

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI  
BEFORE SRI MAHAVIR SINGH, JM AND SRI RAJESH KUMAR, AM**

**ITA No.3088/Mum/2015  
(A.Y:2008-09)**

<b>Devu Tools Pvt. Ltd.,</b> C/o. M/s Ravi & Dev, Charged Accountants 601, ‘A’ Wing, Aurus Chambers, Behind Mahindra Towers, SS Amrutwar Marg, Worli, Mumbai-13	Vs.	<b>Dy. Commissioner of Income Tax,</b> 8(1), Mumbai
<b>Appellant</b>	..	<b>Respondent</b>
<b>PAN No.AAACD8770H</b>		

**ITA No.3967/Mum/2015  
(A.Y:2008-09)**

<b>Dy. Commissioner of Income Tax,</b> 8(1), Mumbai	Vs.	<b>Devu Tools Pvt. Ltd.,</b> C/o. M/s Ravi & Dev, Charged Accountants 601, ‘A’ Wing, Aurus Chambers, Behind Mahindra Towers, SS Amrutwar Marg, Worli, Mumbai-13
<b>Appellant</b>	..	<b>Respondent</b>

<b>Assessee by</b>	..	Shri. Vijay Mehta, AR
<b>Revenue by</b>	..	Shri. Sumon Kumar, DR

<b>Date of hearing</b>	..	<b>19-01-2017</b>
<b>Date of pronouncement</b>	..	<b>17-02-2017</b>

**ORDER**

**PER MAHAVIR SINGH, JM:**

These cross appeals by the assessee and Revenue are arising out of the order of CIT (A)-16, Mumbai in appeal No. CIT (A)-16/DCIT (OSD)-8(1)/IT 247/2013-14 dated 30-03-2015. The Assessment was framed by DCIT (OSD)-8(1), Mumbai for the A.Y. 2008-09 vide order dated 12-03-2014 u/s 143(3) read with section 147 of the Income Tax Act, 1961 (hereinafter ‘the Act’).

2. The only common issue in these cross appeals, one by Revenue and one by assessee, is against the order of CIT(A) estimating the profit rate of 12.5% on the bogus purchase made by assessee as against the entire addition made by the AO of

Rs. 60,64,104/-. The assessee has challenged the application of gross profit rate vide ground No.3 as under: -

*“3. The learned Commissioner of Income-tax (Appeals) erred in law as well as in facts in partly confirming the addition to the extent of Rs.7,58,013/- made by the assessing officer on the basis of information received from Director General of Income Tax (Investigation), Mumbai, by treating genuine purchase of consumables of Rs.60,04,104/- from MIs. Jain Corporation, M/s. Poop Trading Corporation, M/s. Yash Impex, M/s. Dharmesh Trading and M/s. Harsha Enterprises as bogus and unexplained expenditure and applying estimated net profit @ 12.5% on the above transactions.*

*3.1 In doing so, he ignored the vital facts that the assessing officer did not provide to the assessee:*

*(a) the copies of relevant documents, if any, found and seized in the case of M/s. Jainj Corporation, MIs. Pooja Trading Corporation, M/s. Yash Impex, M/s. Dharmesh Trading and MIs. Harsha Enterprises on the basis of which the Director General of Income Tax (Investigation), Mumbai held assessee's transaction with these parties as bogus,*

*(b) the copies of statements recorded in the case of M/s. Thin Corporation, M/s. Pooja Trading Corporation, M/s. Yash Impex, M/s. Dharmesh Trading and M/s. Harsh Enterprises.,*

*(c) the opportunity of cross examination of MIs. Jain Corporation, MIs. Pooja Trading Corporation, M/s. Yash Impex, MIs. Dharmesh Trading and M/s. Harsha Enterprises and*

*(d) the opportunity to rebut the inference drawn against the assessee.”*

Revenue has raised following three grounds :-

*“1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition made on account of bogus*

*purchases b holding that the genuine of the transaction stood explained ignoring the fact that the parties from whom the purchases have been made have been classified as a hawala dealer by the States Tax Department, Maharashtra and its Directors / Proprietors have under oath confirmed that no transaction n has been entered with the assessee and only accommodation entries were provided?*

*2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition made by the AO on account of bogus purchases to the tune of Rs. 60,64,104/- ignoring the fact that during the course of survey proceedings itself, the Managing Director of the company admitted that purchases made from the parties were non-genuine?*

*3. Whether on the facts and in the circumstance of the case, the ld. CIT(A) erred in deleting the addition made by the AO on account of bogus purchases when the assessee has failed to give any quantity wise tally of purchases and its consumption in manufacturing process to establish the genuineness of the purchases made from various hawala parties?..”*

3. Briefly stated facts are that the assessee is engaged in manufacturing of mould makers, manufacturing and exporters. The assessee for assessment year 2008-09 file its return of income and the same was processed under section 143(1) of the Act. A survey under section 133A of the Act was conducted at the business premises of the assessee on 31-10-2012 by the investigation wing of the Mumbai, Income Tax department, whereby it was detected that the assessee company is indulging in bogus purchases and has made aggregate purchase of Rs.14,22,74,602/- from 18 parties as listed in the statement given by the assessee during the financial year 2006-07,2007-08-2008-09, 2009-10 and 2010-11. The AO issue reopening notice under section 148 read with section 147 of the Act on 28-03-2013 by recording reasons. During scrutiny proceedings, the assessee was asked to prove the purchase of Rs. 60,64,104/- purported to have made from the following parties during the financial year 2007-08 relevant to assessment year 2008-09: -

<i>Sr. No.</i>	<i>Name of the party</i>	<i>Amount (Rs.)</i>
1.	<i>M/s Jain Corporation</i>	<i>12,46,048/-</i>
2.	<i>M/s Pooja Trading Corporation</i>	<i>20,15,361/-</i>
3.	<i>M/s Yash Impex</i>	<i>9,18,346/-</i>
4.	<i>M/s. Dharmesh Trading</i>	<i>8,71,924/-</i>
5.	<i>M/s Harsha Enterprises</i>	<i>10,12,425/-</i>
		<b><i>60,64,104/-</i></b>

4. As the assessee was asked to furnish the details of transportation of goods and documentary evidences reflecting their relevant purchases of having received of such goods and having consumed of such goods. The assessee furnished copies of ledger accounts of parties along with bank statement. The assessee could not produce copies of purchase order, bills raised, nature of expenditure, goods receipt note, goods / survey inspection report, installation report, work completion note, lorry receipt etc. According to AO the assessee had made these purchases from hawala entry provider, who had admitted this fact that these purchases are never in such hawala sale bills without supplying goods and assessee is one of the beneficiaries of such hawala transaction. Accordingly, AO added the entire bogus purchase of Rs. 60,64,104/-. Aggrieved, assessee preferred the appeal before CIT(A). The CIT(A) after considering the submissions of the assessee and various case laws estimated the profit rate at the rate of 12.5% on the bogus purchases for the reason that Revenue had accepted the manufacturing of moulds and sale of moulds thereof and it was also not contested by the Revenue that the consumables like Taps, Drills, Cutter, HSS Tools, Carbide Rods, HSS Blades Reamers etc. was not used. The CIT(A), estimated by recording his finding as under: -

*“In the assessee's case, the manufacturing of moulds and the sale of moulds is not under dispute and the revenue on account thereof i.e. sale of moulds was accepted by the assessing officer. It is undisputed fact that various items of consumables like Taps, Drills, Cutter, HSS Tools, Carbide Rods, HSS Blades Reamers etc. were required for manufacture of moulds and without their use, the manufacture of moulds was not*

*possible. Therefore, it cannot be the case that the assessee did not purchase any consumables. However, as the parties from whom purchases were shown to have been made, were suspicious as they were engaged in providing bills and not the material as per the information received from VAT department, it showed that the material was not actually purchased from these parties but procured from some other sources by using these hawala parties as a conduit for the purpose of recording purchases in its books of accounts, obviously to earn extra profit. Therefore, the entire purchases could not be disallowed and it was the extra profit earned by the assessee by using the alleged hawala parties as a conduit which was required to be brought to tax. Such extra profit varies from business to business and has to be estimated on the basis of factors like nature of business, general profitability trend of the business, profit declared by the assessee, VAT benefit derived by the assessee and such other relevant factors. Considering the gross profit rate of 52.50% declared by the assessee during the year, I am of the view that it would meet the end of justice if the extra profit earned by the assessee is estimated at 12.5% of alleged purchases from hawala parties. Accordingly, I estimate the undisclosed profit of the assessee at Rs. 7,58,013/- i.e. 12.5% of Rs.60,64,104/-."*

Aggrieved, against the estimation of profit rate at the rate of 12.5% on bogus purchase, assessee as well as Revenue, both came in second appeal before Tribunal.

5. We have heard rival contentions and gone through the facts and circumstances of the case. Before us, the leaned Counsel for the assessee filed a comparative statement of cross profit and net profit ratio for many years which is as under: -

**Comparative statement of gross profit and net profit ratios**

<i>Income Turnover</i>	2008	2007	2006	2005	2004
	Rs.	Rs.	Rs.	Rs.	Rs.
<i>Sales</i>	81,470,952	103,613,890	44,470,801	64,956,690	65,574,370
<i>Income/Decrease in stock</i>	39,201,816	1,667,781	25,923,445	13,613,129	7,276,896
	<b>120,681,768</b>	<b>101,946,109</b>	<b>70,394,246</b>	<b>51,343,561</b>	<b>72,851,266</b>

**Gross Profit/Turnover**

Bogus purchases allowed as expense 52.20% 49.48% 51.94% 35.52% 40.98%

**Net Profit/ Turnover**

Bogus Purchases allowed as expense 5.36% 5.83% 4.27% 3.90% 9.85%

The learned Counsel for the assessee fairly agreed that a reasonable estimate of profit should be estimated in view of the fact that neither manufacturing of moulds nor sale of moulds is under dispute. According to us, assessee had made purchase but from grey market. We find that the similar finding were given by the CIT(A) that assessee might have purchased extra profit on account of saving of sales tax and other tax. Even by purchasing from grey market, assessee might have save some profits and profit of the assessee has depicted in the above chart which is minimum at the rate of 3.90% and maximum of 9.85%. We are of the view that a reasonable estimate on profit rate at 10% will suffice the issue. Accordingly, we direct the AO to estimate the profit rate @ 10% on the above purchases and appeal of the assessee is partly allowed and that of the Revenue is dismissed.

**6. In the result, the appeal of assessee is partly allowed and the appeal of Revenue is dismissed.**

Order pronounced in the open court on 17-02-2017.

Sd/-  
(RAJESH KUMAR)  
ACCOUNTANT MEMBER

Sd/-  
(MAHAVIR SINGH)  
JUDICIAL MEMBER

Mumbai, Dated: 17-02-2017

*Sudip Sarkar /Sr.PS*

**Copy of the Order forwarded to:**

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

//True Copy//

BY ORDER,  
Assistant Registrar  
**ITAT, MUMBAI**