

**आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ 'SMC', मुंबई ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**MUMBAI BENCHES "SMC", MUMBAI**  
**Before Shri Shamim Yahya, Accountant Member**

ITA No.7276/Mum/2016 : Asst.Year 2010-2011

Shri Radhyesham Goyal 510 Cotton Exchange, Kalbadevi Road Mumbai – 400 002. <b>PAN : AABPG3681L.</b>	<b>बनाम/</b> Vs.	The Income Tax Officer Ward 18(2)(2) Mumbai.
(अपीलार्थी /Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से /Appellant by : --- None ---

प्रत्यर्थी की ओर से /Respondent by : Shri B.Satyanarayana Raju (Sr.DR)

सुनवाई की तारीख / Date of Hearing : 16.05.2017	घोषणा की तारीख / Date of Pronouncement : 03.07.2017
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**आदेश / ORDER**

This appeal by the assessee is directed against the order of CIT(A) dated 08.09.2016 and pertains to assessment year 2010-2011.

2. In this case the assessee has challenged the reopening of the case as well as confirmation of addition at 12.5% of alleged unexplained purchases at Rs.26,60,518.

3. Brief facts of the case are as under.

3.1 In this case, the AO has received information from-the DGIT(Inv.),-Mumbai on the basis of which the case was reopened u/s 147. The information was that the sales tax department has exercised due diligence which revealed that the assessee is involved in taking accommodation 'entries of bogus purchases from the parties namely M/s. Linux Sales Agency Pvt. Ltd. of Rs.35,02,062/-, Donear Trading Pvt. Ltd. of

Rs.1,68,93,379/- and Blue Nile Enterprise of Rs.8,88,706/- aggregating to Rs.2,12,84,147/-. The sales tax department has thus classified these parties as hawala dealers. It was evident from the report of the sales tax department and statement recorded that purchases shown by the assessee from these parties are bogus and nothing but accommodation entries to inflate purchases to reduce taxable profits/income.

3.2 After the issue of notice u/s.148, the appellant was asked to prove the of transactions of purchases from the above referred persons i.e. bills, proof of payments made, and related delivery challans of goods/transport bills and closing stock etc and was also requested to show cause as to why the alleged purchases should not be assessed as concealed income in the hands of the assessee.

3.3 In response to the notices issued, the AR of the assessee filed details such as copy of tax invoice issued by the above parties, copy of ledger account, copy of bank account wherein cheques issued by the assessee were reflected. On perusal of the above, the AO noticed that the assessee has merely furnished ledger account, invoices, bank statements etc and has claimed the relevant purchases as genuine only because the payments were made by cheque. However, the AO observed that the assessee could not discharge its onus by failing to produce the above referred persons. The assessee is not keeping any day to day stock register. The notices issued u/s.133(6) of the I.T. Act have been returned un-served and the assessee could not furnish the present address of the parties. Freight receipts, delivery challans and any transportation documents have not been produced for examination. In view of these circumstances; the AO doubted the purchases

made from the above mentioned three parties. However, as the assessee has shown the corresponding sales, the AO decided to make an addition of 12.5% of the alleged bogus purchases.

4. Upon assessee's appeal, the learned CIT(A) confirmed the action of the assessee holding as under:-

*"The submissions of the Ld. Counsel for the appellant have been carefully considered. The Hon'ble ITAT Ahmedabad 'C' Bench in the case of Vijay Proteins Ltd. vs. ACIT 58 ITD 0428 held that in similar circumstances, 25% of the purchase price accounted through fictitious invoices has to be disallowed. The Hon'ble High Court of Gujarat in the case of Sanjay Oil cakes v/s CIT 316 ITR 0274 dealt with similar case where some of the alleged suppliers who had issued bills to the assessee were not genuine as they were not traceable. The goods must have been received from other parties. The likelihood of the purchase price of these alleged purchases being inflated could not be ruled out and therefore the Hon'ble High Court has upheld the decision of CIT(A) and the ITAT disallowing 25% of the payments made to such parties. The Hon'ble High Court of Gujarat in the case of CFT vs. Simit P. Sheth 356 ITR 0451 held that once the sale is accepted by the AO, the very basis of purchases could not be questioned. Not the entire purchase price could be disallowed but only the profit element embedded in such purchases could be added to the income of the assessee. The estimation varies with the nature of business and no uniform yardstick could be adopted. Given the facts and circumstances of the instant case, I find it reasonable to estimate the gross profit on the alleged bogus purchases at 12.5%. The stand of the AO in estimating the purchases at 12.5% is hereby confirmed. However, the AO is directed to reduce the profit already declared / shown by the appellant on these purchases."*

5. Against the above order, assessee is in appeal before ITAT.

6. I have heard the learned Departmental Representative. None appeared on behalf of the assessee. I am of the considered opinion that the issue can be adjudicated by hearing the learned DR and perusing the records.

7. As regards the reopening of the assessee, on a careful consideration, I note that in this case information was received by the Assessing Officer from DGIT Investigation (Mumbai) there are some parties who are engaged in the hawala transactions and are also involved in issuing bogus purchase bills for sale of material without delivery of goods, which information was based on information received by Revenue from Maharashtra Sales Tax Authority. Information was received that the assessee was beneficiary of hawala accommodation entries from entry providers by way of bogus purchase. The accommodation entry provider has deposed and admitted before the Maharashtra Sales Tax Authority vide statement/ affidavit that they were engaged in providing bogus accommodation entries wherein bogus sale bills were issued without delivery of goods, in consideration for commission. These, accommodation entry providers, on receipt of cheques from parties against bogus bills for sale of material, later on withdrew cash from their bank accounts which was returned to beneficiaries of bogus bills after deduction of their agreed commission. The Assessee was stated to be one of the beneficiaries of these bogus entries of sale of material from hawala entry operators in favour of the assessee wherein the assessee made alleged bogus purchases through these bogus bills issued by hawala entry providers in favour of the assessee. These dealers were surveyed by the Sales Tax Investigation Department whereby the directors of these dealers have admitted in a deposition vide statements/affidavit 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 such parties wherein the assessee is stated to be beneficiary of bogus purchase bills.

8. From the above, I find that tangible and cogent incriminating material were received by the AO which clearly showed that the assessee was beneficiary of bogus purchase entries from bogus entry providers which formed the reason to believe by the AO that income has escaped assessment. The information so received by the AO has live link with reason to believe that income has escaped assessment. On these incriminating tangible material information, assessment was reopened. At this stage there has to be prima facie belief based on some tangible and material information about escapement of income and the same is not required to be proved to the guilt. In this regard, I refer to the decision of the Hon'ble Apex Court in the case of CIT(A) Vs. Rajesh Jhaveri Stock Brokers P. Ltd, 291 ITR 500:-

*"Section 147 authorises and permits the Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word "reason" in the phrase "reason to believe" would mean cause or justification. If the AO has cause or justification to know or suppose (hat income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the AO should have finally ascertained the fact by legal statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers. As observed by the Supreme Court in Central Provinces Managnese Ore Co, Ltd. v. ITO(1991) 191 ITR 662, for initiation of action under section 147(a) (as the provision stood at the relevant time) fulfillment of the two requisite conditions in that regard is essential. At that stage, the final outcome of the proceeding is not relevant. In other words, at the initiation stage, what is required is "reason to believe", but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could*

*have formed a requisite belief Whether the materials would conclusively prove the escapement is not the concern at that stage. This is so because the formation of belief by the AO is within the realm of subjective satisfaction ITO v. Selected Dalurband Coal Co, (P.) Ltd. (1996) 217 ITR 597 (Supreme Court): Raymond Woollen Mills Ltd. v. ITO (1999) 236 ITR 34 (Supreme Court).”*

9. The above discussion and precedent from Apex Court fully justify the validity of reopening in this case. Further I find that the Ld. CIT(A) has carefully examined the issue and has properly appreciated the issue. Hence, I do not find any infirmity in the same. Accordingly, I uphold the order of the Ld. CIT(A) on the issue of reopening. Since, the issue has been decided on the basis of the Hon'ble Apex Court decision, the other case laws referred by assessee are not supporting the assessee's case.

10. As regards the merits of the case, up on careful consideration of the facts of the case, I find that overwhelming evidence have been referred by the authorities below that the impugned purchases are bogus. There is no evidence of the actual movement of the goods under dispute. In these circumstances learned Departmental Representative has referred to Hon'ble Gujarat High Court decision in the case of Tax Appeal No. 240 of 2003 in the case of N K Industries vs Dy.CIT, order dated 20.06.2016, wherein 100% of the bogus purchases will held to be added in the hands of the assessee and tribunals restriction of the addition to 25% of the bogus purchases was set aside. The special leave petition against this order along with others has been dismissed by the Hon'ble Apex Court vide order dated 16.1. 2017. However, this is an appeal by the assessee. Relief already granted cannot

be taken away. Hence disallowance @ 12.5% of bogus purchases is confirmed.

11. In the result, this appeal filed by the assessee stands dismissed.

Order pronounced on this 03<sup>rd</sup> day of July, 2017.

Sd/-  
(Shamim Yahya)  
**ACCOUNTANT MEMBER**

मुंबई Mumbai; दिनांक Dated : 03<sup>rd</sup> July, 2017.  
Devdas\*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A), Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**