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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

ITA No.1348/PUN/2017
निर्धारण वर्ष / Assessment Year : 2010-11

Savas Engineering Company Pvt. Ltd., 498 1 Radhe Industrial Estate, Tajpur Road, Village Changodar, Taluka Sanand, Ahmedabad, Gujarat – 382213 PAN : AAJCS6950R	Vs.	Pr.CIT-3, Pune
Appellant		Respondent

Assessee by	Shri P.I. Patwa
Revenue by	Shri Deepak Garg
Date of hearing	17-09-2020
Date of pronouncement	17-09-2020

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee is directed against the order dated 23-03-2017 passed by the Pr. Commissioner of Income-tax-3, Pune u/s.263 of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2010-11.

2. Briefly stated, the facts of the case are that the assessee filed a return declaring total income of Rs.2.44 crore. The return was processed u/s 143(1) of the Act. Thereafter, the AO initiated reassessment proceedings on the basis of information that the

assessee was beneficiary of the hawala purchases. The assessment was completed u/s.143(3) r.w.s. 147 determining total income at Rs.2.51 crore, making addition of Rs.6,93,574/-, being, 20% of bogus purchases amounting to Rs.34,67,870/-. The ld. Pr.CIT, exercised his revisional power u/s.263 of the Act, held that the AO was not justified in adding only 20% of the bogus purchase price. He also held that the AO failed to examine sundry creditors shown by the assessee, details of other purchases, valuation of stock and various expenses as claimed by the assessee in the Profit and loss account in the reassessment proceedings. The ld. Pr.CIT held the assessment order to be erroneous and prejudicial to the interest of revenue, against which the assessee has come up in appeal before the Tribunal.

3. The assessee has also raised an additional ground reading as under:

> "The learned Principal Commissioner of Income Tax, has erred in passing order u/s.263 for revision of order passed u/s.143(3) r.w.s.147 dated 30-05-2014 on the issues other than issues mentioned in reasons recorded in writing while re-opening the original assessment for A.Y. 2010-11. Hence the revisions order passed u/s.263 being bad in law be treated as null and void."

4. The Hon'ble Supreme Court in *National Thermal Power Company Ltd. Vs. CIT (1998) 229 ITR 383 (SC)* has observed that "the purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, we do not see any reason why the assessee should be prevented from raising that question before the tribunal for the first time, so long as the relevant facts are on record in respect of that item". Answering the question posed before it in affirmative, their Lordships held that on the facts found by the authorities below, if a question of law arises (though not raised before the authorities) which has bearing on the tax liability of the assessee, the Tribunal has jurisdiction to examine the same. Having gone through the subject matter of the additional ground taken by the assessee, it is discernible that the additional ground raises a pure question of law. We, therefore, admit the additional ground and espousing it for disposal on merits.

5. The contention of the assessee through the additional ground is that the ld. Pr.CIT ought not to have travelled beyond the reasons recorded at the time of initiation of reassessment proceedings. It was submitted that initiation of reassessment proceedings was only on the premise of Hawala purchases and hence a direction given by him to the AO for examining the sundry creditors, purchase and other expenses etc. was without jurisdiction. The ld. AR relied on the judgment of Hon'ble Bombay High Court in the case of *Ashoka Buildcon Vs. ACIT and Another (2010) 325 ITR 574 (Bom.)* in support of this contention. Per contra, the ld. DR submitted that no fresh issue was directed to be examined by the ld. Pr. CIT, inasmuch as these items were concerned with the bogus purchases aspect only.

6. Having heard both the sides and gone through the relevant material on record, we observe that the issue in *Ashoka Buildcon (supra)* was about limitation in terms of section 263(2) of the Act. The Hon'ble High Court held that in respect of the issues which were not the subject matter of the assessment, period of limitation provided in sub-section (2) of section 263 should be reckoned from the date of order of original assessment and not the date on which

the order reopening the assessment was passed. We find that this judgment has no relevance in the present context. Firstly, the ld. AR has not adverted to any limitation issue before the Tribunal. Secondly, such a contention could not have been possibly raised because no assessment took place in this case u/s 143(3) of the Act prior to the reassessment. The return of income filed by the assessee u/s.139(1) of the Act was processed u/s.143(1) of the Act. In that view of the matter, there did not exist another assessment order u/s.143(3) before the passing of order u/s 143(3) read with section 147. The only assessment order which has been passed in the instant case is the one which has been the subject matter of revision before the Tribunal. As such, we do not find any merit in the additional ground, which is hereby dismissed.

7. Coming to the merits of the appeal, it is observed from the assessment order passed u/s.143(3) r.w.s.147 of the Act on 30-05-2014 that the assessee could not satisfy the AO as regards the genuineness of alleged hawala purchases recorded in the books of account, which were consumed in the manufacturing process. The AO observed that the gross profit ratio in this case came down to 34.69% for the year as against 42.68% for the preceding year,

which reflected that the assessee reduced gross profit ratio by way of exaggerated bogus purchase bills. Considering the entirety of facts and circumstances, the AO held that 20% of total bogus purchases made from the alleged hawala operators was required to be added, for which he made an addition of Rs.6,93,574/-.

8. It is pertinent to note that we are dealing with revision u/s 263 of the Act, which contemplates revision of an assessment order that is erroneous and prejudicial to the interest of the Revenue. It is trite that the power of revision does not extend to a debatable issue. In other words, if two possible views exist and the AO takes one of such possible views in the assessment order, the revision is ousted.

9. It is seen that the ld. Pr.CIT held the assessment order to be erroneous and prejudicial to the interest of Revenue primarily on the ground that the AO did not properly examine the issue of bogus purchases. The view taken by the AO in not taxing 100% but only profit element in such hawala purchases is fortified by the judgment dated 11-02-2019 of Hon'ble jurisdictional High Court in *Pr.CIT Vs. Mohommad Haji Adam & Co.* (in ITA No.1004 of

2016) wherein it has been held that no *ad hoc* addition for bogus purchases can be made. Rather, 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. Since the AO in the instant case has made addition for the additional profit at the rate of 20% of bogus purchases, we hold that the impugned order, treating such assessment order as erroneous and prejudicial to the interest of revenue, cannot be validated.

10. The ld. DR relied on the judgment in *Shoreline Hotel (P.) Ltd. VS. CIT (2018) 98 taxmann.com 234 (Bom)* to support the contention that the assessment order making addition at a particular rate of bogus purchase bills rightly called for interference at the level of the CIT u/s 263. The facts of that case are that the assessee was engaged in the business of running a hotel. It showed to have purchased certain goods in the nature of plumbing and furniture items, painting and building items from some of the parties, which were found to be bogus. The AO made addition at a particular profit rate of such bogus bills. The CIT held the order to be erroneous and prejudicial to the interest of the Revenue. The Tribunal affirmed the view canvassed by the CIT.

The Hon'ble High Court accorded its seal of approval to the revision order.

11. We find that the facts of the case in *Shoreline Hotel (supra)* lie in different compass. In that case the bogus purchase bills were not that of the items relating to trading or manufacturing structure, but of the fixed assets. The logic behind the decisions upholding the addition upto a certain profit level in the bogus purchase bills is that the assessee, in fact, purchased the material, but procured the bills of higher value so as to deflate the profit. If bogus purchase bills do not relate to the purchases of goods for resale or consumption in the manufacturing process, there can be no question of addition of the part amount of bogus purchase bills. There can be two possibilities of the raw material etc. purchased through bogus bills - either these are sold/consumed during the year or are lying in the closing stock. In both the eventualities, only the excess cost of purchase calls for addition. As the factual panorama in the case of *Shoreline Hotel (supra)* is different inasmuch as it dealt with the bogus bills in respect of non-trading items, the *ratio* laid down in that case cannot apply to the case

under consideration. Rather the case will be covered by the *ratio* in the case of *Mohommad Haji Adam (supra).*

12. The AO in the instant case has taken a view of taxing only 20% of bogus purchase, which cannot, by any standard, be construed as a non-plausible view. The Pune benches of the Tribunal in its order dated 16.09.2020 in *Vinod Bhagwan Patil vs. Pr. CIT* in ITA No.750/PUN/2018 has quashed the order u/s 263 of the Act in similar circumstances. We, therefore, set-aside the impugned order on this score.

13. We now accentuate the other point of view taken by the ld. Pr. CIT that the AO failed to examine sundry creditors shown by the assessee, details of other purchases, valuation of stock and various expenses as claimed in the Profit and loss account in the reassessment proceedings. The ld. DR has categorically submitted that the direction of the ld. Pr.CIT for examining the creditors and purchase accounts etc. along with valuation of stock was connected with the bogus purchases only and not *de hors* the same. We find this position to be amply emerging from the immediately next line in Para 6.1 of the impugned order to the effect that: "*Since*

assessee's computation of profit are dependent on all the above issues and when bogus purchases have come to his notice, it was imperative on the part of the AO to verify all these aspects while completing the assessment." That apart, we find that the ld. Pr.CIT has not indicated anything amiss in these items independent of the issue of bogus purchases. We, therefore, set aside the impugned order.

14. In the result, the appeal is allowed on merits.

Order pronounced in the Open Court on 17th September, 2020.

Sd/-	Sd/-
(S.S. VISWANETHRA RAVI)	**(R.S.SYAL)**
JUDICIAL MEMBER	**VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 17th September, 2020
Satish

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to</u>:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The Pr.CIT-3, Pune
4. The ACIT, Range-6, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "**बी**" / DR 'B', ITAT, Pune
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	17-09-2020	Sr.PS
2.	Draft placed before author	17-09-2020	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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