, the appellant has never responded to the notices issued by the Department and did not bother to attend or file submissions. There is a deliberate attempt on the part of the appellant not to a-end the appeal proceeding which goes on to prove that there is no evidences whatsoever available with the appellant on the grounds of appeal filed with the undersigned. Merely stating something without adducing the proper evidences would not help the case of the appellant. Despite being given repeated opportunities, the appellant has failed to comply with any of the notices. Moreover, the appellant has not denied the havala entries made by the appellant. In fact, the appellant is absolutely silent about the nature of these entries and did not deny the same either in the statement of facts or grounds of appeal. This also proves that the appellant has indulged in havala entries and-has manipulated the accounts. Therefore, it is held that the appellant has no evidence whatsoever to prove its claim and therefore, the order passed by the AO is sustained and the appeal is dismissed."

10. With the assistance of the ld.representatives, we have gone through the record carefully. On page no.3 of the paper book, there are details of Rs.53,60,785/-. All these transactions have been tabulated. The only contention of the assessee is that since in the Asstt.Year 2008-09 the sales-tax authorities have given the details and those details are pertaining to F.Y.2008-09, they have been quantified at Rs.43,04,579/-, therefore, this should be the amount which ought to have been considered in the Asstt.Year 2009-10. We are of the view that this is the only page of the alleged report. Since the period stated in this report for the F.Y2008-09, therefore, in the Asstt.Year 2008-09, we treat this as pertaining to Asstt.Year 2009-10. But apart from these details, there are other details, which have been quantified on page no.3 of the paper book for the Asstt.Year 2010-11. The assessee has not produced a single document either before the AO or before the CIT(A). It has not submitted details in support of his purchases. Therefore, it is to be accepted that the Department was able to lay its hand on the material supplied by the Sales-tax department that bogus purchases to the extent of Rs.59,09,050/-

were made by the assessee for the Asstt.Year 2009-10. Similar identical facts are available for the Asstt.Year 2010-11 wherein an addition of Rs.26,15,013/- has been made in that year.

11. The ld.counsel for the assessee submitted that the assessee has made his sales to Vishal Mart, and all these sales are identifiable. These have been quantified. The supplier of the goods might not have supported their sales on account of certain sales-tax issues; but only element of profit involved in the alleged procurement of goods should be assessed in the hands of the assessee. He took us through pageno.4 of the paper book, wherein total purchases, sales and gross profit declared by him are being noticed. It reads as under:

SUMMARY OF GROSS PROFIT

F.Y.	***Purchase***	***Sales***	***Gross Profit***	***%***	***Disallowance***	***%***
2007 – 2008	*8007434*	*9284294*	*897580*	*9.60*	*4304579*	*56.00*
2008 – 2009	*13015038*	*14037526*	*1022488*	*7.28*	*5909015*	*49.38*
2009 – 2010	*17178402*	*18498353*	*1319951*	*7.14*	*2615013*	*21.27*
2010 – 2011	*16200213*	*16978369*	*778156*	*4.58*	*0*	
2011 – 2012	*21230275*	*22419028*	*1188753*	*5.30*		
2012 – 2013	*33752972*	*35641997*	*1889025*	*5.30*		

12. He submitted that if these disallowances are confirmed, then profit will arise to 49.38% in the A.Y.2009-10, and 21.27% in the Asstt.Year 2010-11, which is practically not achievable. In other years, the AO has not made any addition. The profit reduced to 5.3%. The ld.DR, on other hand submitted that the assessee has inflated his purchases, and therefore, total purchases should be disallowed.

13. On due consideration of the above facts and circumstances, we are of the view that in terms of quantity, the purchases and sales have not been

disputed. Only thing disputed by the Revenue is part purchases from the alleged total sales were treated as bogus. It can be examined with a simple example. That the assessee has purchased material from party "A" ; obtain bills from party "B". Since he has not able to prove the purchases from "B", therefore, the purchases have been treated as bogus. In fact, the material was received by the assessee. If that thing has not been happened, then sales would not have been achieved. Therefore, in these circumstances, only extra element of profit involved in this *modus operandi* of purchases of goods from party "A" and obtaining bills from "B" is to be worked for treating the income of the assessee. The assessee has already shown gross profit at 7.25% and 7.14%. If extra profit at the rate of 6% is being estimated *qua* the alleged purchases of Rs.59,09,015/- and Rs.26,15,013/- in the Asstt.Year 2009-10 and 2010-11, then ends of justice would meet. This 6% we have worked out on the basis of our past experience in dealing with such cases, wherein Hon'ble Gujarat High Court has also upheld estimation of profit ranging between 5% to 20% depending on the nature of business and considering undue profit earned by an assessee. In view of the above discussion, all the appeals of the assessee are partly allowed.

14. In the result, appeals of the assessee are partly allowed.

Order pronounced in the Court on 9th December, 2019 at Ahmedabad.

Sd/-	Sd/-
(WASEEM AHMED)	**(RAJPAL YADAV)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad; Dated 09/12/2019