

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 6253/MUM/2018 (A.Y: 2010-11)

Income Tax Officer, Ward -3(4) 2 nd Floor, Rani Mansion Murbad Road Kalyan(W) - 421 301	v.	Shri Valji R. Mange Prop. Of M/s. Kamal Chem Industries A-304, Om Gopal Krishna Kelkar Cross Road Dombivli (E) – 421 201 PAN: AGEPM4124B
(Assessee)		(Respondent)

Assessee by	:	None
Department by	:	Shri R. Bhoopathi
Date of Hearing	:	02.12.2019
Date of Pronouncement	:	02.12.2019

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals) – 1, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 30.08.2018 for the A.Y. 2010-11 in restricting the disallowance to 5% of the purchases of ₹.5,06,695/- as against the entire purchases disallowed as non-genuine/bogus by the Assessing Officer.

2. Briefly stated the facts are that, the assessee is engaged in the business of "Manufacturing of Dyes & Chemicals", filed return of income on 26.09.2010 for the A.Y.2010-11 declaring income of ₹.1,76,910/- and the return was processed u/s. 143(1) of the Act. Subsequently, Assessing Officer received information from Sales Tax Department, Mumbai about the accommodation entries provided by various dealers and assessee was also one of the beneficiary from those dealers. The assessment was reopened U/s. 147 of the Act based on the information received from Sales Tax Department, Mumbai, that the assessee has availed accommodation entries from M/s. Bhumi Enterprises and M/s. Payal Enterprises who are all providing accommodation entries without there being transportation of any goods. In the re-assessment proceedings, the assessee was required to prove the genuineness of the purchases made from various parties which were referred to in the Assessment Order. The assessee furnished purchase bills, statement of purchases. It was further stated that the transport & Octroi bills are not applicable and submitted that the purchases made are genuine. Not convinced with the submissions of the assessee the Assessing Officer deputed the Inspector to obtain the information from the above alleged parties, who in-turn reported that no such businesses were carried out by the parties at the respective addresses. Considering the report of the Inspector, Assessing

Officer treated the purchases as non-genuine and rejected the Books of Accounts relying on the audit report. Assessing Officer was of the opinion that assessee had obtained only accommodation entries without there being any transportation of materials and the assessee might have made purchases in the gray market. Thus, Assessing Officer treated entire purchases of ₹.5,06,695/- as non-genuine and added to the income of the assessee. On appeal the Ld.CIT(A) considering the evidences and various submissions of the assessee restricted the disallowance to the extent 5% of the non-genuine purchases.

3. In spite of issue of notice none appeared on behalf of the assessee nor any adjournment was sought by the assessee. Therefore, we proceed to dispose off this appeal on hearing the Ld. DR on merits.

4. Ld. DR vehemently supported the order of the Assessing Officer.

5. Heard Ld. DR on merits and perused the orders of the authorities below. On a perusal of the order of the Ld.CIT(A), we find that the Ld.CIT(A) considered this aspect of the matter elaborately with reference to the submissions of the assessee and the averments in the Assessment Order and considering various decisions of High Courts restricted the disallowance to 5% of the non-genuine purchases, while holding so, the Ld.CIT(A) observed as under: -

“6.6 As regards the ratio of decisions in the cases of CIT v MK Brothers 163 ITR 249 (Guj), CIT I Vs.-Nikunji Exmp Enterprises Pvt. Ltd (Mumbai Income Tax), CIT Vs. Leades Valver Pvt. Ltd., (High Court Punjab & Haryana), Gujarat High Court M.K Brothers 163 ITR 149, Ahamedabad ITAT in Rajesh.P Soni Vs. ACIT-100 TTJ 892, Kishinchand Chellaram Vs. CIT (1980) 125 ITR 713 (SC) Tin Box Co. CIT, 249 ITR 216(SC), etc, as cited by the Ld. AR, are concerned the same are not applicable in the case of the appellant, as during the course of assessment as well as appellate proceedings, the Ld. AR, time and again, was asked to explain / justify the genuineness of purchases, made from hawala parties, by filing their current confirmation, bank statements and produce hawala parties for examination, etc., but failed to do so. In the absence of these details the department could not examine the correctness, reasonableness and genuineness of these purchases. The perusal of the decisions of various courts reveals that there are varying / different findings and the same differ from case to case. Therefore, the ratio of those cases cannot be said to be squarely applicable in the appellant’s case.

6.7. Since the hawala parties have run away from their original addresses and the appellant is not in a position to furnish the current verifiable addresses, therefore, the department is also not in a position to enquire the genuineness of these purchases, mainly due to failure on the part of the appellant.

6.8. As regards other aspects such as payment through banking channels, justification for purchases made from hawala parties as genuine, sales made against such purchases, etc., I would like to place the reliance on finding of the Hon’ble Supreme Court, in the case of Lachminarayan Madan Lal v. CIT (1972) 86 ITR 439 (Supreme Court), wherein it is held that even if there is an agreement, between the assessee and its agents for payments of certain amounts as commission, assuming there was such payment, that does not bind the Income-tax Officer to hold that the payment was made exclusively and wholly for the purposes of the assessee's business. In this case, the Supreme Court inter alia, has observed as under:-

"Although there might be such an agreement in existence and the payments might have been made, it is still open to the Income Tax Officer to consider the relevant factors and determine for himself whether the commission said to have been paid is properly deductible.

In this case absolutely no material on record has been brought by the assessee to suggest that the commission agents had procure any orders for the assessee. The Production of bills or payments having been made by account-payee cheques cannot by itself show that the commission agents had

procured any order for the assessee. No correspondence
....."

6.9. In the above case, the Hon'ble Supreme Court has made it very clear that by creating documents and making payment through banking channel to give colour, does not sacrosanct/ establishes the genuineness of the transaction. In number of other cases, as discussed above, 25% to 100% disallowance of bogus purchases have been upheld, based on the facts of those cases. In view of the foregoing discussion, the percentage of disallowance of bogus purchases, has to be based on the facts of each case, hence the same cannot be generalized in every case.

6.10. Considering the above facts and in view of the decision of the Hon. Delhi High Court in the case of CIT Vs. Jansampark Advertising and Marketing (P) Ltd., it is also an obligation on the part of the First appellate authority to ensure that the effective enquiry is carried out, to arrive at logical conclusion. Therefore, to understand the impact of booking of hawala purchases on the profit of the year, the Ld. AR wasw required to furnish the comparative details of GP/NP and GP/NP rates for hawala years, preceding two years and subsequent two years. In compliance, the appellant has submitted the details, as under: -

Asst Yr.		2008-09	2009-10	2010-11	2011-12	2012-13
Turnover		55,67,993	66,30,229	74,33,850	92,91,251	1,09,27,065
GP		3,32,275	3,49,309	4,11,633	4,65,925	6,24,023
GP Rate		5.97%	5.27%	5.54%	5.01%	5.71%
GP	After	--	--	9,18,328		--
GP	Add	--	--	12.35%		--
Rate	of BP					
NP		1,37,460	1,52,320	1,82,640	2,04,360	3,06,160
NP Rate		2.47%	2.30%	2.46%	2.20%	2.80%
NP	After	--	--	6,89,335	--	--
NP	add of	--	--	9.27%	--	--
Rate	BP					

6.11. From the above details it is seen that in the year under appeal i.e. A.Y. 2010-11 the appellant had declared NP @ 2.26%, which is much lesser then the NP rate of 5%. prescribed in the provisions of section 44AF of the Act for the retailers/traders. It is seen that the appellant enjoys income from manufacturing and trading of dyes and chemicals. In view of the above facts the Ld. AR was questioned to justify the lower rate of NP, keeping in view the provision of section 44AF vis-a-vis un-verifiability of above alleged purchases, coupled

with non-furnishing of current mailing addresses/confirmations, etc. In compliance the Ld. AR, after considering the above facts, vide order sheet entry dated 21.8.2018, requested that the NP @5% of the turnover, as per the provisions of section 44AF of the Act, may be estimated or disallowance to the extent of 25% of bogus purchases, whichever higher, maybe stay of demand.

6.12. The NP for AY 2010-11, @5% as per provision of section 44AF of the Act, is worked out at Rs. 3,71,6937- (Rs. 74,33,850 X 5/100), which is much higher than the NP of Rs. 1,82,6407- declared by the appellant and will also be higher than the profit if determined after adding of disallowance of 25% of bogus purchases. The AO, therefore, is directed to tax the income of the appellant at Rs. 3,71,693/- [disallowance sustained at Rs. 1,89,053 (3,71,693 - 1,82,640)]. The appellant will, therefore, get relief of Rs. 3,17,642/- [5,06,695 - 1,89,053]. The grounds of appeal, raised as above, are partly allowed.”

6. On a careful perusal of the order of the Ld.CIT(A) and the reasons given therein, we do not find any infirmity in the order passed by the Ld.CIT(A). None of the findings and observations of the Ld.CIT(A) have been rebutted with evidences by the revenue and thus we do not see any infirmity in the order passed by the Ld.CIT(A) in restricting the disallowance to the extent of 5% of the Net Profit purchases. Grounds raised by the revenue are dismissed.

7. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on the 02nd December, 2019

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Mumbai / Dated 02/12/2019
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum