

## ITAT confirmed sec. 69C additions relating to bogus purchase invoices received without actual delivery of goods

**Summary – The Mumbai ITAT in a recent case of Ratnagiri Stainless (P.) Ltd., (the Assessee) held that where director of 28 entities had admitted of issuing only invoices for sake of entry without delivery of goods and assessee did not produce documents for showing movement of goods from supplier to assessee and from assessee to customer as evidence, Assessing Officer was justified in treating it as bogus purchase**

### Facts

- Information was received by the Assessing Officer from DGIT (Inv.), Mumbai that there were some parties who were engaged in hawala transactions and were involved in issuing bogus bills for sale of material without delivery of goods, and that the assessee was beneficiary of hawala/accommodation entries from 28 entry providers by way of bogus purchases.
- The assessee was confronted with the same and was asked to produce the parties and also file the documents to substantiate the claim of purchase and stock register, particulars of the transporter, medium of transport, date of transport, transport voucher, octroi post records and payment particulars, etc. The assessee did not submit documentary evidence to show that there was movement of goods and that the assessee filed delivery challan in one case only and that too there was no mention of transportation details. It was further observed that the notices issued to 28 parties were returned unserved. He concluded that it was a case of default committed through an organized scam to defraud the revenue in a systematic manner.
- The Assessing Officer further observed that the assessee had made sales which were duly quantitatively reconciled by the assessee with purchases, and purchases also made by the assessee at low price from grey market and to cover deficiencies in documents, invoices were obtained from these 28 suppliers who issued bogus bills to the assessee without supplying any material. Thus, the Assessing Officer held that the assessee failed to prove the onus cast upon it to prove that purchases made by the assessee were genuine purchases and he made gross profit additions at the rate of 12.5 per cent over the total purchases.
- The Commissioner (Appeals) confirmed said addition.
- On appeal:

### Held

#### *Validity of reassessment*

- These dealers were surveyed by the Sales Tax Investigation Department whereby the directors of these dealers have admitted in a deposition *vide* statements/affidavits 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 28 such parties wherein the assessee is stated to be beneficiary of bogus purchase bills. Thus, tangible material information was received by the Assessing Officer which clearly indicated assessee to be beneficiary of bogus purchase entries from 28 bogus entry providers which formed the reasons to believe by the Assessing Officer in forming an opinion that income has escaped assessment and the information so received by the Assessing Officer has live link with reasons to believe that income has escaped assessment. Thus, at this stage, there has to be *prima-facie* satisfaction of the Assessing Officer based on tangible and material incriminating information in his possession leading to reasons to believe that income of the assessee has escaped assessment. In a subsequent stage when assessment is being framed under section 143(3) read with section 147 where necessary and detailed opportunities are required to be given to the assessee for rebuttal before fastening tax liability as per scheme and mandate of Act. It is to be noted also that in the instant case no scrutiny assessment under section 143(3) read with section 143(2) was framed originally by the revenue while processing assessee's return of income filed with revenue. Return of income of the assessee was originally processed by revenue under section 143(1) only. There was, thus, no formation of opinion as intimation under section 143(1) is not an assessment. Thus, there cannot be a change of opinion as no opinion was initially formed by the Assessing Officer as return was originally processed under section 143(1) and no scrutiny assessment was framed by revenue under section 143(3) read with section 143(2). Thus, it could not be said that no tangible and material incriminating material was received by the Assessing Officer, rather it is only after receipt of tangible and material incriminating material by the Assessing Officer from DGIT(Inv), that the assessment was reopened under section 147. Thus, it cannot be said that the revenue has reopened the assessment based upon suspicion.

- Re-opening of the assessment as done in the instant case by the Assessing Officer under section 147 was valid and legal, and the contentions of the assessee are, hereby, rejected.

#### ***Bogus purchases***

- It was observed by the Assessing Officer that these parties just issue bogus bills in lieu for earning commission without actual supply of goods. In an sworn Affidavit Cum Declaration filed before Sales Tax Investigation Branch, Mumbai, and in deposition before the Assistant Commissioner of Sales tax, Investigation Branch, Mumbai, the directors of the said 28 entities have admitted of issuing only invoices for sake of entry without delivery of goods.
- Notices under section 133(6) were issued by the Assessing Officer to all the above 28 parties. All these notices except one notice were either returned un-served or were not replied to. Only one party, categorically stated that they have not supplied any material to the assessee concern. The Assessing Officer asked the assessee to produce the parties but the assessee failed to produce the parties. The parties were not produced even before Commissioner (Appeals). The assessee also

failed to produce suppliers, transporters or brokers before the Assessing Officer for verification and enquiry.

- The assessee was not able to discharge burden cast under section 106 of 1872 Act as the assessee did not produce the original documents before the Assessing Officer and file documents for showing movement of goods from supplier to assessee and from assessee to customer as evidence although it stated in its reply that said documents are being filed. The assessee filed delivery challan in one case only and that too there was no mention of transportation details. The assessee did not file confirmations from these parties nor transportation details of the material purported to be purchased from these suppliers were furnished. The parties were also not produced before the authorities below. The only party who responded to notice under section 133(6) issued by the Assessing Officer namely Ranakpur deposed against the assessee. The assessee did not ask for cross examination of Ranakpur. The assessee has to first discharge its primary onus cast under law and if the same stood duly discharged which is not rebutted by authorities, but despite that then also the authorities proceed to put assessee to prejudice solely relying on the basis of incriminating statement recorded of third party at the back of the assessee, then certainly the right to cross examination the said third party whose incriminating statement recorded at the back of the assessee is relied upon by authorities to prejudice the assessee will become absolute. But in the instant case, primary onus cast on the assessee itself did not stand discharged by the assessee. The Assessing Officer made gross profit additions at the rate of 12.5% over the total bogus purchases of Rs.2,39,83,261/- which were held to be non-genuine by the authorities below, which addition came to Rs. 29,97,908/- which addition was confirmed by the learned Commissioner (Appeals). In such circumstances, GP ratio needs to be estimated which definitely involved some estimation/guesswork but the said estimation/guesswork should be fair, honest and rational keeping in view factual matrix of the case and cannot be arbitrarily applied at the discretion of authorities.
- The authorities below in the instant case did not make any industry comparisons to arrive at fair, honest and rational estimation of GP ratio, rather applied GP ratio of 12.5 per cent on alleged bogus purchases which estimation was in addition to the normal GP ratio declared by the assessee in return of income filed with revenue. The revenue made aforesaid additions relying on the presumption that the material was in-fact purchased from grey market at a lower rate and to cover deficiencies in record, the invoices were procured from these entry operators to reduce the profit. It was also considered that there will be savings on account of taxes while procuring material from grey market.
- The books of account were not rejected under section 145(3) by the revenue. In the immediately preceding year *i.e.* assessment year 2008-09, the assessee earned GP ratio of 4.3 per cent on total turnover, while for the year under consideration GP ratio earned was 5.45 per cent. Based on facts and circumstances of the case, end of justice will be met if GP ratio of 12.5 per cent on alleged bogus purchases was added to income of the assessee against which credit for the declared GP ratio

on the alleged bogus purchases will be granted by the Assessing Officer after verification by the Assessing Officer because of failure of the assessee to come forward to discharge primary onus cast upon him for which assessee is to be blamed and in the midst of afore-stated un-rebutted allegation against the assessee and non discharge of primary onus, the declared lower GP ratio of 5.45 per cent in the instant previous year under appeal cannot be accepted.