

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER) AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA No. 445/MUM/2021
Assessment Year: 2007-08**

&

**ITA No. 444/MUM/2021
Assessment Year: 2008-09**

&

**ITA No. 443/MUM/2021
Assessment Year: 2009-10**

&

**ITA No. 442/MUM/2021
Assessment Year: 2010-11**

&

**ITA No. 441/MUM/2021
Assessment Year: 2011-12**

Jurisdictional Income-tax Officer-
31(1)(1),
Room No. 603, 6th Floor,
Kautilya Bhavan,
Bandra Kurla Complex,
'G' Block, Bandra (East)
Mumbai-400051.

Appellant

M/s Elphinstone Paper Box
Manufacturing Co.
Vs. S/10 Ram Mandir Road,
Goregaon (West),
Mumbai-400104.

**PAN No. AAAFE 0509 Q
Respondent**

**CO No. 18/MUM/2022
(ITA No. 445/MUM/2021)
Assessment Year: 2007-08**

&

**CO No. 17/MUM/2022
(ITA No. 444/MUM/2021)
Assessment Year: 2008-09**

&

**CO No. 16/MUM/2022
(ITA No. 443/MUM/2021)
Assessment Year: 2009-10**

&

**CO No. 15/MUM/2022
(ITA No. 442/MUM/2021)
Assessment Year: 2010-11**

&

**CO No. 14/MUM/2022
(ITA No. 441/MUM/2021)
Assessment Year: 2011-12**

M/s Elphinstone Paper Box
Manufacturing Co.
S/10 Ram Mandir Road,
Goregaon (West),
Mumbai-400104.

Vs.

Jurisdictional Income-tax Officer-
31(1)(1),
Room No. 603, 6th Floor,
Kautilya Bhavan,
Bandra Kurla Complex,
'G' Block, Bandra (East)
Mumbai-400051.

**PAN No. AAAFE 0509 Q
Appellant**

Respondent

**ITA No. 440/MUM/2021
Assessment Year: 2010-11**

Jurisdictional Income-tax
Officer-31(1)(1),
Room No. 603, 6th Floor,
Kautilya Bhavan,
Bandra Kurla Complex,
'G' Block, Bandra (East)
Mumbai-400051.

Vs.

Yogendra K. Patel (HUF)
31, Vakharia Indl. Estate,
Ram Mandir Road,
Goregaon (West),
Mumbai-400104.

Appellant

**PAN No. AAAHY 0047 D
Respondent**

**CO No. 13/MUM/2022
(ITA No. 440/MUM/2021)
Assessment Year: 2010-11**

Yogendra K. Patel (HUF)
31, Vakharia Indl. Estate,
Ram Mandir Road,
Goregaon (West),
Mumbai-400104.

Vs.

Jurisdictional Income-tax Officer-
31(1)(1),
Room No. 603, 6th Floor,
Kautilya Bhavan,
Bandra Kurla Complex,
'G' Block, Bandra (East)
Mumbai-400051.

**PAN No. AAAHY 0047 D
Appellant**

Respondent

Revenue by : Mrs. Smita Nair, DR
Assessee by : Mr. Bhupendra Shah, AR

Date of Hearing : 21/06/2022
Date of pronouncement : 29/06/2022

ORDER

PER BENCH

These appeals by the Revenue and cross-objection by the assessee(s) are directed against separate orders passed by the Commissioner of Income-tax (Appeals)-42, Mumbai [in short 'the Ld. CIT(A)'] for different assessment years.

2. In the grounds, Revenue has agitated deleting of additions, which were made by the Assessing Officer alleging the purchases made from one of the party namely “M/s Bigwin Paper Distributor Private Limited” as bogus.

3. In the cross-objection, the assessee has raised one of the issue of appeals being covered by the tax effects Circular issued by the Central Board of Direct Taxes(CBDT), New Delhi.

4. Before us, the Ld. DR on the issue of appeals covered by tax effects Circular, submitted that in these cases information was received from the Sales Tax Authorities regarding bogus purchases and therefore appeals of the assessee falls under exception clause of the circular, according to which wherever information has been received from external sources, those appeals shall not be covered by the tax effects circular.

5. In the rejoinder, the Ld. counsel of assessee submitted that sales tax information was received in the case of “Bigwin Paper Distributor Private Limited” and thereafter in that case survey proceeding was conducted, wherein it was found that said party has issued further bills in the case of the assessee before us in cross-objection. According to the Ld. counsel, these facts are amply clear from the body of the assessment order, and therefore exception clause does not apply to these appeals and same are covered by the tax effects circular.

6. We have heard submission of the both parties on the issue in dispute. The tax effect in these appeals is reproduced in the chart below:

S. No.	ITA No.	Tax effect
1.	445/M/2021	36,875/-
2.	444/M/2021	69,012/-

3.	443/M/2021	1,10,375/-
4.	440/M/2021	1,13,471/-
5.	441/M/2021	32,068/-
6.	442/M/2021	1,17,596/-

6.1 We find that tax effect in these appeals is not exceeding the monetary limit, which has been revised by the CBDT *vide* circular dated 08/08/2019 for the purpose of the filing of the appeal by the Department before the Income-Tax Appellate Tribunal from ₹ 20.00 lakhs to ₹ 50.00 lakhs. For ready reference, the relevant part of the said circular is reproduced as under:

“Reference is invited to the Circular No.3 of 2018 dated 11.07.2018 (the Circular) of Central Board of Direct Taxes (the Board) and its amendment dated 20 th August, 2018 vide which monetary limits for filing of income tax appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court have been specified. Representation has also been received that an anomaly in the said circular at para 5 may be removed.

2. As a step towards further management of litigation, it has been decided by the Board that monetary limits for filing of appeals in

income-tax cases be enhanced further through amendment in Para 3 of the Circular mentioned above and accordingly, the table for monetary limits specified in Para 3 of the Circular shall read as follows:

<i>S. No.</i>	<i>Appeals/SLPs in Income-tax matters</i>	<i>Monetary Limit (₹)</i>
<i>1.</i>	<i>Before Appellate Tribunal</i>	<i>50,00,000/-</i>
<i>2.</i>	<i>Before High Court</i>	<i>1,00,00,000/-</i>
<i>3.</i>	<i>Before Supreme Court</i>	<i>2,00,00,000/-</i>

6.2 Thus prima facie, the appeals of the Department are not maintainable in view of monetary tax effect being less than ₹50 lakh. The Ld. DR however, submitted that the case falls under exception clause communicated by the CBDT. He referred to CBDT directive dated 20.08.2018 by which exceptions have been carved out to Circular No. 03 of 2018 dated 11th July 2018 relating to withdrawal/non-filing appeal by the Department in low tax effect appeals. The CBDT has specified several instances for filing appeal despite their low tax effect. The contents of the said letter are reproduced as under:

*“All the Principal Chief Commissioners of Income Tax
Subject: Amendment to para 10 of the Circular No. 3 of 2018
dated 11.07.2018-reg:*

Madam/Sir,

Kindly refer to the above.

2. The monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/ appeals before Supreme Court have been revised by Board's Circular No. 3 of 2018 dated 11.07.2018.

3. Para 10 of the said Circular provides that adverse judgments relating to the issues enumerated in the said para should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 thereof or there is no tax effect. Para 10 of the Circular No. 3 of 2018 dated 11.07.2018 is hereby amended as under:

"10. Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect:

(a) Where the Constitutional validity of the provisions of an Act or Rule is under challenge, or

(b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or

(c) Where Revenue Audit objection in the case has been accepted by the Department, or

(d) Where addition relates to undisclosed foreign income/ undisclosed foreign assets (including financial assets)/ undisclosed foreign bank account.

(e) Where addition is based on information received from external sources in the nature of law enforcement agencies such as CBI/ ED/ DRI/ SFIO/ Directorate General of GST Intelligence (DGGI).

(f) Cases where prosecution has been filed by the Department and is pending in the Court."

4. The said modification shall come into effect from the date of issue of this letter.

5. The same may be brought to the knowledge of all officers working in your region.

6. This issues with the approval of the Hon'ble Finance Minister."

6.3 The exception 10(e) which has been referred by the Ld. DR related to the cases whether information from the external sources in the nature of law enforcement agencies such as

CBD/ED/DRI/SFIO/Directorate General of GST Intelligence (DGGI) etc. Whereas the Investigation Wing of the Income Tax Department is part of the Income Tax Department and administratively as well as functionally it is a part of the Income Tax Department and not external law enforcement agency as specified in the aforesaid exception. The issue precipitated before us is whether the information in the case has been received from external law enforcement agency i.e. Sales Tax Department or from internal source i.e. Investigation Wing. In the case before us, the Ld. Assessing Officer has given a details finding as how search/survey was conducted in the case of 'M/s Bigwin Paper Distributor Private Limited' and 'M/s Arun Paper and Iron Traders' by the Investigation Wing of the Income Tax Department based on the information from the Sales Tax Authorities that those were engaged in accepting bogus purchase bills. During the search/survey action on M/s Bigwin Paper Distributor Private Limited and M/s Arun Paper and



Iron Trader, it was found that those were also engaged in the providing entries of bogus sales to the assessee and thereafter the Investigation Wing has sent the information to the Assessing Officer of the assessee that assessee was engaged in receipt of bogus purchase bills from M/s Bigwin Paper Distributor Private Limited. The relevant finding of the Assessing Officer is reproduced as under:

“4.1(v) Here it is pertained to mention that the statement of Shri Arun Agarwal Director of M/s. Bigwin paper Distributors was recorded U/s 131 of the I.T. Act by ACIT 31(1) Mumbai on 02/02/2015 and on 24/02/2015. The facts emerged in the statements may be summarized as under:

- i. In both the entities i.e. Bigwin paper Distributors and M/s. Arun Paper and Iron Traders, he was managing person. Both the firm had carried out trading of paper during the financial year, relevant to the year under assessment.*
- ii. Both the concerns engaged in the business of trading of paper, wherein they had been procuring orders for supply of papers from its customers and pass on the same to the other traders/suppliers, available in market, who directly supply the goods to the customers of his two concerns i.e. M/s Bigwin paper Distributors Pvt. Ltd. and M/s. Arun Paper and Iron Traders.*
- iii. During the course of statement proceedings, he has stated that the Sales tax Department had conducted an enquiry in Feb/March 2010 in the*

above named two concerns in connection to the purchases made from certain parties which are alleged involved in issuing sales bills without making actual delivery of the goods. In general terms which are being named as Bogus/ "Hawala" dealers. The names of such the parties are as under:

- 1. M/S V.S.K. Enterprises*
- 2. M/s Forum Traders*
- 3. M/s Apple Industries*
- 4. M/S Adinath Traders*
- 5. M/s Raviraj Impex Pvt. Ltd.*
- 6. M/s Shubham Enterprises*
- 7. M/s Sameer Trading Corporation*
- 8. M/S Hiten Enterprises*
- 9. M/s Neelofar Trade Pvt. Ltd.*

- iv. It is also stated by him that in November 2013, survey u/s 133A of the I.T.Act was carried out by the Investigation Wing of the Income Tax Department, Mumbai in the case of both the entities, managed by him. During the course of survey proceeding, his statement on oath u/s 131 of the I.T.Act was recorded on 6/12/2012 and on 7/12/2012. In the statement, he had admitted that out of the purchases claimed to have made by his two concerns, there are certain parties, mentioned supra were involved in "hawala" transactions.*

- v. *Vide reply to question no. 22 of the statement, recorded on oath on 06/12/2012 as a proprietor of M/s Arun Paper and Iron Traders and also vide reply to question no. 22 of his statement, recorded as managing person of M/s Bigwin paper Distributors Pvt. Ltd. he expressed his inability to furnish the vital evidences i.e. Purchase orders, Transport Receipts, weighment Slips, Octroi Receipts, Delivery Challans and goods receipt register in respect of the purchases, claimed to have made from the alleged hawala traders.*
- vi. *He admitted that certain purchases, reflected in the books of account of his two concerns were affected through a broker/trader namely Hamukh Upadhayaya, (who is now no more alive). He further admitted that all the concerns/parties which are appearing in the list of Sales tax Department as suspicious Hawala dealers are related to the purchases affected through the Mr. Hamukh Upadhayaya.*
- vii. *Vide answer to the question no 15 of the statement recorded during the course of survey proceeding on 7/12/2012 it is confirmed by him that all the nine concerns i.e. M/s V.S.K. Enterprises, M/s Forum Traders, M/s Apple Industries, M/s Adinath Traders, M/s Raviraj Impex Pvt. Ltd., M/s Shubham Enterprises, M/s Sameer Trading Corporation, M/s Hiten Enterprises, M/s Neelofar Trade Pvt. Ltd. are appearing in the list of said hawala parties were engaged in hawala trading activity and have issuing sales bills without making actual delivery of goods.*
- viii. *During the course of survey proceeding, carried out by the Investigation wing of the Income Department he had furnished mapping of each of the sale shown in his two concerns i.e. M/s Bigwin paper Distributors Pvt. Ltd. and M/s. Arun Paper and Iron Traders with the respective purchase relevant to th financial year 2006-07, financial year 2007-08, financial year 2008-09, financial year 2009-10 and financial year 2010-11. It is*

stated by him that in both the concerns business is closed down after September, 2011.

- ix. During the course of captioned assessment proceeding, while recording his statement on 02/02/2015 and 24/02/2015, a copy of his statements, recorded on oath in the course of survey proceeding on 06/12/2013 and 7/12/2013 along with the mapping detail purchases and sales, (procured from the Investigation wing of Income Tax Department) was provided to Mr. Arun Agarwal and was asked to go through and give his comments on the same. It is stated by him that that he has gone through the statements, recorded during the course of survey proceeding and the mapping of purchases and sales of both his entities relevant to financial year 2006-07, 2007-08, 2008-09 and 2009-10. He further admitted that these statements had been given by him and the facts mentioned in the statements were given by him and are true & correct and still acceptable to him. It is further admitted by him that the mapping report of the purchase and sales shown to him is also related to his two concerns and is also acceptable to him.*

4.1 (vi) From the statement of Mr. Arun Agarwal on various dates in the course of survey proceeding and in the captioned assessment proceeding and the mapping report of the purchase and sales of both his concerns provided by him as well procured from the Investigation wing of the Income Tax Department, Mumbai, it is emerged that during the financial year 2006-07 all the sales, claimed to have made by M/s Bigwin Paper Distributors Pvt. Ltd. and M/s Arun Paper & Iron Traders to M/s Goel Packaging were sourced from two concerns M/s V.S.K. Enterprises and M/s Foram Traders. It is also clear that from the detail mentioned above that both these parties were engaged in "Hawala Activity" i.e. issuing sales bills without making actual delivery of the goods."

6.4 Thus it is clear that in the case of the assessee source of information is not Sales Tax Department and information is received only from the Investigation Wing of the Department, which is an internal source and not external law enforcement agencies as specified in exception 10(e) of the CBDT Letter under reference reproduced above.

6.5 In view of the above appeals filed by the Revenue are covered by the Circular No. 17/2019 dated 08.08.2019 being tax effect involved less than the monetary limit prescribed in the said Circular. These appeals of the Revenue are treated as infructuous and accordingly dismissed.

6.6 As these appeals have already been dismissed, the cross-objection raised by the assessee in respective appeals are accordingly allowed.

7. In the result, the appeals filed by the Revenue are dismissed, whereas cross objection raised by the assessee are allowed.

Order pronounced in the Court on 29/06/2022.

Sd/-

**(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER**

Sd/-

**(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;

Dated: 29/06/2022

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai