

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "I", MUMBAI

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER  
AND SHRI AMARJIT SINGH, JUDICIAL MEMBER

ITA No. 5427/MUM/2015  
(Assessment Year : 2009-10)

M/s. Imperial Imp & Exp.  
Building No.3, 10<sup>th</sup> Floor,  
Block No.30, Navjeevan Society,  
Lamington Road,  
Mumbai 400 008  
PAN:AABFI 7409L

... Appellant

Vs.

The ITO 20(1)(5),  
Piramal Chambers,  
Mumbai.

.... Respondent

Appellant by : Shri Bhupendra Shah  
Respondent by : Shri O.P.Meena

Date of hearing : 22/02/2016  
Date of pronouncement : 18/03/2016

**ORDER**

**PER G.S. PANNU,AM:**

The captioned appeal by the assessee is directed against the order of the CIT(A)-32, Mumbai dated 23/10/2015 pertaining to the Assessment Year 2009-10, which in turn has arisen from the order passed by the Assessing Officer dated 16/03/2015 under section 143(3) of the Income Tax Act, 1961 (in short 'the Act') .

2. In this appeal, although the assessee has raised multiple Grounds of appeal, but the substantive grievance is against the action of the CIT(Appeals) in confirming an addition of Rs.4,19,356/- being estimated profit on unexplained purchases.

3. In brief, the relevant facts are that the appellant is a partnership firm, which is engaged in the business of export of consumer clothing. The return of income for assessment year 2009-10 was filed by the assessee declaring a total income of Rs.3,49,320/-, which was subject to a scrutiny assessment under section 143(3) of the Act, whereby the total income was assessed at Rs.3,66,344/-. Subsequently, the Assessing Officer issued notice under section 148 of the Act on 06/03/2014 reopening the assessment on the ground that certain income chargeable to tax had escaped assessment, in as much as, assessee had taken accommodation purchase bills from four parties, totalling to Rs.77,51,496/-. In the ensuing assessment, the Assessing Officer has held that purchases declared by the assessee of Rs.77,51,496/- from four parties, detailed in para-1 of the assessment order are bogus purchases. According to the Assessing Officer, assessee did not make actual purchases from such four parties because as per the information received from the Investment Wing, the four parties in question were found to have been VAT dodgers by the Maharashtra VAT Department. The Assessing Officer noted that since sales have been effected by the assessee, which showed that assessee was actually in possession of goods, the material would have been procured from grey market without bills in order to cover up the purchases, and thus assessee would have taken accommodation bills

for purchases from the said four parties amounting to Rs.77,51,496/-. Accordingly, the Assessing Officer brought to tax the profit margin in relation to such non-genuine purchases, which he computed by applying the rate of 12.5% on the total amount of Rs.77,51,496/-, which came to Rs.9,68,937/-.

3.1 The plea of the assessee before the Assessing Officer as well as before the CIT(Appeals) was that the purchases in question were duly supported by the bills of purchase. Moreover, the assessee pointed out that all its sales were by way of exports and that there was no evidence to say that the purchases in question were bogus. The assessee also referred to his bank statement to prove payments to such parties. The details of goods sold by the assessee was also furnished, which corresponded to the purchases effected from such four parties. The CIT(Appeals) has primarily affirmed the stand of the Assessing Officer based on the information stated to have been received from the Investigation Wing of the Department relating to the finding of the Maharashtra VAT Department. Additionally, the CIT(Appeals) also noticed that assessee could not prove the existence of the suppliers and, therefore, the circumstantial evidence also suggested that the entire purchases from the four parties was unverifiable. However, he restricted the addition to 5.41% of the amount of such unexplained purchases, instead of 12.5% adopted by the Assessing Officer. The CIT(Appeals) has applied the rate of 5.41% being the gross profit rate of the assessee for the year under consideration. Accordingly, out of an addition of Rs.9,68,937/- made by the Assessing Officer, the

CIT(Appeals) retained an addition of Rs.4,19,356/- and deleted the balance.

4. Before us, the Ld. Representative for the assessee has vehemently pointed out that the entire sales of the assessee are by way of exports and, therefore, there was no liability towards sales tax on the purchases effected by it. It was also contended that though the Assessing Officer has referred to the four parties having been listed as 'hawala operators' by the Sales Tax Department of the Government of Maharashtra, but there is no clear evidence to suggest that the transaction with the assessee were bogus. It is pointed out that in the cases of some other assessees, under identical circumstances, the Co-ordinate Benches of the Tribunal have deleted the additions. In this connection, reliance have been placed on the following decisions:-

- (1) ITO vs. Shri Deepak Popatlal Gala in ITA No.5920/Mum/2013 (A.Y 2010-11) dated 27/03/2015;
- (2) Ramesh Kumar and Co. V/s. ACIT in ITA No.2959/Mum/2014 (A.Y. 2010-11) dated 28/11/2014;
- (3) DCIT v/s. Shri Rajeev G. Kalathil in ITA No.6727/Mum/2012 (A.Y.2009-10) dated 20/08/2014;
- (4) Shri Ganpatraj A. Sanghavi v/s. ACIT in iTA No.2826/Mum/2013 (A.Y.2009-10) dated 5/11/2014; and
- (5) Shri Hiralal chunilal Jain vs. Income Tax Officer in No.4547/Mum/2014 dated 01/01/2016.

On this basis, the plea of the assessee is that the entire addition is liable to be deleted.

5. On the other hand, the Ld. Departmental Representative supported the orders of the authorities below by pointing out that the addition has been made on account of the enquiries conducted by the Sales Tax Department of the Government of Maharashtra and no effort has been made by the assessee to controvert such information.

6. We have carefully considered the rival submissions. The entire discussion in the assessment order reveals that purchases from four parties namely Dhruv sales Corporation - Rs.13,67,640/-; Subhlaxmi Sales Corp. - Rs.20,20,800/-; Dharshan Sales Corporation -Rs.9,64,656/-; and Paras (India)- Rs.33,98,400, totalling to Rs.77,51,496/- have been treated to be bogus based on the purported enquiries conducted by the Sales Tax Department of the Government of Maharashtra. Ostensibly, the Assessing Officer ought to have brought on record material which is relevant to the transactions of the assessee with the aforesaid four parties instead of making a general observation about the information received from the Sales Tax Department of the Government of Maharashtra. Quite clearly, the Assessing Officer as well as CIT(Appeals) have taken note of the fact that no sales could have been effected by the assessee without purchases. In the present case, assessee has explained that all its sales are by way of exports. The books of account maintained by the assessee show payment for effecting such purchases by account payee cheques and also the vouchers for sale and purchase of goods, etc. Notably, no independent enquiries have been conducted by the Assessing Officer. Under identical circumstances, our Co-ordinate Benches in the cases of Deepak Popatwala Gal (supra), Shri Rajeev G. Kalathil(supra)and Ramesh Kumar and Co.(supra) have held that the Assessing Officer was not justified in making additions merely on the basis of information obtained from the Sales Tax Department of the Government of Maharashtra without conducting any independent enquiries. Before the CIT(Appeals), one of the points raised by the assessee was with respect to an opportunity to cross examine the four

parties, but we find that no such opportunity have been allowed. Considering the entirety of facts and circumstances of the case and the aforesaid precedents, which have been rendered under identical circumstances, in our view, the CIT(Appeals) erred in sustaining the addition to the extent of Rs.4,19,356/- instead of deleting the entire addition of Rs.9,68,937/- made by the Assessing Officer. We direct accordingly.

7. Since the assessee firm has succeeded on merits of the addition, the other ground raised by the assessee challenging the initiation of proceedings under section 147/148 of the Act is rendered academic and is not being adjudicated for the present.

8. In the result, appeal of the assessee is allowed, as above.

Order pronounced in the open court on 18/03/2016.

Sd/-  
(AMARJIT SINGH)  
JUDICIAL MEMBER  
Mumbai, Dated 18/03/2016

Sd/-  
(G.S. PANNU)  
ACCOUNTANT MEMBER

Vm, Sr. PS

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,  
  
(Dy./Asstt. Registrar)  
**ITAT, Mumbai**