

Tax Review/Taxation

Daily Alert Service

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This special email service from Monday to Friday, part of subscription package, is aimed at keeping you informed about tax and fiscal matters. It contains news, legislative changes, case-law, in-depth articles and analyses covering all areas of taxes at domestic and international level. On every Saturday evening, we email weekly compilation of the entire material. Every month, **Taxation** in printed form, is sent through post and digital version of **Tax Review International** is made available for download at www.huzaimaikram.com.

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This issue contains:

- **TAX NEWS**

South Korea plans tax changes to boost growth

China cut tariffs on January 1

Taiwan's VAT on online retailers becomes law

German government targets offshore tax avoidance

Switzerland need not hike taxes drastically, says IMF

No tax on second houses in Vietnam in 2017

GST on transportation services: provinces to hold applicability in abeyance till March 31st

FBR chief presides over passing-out ceremony

FTO holds workshop for medium, small scale enterprises

- **STATUTES**

No.SRB-3-4/1/2017, dated January 02, 2016

- **CASE LAW**

I.T.A. No. 4736/Mum/2014
(Assessment Year : 2010-11) &
I.T.A. No. 5207/Mum/2014
(Assessment Year : 2010-11)

Kind Regards,

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South Korea**South Korea plans tax changes to boost growth**

Within its proposed policy framework for 2017, the South Korean Ministry of Strategy and Finance has announced various tax changes to counteract the continued economic uncertainties, including measures to create jobs and support new growth industries.

For example, to encourage the commencement of job-creating investments, there will be an extra two percent corporate tax credit for posts created in projects started in 2017. In addition, the corporate tax credit for regular positions created will be raised from KRW5m (USD4,160) to KRW7m per employee (from KRW2m to KRW3m for large conglomerates).

It was also disclosed that a temporary-worker support package will be introduced in the second half of the year. This should increase the corporate tax credit for transferring workers from temporary positions to permanent positions, from KRW2m per transfer to KRW5m.

Research and development (R&D) tax credits are to be increased and expanded across more industrial sectors. The Government proposes to grant the 30 percent credit currently provided to small and medium-sized companies also to large and medium-sized companies (presently only 20 percent).

The industrial areas where the R&D tax credit will be available include artificial intelligence and robotics, next generation electronic information devices and communication systems, bio-health innovation, new energy industry and environment, and future automobile, air, and aerospace technology.

The Government's tax measures also include a strengthening and widening of the tax base on financial instruments. In particular, from April 2018, it is intended that the threshold will be lowered so that shareholders with a stake of one percent or KRW1.5m in shares (previously KRW2.5bn) listed on the Korea Composite Stock Price Index (KOSPI) will be subject to capital gains tax (CGT) on transfers. That threshold will be reduced to KRW1bn in April 2020.

In addition, while only KOSPI 200 futures and options are subject to CGT under the current arrangements, KOSPI 200 equity-linked warrants are to be taxed with effect from April 1, 2017.

The tax exemption thresholds on interest and dividends from long-term deposit-type insurance investments (of 10 years or more) are also to be lowered, and the tax base on earnings from these financial instruments will be extended to those linked with derivatives, as well as those that have not been not originally structured by South Korean financial institutions, but are sold by them (for example, overseas low interest bonds with a forward exchange rate).

Finally, to protect household incomes, the Government plans to expand child tax benefits to families with two or more children, from families with three or more; and to introduce marriage income tax breaks of KRW500,000 per person (KRW1m if both individuals are working). – *Courtesy tax-news.com*

China

China cut tariffs on January 1

China introduced import and export duty changes from January 1 to boost innovation-driven development and put the country's tariff structure "more in line with the needs of international trade development."

The changes are said to be to encourage imports of advanced equipment, key spare parts, and essential energy and raw materials. For example, duty relief is now offered on integrated circuit test equipment, aircraft hydraulic actuators, parts for high-resolution digital cinema projectors, and thermal cracking furnaces.

China has also adjusted the tariffs on certain goods, such as tuna and arctic shrimp, to improve consumer choice, while import duties have been cut on materials used in pharmaceutical development, such as for anti-cancer and anti-diabetes medicines.

In addition, export tariffs have been eliminated on nitrogen, phosphate fertilizers, and commodities such as natural graphite.

Finally, import duties have been further lowered in 2017 in accordance with the terms of China's free trade agreements. In particular, tariffs have been lowered for further products from Hong Kong and Macau following the upgrading of their Closer Economic Partnership Arrangements. Annual tariff adjustments under the agreements with South Korea, Australia, New Zealand, Peru, Costa Rica, Switzerland, Iceland, and Pakistan have also taken effect. – *Courtesy tax-news.com*

Taiwan

Taiwan's VAT on online retailers becomes law

On December 28, Taiwan's President Tsai Ing-wen signed into law the amendment to the Value-Added and Non-Value-Added Business Tax Act to impose tax on foreign online sellers' supplies to Taiwanese consumers.

The amendment is intended to raise additional revenues and level the playing field for Taiwanese bricks-and-mortar retail and service businesses.

The Ministry of Finance is to draw up the required tax regulations and procedures. In addition, it is to establish a website for simplified business registration and for filing VAT returns and paying VAT.

Foreign online suppliers selling cross-border goods and electronic services to end consumers will have to register for tax in Taiwan through a permanent establishment, or appoint a VAT or non-VAT tax representative. The permanent establishment or agent will be required to file the necessary bimonthly tax returns. Significant penalties will be imposed for non-compliance. – *Courtesy tax-news.com*

Germany

German government targets offshore tax avoidance

The German Government has adopted draft anti-avoidance legislation intended to make it more difficult for domestic taxpayers to avoid tax through the use of "mailbox companies in tax havens."

The draft bill, approved by the Cabinet on December 21, contains more stringent reporting obligations for German taxpayers with foreign financial interests, and financial institutions managing foreign investment structures for their clients.

Under the proposals, taxpayers must make a disclosure to tax authorities if they have a stake of 10 percent or more in an entity such as a company or fund that is located outside of the European Union and European Free Trade Association area, or a stake worth at least EUR150,000 (USD156,800), irrespective of whether the participation is held directly or indirectly. Failure to report such "business relationships" could be punishable by fines of up to EUR25,000.

The draft legislation also places an obligation on financial institutions to report to the financial authorities certain structures that they have established or administer on behalf of clients in non-EU and non-EFTA “third countries.” Failure to do so could attract fines of up to EUR50,000.

The bill also standardizes reporting obligations for direct and indirect holdings in foreign entities and synchronizes the deadline for information reporting with the deadline for tax returns.

German taxpayers with a controlling interest in foreign entities will be required to maintain records for at least six years under the proposed changes. In addition, the draft legislation extends the statute of limitations in cases of tax evasion from five to 10 years.

If the bill is approved by parliament in its existing form, the changes will be introduced on January 1, 2018.

On the same date, the Cabinet also announced that Germany will sign the multilateral instrument to align tax treaties with the OECD’s BEPS recommendations. The instrument – developed under Action 15 of the BEPS project – will transpose BEPS recommendations into over 2,000 tax treaties worldwide, and implement minimum standards to counter treaty abuse and to improve dispute resolution mechanisms. – *Courtesy tax-news.com*

Switzerland

Switzerland need not hike taxes drastically, says IMF

Switzerland’s measures to end the preferential tax arrangements for foreign companies will reduce tax revenues in the country, according to an Article IV report by the IMF.

Under reforms set to be introduced in 2019, Switzerland will harmonize corporate income tax rates at cantonal level, with a rate of about 14 to 15 percent.

While the unification of rates could boost investment by small and medium-sized firms, it is “likely lead to some revenue loss,” the report said, and the tax burden on foreign companies is to increase slightly.

The IMF said “other factors” will continue to ensure Switzerland remains attractive to foreign investors.

To buoy the nation’s finances, in early 2017, Switzerland is expected to agree an increase to the VAT rate of about 1 to 1.5

percent, alongside a higher retirement age for women under plans to bolster pension provisions.

The report concluded that the country's medium term fiscal goals can be met without "an undue increase in taxes." – *Courtesy tax-news.com*

Vietnam

No tax on second houses in Vietnam in 2017

Vietnam's Finance Ministry has confirmed that the Government will not levy additional tax on those with more than one property in 2017.

Nguyen Van Phung, Deputy Director of the Ministry's tax policy department, said although the Government is studying a proposal to levy a tax on those with second homes, it will not be implemented in the coming year.

Phung added that currently there is no national synchronized information system for land and house registration records and it is therefore presently impossible to implement the proposal.

It is said that Vietnam's property market is facing issues because of low taxes on properties, with valuations for levies said to be outdated. – *Courtesy tax-news.com*

GST on transportation services: provinces to hold applicability in abeyance till March 31st

The provincial governments would issue necessary notifications to hold in abeyance the applicability of sales tax on transportation services till March 31, 2017. Sources told here on Monday that a meeting under the chairmanship of additional secretary, Ministry of Petroleum and Natural Resources, was held to discuss and resolve the issues regarding imposition of sales tax on transportation services by the provincial governments.

The notifications for applicability of sales tax on transportation services would be held in abeyance by provincial governments till March 31, 2017. The aim of the whole exercise is to finalise an equitable mechanism or formula for sales tax collection on the services of inter-city transportation of POL products. The issue would be resolved between the Federal Board of Revenue (FBR) and provincial sales tax authorities regarding input tax adjustment on provincial sales tax on the services of inter-city transportation of POL products.

After thorough discussions with all the stakeholders, the following decisions have been taken:

Firstly, Sindh Revenue Board (SRB)/ Punjab Revenue Authority (PRA) would furnish their agreed stance on the issue of sales tax collection based on the origination/destination and tax nature based on single/reduced rate duly endorsed by Khyber Pakhtunkhwa Revenue Authority (KPRA) and Balochistan Revenue Authority (BRA).

Secondly, Ashfaq Tola, Legal/Tax Consultant of Oil Tankers Contractors Association (OTCA) will submit proposals for permanent resolution of the subject tax including registration of either oil tankers companies with provincial revenue authorities or OMCs, as withholding agents, latest by 15th January, 2017 to the Ministry of Petroleum and Natural Resources.

Thirdly, Ministry of Petroleum and Natural Resources would share these proposals to all the concerned stakeholders for convening a meeting by the end of January, 2017 in order to conclude the matter.

Fourthly, the provincial governments would issue necessary notification for extending the applicability of subject sales tax till March 31, 2017. – *Courtesy Business Recorder*

FBR chief presides over passing-out ceremony

The Federal Board of Revenue (FBR) Chairman Nisar Muhammad Khan presided over a passing out ceremony of 43rd Common at the Inland Revenue Service on Monday. As many as 61 officials, including 26 female officers, passed out and received certificates from the Chairman FBR. He also distributed commemorative shields to the position holders including Umar Hayat Malik, Mehk Fatima and Kamran Hussain.

The chairman FBR termed the Inland Revenue Service as the best service in the country. – *Courtesy Business Recorder*

FTO holds workshop for medium, small scale enterprises

Federal Tax Ombudsman (FTO) has organised an awareness workshop regarding its project titled “Public Awareness and Advocacy About Dispute Resolution Mechanism of Federal Tax Ombudsman” for medium and small scale enterprises on Monday at a local hotel of Lahore.

M Asif, Director General Administration FTO, shed light on the historical perspective of the Ombudsman office. He said at present, there are 150 Ombudsman offices in the world. In Pakistan, the Ombudsman office was established in 1983 and in year 2000, an independent office of Federal Tax Ombudsman was established. He elaborated in detail the complaint filing procedure and other available facilities provided by the FTO office to aggrieved taxpayers.

He said the mandate of FTO office is to ensure prompt and inexpensive redress of taxpayers’ genuine grievances against maladministration by the tax employees of Federal Board of Revenue (FBR)/Revenue Division, Government of Pakistan.

He said an average 1500 complaints annually are currently being handled by the FTO offices across Pakistan. Asif also highlighted the success stories of the FTO office since its establishment in year 2000. He said the tax-payers can file their complaints by courier, by hand, online or through e-mail. He said the services of FTO offices are free of cost, citizens friendly and the complaints are decided in 60 days.

He said Form-A is available on the website (www.fto.gov.pk) of the FTO on which tax-payers can lodge their complaints. The form can also be obtained from the FTO offices, besides its Islamabad

secretariat, located in Lahore, Karachi, Quetta, Peshawar, Sukkur, Abbottabad, Multan and Faisalabad.

He further said Wafaqi Tax Mohtasib is working to eliminate fear of traders so that they can freely lodge their complaints with the FTO offices located across Pakistan.

The traders gave useful feedback to the FTO team comprising DG Administration Muhammad Asif, Advisor Incharge Munir Qureshi and Advisor Muhammad Siddique. Naeem Meer, General Secretary All Pakistan Anjuman-e-Taajran, Ashraf Bhatti, President Anjuman-e-Taajran, Mehboob Ali Sarki, President Punjab Anjuman-e-Taajran, Haji Farrukh Iqbal, Chairman Crockery Shah Alam Market, Safdar Butt, President Lahore Trade Alliance and others also addressed the event.

The session was moderated by Ali Nasir, Media Manager, FTO Secretariat, Islamabad. – *Courtesy Business Recorder*

No.SRB-3-4/1/2017, Karachi, the 2nd January, 2017.– In exercise of the powers conferred by sub-section (1) of section 34 of the Sindh Sales Tax on Services Act, 2011 (Sindh Act No. XII of 2011), read with sections 35 and 36 thereof, the Board is pleased to direct that the following further amendments shall be made in its notification No. SRB-3-4/22/2016 dated 1st December, 2016:–

In the aforesaid Notification, in Table:–

- (i) against S.No. 2 in column (1), for the words “Ms. Madiha Mahmood” in column (2), the words “Mr. Naheed Ahmed Mirani” shall be substituted; and
 - (ii) against S.No. 3 in column (1), for the words “Mr. Naheed Ahmed Mirani”, the words “Ms. Madiha Mahmood” shall be substituted.
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2017 TRI 1 (Trib. Ind.)

INCOME TAX APPELLATE TRIBUNAL
MUMBAI "A" BENCH, MUMBAI

Mahavir Singh, Judicial Member and
Ramit Kochar, Accountant Member

FACTS/HELD

S. 69C Bogus Purchases: Though S. 133(6) notices were returned unserved and the assessee could not produce the alleged bogus hawala suppliers, the entire purchases cannot be added as undisclosed income. The addition has to be restricted by estimating Gross Profit ratio on the purchases from the alleged accommodation entry providers

- (i) The assessee is an individual running a proprietorship firm namely M/s The Shoe Box INC Retail Store of footwear, bags, belts, wallets and leather goods, boutique etc. having shops at different places , and office at Mumbai. Information was received by the AO from the Sales Tax Authorities, Government of Maharashtra that the assessee has made bogus purchases to the tune of Rs. 1.13 crores from four parties who are in the list of hawala dealers giving accommodation entries without supplying any goods.
- (ii) The AO issued notices u/s 133(6) of the Act to the above stated parties to seek relevant information/documents but the notices were returned unserved. The assessee was asked by the AO to produce these four parties but the assessee could not produce the parties from whom the purchases were made. The AO made additions u/s 69C of the Act of the peak credit outstanding to be payable to these four parties during the year to the tune of Rs.1,31,88,227/- as against purchases of Rs.1,13,44,778/- . The credit for purchases from these four parties of Rs.1,13,44,778/- are appearing in the books of accounts of the assessee. The assessee has to discharge the primary onus as to the genuineness and bonafide of the transaction of purchase of goods. It is observed that the A.O. has made addition of the entire purchases amount to Rs. 1.13 crores by making additions of Rs. 1,31,88,227/- being peak credit payable during the year for purchases to these parties

which included balance of Rs.18,43,451/- for purchases made in the earlier year, while the AO has, however, not doubted the sales made by the assessee against these purchases. The assessee has reconciled the quantitative details of the stock reflected in these purchases with quantitative details of stock as per sale invoices. The A.O. has doubted the purchases from these four alleged accommodation entry providers being hawala dealers as concluded by Sales Tax Department of Government of Maharashtra to be bogus purchases, that these four parties only provided accommodation bills and the goods were never supplied by these parties and the assessee allegedly made purchases from some other parties for which payments were made through undisclosed income. Thus, the A.O. observed that the assessee has purchased the material from someone else while bogus bills were organized by these hawala dealers, hence, section 69C of the Act was invoked by the AO and additions were made by the AO.

- (iii) The conclusion of the ICIT(A) that the assessee has purchased material from some other dealers but quantitative reconciliation of the stock was duly done by the assessee of the sale and purchase and hence the profit element in this accommodation entries are to be added to the income cannot be faulted. The CIT(A) restricted the addition by estimating GP ratio of 12.5% of Rs. 1,13,44,778/- being purchases from these alleged four accommodation entry providers. We do not find any infirmity in the well reasoned order of the Id. CIT(A) whereby net profit was estimated which was a reasonable estimation made by learned CIT(A) and we sustain/affirm the order of learned CIT(A).

Cases referred:

Addition u/s. 69C cannot be invoked in absence of the full proof evidence.

- i) ITO vs. Sunsteel 92 TTJ 1126 (Ahd-ITAT)
- ii) Nisraj Real Estate & Export(P) Ltd vs. ACIT 31 DTR 456 (JP-ITAT) (Trib)
- ii) ACIT vs. Kishan Lal Jewels (P) Ltd 147 TTJ 308(Del-ITAT)
- iii) Shubh Laxmi Exports vs. ITO 10 DTR 281 (Jp-ITAT) (Trib)

Onus is the on the Revenue to prove the payment to invoke Sec.69C

- i) Himalaya Distributors vs. ITO 29 DTR 267 (Pune-ITAT)
- ii) M.P. Malliwal vs. JCIT 10 SOT 319 (Hyd-ITA T) (TM)
- iii) Rajmal Leknicnenc: vs. ACIT 791TD 84 (Pune-ITA T)

Only profit embedded in the ingenuine purchase could be brought to tax.

- i) CIT vs. Simit P. Sheth 38 Taxmann.com 385 (Guj-HC)
- ii) CIT vs. Bholanath Poly Fab Pvt Ltd 355 ITR 290 (Guj-HC)
- iii) CIT vs. President Industries 258 ITR 654 (Guj-HC)
- iv) CIT vs. Balchand Ajit Kumer 263 ITR 610 (MP-HC)
- v) Man Mohan Sadani vs. CIT 304 ITR 152 (MP-HC)
- vi) CIT vs. Leaders valves (P) Ltd 285 ITR 435 (P&H-HC)

Merely non appearance of suppliers would not conclude the purchase as ingenuine

- i) CIT vs. Nikunj Eximp Enterprises (P) Ltd 35 Taxmann.com 384 (Bom-HC)

Order accordingly.

I.T.A. No. 4736/Mum/2014 (Assessment Year : 2010-11) & I.T.A. No. 5207/Mum/2014 (Assessment Year : 2010-11).

Heard on: 5th October, 2016.

Decided on: 14th December, 2016.

Present at hearing: Prakash Jhunjhunwala, for Assessee. Vikash Kumar Agarwal, for Revenue.

JUDGMENT

Per Ramit Kochar:– (Accountant Member)

These are cross appeals filed by the assessee and the Revenue before the Income-tax Appellate Tribunal, Mumbai (Hereinafter called “the Tribunal”). These cross appeals are heard together and are disposed of by this common order for the sake of convenience and brevity. These appeals are directed against the appellate order dated 2nd May, 2014 passed by learned Commissioner of Income Tax (Appeals)- 27, Mumbai (hereinafter called “the CIT(A)”), for the assessment year 2010-11, the appellate proceedings before the learned CIT(A) arising from the assessment order dated 28th March, 2013 passed by the learned Assessing Officer (hereinafter called “the AO”) u/s 143(3) of the Income-tax Act,1961 (Hereinafter called “the Act”).

2. The grounds of appeal raised by the assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the Tribunal") read as under:-

1.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in estimating the undisclosed profit of Rs 14,18,097/- @ 12.50% on alleged bogus purchase of Rs.1,13,44,778/-;

2.0 The Ld. CIT(A) before estimating the undisclosed profit @ 12.50% on disputed purchase ought to have appreciated the understated vital facts, being;

a) The alleged in-genuine purchase are supported with purchase bills, delivery challans, confirmation of accounts, PAN, bank statements, stock statements and other documents;

b) The purchase is treated as ingenuine merely relying on the information received from the Sales tax department and without allowing a copy for confrontation and without allowing an opportunity of cross examination;

c) The appellant had disclosed the G.P @ 45.49% on sales (85% on purchase) which is in par with own past history and Industry's average profit margin;

d) The Ld. A.O had not rejected the appellant's books of accounts u/s 145(3) of the Act and having accepted the book results is unjustified in estimating the profit on alleged unproved purchase;

3.0 Without Prejudice, Ld. CIT(A) ought to have restricted the addition to the extent of 5% of alleged ingenuine purchase of Rs. 1,13,44,778/-."

3. The following grounds of appeal are raised by the Revenue in ITA No. 5207/Mum/2014 for the assessment year 2010-11 in the memo of appeal filed with Tribunal which reads as under:-

1. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) is right in restricting the addition made u/s 69C of Rs.1,31,88,2271- to 12.5% of Rs.1,13,44,7781- i.e. Rs.14,18,097/- on account of bogus purchases?

2. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) is right in estimating the earning at a very low rate particularly when alleged sellers of goods to the assessee being provider of accommodation entries has admitted before the Sales Tax Department that accommodation entries were provided to the assessee and also the field enquiries resulted in confirmation of bogus purchases.

3. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was right in not appreciating the findings of the A.O. in the Assessment Order that the sellers were not available at the address shown in the purchase bills.”

4. The Brief facts of the case are that the assessee is an individual running a proprietorship firm namely M/s The Shoe Box INC Retail Store of footwear, bags, belts, wallets and leather goods, boutique etc. having shops at Pune, Ahmedabad, Jalandhar and office at Mumbai.

It was observed by the A.O. that the assessee had incurred expenditure in terms of purchases of Rs.4,89,88,555.31 , out of which it was alleged by the AO that purchases of Rs.1,13,44,77/- was made from the allegedly bogus parties as per information received from Sales Tax Department, Government of Maharashtra , who as per Government of Maharashtra web-site are suspicious parties providing accommodation entries and are thus bogus bill giving entities without doing any business, as detailed hereunder:

S No.	Name of parties	TIN	Financial year	Amount
1	Rohit Enterprises	27020680974V	2009-10	Rs. 8,84,584
2	Deep Enterprises	27750595164V	-do-	Rs. 18,09,710
3	Kwality Enterprises	27790284742V	-do-	Rs. 60,33,496
4	V3 Enterprises	27860613194V	-do-	Rs. 26,16,988
	Total			Rs.1,13,44,778/-

The sales tax department conducted independent enquiries in each of the above parties and concluded that these parties were engaged in the business of providing accommodation entries only. The notices were issued by the AO u/s 133(6) of the Act to these four parties which returned back unserved. The assessee was asked by the AO to produce all these parties. The assessee failed to produce these parties before the AO to prove genuineness of the claim. The assessee submitted that the purchases were made through brokers who are now not co-operating with the assessee. The assessee requested that GP ratio be estimated at 46% on these purchases. The assessee also could not offer explanation regarding the source of the said expenditure as well that purchases are genuine. The AO observed that these parties denied to supplying goods as being accommodation entries, hence the AO observed that the human probability is that goods as mentioned in the paper transactions have been purchases by the assessee through an undisclosed entity, whose identity the assessee does not wish to disclosed and also purchases were made from undisclosed source of income. The said unexplained expenditure of Rs. 1,31,88,227/- (being maximum credit balance outstanding in the ledger accounts of the parties, as against purchases of Rs.1,13,44,778/- from these four parties) was deemed to be the income of

the assessee and was added to the income of the assessee u/s 69C of the Act which was alleged to be expended through an undisclosed source of income to carry out purchase from an undisclosed entity, vide assessment order dated 28-03-2013 passed by the AO u/s 143(3) of the Act.

5. Aggrieved by the assessment order dated 28.03.2013 passed by the A.O. u/s 143(3) of the Act, the assessee filed first appeal before the Id. CIT(A).

6. Before the Id. CIT(A), the assessee has made the following submissions:-

“Ground No.1 to 5 : Addition of Unexplained expenditure u/s.69C of Rs.1,31,88,2271- is erroneous:

The appellant humbly submits that the addition made in assessment u/s.69C of alleged unexplained expenditure of purchase made from 4 parties named M/s Rohit Enterprises, M/s Deep Enterprises, M/s Kwaliti Enterprises and M/s V3 Enterprises of Rs.1,13,44,776/- and of the Opening balance of such 4 parties of Rs.18,43,451/- totaling to Rs.1,31,88,227/- is erroneous and is unjustified on understated reasons:-

1.1 The entire addition had been made purely on the basis of assumption and surmise. There is absolutely no evidence or material on record to justify that the appellant had incurred any unexplained expenditure to purchase the goods. The Ld. AO had not brought any evidence on record that the appellant had made the unexplained payments to any unidentified parties, in absence of which the provision of Sec 69C cannot be invoked. The appellant, during course of assessment, furnished various documentary evidences such as purchase and sale bills, confirmation of account, PAN of suppliers, details of purchase, payments made to the said 4 parties and bank statements to justify the genuineness of the recorded purchase and payments thereon. The appellant also furnished a detailed statement displaying the purchase made from such 4 parties and corresponding sales made against such purchases and profit earned thereon. The Ld. A.O, ignoring the above stated documents, erred seriously in holding that the appellant's purchase as ingenuine and assumed that the appellant would have incurred unexplained purchase expenditure to source the sales;

1.2 The Ld. A.O is not justified in making a harsh presumption that the appellant would have procured the goods from some unidentified sources and incurred unexplained expenditure (purchases) against the sales accepted as genuine. In this context, the appellant submits that its purchases had been made only through brokers who supplied the goods at premise

(on site) of the appellant and furnished the bills of such 4 parties to the appellant for making the payment at agreed terms. The appellant, as desired by brokers, made only the cheque payments against these purchase bills and appellant had not made any unaccounted cash payment for purchase of goods. The appellant alternatively submits that even it is presumed that the appellant had not made purchases from such 4 parties, then it is possible that such brokers would have procured the goods from grey (local) market and had supplied the physical goods with alleged ingenuine bills. The Ld. A.O had not denied the fact that the appellant had actually received the goods, through brokers, at its site office and such goods had been actually sold by the appellant at profit margin of over 85 % on purchase (45.49% on sales). The appellant does not have any source of unaccounted income, thus the possibility of unexplained payment would not arise. In any case, Ld. A.O did not bring any evidence on record to justify any sort of unexplained payments made to the alleged unidentified parties, accordingly the addition u/s.69C is unjustified, (92 TTJ 1126 (Ahd), 31 DTR 456 (Jp), 147 TTJ 308 (Del), 10 DTR 281 (Jp);

1.3 The Ld. A.O had not rejected the appellant's books of accounts u/s.145(3) of the Act and having accepted the book results is not justified in invoking the provision of Sec 69C of the Act on incorrectly assuming that the appellant had incurred unexplained expenditure to source the purchase made from unknown parties;

1.4 The appellant also submits that the addition of entire purchase is unjustified as it would lead to a case of taxing the entire sales without allowing the deduction of the corresponding purchase. There cannot be a case of only sales without the purchases. In short, if there is a sale, then it is required to be presumed that there is a corresponding purchase against each such sale and moreover, in impugned case, there is a direct nexus of sales with the purchases. [38 Taxmann.com 385 (Guj), 355 ITR 290 (Guj), 263 ITR 610 (MP), 304 ITR 52 (MP), 258 ITR 654 (Gu)];

As per comparative chart of sales vis-a-vis purchase (copy enclosed), it is evident that each purchase corresponds to the sales. For example : The purchase of 257 pairs of footwear made vide bill no 16 on 17th September, 2009 aggregating to Rs. 126,333 from Deep Enterprises were sold on 23rd September, 2009 at Rs. 1,44,273/-.

1.5 The appellant in audited P&L account, disclosed a higher Grossprofit @ 45.49 % on sales (85% on purchase) which is most reasonable in trading activity of footwears. In respect of

disputed purchase made from the 4 parties, the appellant disclosed the Gross profit @ 41.75 % on sales, stated as under:-

Purchase from the 4 parties	=	Rs. 1,13,44,778/-
Sales corresponding to above purchases	=	Rs. 1,93,83,886/-
Closing stock from above purchase	=	<u>Rs. 52,882/-</u>
Gross profit	=	Rs.80,91,990/-(41.75%)

Without prejudice, the appellant makes a prayer to adopt the concept of real income and estimate the total income @ 45.49 % on sales which would take care of the ingenuine purchase. It is to further submit that even in case of best judgment assessment is passed , after rejecting the books of accounts, then, in such case, the total income is estimated, on the basis of honest guess work as per the normal profit in the industry. [Kachwala Gems - 288 ITR 10(SC). The appellant makes a prayer to adopt the concept of real income and estimate the suppressed income of Rs. 7,24,957/- (@ 45.49% - 41.75% on Rs.1,93,83,886/-) that reasonably would have been earned in such trading activity;

1.6 The appellant to substantiate, the genuineness of the disclosed purchase and corresponding sales, relied upon the understated documents as under:-

- a) Details of the four purchases parties along with their address and PAN;
- b) A tabular chart (quantitywise and value wise) displaying Purchase vis-a-vis Sales displaying the bill numbers of suppliers/customers, quantity and amounts;
- c) Bill wise and quantity wise details of purchase made from such 4 suppliers;
- d) Details of payments made to such 4 purchase parties by A/c payee cheques and bank statements;
- e) Purchase bills;

The appellant on furnishing the abovestated details/documents had reasonably discharged his primary onus to substantiate the genuineness of the purchase. However, Ld.AO had not discharged the heavy onus casted upon him to prove contrary the facts and harshly made the addition of unexplained expenditure u/s.69C of the Act. [29 DTR 267 (Pune), 10 SOT 319 (Hyd) (TM)J.

1.7 The appellant submits that no contrary evidence had been brought on record to justify that the appellant's purchases are ingenuine. The said 4 purchase parties irresponsibly gave a general statement, without stating name of the appellant, that

it had issued only accommodation bills. Such general statement was recorded at back of the appellant and a copy of the statement was not provided to the appellant for confrontation and even no opportunity of cross examination Was allowed to the appellant, thus addition u/s 69C on the basis of mere statement is unjustified and may kindly be deleted (Kishinchand Chnelterem decision);

1.8 The appellant further submits that Ld. AO is not justified in making the addition of the Opening balance of such 4 parties of Rs.18,43,451/-. The appellant had not claimed the purchase expenses of Rs.18,43,451/- in impugned year, thus addition of such purchases (related to earlier year) cannot be made in impugned year. Further, Ld. A.O. had already issued the notice u/s 148 of earlier year viz. A.Y. 2009-10 and had proposed to make the addition of the purchase of earlier year viz. A. Y-2009-10, thus the addition of purchase made in earlier year whose closing balances are disclosed as opening balance in impugned year is unjustified. Further, there is absolutely no evidence on record that the opening balance of earlier year (purchase of last year) would have been paid in impugned year out of unaccounted source of funds, thus addition of opening balance of Rs. 18,43,451/- is unjustified,

The appellant relies on understated direct judicial decisions:-

Addition u/s. 69C cannot be invoked in absence of the full proof evidence.

- i) ITO vs. Sunsteel 92 TTJ 1126 (Ahd-ITAT)
- ii) Nisraj Real Estate & Export(P) Ltd vs. ACIT 31 DTR 456 (JP-ITAT) (Trib)
- ii) ACIT vs. Kishan Lal Jewels (P) Ltd 147 TTJ 308(Del-ITAT)
- iii) Shubh Laxmi Exports vs. ITO 10 DTR 281 (Jp-ITA T) (Trib)

Onus is the on the Revenue to prove the payment to invoke Sec.69C

- i) Himalaya Distributors vs. ITO 29 DTR 267 (Pune-ITAT)
- ii) M.P. Malliwal vs. JCIT 10 SOT 319 (Hyd-ITA T) (TM)
- iii) Rajmal Leknicnenc: vs. ACIT 791TD 84 (Pune-ITA T)

Only profit embedded in the ingenuine purchase could be brought to tax.

- i) CIT vs. Simit P. Sheth 38 Taxmann.com 385 (Guj-HC)
- ii) CIT vs. Bholanath Poly Fab Pvt Ltd 355 ITR 290 (Guj-HC)
- iii) CIT vs. President Industries 258 ITR 654 (Guj-HC)
- iv) CIT vs. Balchand Ajit Kumer 263 ITR 610 (MP-HC)

- v) Man Mohan Sadani vs. CIT 304 ITR 152 (MP-HC)
- vi) CIT vs. Leaders valves (P) Ltd 285 ITR 435 (P&H-HC)

Merely non appearance of suppliers would not conclude the purchase as ingenuine

- i) CIT vs. Nikunj Eximp Enterprises (P) Ltd 35 Taxmann.com 384 (Bom-HC)

In view of the above, a humble prayer is made :- a) To delete the addition u/s 69C of Rs 1,31,88,227/- or alternatively, b) To adopt the concept of real income and restrict the addition on estimating the suppressed income of Rs 7,24,957/- being 45.49% on sales corresponding to alleged ingenuine purchase (45.49% minus 41.75 % on Rs. 1,93,83,886) for which the appellatant shall ever remain grateful and oblige.”

The ld. CIT(A) after considering the submissions of the assessee came to the conclusion that quantitative details were maintained and the assessee being a trader of goods, the A.O. has not doubted the genuineness of sales, could not have gone ahead and made addition in respect of maximum credit balance of purchases especially when the A.O. himself recorded a finding that the assessee made the purchases from some other party. The ld. CIT(A) observed that the element of profit embedded in bogus purchases which the assessee would have made from some unknown entities needs to be computed. It was observed by learned CIT(A) that the purchases made from four parties during the year was Rs. 1,13,44,778/- on which the GP reflected was 41% as against 46% reflected on over all basis, hence, there was a suppression of GP ratio to the tune of 5%. The learned CIT(A) observed that the A.O. had held that the assessee must have purchased the goods from someone else and not from the four parties in whose names the bills were procured and hence, the only recourse left is to estimate the profit element embedded in the purchases made during the year of Rs. 1,13,44,778/- , rather than on Rs. 1,31,88,227/- (which included opening balance added by the A.O.), which were estimated by learned CIT(A) @12.5% of the purchases made during the year of Rs.1,13,88,227/-. The ld. CIT(A) accordingly partly allowed the appeal of the assessee vide appellate orders dated 02-05-2014.

7. Aggrieved by the appellate orders dated 02-05-2014 passed by the ld. CIT(A) , both the assessee and Revenue are in appeal before the Tribunal.

8. The assessee is challenging the addition made of the undisclosed profit of Rs. 14,18,097/- @12.5% on purchases of Rs. 1,13,44,778/- , while the Revenue in its appeal is challenging deletion of addition made by the AO u/s 69C of the Act to the tune of Rs. 1,31,88,227/- which was restricted to profit element embedded in the purchases to the tune of 12.5% of Rs. 1,13,44,778/-. The ld. Counsel for the assessee submitted that the following parties were included in the list of bogus parties by Sales Tax

Department of Government of Maharashtra with whom the assessee had made purchases:-

S No.	Name of parties	TIN	Financial year	Amount
1	Rohit Enterprises	27020680974V	2009-10	Rs. 8,84,584
2	Deep Enterprises	27750595164V	-do-	Rs. 18,09,710
3	Kwality Enterprises	27790284742V	-do-	Rs. 60,33,496
4	V3 Enterprises	27860613194V	-do-	Rs. 26,16,988
	Total			Rs.1,13,44,778/-

The A.O. observed that the above parties are suspicious parties who were providing accommodation entries without doing any business as per the information received from Sales Tax Department, Government of Maharashtra and the assessee had made purchases from these parties without actual supply of goods. The A.O. also issued notice u/s 133(6) of the Act asking to furnish certain documents of the above parties but the notices were returned back unserved. The assessee was also asked to produce the parties but the assessee failed to produce the parties. The A.O. has made addition u/s 69C of the Act on the peak credit outstanding in the books of accounts, whereby addition of Rs. 1,31,88,227/- was wrongly made, as against total purchases of Rs. 1,13,44,778/- made by the assessee from these 4 parties. The A.O. added the entire amount while the Id. CIT(A) has restricted the addition by estimating GP ratio of 12.5% of Rs. 1,13,44,778/- being total purchases made from these four parties. The Id. Counsel for the assessee submitted that the sales are not in doubt which is accepted by the Revenue. The Id. Counsel also drew our attention to the orders of authorities below. While, the Id. D.R. relied on the order of the A.O.

9. We have considered the rival contentions and also perused the material available on record. We have observed that the assessee is an individual running a proprietorship firm namely M/s The Shoe Box INC Retail Store of footwear, bags, belts, wallets and leather goods, boutique etc. having shops at different places, and office at Mumbai. Information was received by the AO from the Sales Tax Authorities, Government of Maharashtra that the assessee has made bogus purchases to the tune of Rs. 1.13 crores from following four parties who are in the list of hawala dealers giving accommodation entries without supplying any goods:-

S No.	Name of parties	TIN	Financial year	Amount
1	Rohit Enterprises	27020680974V	2009-10	Rs. 8,84,584
2	Deep Enterprises	27750595164V	-do-	Rs. 18,09,710
3	Kwality Enterprises	27790284742V	-do-	Rs. 60,33,496
4	V3 Enterprises	27860613194V	-do-	Rs. 26,16,988
	Total			Rs.1,13,44,778/-

The AO issued notices u/s 133(6) of the Act to the above stated parties to seek relevant information/documents but the notices were returned unserved. The assessee was asked by the AO to produce these four parties but the assessee could not produce the parties from whom the purchases were made. The AO made additions u/s 69C of the Act of the peak credit outstanding to be payable to these four parties during the year to the tune of Rs.1,31,88,227/- as against purchases of Rs.1,13,44,778/- . The credit for purchases from these four parties of Rs.1,13,44,778/- are appearing in the books of accounts of the assessee. The assessee has to discharge the primary onus as to the genuineness and bonafide of the transaction of purchase of goods. It is observed that the A.O. has made addition of the entire purchases amount to Rs. 1.13 crores by making additions of Rs. 1,31,88,227/- being peak credit payable during the year for purchases to these parties which included balance of Rs.18,43,451/- for purchases made in the earlier year, while the AO has , however , not doubted the sales made by the assessee against these purchases. The assessee has reconciled the quantitative details of the stock reflected in these purchases with quantitative details of stock as per sale invoices. The A.O. has doubted the purchases from these four alleged accommodation entry providers being hawala dealers as concluded by Sales Tax Department of Government of Maharashtra to be bogus purchases, that these four parties only provided accommodation bills and the goods were never supplied by these parties and the assessee allegedly made purchases from some other parties for which payments were made through undisclosed income. Thus, the A.O. observed that the assessee has purchased the material from someone else while bogus bills were organized by these hawala dealers, hence, section 69C of the Act was invoked by the AO and additions were made by the AO. The conclusion of the Id. CIT(A) that the assessee has purchased material from some other dealers but quantitative reconciliation of the stock was duly done by the assessee of the sale and purchase and hence the profit element in this accommodation entries are to be added to the income cannot be faulted . The Id. CIT(A) restricted the addition by estimating GP ratio of 12.5% of Rs. 1,13,44,778/- being purchases from these alleged four accommodation entry providers. We do not find any infirmity in the well reasoned order of the Id. CIT(A) whereby net profit was estimated which was a reasonable estimation made by learned CIT(A) and we sustain/affirm the order of learned CIT(A). In the result , we dismiss both the appeal of the assessee as well of Revenue. We order accordingly.

10. In the result, the appeal filed by the assessee in ITA No. 4736/Mum/2014 and the appeal filed by the Revenue in ITA No. 5207/Mum/14 for the assessment year 2010-11 are dismissed.

Order pronounced in the open court on 14th December, 2016.