



RECENT DEVELOPMENTS IN TAXATION OF TRANSACTIONS OF BOGUS PURCHASES

*O/o CIT(Judicial), Ahmedabad
Pr. Chief Commissioner of Income Tax, Gujarat*





BOGUS PURCHASES

Two types:

(a) Only bill providers/bogus purchases and no actual sale/purchase.

(b) Parties bogus but purchases not bogus.

BOGUS PURCHASES (contd...)

- **Consequences under Direct Taxes:**
 - **Disallowance of entire expenses represented by such invoices/bills.**
 - **Disallowance u/s. 40A(3)**
 - **Addition of the profit embedded in such transactions.**
 - **Addition u/s. 68 or 69C**
 - **Addition of the peak amount**
 - **Consequences of additions in 80IA, 80IB cases**

BOGUS PURCHASES (contd...)

- Prima facie onus to prove genuineness is on the Assessee

- **Evidences:**

- a) Direct Evidences**

- *Delivery Challans, Gate Pass*
- *Transport / Lorry Receipt*
- *Purchase Invoices, Stock Register, Payment details*
- *Excise Register*
- *Weight Note, Lab Report*

BOGUS PURCHASES (contd...)

b) Indirect Evidence:

- *Comparison of GP/NP Rate*
- *Comparable cases*
- *Input / Output norms*
- *Valuation Reports / Architect's Certificate in the case of Builder-Developers*

BOGUS PURCHASES (contd...)

- Where purchases are found to be bogus/non-existent and were introduced to lower profits, entire amount of such bogus purchases added back.

- *Sri Ganesh Rice Mills [2007] 294 ITR 316 (ALL.)*

- *Indian Woollen Carpet Factory [2002] 125 TAXMAN 763 (RAJ.)*

BOGUS PURCHASES (contd...)

- **Where purchases are found to be genuine and suppliers not responding/available.**

Assessee submits all evidences in support of genuineness mainly quantitative details, Excise records, payment particulars by cheques, no addition.

- *Adinath Industries 252 ITR 476 (Guj.)*
- *CIT Vs. Nikunj Exim Enterprises Pvt. Ltd. 372 ITR 615 (Bom.)*
- *CIT Vs. M. K. Bros 163 ITR 249 (Guj.)*
- *ITO V. B. Totaram B. Sharma - T.A. No. 1344 of 2008 dated 09.02.2010 (Guj.)*

BOGUS PURCHASES (contd...)

- Where purchases found to be genuine and supplier parties found to be bogus / non-existing.

Only profit embedded in such amount could be taxed.

- *CIT Vs. Bholanath Poly Fab Pvt. Ltd. 355 ITR 290 (Guj.)*
- *CIT Vs. Simit P. Sheth 356 ITR 451 (Guj.)*
- *Vijay Trading Co. Vs. ITO 388 ITR 377 (Guj.)*
- However, in *N.K. Industries Ltd. 84 taxmann.com 195 (SC)*, the amount of the entire bogus purchase is held to be added to the income.

BOGUS PURCHASES (contd...)

- Impact of the judgment in the case of *N.K. Industries Ltd. 84 taxmann.com 195 (SC)* wherein the amount of the entire bogus purchase is added to the income.

Departments' question of law admitted:

Aashadeep Industries [2018] 95 taxmann.com 135 (Gujarat)

Considered and distinguished on facts:

- *Jayprakash Lakhani – ITA No. 924/M/2017 dated 18.04.2018 (Mum.)*
- *Navin Shantilal Mehta 90 taxmann.com 16 (Mum.)*

BOGUS PURCHASES (contd...)

- **Applicability of provisions of Sec. 40A(3):**
 - a) where payments made by bearer cheques/ crossed cheques, sec. 40A(3) applicable
 - *Rajmoti Industries Vs. ACIT 367 ITR 392 (Guj.)*
[SLP admitted in 78 taxmann.com 200 (SC)]
 - b) Where sales and purchase transactions are unaccounted, payment for purchases made in cash would attract Sec. 40A(3) where payees are not identified and genuineness of payment is not established.
 - *CIT Vs. Hynoup Foods & Oil Industries Pvt. Ltd. 290 ITR 702 (Guj.)*

BOGUS PURCHASES (contd...)

- **Applicability of provisions of Sec. 40A(3) [contd..]**
 - c) Where parties are identified and genuineness is established, in such cases, the payment would be covered by exceptions provided in Rule 6DD(j)
 - *Vijay Proteins Ltd. Vs. CIT – 58 taxmann.com 44 (Guj.)*
 - *Anupam Tele Services Vs. ITO – 43 taxmann.com 199 (Guj.)*
 - *A. Daga Royal Arts – ITA No. 1065/JP/2016 dated 15.05.2018 (Jaipur Trib.)*

BOGUS PURCHASES (contd...)

d) Where income is assessed by rejection of books and assessment is made on estimation, no disallowance is to be made u/s. 40A(3)

- Prashant Oil Mills Vs. ITO 72 taxmann.com 136 (Guj.)

- CIT Vs. Dhiraj R. Rungta 40 taxmann.com 284 (Guj.)

REASSESSMENT / REVISION

- Reopening on the basis of the report of the Investigation Wing about receipt of loans / LTCG / bogus bills from Entry Providers held to be justified
 - *Jayant Security & Finance Ltd. Vs. ACIT 91 taxmann.com 181 (Guj.)*
 - *Ankit Agrochem Pvt. Ltd. Vs. JCIT 89 taxmann.com 45 (Raj.)*
 - *Pushpak Bullion Pvt. Ltd. Vs. DCIT 85 taxmann.com 84 (Guj.)*
 - *Aradhana Estates Pvt. Ltd. Vs. DCIT 91 taxmann.com 119 (Guj.)*

REASSESSMENT / REVISION (contd...)

- **Revision u/s. 263:**

Tendency on part of the Commissioners to revise the orders by resort to invoking the Explanation 2(a) inserted by Finance Act w.e.f. 01.06.2015.

Explanation 2 (a):

“Explanation 2.—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner,—

a) the order is passed without making inquiries or verification which should have been made;”

REASSESSMENT / REVISION (contd...)

- Explanation 2 inserted from 01.06.2015 do not enlarge the scope of powers of revision. The Explanation cannot be said to have overriding effect to the law as interpreted by the various High Courts.
 - *Amira Pure Foods Pvt. Ltd V/s PCIT – ITA No 3205/DEL/2017 dated 29.11.2017*
 - *Narayan Tatu Rane Vs. ITO – 70 Taxmann.com 227*

APPLICABILITY OF BENAMI PROHIBITION ACT / PMLA

- **Whether the amount received as consideration on sale of Penny Stocks be regarded as Benami Property, if the person giving the consideration is not traceable and addition has been made under section 68 or 69 of the Act.**
- **In a bogus purchase case, the allegation on the person procuring such bogus bill has made the payment by cheque and has received back the amount in cash. Can it be said that the person who has received the cheque is holding the amount on behalf of the person who has issued the cheque and, consequently, it is a case of benami transaction? In cases where the alleged suppliers are not traceable, can it be said that it is a case of benami transaction?**

APPLICABILITY OF BENAMI PROHIBITION ACT / PMLA (contd...)

- Whether bogus transactions and sham transactions would come within the ambit of Benami transaction?
- Where the source of proceeds / consideration in relation to alleged bogus transaction are not explained and additions made, can the provisions of PMLA be applied?
 - *Rajmandir Estates Private Ltd. Vs. Pr. CIT 70 taxmann.com 124 (Cal.)*
– SLP dismissed – 77 taxmann.com 285 (SC)
 - *Rohit Tandon Vs. Enforcement Directorate 145 SCL 1 (SC)*



THANK YOU