

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ “जी” मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI

श्री सी. एन. प्रसाद, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष
BEFORE SHRI C.N. PRASAD, JM AND SHRI RAJESH KUMAR, AM

ITA NO.2606/Mum/2015
(निर्धारण वर्ष / Assessment Year: 2009-10)

Income Tax Officer-31(2)(3), Room No.704, C-11, Pratyakshakar Bhavan, Bandra-Kurla Complex, Bandra (E), Mumbai-400051	बनाम/ Vs.	Shri Mahesh Banichand Rajput, 105/844, Motilal Nagar No.1, Road, No.3, Goregaon (W), Mumbai-400062.
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Cross-objection No.195/Mum/2016
Arising out of I.T.A. No.2606/Mum/2015
(निर्धारण वर्ष / Assessment Year : 2009-10)

Shri Mahesh Banichand Rajput, Mumbai	बनाम/ Vs.	Income Tax Officer-31(2)(3), Mumbai-400051
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./PAN : AACPR2152A		
(अपीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Revenue by	:	Shri G Nantha Kumar
प्रत्यर्थी की ओर से/Assessee by	:	Shri Manish Dedhia

सुनवाई की तारीख /Date of Hearing	:	29.12.2016
घोषणा की तारीख /Date of Pronouncement	:	18.1.2017

आदेश / ORDER

PER RAJESH KUMAR, A. M:

Appeal by the revenue and cross-objection thereto is filed by the assessee are directed against the order dated 18.2.2015 passed by the Id.

CIT(A)-42, Mumbai for the assessment year 2009-10. For the sake of convenience, these were heard together and are being decided by this common order.

2. First we will decide the cross-objection taken by the assessee.
3. Grounds taken by the assessee in the cross-objection are as under:

"1. The learned AO has on receipt of information from DGIT(Inv), Mumbai regarding bogus purchase without doing further investigation; reopen the assessment and thus erred in reopening the assessment u/s. 147/148.

2. The learned AO has erred in adding purchase as bogus purchase without conducting independent inquiry and merely on the basis of statement given by third parties before sales tax department and information received from the MVAT department.

3. The learned CIT(A) erred in ignoring the fact that purchases were duly verified by the preceding AO and after satisfaction the differentiate amount is added to income as per order u/s.143(3) dated 29.12.2011.

Without prejudice to above we state that

4. The learned CIT(A) has duly considered the G.P.Ratio of the assessee for different year and G.P.Ratio of Industries and after that restrict the addition to the extent of G.P.Margin thus there is no erred by the CIT(A) in deleting the full addition of Rs.46,52,938/- and restricting the same to the extent of G.P.Margin of Assessee.

5. The assessee craves leaves to add, alter, amend and/or delete any of the above grounds of cross"

4. The issue raised in the cross-objection no. 1,2 & 3 by the assessee is against upholding the reopening of assessment under section 147 read with section 148 of the Act raising the jurisdiction of the AO. The issue

raised in grounds of cross objection appeal no.2,3 and 4 is regarding the bogus purchases without any inquiry and making the addition on the basis of third party statement and the information received from the Sales Tax Department, Government of Maharashtra without verification of purchases and sustaining the GP addition on the bogus purchases.

5. Brief facts of the case are that the assessee filed return of income on 30.9.2009 declaring total income of Rs.13,98,750/- which was revised on 21.2.2011 to total income of Rs.9,39,050/-. The case of the assessee was selected under CASS and accordingly notices under section 143(2) and 142(1) of the Act were issued and served upon the assessee. Ultimately the assessment was completed under section 143(3) on 29.12.2011 assessing the total income of the assessee at Rs.10,59,910/-. Thereafter the case of the assessee was reopened by issuing the notice under section 148 of the Act dated 25.3.2013 by recording the following reasons:

“..... it is noticed that the assessee had purchased goods/materials from the following parties amounting to Rs.46,52,938/-. These parties are the list of suspicious dealers published by the Sales Tax Department Govt. of Maharashtra. This fact is also informed by the DGIT (In v.), Mumbai.

i	V3 Enterprises	Rs. 7,28,010
ii	Siddhi Vinayak Traders	Rs. 1,55,610
iii	Siddhi Enterprises	Rs. 46,438
iv	Mahavir Enterprises	Rs. 9,85,163
v	Navpad Exports Pvt. Ltd.	Rs.23,21,601
vi	Saileela Trading Pvt. Ltd.	Rs. 4.16.116
	Total	Rs.46, 52, 938

Therefore, I have reason to believe that income to the extent of Rs.46,52,938/-has escaped assessment- within the meaning of provisions of section 147 of the I. T. Act 1961 and accordingly the case is required to be reopened by issue of notice u/s. 148" of the Act, so as to reassess the assessee's correct income for the AY 2009-10".

6. The assessee vide letter dated 17.4.2013 submitted before the AO that original return may kindly be treated as return of income filed in compliance to notice issued under section 148 of the Act. The assessee vide letter dated 11.3.2013 objected to the reopening the assessment u/s 147 read with section 148 of the Act on the ground that the information on the basis of which the assessment was proposed to be reopened was before the AO at the time of hearing of regular assessment under section 143(3) and was duly verified by the AO while framing the such assessment. Information on the basis of which the assessment was reopened was that the assessee made bogus purchase from these Hawala dealers. During the course of assessment proceedings, the assessee was asked to produce these dealers from whom the assessee made purchases which was responded by the assessee vide letter dated 20.12.2013. After examining the submissions of the assessee, it was found by the AO that the assessee has received accommodation entries qua purchase of materials from these six parties aggregating to Rs.46,52,938/- which is mentioned in the para 6.2 of the assessment order. The AO issued show cause notice to these six parties,

however, in the case of five parties from serial number 2 to 6, the notices were returned unserved and in the case of party at serial number one, notice was served but was not replied. The assessee was again required by the AO to furnish information or produce these six parties vide letter dated 20.1.2014 and also asked as to why total purchases amounting to Rs.46,52,938/- should not be added to the total income of the assessee as bogus and unexplained expenditure. Thereafter, again the assessee vide letter dated 21.1.2014 requested the AO to allow 20 days time to file necessary documents and also furnish address of all the remaining five parties on whom the notices were returned unserved. However, again on the date given by the AO, the assessee neither did turn up nor file any reply and ultimately the purchases made by the assessee amounting to Rs.46,52,938/- were added to the total income of the assessee as unexplained by assessing the assessment u/s 143(3) r.w.s.147 of the Act at Rs.57,12,840/-. Aggrieved by the order of the AO, the assessee preferred an appeal before the FAA regarding reopening of the assessment under section 147 read with section 148 of the Act which was rejected and dismissed by the Id. CIT(A) vide para 2 and 3 of the appellate order by observing and holding as under :

"2.3 I have carefully considered the facts and the submissions. It is seen that the AO had received information from DGIT(Inv), Mumbai regarding the bogus purchases and billings, The reasons for issuance of notice were communicated to the Appellant. The AO has completely

relied on the information provided to him and he is required to examine the correctness and genuineness of the same by reopening the assessment and inquiring and verifying the correctness of transactions involved.

The AO had properly recorded the reasons and intimated the same to the Appellant and accordingly, the assessment u/s 147 and issuance of notice u/s 148 is valid in law. Accordingly, this ground of appeal is rejected."

7. Now, the assessee by filing cross objection in the revenue appeal has challenged the order of Id.CIT(A) confirming the reopening of the assessment u/s 147 r.w.s 148 of the Act.

8. Now the Id.AR vehemently submitted before us that the assessment reopened under section 147/148 of the Act was without jurisdiction as the assessment has been reopened on the basis of information received from the Sales Tax Department of Government of Maharashtra that the accommodation entries given to the assessee by the hawala dealers who were listed in the website of Government of Maharashtra as bogus dealers and were engaged in the business of providing accommodation entries without doing any actual business. The Id. AR further stated that all these six parties were verified by the AO during the course of original assessment proceedings vide order sheet entries dated 9.11.2011 and 11.11.2011 which is filed at page 21 of the paper book. The Id. AR argued that all these creditors /dealers were examined by the AO at the time of original assessment proceedings and the account of the assessee were duly

reconciled then the AO pointed out some discrepancies in the purchase account on the basis of information gathered from the other department and thus the reopening on the basis of information which was already available before the AO at the time of original assessment and was duly verified by the AO and now it is not permissible under the Act to re-open the completed assessment on mere change of mind/opinion. The Id. AR in defense of his arguments relied on the decision of Mumbai Bench of the Tribunal in the case of ACIT V/s Shri Ramila Pravin Shah in ITA No.5246/Mum/2013(AY-2010-11) dated 5.3.2015 and prayed that the re-assessment order passed by the AO and upheld by the Id. CIT(A) deserved to be quashed as void ab initio.

9. On the other hand, the Id., DR strongly relied on the orders of authorities below on the ground that the assessment was reopened under section 143(3) on the information received from the third party which is a government department. That the assessee was beneficiary of accommodation entries provided by the hawala dealers, therefore, the AO has validly reopened the assessment after recording the reasons for the same. The Id. DR also objected to the argument of the Id. AR that the sundry creditors including following six parties were creditors and not hawala dealers which were verified from the assessment proceedings.:

<i>Sr.No.</i>	<i>Name of the party</i>
<i>i</i>	<i>M/s Navpad Exports Pvt. Ltd.</i>
<i>ii</i>	<i>M/s Saileela Trading Pvt. Ltd.</i>
<i>iii</i>	<i>M/s Siddhi Vinayak Traders</i>
<i>iv</i>	<i>M/s V3 Enterprises</i>
<i>v</i>	<i>M/s Siddhi Enterprises</i>
<i>vi</i>	<i>M/s Mahavir Enterprises</i>

The Id. DR also pointed out order sheet entries dated 9.11.2011 and 11.11.2011, wherein it was recorded that the some discrepancies were found by the AO which were reconciled by the assessee and nothing was mentioned as to the confirmation of these purchases from these six parties. Therefore, the argument that the assessee is liable to be brushed aside. Finally, the Id. DR submitted that the cross-objection filed by the assessee should be dismissed as being devoid of merits.

10. We have carefully considered the rival submissions and perused the material placed before us. We find that the AO finalized the assessment order u/s 143(3) r.w.s.147 vide assessment order dated 14.2.2014 by making addition of Rs.46,52,938/- on account of purchases of material from six hawala dealers which the assessee could not confirm and prove the genuineness of the transactions during the course of assessment proceedings. We also find during the course of assessment proceedings, certain discrepancies were found in the books of account of the assessee regarding these dealers and thereafter the assessee reconciled these

accounts and the fact has been mentioned in the order sheet vide entries dated 9.2.2011 and 11.2.2011 forming part of the paper book of the assessee. Now, the issue before us is regarding whether the reopening of the assessment under section 147 on the basis of information received from the third party was a credible evidence for reopening of the completed assessment or is bad in law on the basis of change of opinion. Considering all the facts as stated above, we find that during the original assessment proceedings the assessing officer observed that there are certain discrepancies in the books of account of the assessee and it is nowhere mentioned that these accounts were duly confirmed during the original assessment proceedings. Thereafter after framing the assessment, the AO received information from the Sales Tax Department, Govt. of Maharashtra that the assessee obtained accommodation entries from six parties who were involved in issuing bogus bills. In our opinion the said piece of information constituted a credible information/evidence before the AO to come to a conclusion that the income of the assessee has escaped assessment as the AO has not examined all the purchases from these angles at the time of original assessment proceedings. We therefore do not find any merit or substance in the cross-objection raised by the assessee that reopening u/s 147 read with section 148 is void and bad in law ab-initio. Accordingly, we

are inclined to dismiss the cross-objection raised by the assessee qua reopening of the assessment raised.

11. The issue raised in the cross-objection no. 4 qua application of GP rate to the tainted purchases by the Id. CIT(A) by deletion of addition made by the Id.CIT(A) by adding the entire bogus purchases by the AO is being dealt and disposed off by us while disposing and deciding the appeal of the revenue in the following paragraphs.

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12. Only issue raised in all the grounds of appeal by the revenue is deletion of addition of Rs.46,52,938/- by the Id. CIT(A) as made by the AO on account of non-genuine purchase from the six parties and thereby directing the AO to restrict the addition to the extent of GP margin at Rs.10,47,957/-.

13. The Id. DR submitted before us that the assessee was beneficiary of hawala transactions made with these six parties from whom the purchase of Rs.46,52,939/- were shown to have been made and the basis of the said addition was that the information received from the Sales Tax Department of Government of Maharashtra. The Id. DR further submitted that the assessee could not prove genuine of purchases neither by confirming purchase from these six parties nor by producing these parties before the AO. Therefore,

the action of the Id.CIT(A) in deleting the purchases and directing the addition to be made by applying the GP only was not correct and should be reversed by restoring the order of the AO.

