

आयकर अपीलिय अधिकरण “जे” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “J” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./I.T.A. No.7077/Mum/2016

(निर्धारण वर्ष / Assessment Year: 2010-11)

Sanjay Kailash Gupta 707, A7, Kingstone Yogidham, Shop No. 1, 2, 3, Kasturigram Society, Khadakpada, Kalyan (West)	बनाम/ Vs.	The Income Tax Officer, Ward 3(4), Kalyan Murbad Road, Rani Mansion, Kalyan (West)
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. ADTPG 0574 H		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	None
प्रत्यर्थी की ओर से/Respondent by	:	Ms. Aarju Garodia
सुनवाई की तारीख / Date of Hearing	:	04.06.2018
घोषणा की तारीख / Date of Pronouncement	:	02.07.2018

आदेश / ORDER

Per Shamim Yahya, A. M.:

This appeal by the assessee is directed against order of Id. Commissioner of Income Tax (Appeals)-1, Thane dated 13.07.2016 and pertains to the assessment year 2010-11.

2. The issue raised is that Id. Commissioner of Income Tax (Appeals) erred in sustaining disallowance of 12.5 % of bogus purchase.
3. The grounds of appeal read as under:

1. On the facts and circumstances of the case and in law, the Learned Commissioner (Appeals) erred in confirming the reopening of assessment under section 147 of the Act on the following grounds
 - a. The Commissioner (Appeal) failed to appreciate that the notice under section 148 was issued without any valid reason for reopening.
 - b. The Commissioner (Appeals) failed to appreciate that the Assessing Officer had failed to give reasons for reopening to the Appellant and proceeding with the assessment proceedings without authority.
 - c. The Commissioner (Appeals) failed to appreciate that a mere mention of name from whom the Appellant had purchased goods from certain parties list by Sales Tax Department does not by itself a information within the meaning of section 147 and thereby a ground for reopening of assessment.
2. On the facts and circumstances of the case and in law, the Learned Commissioner (Appeals) erred in holding the purchases of Rs.104,23,000 /- as non genuine under section 69C of the Act.
3. On the facts and circumstances of the case and in law, the Learned Commissioner (Appeals) erred in arriving at a disallowance by adopting a Gross Profit ratio of 12.50% on alleged bogus purchases, which is without any basis and justification and thereby confirming the addition of Rs.13,02,875 /-. The said percentage is very high and is arrived on an ad-hoc basis.
4. In this case, the assessee is engaged in the business of trading in steel & scrap in the name of his proprietary concern M/s. Shree Kailash Engineering Works. Information had been received by the Assessing Officer from the Sales-tax Department, Maharashtra to the effect that the assessee was one of the beneficiaries of transactions with Hawala dealers. The assessee had shown purchases amounting to Rs.1,04,23,000/- from the following parties:

Sr. No.	Name of Hawala dealer	Tin of Hawala dealer	PAN of Hawala dealer	Amount of Bill
1	Maruti Steel Traders	27230546012V	BANPS8526B	6,47,150/-
2	Shiv Industries	27680272629V	AMIPS8519C	6,94,270/-
3	Laxmi Trading	27620378101V	AHAPP9143L	56,63,085/-
4	Haitvi Steel Traders Pvt. Ltd.	27110361261V	AABCH5536Q	2,50,016/-
5	Revati Steel Traders	27090277561V		31,68,479/-
			Total	1,04,23,000/-

5. The names of these parties were appearing in the list of hawala dealers as supplied by the Sales-tax Department of Maharashtra. The hawala dealers had admitted before the Sales-tax authorities in their statement/affidavit that they were providing only accommodation bills without there being any actual purchase/sale of goods. Though the payment was received by the said parties from their customers through banking channels, however, after clearing of the cheques cash was withdrawn and handed over to the customers after deduction of nominal commission charges. The Assessing Officer issued notice u/s. 148 of the I.T. Act to the assessee for re-opening of the assessment proceedings for the year under consideration. The Assessing Officer asked the assessee to file documentary evidence to establish the genuineness of the purchases shown from these parties. In response to this query the assessee filed copies of purchase bills and ledger accounts of the above listed parties. The assessee however could not file copies of lorry receipts and octroi payment receipts to establish delivery of the goods to the appellant's premises. The notices issued by the Assessing Officer u/s. 133(6) of the I.T. Act to these parties were received back unserved with the remark "left/not known". The appellant could not produce any of the parties before the Assessing Officer. The Assessing Officer therefore held that the assessee had failed to establish the genuineness of the purchases from the above listed parties and added the amount of Rs.1,04,23,000/- to the assessee's income on account of unproved purchases.

6. Against the above order, the assessee appealed before the Id. Commissioner of Income Tax (Appeals). The Id. Commissioner of Income Tax (Appeals) confirmed the action of the assessing officer in making addition of 12.5% of the bogus purchase.

7. Against the above order of Id. Commissioner of Income Tax (Appeals), the assessee is in appeal before the ITAT.

8. We have heard the Id. Departmental Representative and perused the records. None appeared on behalf of the assessee despite notice. The last notice has returned unserved.

9. As regards the reopening of the case, on a careful consideration, we note that in this case information was received by the Assessing Officer from DGIT Investigation (Mumbai) there are some parties who are engaged in the hawala transactions and are also involved in issuing bogus purchase bills for sale of material without delivery of goods, which information was based on information received by Revenue from Maharashtra Sales Tax Authority. Information was received that the assessee was beneficiary of hawala accommodation entries from entry providers by way of bogus purchase. The accommodation entry provider has deposed and admitted before the Maharashtra Sales Tax Authority vide statement/ affidavit that they were engaged in providing bogus accommodation entries wherein bogus sale bills were issued without delivery of goods, in consideration for commission. These, accommodation entry providers, on receipt of cheques from parties against bogus bills for sale of material, later on withdrew cash from their bank accounts, which was returned to beneficiaries of bogus bills after deduction of

their agreed commission. The Assessee was stated to be one of the beneficiaries of these bogus entries of sale of material from hawala entry operators in favour of the assessee wherein the assessee made alleged bogus purchases through these bogus bills issued by hawala entry providers in favour of the assessee. These dealers were surveyed by the Sales Tax Investigation Department whereby the directors of these dealers have admitted in a deposition vide statements/affidavit made before the Sales Tax Department that they were involved in. issuing bogus purchase bills without delivery of any material. There is a list of such parties wherein the assessee is stated to be beneficiary of bogus purchase bills.

10. From the above, we find that tangible and cogent incriminating material were received by the AO which clearly showed that the assessee was beneficiary of bogus purchase entries from bogus entry providers which formed the reason to believe by the Assessing Officer that income has escaped assessment. The information so received by the Assessing Officer has live link with reason to believe that income has escaped assessment. On this incriminating tangible material information, assessment was reopened. At this stage there has to be prima facie belief based on some tangible and material information about escapement of income and the same is not required to be proved to the guilt. In this regard, I refer to the decision of the Hon'ble Apex Court in the case of CIT(A) Vs. Rajesh Jhaveri Stock Brokers P. Ltd, 291 ITR 500:-

"Section 147 authorises and permits the Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word "reason" in the phrase "reason to believe" would mean cause or justification. If the AO has cause or justification

to know or suppose (that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the AO should have finally ascertained the fact by legal statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers. As observed by the Supreme Court in *Central Provinces Managense Ore Co, ltd. v. ITO*(1991) 191 ITR 662, for initiation of action under section 147(a) (as the provision stood at the relevant time) fulfillment of the two requisite conditions in that regard is essential. At that stage, the final outcome of the proceeding is not relevant. In other words, at the initiation stage, what is required is "reason to believe", but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief Whether the materials would conclusively prove the escapement is not the concern at that stage. This is so because the formation of belief by the AO is within the realm of subjective satisfaction *ITO v. Selected Dalurband Coal Co, (P.) Ltd.* (1996) 217 ITR 597 (Supreme Court): *Raymond Woollen Mills Ltd. v. ITO* (1999) 236 ITR 34 (Supreme Court).”

11. The above discussion and precedent from Hon’ble Apex Court fully justify the validity of reopening in this case. The assessee has also raised some other issue relating to reasons for reopening. We find that these grounds were neither raised before the Assessing Officer nor before the Id. Commissioner of Income Tax (Appeals). They are also not arising out of the order of the Id. Commissioner of Income Tax (Appeals). Hence, the assessee’s challenge in this regard is dismissed.

12. As regards merits of addition, we find that credible and cogent information was received in this case by the assessing officer that certain accommodation entry provider/bogus suppliers were being used by certain parties to obtained bogus bills. The assessee was found to have taken accommodation entry/bogus purchase bills during the concerned assessment year from different parties. Based upon this information, the assessment was reopened. The credibility of information relating to reopening has been confirmed by us as above. Furthermore it is noted that in such factual scenario Assessing

Officer has made the necessary enquiry. The issue of notice to all the parties have returned unserved. Assessee has not been able to provide any confirmation from any of the party. Assessee has also not been able to produce any of the parties. The necessary evidence for transportation of goods have not been provided by the assessee. In this factual scenario it is amply that assessee has obtained bogus purchase bills. Mere preparation of documents for purchases cannot controvert overwhelming evidence that the provider of these bills are bogus and non-existent and there is no cogent evidence of transportation of goods. The sales tax Department in its enquiry have found the parties to be providing bogus accommodation entries. The assessing officer also issued notices to these parties at the addresses provided by the assessee. All these notices have returned unserved. Assessee has not been able to produce any of the parties. The assessing officer has noted that there is no cogent evidence of the provision of goods. Neither the assessee has been able to produce any confirmation from these parties. In such circumstances, there is no doubt that these parties are non-existent.

13. Hence purchase bills from these non-existent the/bogus parties cannot be taken as cogent evidence of purchases, in light of the overwhelming evidence the revenue authorities cannot put upon blinkers and accept these purchases as genuine. This proposition is duly supported by Hon'ble Apex Court decision in the case of Sumati Dayal 214 ITR 801 and Durga Prasad More 82 ITR 540. In the present case the assessee wants that the unassailable fact that the suppliers are non-existent and thus bogus should be ignored and only the documents being produced should be considered. This proposition is totally unsustainable in light of above apex court decisions.

14. In these circumstances, learned departmental representative has referred to Hon'ble Gujarat High Court decision in the case of Apex Appeal No. 240 of 2003 in the case of N K Industries vs Dy CIT, order dated 20.06.2016, wherein hundred percent of the bogus purchases was held to be added in the hands of the assessee and tribunals restriction of the addition to 25% of the bogus purchases was set aside. It was expounded that when purchase bills have been found to be bogus 100% disallowance was required. The special leave petition against this order along with others has been dismissed by the Hon'ble Apex Court vide order dated 16.1.2017.

15. We further note that Hon'ble Rajasthan high court has similarly taken note of decisions of the apex court on the issue of bogus purchases in the case of CIT Jaipur vs Shruti Gems in ITA No. 658 of 2009. The Hon'ble High Court has referred to the decision of CIT Jaipur vs. Aditya Gems, D. B. in ITA No. 234 of 2008 dated 02.11.2016, wherein the Hon'ble Court had *inter alia* held as under:

"Considering the law declared by the Supreme Court in the case of Vijay Proteins Ltd. Vs. Commissioner of Income Tax, Special Leave to Appeal (C) No.8956/2015 decided on 06.04.2015 whereby the Supreme Court has dismissed the SLP confirmed the order dated 09.12.2014 passed by the Gujarat High Court and other decisions of the High Court of Gujarat in the case of Sanjay Oilcake Industries Vs. Commissioner of Income Tax (2009) 316 ITR 274 (Guj) and N.K. Industries Ltd. Vs. Dy. C.I.T., Tax Appeal No.240/2003 decided on 20.06.2016, the parties are bound by the principle of law pronounced in the aforesaid three judgments.

16. Upon careful consideration we note that this is not an appeal by the Revenue. Hence, it will not be appropriate to consider and take away the relief already granted by the Id. CIT(A) to the assessee. As held by the Hon'ble jurisdictional High Court when

sales are not doubted 100% disallowance for bogus purchase is not disallowable. Hence, we confirm the order of Id. CIT(A).

17. In the result, this appeal filed by the assessee stands dismissed.

Order pronounced in the open court on 02.07.2018
Sd/- Sd/-

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

(Shamim Yahya)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 02.07.2018

व.नि.स./Roshani, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai