IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE – VIRTUAL COURT

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA No.1568/PUN/2019
निर्धारण वर्ष / Assessment Year : 2009-10

Anil Jairam Goel,
C/o Lata Subhash Goel,
Flat No.605, Padmavati Apt,
Sector 7, Near Yash Garden,
Indrayani Nagar, Bhosari,
Pune – 411026

PAN : ADRPG2220L

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward 7(3), Pune

.....प्रत्यर्थी / Respondent

Assessee by	:	Shri Nikhil Pathak
Revenue by	:	Shri Ajay Dhoke, Addl.CIT

सुनवाई की तारीख / Date of Hearing : 14-07-2020
घोषणा की तारीख / Date of Pronouncement : 14-07-2020

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the assessee emanates from the order of the Ld. CIT(Appeals)-8, Pune, dated 05.08.2019.

2. The assessee has raised the following grounds of appeal:

On the facts and circumstances of the case and in law:-

1. *The Hon.CIT(A) failed to appreciate that the AO was not justified in issuing notice under Section 148 for reopening the Appellant's case under Section 147 of the Income Tax Act, 1961 without satisfying the conditions*

precedent for doing so. It is prayed that the reopening u/s 148 is not valid and the assessment framed by the A.O. pursuant to these proceedings be quashed.

2. *Without prejudice to Ground no.1 above,*

   (i) The AO erred in doubting the genuineness of purchases of Rs.7,48,21,217 made by the assessee based on suspicion of the supplier being a sales tax evader and adding Rs.10,62,461 calculated @ 1.42% of the said purchases to declared income.

   (ii) The Hon CIT(A) erred in enhancing the estimated addition of 1.42% of tainted purchases made to income by the AO to an amount calculated @10% of the said purchases relying on the decision of Chhabi Electricals P. Ltd. (ITA No.795/PUN/2014 of Pune ITAT. The appellant pleads that the enhancement made by the CIT(A) is not justified.

3. Brief facts of the case are that the assessee is an individual and proprietor of M/s. Bhakti Steel and he is reseller in steel and bar. The assessee filed his return of income for A.Y. 2009-10 on 31.10.2009 declaring total income at Rs.10,69,850/- and the same was assessed u/s 143(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'). The information was received from the Sales Tax Department of Maharashtra that the assessee has made purchases from hawala dealers. The Assessing Officer initiated proceedings u/s 147 of the Act with a view to assess the escaped income and issued notice u/s 148 of the Act. The Assessing Officer recorded reasons and took appropriate approval from the Competent Authority to reopen the case. In reply, the assessee stated that ROI furnished on 31.10.2009 may be treated as a return in response to notice u/s 148 of the Act. The subsequent notices u/s 143(2) and 142(1) of the Act, dated 21.07.2014 were issued to the assessee. The assessee had shown purchases from the Hawala Traders to the tune of Rs.7,48,21,217/- in the year under consideration. However, the assessee himself offered 1.42% of the said purchases as income over and above GP vide submission dated 12.03.2015 before the Assessing Officer. The

Assessing Officer agreed and added Rs.10,62,461/- being 1.42% of the total purchases. The CIT(A) after considering the detailed written submissions furnished by the assessee, facts of the case and assessment order, placed strong reliance on the decision of ITAT, Pune in the case of Chhabi Electrical P. Ltd. Vs. DCIT in ITA No.795/PUN/2014 and held 10% of purchases to be added in total income of the assessee over and above GP.

4. At the time of hearing before us, the Ld. Counsel for the assessee submitted that ground No.1 is not pressed, hence the same is dismissed as not pressed. Regarding ground No.2, he reiterated the submissions placed before the subordinate authorities and submitted that though the CIT(A) has followed the decision in the case of Chhabi Electrical P. Ltd. Vs. DCIT (supra) and has enhanced the addition from 1.42% to 10%. However, after the decision in the case of Chhabi Electrical P. Ltd. Vs. DCIT (supra), there is a decision of the Hon'ble Bombay High Court in the case of ***Pr.CIT Vs. Mohommad Haji Adam & Co.*** Vide its judgment dated 11-02-2019 in ITA No.1004 of 2016 and others and placing reliance on this decision, Ld. Counsel for the assessee submitted that the matter may be restored to the file of Assessing Officer to comply with the principles laid down therein and adjudicate the matter afresh.

5. The ld. DR very fairly conceded to the prayer of the assessee and placed no objection on record.

6. We have heard the rival contentions and perused the case records, considered the judicial pronouncements placed before us. We find that in

this case information was received by the Assessing Officer from Sales Tax Department of Maharashtra regarding bogus purchases and the transactions of assessee with Hawala dealers. In view thereof, as the facts demonstrated, the assessee himself offered 1.42% of the said purchases as income over and above GP and the Assessing Officer added Rs.10,62,461/- being 1.42% of the total purchases accordingly. However, the CIT(A) placing reliance on the decision of ITAT, Pune in the case of Chhabi Electrical P. Ltd. Vs. DCIT (supra) held that 10% of purchases should be added over and above GP. We have also perused the decision of Bombay High Court in the case of ***Pr.CIT Vs. Mohommad Haji Adam & Co. (supra)***. The relevant part of the decision is extracted as under:-

> *"8. In the present case, as noted above, the assessee was a trader of fabrics. The A.O. found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sales declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases. The decision of the Gujarat High Court in the case of N.K. I (supra) cannot be applied without reference to the facts. In fact in paragraph 8 of the same Judgment the Court held and observed as under-*
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> > *" So far as the question regarding addition of Rs.3,70,78,125/- as gross profit on sales of Rs.37.08 Crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular books during Financial Year 1997-98 is concerned, we are of the view that the assessee cannot be punished since sale price is accepted by the revenue. Therefore, even if 6 % gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as a result of which profit comes to 5.66 %. Therefore, considering 5.66 % of Rs.3,70,78,125/- which comes to Rs.20,98,621.88 we think it fit to direct the revenue to add Rs.20,98,621.88 as gross profit and make necessary deductions accordingly. Accordingly, the said question is*

answered partially in favour of the assessee and partially in favour of the revenue."

9. In these circumstances, no question of law, therefore, arises. All Income Tax Appeals are dismissed, accordingly…."

7. Further, ITAT, Pune in the case of ITO Vs. Shri Shivkumar Sharma in ITA No.50/PUN/2020, vide order dated 07.02.2020 following the decision of Hon'ble Bombay High Court in the case of ***Pr.CIT Vs. Mohommad Haji Adam & Co. (supra)*** has remitted the matter back to the file of Assessing Officer for fresh adjudication. The relevant para of the decision is extracted as under:-

"5. It is seen that cases of several assessees who had obtained bogus purchase bills from hawala parties came up for consideration before the Pune Benches of the Tribunal. Vide its common order dated 26.9.2019 in Dinesh Rathi vs. DCIT (ITA No. 975/PUN/2018) and others, the Tribunal has restored this issue to the file of the AO by observing in para no. 11 as under : -

`Now we turn to the merits of the cases. 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 recently 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. Such case specific details are not readily available with the respective ld. ARs or the ld. DRs for facilitating the calculation of gross profit rates of genuine and hawala purchases. Under these circumstances, we 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 recompute the amount of additions, if any, after allowing a reasonable opportunity of hearing to the assessee.'

6. In the light of the above decision taken by the Pune Benches of the Tribunal in several similar cases, I set-aside the impugned order and remit the matter to the file of the AO for deciding it in conformity with the above directions. In the absence of notice of any appeal filed by the assessee, the amount of relief is directed not to exceed the extent as allowed by the ld. CIT(A)."

8. Respectfully following the judicial precedents, we remit the issue back to the file of Assessing Officer to comply with the order of Hon'ble

jurisdictional High Court. We order accordingly. Needless to say that, the Assessing Officer shall afford reasonable opportunity of being heard to the assessee.

9. In the result, the appeal of assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 14th July, 2020.

Sd/-	Sd/-
R.S. SYAL	**PARTHA SARATHI CHAUDHURY**
VICE PRESIDENT	**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 14th July, 2020
GCVSR

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent
3. The CIT (Appeals)-8, Pune.
4. The Pr. CIT-4, Pune.
5. DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy// आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune