

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted Through Virtual Court)

**Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA Nos: 206 & 207/Rjt/2022
Assessment Years: 2014-15 & 2015-16**

The DCIT, Circle-1(1), Rajkot (Appellant)	Vs	M/s. Dhruv Craft Mill Pvt. Ltd., Sr. No. 285, Nr. Fact Paper, Tal-Morbi, Lalapar 363641 PAN No: AADCD6851E (Respondent)
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**Revenue Represented: Shri Ashish Kumar Pandey, Sr. D.R.
Assessee Represented: Shri Mehul Ranpura, A.R.**

Date of hearing : 20-09-2023
Date of pronouncement : 03-11-2023

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

These two appeals are filed by the Revenue as against the two separate appellate orders both dated 31.05.2022 passed by the Commissioner of Income Tax (Appeals-11, Ahmedabad arising out of the reassessment order passed under section 143 r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Years 2014-15 & 2015-16. Since

identical issue of bogus purchase is involved in both cases, the same are disposed of by this common order.

2. The brief facts of the case is that the assessee is a Private Limited Company engaged in manufacturing of all type of Craft Papers. For the Assessment Year 2014-15, the assessee filed its Return of Income declaring total income of Rs. 1,90,633/-. The same was processed u/s. 143(1) of the Act on 24.07.2015 accepting the returned income. It is thereafter the assessment was reopened issuing notice u/s. 148 of the Act on the information received from DGCEI, in respect of the persons/parties who purchased goods from M/s. Chauhan Suppliers the bogus suppliers, whose TIN number had been cancelled ab initio. Further the assessee itself agreed on the bogus purchase and paid its tax liability to the Commercial Tax Department. Therefore the bogus purchase of Rs. 1.05 crores required to be disallowed and brought to tax which has escaped assessment. In response to the 148 notice, the assessee filed its return of income admitting the same income as in the original return. After calling upon various details, the Assessing Officer added the purchase from M/s. Chauhan Suppliers as bogus and added as the income of the assessee.

3. Aggrieved against the same, the assessee filed an appeal before Commissioner (Appeals). After considering the various submissions of the assessee and gross profit and net profit ratio of the assessee, Ld. CIT(A) estimated the profit of the assessee at 7.5% on the bogus purchase and restricted the addition to Rs. 7,90,739/- as against

the addition made by the A.O. of Rs. 97,52,444/- observing as follows:

“.....8.5 I further find that the AO has pointed out many discrepancies in the purchase made from the alleged vendor, and also found that certain documents for verification by the appellant. On the other hand, the appellant has also submitted detailed point-wise reply against the observations reproduced in the earlier paras.

8.6. I find that the AO nowhere in the assessment order doubted the production, Sales, Yield Ratio, and other financial ratios declared by the appellant. The AO the book results. In view of the above, it is clear that the has also not rejected appellant did make purchases of raw materials (waste paper) albeit from some there cannot be sales in absence of relevant purchase of raw materials.

8.7 Though, the purchase of waste papers made by the appellant is not doubted, it cannot be said that the appellant has actually made purchase from the supplier M/s. Chouhan Supplier only. The search action carried out by the VAT Department at the premises of Ms. Chouhan Supplier and cancellation of his tax registration number shows that the vendor was not in the actual business of trading in waste paper. Such type of practice is prevailing in some industry, where the actual purchase of goods is made from grey market and subsequently, to justify such purchase, the purchaser obtains purchase bills from the parties engaged in accommodation entries i.e. M/s. Chouhan Supplier. In view of these facts and also the discrepancies mentioned by the AO in the Assessment order, it is established that purchase from M/s. Chouhan Supplier was not genuine.

8.8 Therefore, the important question is that, if the appellant had actually purchased the raw material (wastepaper) from a source other than the impugned vendor M/s. Chouhan Supplier, then there should be some benefit arising to the appellant. The purchase of wastepaper is imperative to the appellant. Here the appellant might have resorted to Un-registered dealer (URD) purchases and obtained bills from registered purchasers. In that case, the benefit to the appellant is the non-payment of VAT on such purchases, which is 5% on such purchase plus some other benefits.

8.9 Reliance is placed on Hon'ble Jurisdictional High Court of Gujarat judgment in the case of PCIT Vs Sandeep Kumar Chandak in Tax Appeal No. 210 of 2020, wherein the identical issue has been dealt with and the relevant para of the findings of the Hon'ble Court is reproduced as under:-

9. We take notice of the findings recorded by the Tribunal. The findings are as under:

"10.2 From the preceding discussion we also note that the assessee has claimed to have made sales against such purchases which have been admitted by the Revenue. As such in our considered view, such sales cannot be executed without having the corresponding purchases. There was no defect pointed out by the authorities below insofar the sales made against such purchases. Moreover, there is also

no allegation regarding the genuineness of the books of accounts which were duly audited under the Income Tax Act.

10.3 However, before parting we cannot ignore the practice prevailing in the business industries to purchase the goods from the grey market and subsequently justify such purchases by obtaining a purchase bill from the parties engaged in providing accommodation entries. It is because the assessee in the present case has claimed to have purchased the goods from the parties not having valid VAT/CST registration certificate though he is claiming to have purchased goods from the registered party. Moreover, there was no submission from the side of the assessee against the finding of the Maharashtra Sales Tax Department wherein it was alleged that the parties are not genuine. In view of the above, we can presume that the actual purchases were made by the assessee from the grey market but shown in the name of the impugned parties.

10.4 We are also conscious to the fact that the assessee has already declared the GP in its books of accounts by recording the sales and the corresponding purchases. But to prevent the possible leakage of the Revenue, as the purchases from the local/grey market is normally cheaper, we are inclined to make ad hoc addition at the rate of 5% of such purchases in order to meet the end of justice and to stop the ongoing dispute. In holding so, we find support and guidance from the judgment of the ITAT Ahmedabad in case of ITO vs. Sun Steel reported in 92 TTJ 1126 wherein it was held as under.

At the most it can be presumed that the assessee did not make purchases from the above parties but made from other unregistered dealer and got benefit of margin of purchases from unregistered dealer. We find that to that extent an estimation of profit can be made which will be fair and reasonable under the facts and circumstances of the case. Therefore, for the above purposes we estimate Rs.50,000 and accordingly the order of the CIT(A) is modified and the addition to the extent of Rs.50,000 is sustained and balance addition of Rs.26,89,407 is deleted out of the total addition made of Rs.27,39,407.

In view of the above, we direct the AO to make the ad-hoc addition on such purchases as discussed above, hence the ground of appeal of the assessee is allowed.

10 Thus, if the Appellate Tribunal in the overall facts of the case and having regard to the materials on record thought fit to make ad hoc addition at the rate of 5% of such purchases, then, the Tribunal could not be said to have committed any serious error warranting any interference in this appeal.

8.11. Accordingly, respectfully following the above stated decision of the Hon'ble Jurisdictional High Court of Gujarat, and particularly looking to the fact that the stock as on the date of verification by Excise Department was tallied, it is concluded that the appellant might have purchased the raw-material from any other sources and not from M/s. Chouhan Supplier. Under such circumstances, purchase should not be added to the income of the appellant but only element embedded therein it to be added.

8.12. Therefore, considering the appellant's GP of 9.52% and NP of 2.09% and probable saving in the cost of purchase by avoiding burden of VAT of 5% and some other savings and discrepancies noticed by the AO in the assessment order, it is reasonable to estimate the probable benefit derived by the appellant at 7.5% of the total purchase made from M/s. Chouhan Suppliers, which works out to Rs.7,90,739/-. Hence, the addition is restricted to the tune of Rs.7,90,739/- and thus, the AO is directed to delete the balance amount of addition of Rs.97,52,444/-. Thus, the grounds of appeal no. 3 & 4 are partly allowed.

4. Aggrieved against the same, the Revenue is in appeal before us raising the following Grounds of Appeal:

1. The Ld. CIT (A)-11, Ahmedabad has erred in law and on facts in reducing the disallowance of bogus purchase from Rs.1,05,43,183/- to Rs.7,90,739/-.

2. The Ld. CIT(A)-11, Ahmedabad has erred in law and on facts in inferring the purchase of waste paper from grey market when supporting evidence in this regard was not produced before him.

3. The Ld. CIT(A)-11, Ahmedabad has erred in law and on facts in reducing the bogus purchase of the assessee when there was finding by the Gujarat Commercial Tax department that sales of M/s Chouhan Supplier are bogus and its TIN was cancelled ab-initio.

4. The Ld. CIT(A)-11, Ahmedabad has erred in law and on facts by relying upon order of Hon'ble Gujarat High Court in the case of PCIT vs. Sandeep Kumar Chandak, as the issue under consideration is squarely covered by decision of Hon'ble Gujarat High Court in the case of N.K. Industries vs. DCIT [2016] 72 taxmann.com 289 (Gujarat) dated 20.06.2016.

5. It is, therefore, prayed that the order of the Ld. CIT (A) may be set aside and that of the Assessing Officer be restored.

6. The appeal is being filed in view of the fact that the case falls under the exception No. (e) of the amendment to Board's circular No. 3/2018 dated 20th August, 2018.

5. The Ld. Sr. D.R. Shri Ashish Kumar Pandey appearing for the Revenue supported the order passed by the Assessing Officer and submitted the purchases made from M/s. Chauhan Suppliers is not proved to be genuine, since the TIN number of the supplier was cancelled by Authorities. Thus the case is squarely covered by the decision of the Hon'ble Gujarat High Court in the case of N.K. Industries vs. DCIT reported in [2016] 72 taxmann.com 289 and the A.O. was correct in holding the entire bogus purchases as the income of the assessee.

6. Per contra, the Ld. Counsel Shri Mehul Ranpura appearing for the assessee supported the order passed by the Ld. CIT(A) and submitted that the assessee had actually purchased of raw materials (Waste paper) from unregistered dealers from grey market other than the supplier of M/s. Chauhan Supplier. Further the assessee's premises was subjected to search action under Central Excise Act, 1944 on 08.08.2014, the search parties made physical verification of stock including purchases, bills and vouchers and compared the same with the books of account. After verification they have not made any adverse remarks about the stocks.

6.1. Similarly, the Assessing Officer nowhere in the assessment order doubted the production, sales, yield ratio and other financial ratio declared by the assessee and the A.O. has not rejected the book results. It is the above circumstances, Ld. CIT(A) followed Jurisdictional High Court Judgment in the case of Sandeep Kumar Chandak and considering the assessee's G.P. and N.P. ratio estimated the profit derived by the assessee at 7.5% of the total

purchase made from M/s. Chauhan Suppliers which does not require any interference. Therefore the Revenue appeal is liable to be dismissed.

7. We have given our thoughtful consideration and perused the materials available on record. The Commercial Tax (VAT) Department had carried out spot inspection at the business premises of the assessee on 04.04.2016 wherein nothing abnormal was found except the fact, the supplier M/s. Chauhan Supplier had not deposited VAT collected by it from the assessee thereby assessee is not entitled for input credit of tax on the so called purchases. However, the assessee in order to avoid long turn litigation and to buy peace of mind, paid the VAT liability of Rs.7,13,779/- on account of reversal of input tax credit availed by it. In fact, the Commercial Tax Department accepted the payment of tax and interest and not levied penalty to the assessee. Thus the input tax credit availed on purchases if it is inadmissible the entire purchases cannot be disallowed. The A.O. has not pointed out any defect in the stocks nor in the books of account maintained by the assessee.

8. The Ld. CIT(A) considered the assessee's Gross Profit rate at 9.52% and Net Profit at 2.09% and considering the probable savings in the cost of purchase of goods in grey market by avoiding burden of VAT at 5% and then determined the profit made by the assessee at 7.5% on the purchase from M/s. Chauhan Suppliers. This decision arrived by Ld. CIT(A) by following Tribunals decision in the case of Sandeep Kumar Chandak and ITO Vs. Sun Steel

reported in 92 TTJ 1126 which were later confirmed by the High Court of Gujarat in Tax Appeal No. 210 of 2020 in the case of PCIT Vs. Sandeep Kumar Chandak. Thus the finding arrived by the Ld. CIT(A) does not require any interference and Revenue could not produce before us any document in support of its claim to sustain the entire addition made by the Assessing Officer. The Case law relied by Ld. D.R. is clearly distinguishable. Further Jurisdictional High Court held that only profit element embedded in purchases could be added as assessee's income in the following cases:

(i) **CIT vs. Simit P. Sheth (2013) 356 ITR 451 (Guj-HC)**: in this case it is held that:

"Section 145 of the Income-tax Act, 1961 Method of accounting - Estimation of Profits (Bogus purchases) - Assessment year 2006-07 Assessee was engaged in business of trading in steel on wholesale basis - Tills, held that purchases made from said parties were bogus - He, Assessing Officer having found that some of alleged suppliers of steel to assessee had not supplied steel to assessee but had only provided sale bills, held that purchases made from said parties were bogus. He, accordingly, added entire amount of purchases to gross profit of assessee - Commissioner (Appeals) having found that assessee had indeed made purchases, though not from named parties but other parties from grey market, sustained addition to extent of 30 per cent of purchase cost as probable profit of assessee extent of 12.5 per cent Tribunal however, sustained addition To Whether since purchases were not bogus but were made from parties other than those mentioned in books of account, only profit element embedded in such purchases could be added to assessee's income Held, yes Whether hence, order of Tribunal needed no interference - Held, yes (Paras 6, 7 & 9 In favour of assessee]"

(ii) **CIT vs. Sathyanarayan P. Rathi [2013] 38 taxmann.com 402 (Guj HC)**: in this case it is held that:

"Section 143 of the Income-tax Act, 1961. Assessment Additions to income [Purchases from market] - Assessment year 2003-04 - Assessing Officer made addition of entire amount of purchase on ground that concerned suppliers had never supplied goods as named by assessee. Commissioner (Appeals) as well as Tribunal

having found that though purchases were not made from parties from whom assessee claimed but such materials were purchased from open market incurring cash payment and bills were procured from various sources, held that only profit element at rate of 12.5 per cent was to be added to income of assessee Whether present case being one of only purchase but not from disclosed sources it would be only profit element embodied in such purchase which could be added in income of assessee and thus, rightly so done by Commissioner (Appeals) and Tribunal - Held, yes [Paras 6 & 7] [In favour of assessee]."

(iii) **CIT vs. Bholanath Poly Fab (P) Ltd (2013) 355 ITR 290 (Guj-HC):**

in this case it is held that:

"Section 69 of the Income-tax Act, 1961 Undisclosed investments [Bogus purchases] - Assessment year 2005-06- Assessee was engaged in business of trading in finished fabrics - Assessing Officer found that concerned parties from whom material was purchased were not found at their addresses and held that purchases made by assessee were bogus Accordingly, he made disallowance Tribunal found that though purchases were made from bogus parties, but purchases themselves were not bogus as entire quantity of stock was sold by assessee and held that only profit margin embedded in such purchases would be subjected to tax and not entire purchases - Whether no illegality was commated by Tribunal - Held, yes [Para 6] [In favour of assessee]."

9. Respectfully following the above judicial precedents, we have no hesitation in confirming the order passed by the Ld. CIT(A). Thus the grounds raised by the Revenue are devoid of merits and the same are hereby dismissed.

10. In the result, both the appeals filed by the Revenue are hereby dismissed.

Order pronounced in the open court on 03-11-2023

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 03/11/2023

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
राजकोट

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