14. The contention of the Id.AR on this issue has already been discussed in this order while deciding the cross-objection filed by the assessee.

15. We have carefully considered the rival contentions and perused the material placed before us. We find that the Id. DR contended that the Id.FAA was wrong in giving directing to the AO to delete the addition and directed the additions to be made only @ 23.39% of total purchase equal to GP rate of the assessee. After hearing both the parties and on perusal of the material placed before us and the impugned order, we find that it is undisputed facts that the assessee was involved in hawala transactions and made purchases to the tune of Rs.46,52,938/- from these parties as noted by the AO in the assessment order. We find that the above parties could not be confirmed by the assessee during the course of assessment proceedings despite allowing several opportunities to the assessee and ultimately the AO was left with no option but to add the entire purchases. During the appellate proceedings before the FAA, the Id. counsel submitted that the addition of the purchases be deleted but the Id.CIT(A) while deleting the addition directed the AO to add Rs.10,47,950/- being equal to 23.39% of

the purchases which was the GP rate of the assessee by observing and holding as under:

"4.4. I have considered the above submissions of the appellant, material available on record and the impugned assessment order on this issue. The list of the suspicious dealers and hawala parties have been obtained from DGIT(Inv). The Appellant has unable to prove the genuineness of the transactions by producing the parties or getting the confirmations from these parties. No reply or confirmation has been obtained to the notices issued u/s. 133(6) of the Income-tax Act, 1961.

4.5. Further, considering that the sales of the Appellant are genuine and has not been under doubt, the entire amount of purchases cannot be disallowed. Further, as per the submissions made by the Appellant and the supporting furnished in respect of the purchase register, it is noted that the Appellant- has not routed the VAT through the Profit & Loss account and accordingly, the amount of VAT has not been included in the purchases as being reflected in the profit & loss account. Accordingly, for the purposes of disallowance of the purchases of bogus billings, the amount of VAT is being reduced from the total purchases.

4.6. Also, from the above table at point 4.3 it is noted that there appears to be some discrepancy regarding the amount of purchase as per the Appellant and the AO In the case of Navpad Exports Pvt Ltd. The gross purchase amount as per the AO is Rs.23,21,601 whereas as per the Appellant the same is Rs.21,55,600 (and without VAT the same is Rs.20,72,692). The Appellant has not furnished any details regarding the reconciliation of the same. Also, no details have been obtained from Navpad Exports Pvt. Ltd in response to notice issued u/ss. 133(6) of the Income-tax Act, 1961. Accordingly, the difference of Rs.1,66,001 (Rs.23,21,601 - Rs.21,55,600) is being added to Rs.43,14,362 (total purchases excluding VAT) to compute the amount of bogus purchase from the parties covered under hawala transactions at Rs.44,80,363.

4.7. The Gross profit margin of the Appellant is 23.39% for the year. Accordingly, I do hereby direct to disallow only the sum of Rs.10,47,957 being the gross profit margin on the purchases from the parties covered under hawala of Rs.44,80,363/-.

In view of these facts, the entire additions made by the AO of Rs.46,52,938/- is not justified and accordingly I direct the AO to restrict the addition to the extent of gross profit margin at Rs.10,47,957/- made under section 69C. This ground of appeal is partly allowed"

We further find that the assessee has made purchases from these parties and payments were made through banking channels which was recorded in the books of accounts of the assessee. It is also undisputed fact that the sales made by the assessee were accepted by the AO and therefore the GP on these purchases has been accounted for in the books of account of the assessee. In our opinion the FAA has rightly applied the GP rate on the purchase to obliterate the possibility of leakage of revenue by purchase in the gray market. We are therefore, inclined to uphold the order of Id. CIT(A) by dismissing the appeal of the revenue.

16. Without prejudice ground raised by the assessee is only in support of the CIT(A)'s order in restricting the addition to the GP margin. As we have dismissed the revenue's appeal confirming the order of the Id. CIT(A) in estimating the GP this ground on cross-objection becomes infructuous and therefore, dismissed as infructuours.

17. In the result, cross-objection filed by the assessee is partly allowed and appeal filed by the revenue is dismissed.

Order pronounced in the open court on 18th Jan, 2017.

Sd

sd

(C.N. Prasad)

(Rajesh Kumar)

न्यायिक सदस्य / Judicial Member

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 18th Jan 2017
SRL,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

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आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai