

**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.1282/Mum/2017 : Asst.Year 2010-2011  
ITA No.1283/Mum/2017 : Asst.Year 2009-2010  
ITA No.1284/Mum/2017 : Asst.Year 2011-2012

M/s.Bharat Bright Bars Pvt. Ltd. 4, 1 <sup>st</sup> Floor, Saraswati Bhavan Lamington Road Mumbai – 400 007. <b>PAN : AACCM2937R.</b>	<b>बनाम/</b> Vs.	The Income Tax Officer Ward 5(1)(2) Mumbai.
(अपीलार्थी /Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से /Appellant by : **Shri Vimal Punmiya**  
प्रत्यर्थी की ओर से /Respondent by : **Shri B.Satyanarayana Raju**

सुनवाई की तारीख / Date of Hearing : 17.05.2017	घोषणा की तारीख / Date of Pronouncement : 03.07.2017
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**आदेश / ORDER**

These are appeals by the assessee against common order of learned CIT(A) dated 28.11.2016 for the aforesaid assessment years.

2. One common ground is that the learned CIT(A) erred in confirming that notice was issued u/s 151 after getting approval from proper authority whereas sanction was not taken from property authority.

3. On this issue, learned Counsel of the assessee did not elaborate and did not make any cogent submission. Accordingly, this ground is dismissed.

4. Next common ground raised is that learned CIT(A) erred in confirming the addition on alleged bogus purchase at the rate of 12.5% of the bogus purchases.

5. On this issue, the A.O. has received Information from DGIT(Inv.)Mumbai through the office of CIT-5, Mumbai that the assessee has taken the accommodation entries from the following hawala entities.

**A.Y.2009-10**

Sr. No.	Name of the Bogus Party	PAN	Amount (Rs.)
1	Sagar Enterprises	ACTPS9740C	2,28,486
2	Ambika Enterprises	AFFPB5446R	87,329
3	Aayush Enterprises	AGQPP38G7N	22,78,125
4	Vaibhav Sales Corpn.	AUEPS3213R	90,955
	Total		26,84,895

**A.Y.2010-11**

Sr. No.	Name of the Bogus Party	PAN	Amount (Rs.)
1.	Sagar Enterprises	ACTPS9740C	19,01,270
2.	Nirush Trading Co.	AJPPP3149P	44,550
	Total		19,45,820

**A.Y.2011-12**

Sr. No.	Name of the Bogus Party	PAN	Amount (Rs.)
1	Tisha Enterprises	AGVPP0871D	47,250
2	Augyasha Sales	AEKPD0720L	1,08,945

3	H.R. Trading	BNMPS4635K	53,872
4	Swastik Trad. Co. / Metal India Corpn.	AFPPJ0417G	8,42,216
	Total		10,52,283

It was revealed during the course of investigation carried out by Sales Tax Department on the defaulters of VAT that they have never sold any goods to any trader except issuing invoices for certain commission. These so-called seller parties have admitted these facts before the Sales tax authorities in the form of Sworn affidavits. Based on such revelations the assessee was asked by the AO to submit certain details with regard to the parties who have sold the goods to them like addresses of the parties, PAN details, ledger copies, IT returns, financials of the parties etc. so as to establish the genuineness of the transaction. There was no compliance and required details were not given to the AO. Accordingly, the AO has estimated the profit @ 35% on the bogus purchases which the appellant might have earned additionally by buying the same material in a grey market and manipulating the invoices by obtaining them from the above parties for accommodation in the books.

6. Upon assessee's appeal, the learned CIT(A) referred to the decision of the Hon'ble Gujarat High Court in the case of Simit P.Seth (356 ITR 451). The learned CIT(A) concluded as under:-

*"In the instant case, the appellant has failed to produce any independent evidence to prove the purchases like transport bills, delivery challans etc. either during assessment proceedings or*

*during appellate proceedings. With regard to the information received from DIT(Inv.), Mumbai the summary of the communication was already passed on to the appellant while communicating reasons for reopening. Even though the AO could not prove substantively that the amounts given to the sellers in cheque form have come back to the appellant, the activities of accommodation entries in the trading community is not unheard of, Further, the investigations carried out by the Sales Tax Department, another Government Agency, with regard to VAT violation cannot be lost sight of. Even though there are catena of cases by the jurisdictional ITAT which have decided the issue in the favour of the assessee, they are not uniform in all the cases as they were decided as per the facts and circumstances of that particular case before them. I am of the opinion that the facts and circumstances of the present case are more akin to the case decided by the Hon'ble Gujarat High Court in the case of Simit P Seth (supra.). Even though the AO has made an estimation of profit @ 35% under similar circumstance of the case cited above, I find it appropriate to go by the above decision and add 12.5% by replacing 35% adopted by the AO to meet the ends of justice.”*

7. Against the above order, the assessee is in appeal before the ITAT.
8. I have heard both the Counsel and perused the records. I find that overwhelming evidences are on record in this case to show that purchases in this case are bogus. This is more so in the light of the fact that assessee has failed to produce any independent evidences to prove the purchases like transport bills, delivery challens, mode of transportation either during the assessment proceedings or during the appellate proceedings.
9. The learned Departmental Representative has submitted that in a similar case of bogus purchase, Gujarat High Court in IT Appeal No.240 of 2003 in the case of N.K.Industry v. DCIT in order dated 20.06.2016 wherein

100% of the bogus purchases has been held to be added in the hands of the assessee and Tribunal's restriction of addition to 25% of the bogus purchases was set aside. The Special Leave Petition against this order has been dismissed by the Hon'ble Apex Court by order dated 16.01.2017.

10. However, I find that it may not be appropriate in this case to take away the relief that has been granted by the Assessing Officer. Hence, in these circumstances, I find that it is clear that the assessee has made the purchases from grey market and purchases from grey market give benefit to the assessee in the form of non-payment of taxes and others. Hence, disallowance of 12.5% of the bogus purchases is very reasonable. Hence, I do not find any infirmity in the order of the learned CIT(A). Accordingly, I uphold the same.

11. Another common issue raised is that learned CIT(A) erred in confirming addition of depreciation on additional fixed assets purchased during the year.

12. On this issue, the A.O. has noticed that the assessee has made certain additions to assets, in respect of Computer, Crane Machine and Tools & Dies and claimed depreciation on such assets. In this regard, the assessee has not submitted any details / explanation to the A.O. Therefore, depreciation claimed on new assets was disallowed for want of copy of bills, delivery challans and payment schedule in respect of new assets added.

13. Upon assessee's appeal, the learned CIT(A) adjudicated the issue as under:-

*"I have carefully considered the facts of the case and the submissions of the Id.AR. It is noticed that the assessee has bought certain fixed assets like tools and dies, cranes etc. The AO has made the disallowance of Rs.2,67,008/- on the basis of depreciation claimed on new assets introduced during the year for want of bills, based on the details submitted during the course of appellate proceedings, the claim of depreciation is as under:-*

As per depreciation schedule for IT purposes.

<i>Name of the assets</i>	<i>Amt. of addition</i>	<i>Amount of Depreciation</i>
<i>Computer</i>	<i>21,154</i>	<i>15,591</i>
<i>Crane machine</i>	<i>20,25,000</i>	<i>1,51,875</i>
<i>Tools and dyes</i>	<i>2,03,100</i>	<i>15,233</i>
<i>Plant &amp; Machinery</i>	<i>---</i>	<i>---</i>
<i>Total</i>	<i>22,49,254</i>	<i>1,82,699</i>

As per written submissions dated 23/11/2016 filed before us.

<i>Name of the assets</i>	<i>Amt. of addition</i>	<i>Amount of Depreciation</i>
<i>Computer</i>	<i>21,154</i>	<i>3,000</i>
<i>Crane machine</i>	<i>20,25,000</i>	<i>25,515</i>
<i>Tools and dyes</i>	<i>3,04,836</i>	<i>12,692</i>
<i>Plant &amp; Machinery</i>	<i>20,000</i>	<i>1,51,875</i>
<i>Total</i>	<i>23,70,990</i>	<i>1,93,082</i>

As seen from the above –

(i) *the depreciation claimed in the return of income as per the depreciation schedule for I.T. purpose and the depreciation worked out by the Id.AR while filing written submissions are different which was not explained by the Id.AR.*

(ii) *the values of the additions made are also varying in above two schedules.*

(iii) *the rates at which the depreciation claimed is also not matching with rates prescribed. For example when the rate of depreciation allowable under plant and machinery is 15% the assessee has claimed as per written submissions a depreciation of Rs.1,51,875/- on an asset of Rs.20,000/- under plant machinery which works out to 759%. Similarly, the discrepancies are noticed under other head also. When questioned the Id.AR could not give any satisfactory explanation. Since, no explanation was provided even during the appeal proceedings, the disallowance of depreciation made by the AO is confirmed.”*

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

15. I have heard both the Counsel and perused the records. The learned Counsel of the assessee submitted that as in the case of bogus purchases above, the purchase to the extent of 12.5% in this case may be allowed and consequent depreciation granted. Upon careful consideration of the facts, I do not find any merit in the submission of the learned Counsel of the assessee. 12.5% disallowance on account of bogus purchases has been done in the earlier part of this order in the trading account on the premises that the sales have not been doubted. However no such presumption can be made in the case of purchase for fixed assets. Assessee having failed to provide any evidence for the purchase of fixed assets cannot be granted

12.5% allowance for fixed assets purchased on adhoc basis. Hence, I do not find any infirmity in the orders of the authorities below on this issue. Hence I confirm the same.

16. One issue raised in assessment year 2009-2010 is that CIT(A) erred in confirming the addition of Rs.5,80,000 which also taxed in the hands of Director and same income cannot be taxed double time.

17. On this issue, during the course of assessment proceedings, the AO has noticed that the assessee has debited remuneration (to two directors) of Rs.10 lacs in A.Y.2009-2010, whereas it was only Rs.4,20,000/- in the immediately preceding year i.e. 2008-2009. The increase was more than double within a year. The AO has also noticed similar hike for A.Y.2011-2012 to Rs.12 lacs from Rs.7 lacs in the immediately preceding year i.e. 2010-2011. Accordingly, the AO has disallowed the difference of Rs.5,80,000/- for A.Y.2009-2010 and Rs.5 lacs for A.Y.2011-2012. The assessee was asked to submit copy of ITR, computation of income, capital account & balance-sheet and salary certificate in respect of these directors and director's report in respect of increase in remuneration. In response to the same, the assessee or his representative had failed to submit any details/explanation to the AO. Therefore, excess remuneration paid to directors claimed in P&L account under the head sales & administrative expenses was disallowed and added to the total income of the assessee.

18. Upon assessee's appeal the learned CIT(A) has confirmed the addition holding as under:-

*"I have carefully considered the facts of the case and the submissions of the Id.AR. I have also gone through the decisions relied on by the Id.AR. As seen from the details filed the appellant has not given any justification for increase in the salary of its two directors Shri Bhartkumr Jain and Shri Chandanmal Jain during the year except stating that they have made extra efforts to increase the turnover thereby increased salary paid to them from Rs.4.20,000/- to Rs.10,00,000/- is justified. I do not agree with the argument of the Id.AR. As seen from the details filed during appeal proceedings there was a slight increase of turnover from 8.69 cr. to 11 -02 cr. between A.Y.2008-09 and 2009-10 and there was slight increase in turnover from 11.34 cr. to Rs.15.80 cr. between these A.Y.2010-11 and 2011-12. But there is no justification given to show that this increase in turnover is only because of the efforts made by these two directors and nobody else. The increase in turnover could be because of several factors including the increase in the sale price of the material dealt by the assessee. Further, there is no justification given for such a hike of remuneration (more than double) when the GP increase was only insignificantly high i.e. from 7.15% to 7.76% between A.Y.2008-09 to 2011-12. In view of the above discussion, I, do not find any justification of so much increase in the remuneration paid to directors. The argument that the directors have offered the remuneration for taxation in their hands is secondary. I, therefore, confirm the disallowance made by the AO."*

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

20. I have heard both the Counsel and perused the records. I find that no cogent evidence has been brought on record by the authorities below to disallow the Directors remuneration. It is not the case that the remuneration is bogus, it has been solely disallowed as in the opinion of the Revenue authorities there was no justification for such an increase in the salary as they were not convinced that the increase in turnover is only because of efforts of the Director. I find that Revenue authorities in this case are trying to

enter into the shoes of the businessman, which is not permissible. Accordingly I set aside the orders of the authorities below on this issue and decide the issue in favour of the assessee.

21. In the result, ITA No.1282/Mum/2017 and ITA No.1284/Mum/2017 are dismissed and ITA No.1283/Mum/2017 is partly allowed.

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**