

**IN THE INCOME TAX APPELLATE TRIBUNAL 'L' BENCH, MUMBAI  
BEFORE SHRI RAJENDRA, AM AND SHRI RAVISH SOOD, JM**

आयकर अपील सं./ I.T.A. No.2507/Mum/2017  
(निर्धारण वर्ष / Assessment Year: 2011-12)

ITO 19(2)(5) 2 <sup>nd</sup> Floor, Matru Mandir, Tardeo Road, Mumbai- 400007	<b>बनाम/ Vs.</b>	Smt. Pankhidevi N. Doshi 52-A, Nanubhai Desai Road, Sindhi Lane Naka, Mumbai-400 004
स्थायीलेखासं./जीआइआरसं./ <b>PAN/GIR No.</b>		AEJPD6317G
<b>(अपीलार्थी/Revenue)</b>	:	<b>(प्रत्यर्थी / Assessee)</b>

अपीलार्थी की ओर से/ <b>Revenue by</b>	:	Shri M.V. Rajguru, Sr. D.R
प्रत्यर्थी की ओर से/ <b>Assessee by</b>	:	None

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	04/09/2017
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	13/09/2017

**आदेश / ORDER**

**PER RAVISH SOOD, JUDICIAL MEMBER:**

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-29, Mumbai, dated 20.01.2017, which in itself arises from the assessment order passed by the A.O u/s. 143(3) r.w.s.147 of the Income tax Act, 1961, (for short 'Act'), dated

22.02.2016. The revenue assailing the order of the CIT(A) had raised the following grounds of appeal before us:-

- “1. On the facts and circumstances of the case and in law, whether the Ld. CIT (A) was justified in sustaining only an addition @12.5% profit rate on total purchases of Rs. 61,50,710/- made from 2 parties of a group concern of M/s. Bhanwarlal group of companies, who were in the business of providing accommodation entries as established by the investigating wing consequent to search action u/s 132 of the I.T. Act, 1961.
2. On the facts and circumstances of the case and in law, whether the Ld. CIT(A) was justified in sustaining only an addition @ 12.5% profit rate on total purchases of Rs. 61,50,710/- made from 2 parties as the assessee failed to substantiate the said purchases before Assessing Officer.
3. The appellant prays that the order of the Ld. CIT(A) on the above grounds be set-aside and that of the A.O be restored.
4. The appellant craves leave, add, amend, alter or vary any of the grounds of appeal at the time and/or before the hearing of the appeal.

*The appellant prays that the order of the CIT (A) on the above grounds be set aside and that of the Assessing officer be restored.*

2. Briefly stated, the facts of the case are that the assessee who is engaged in the business of trading in ferrous and non-ferrous metals had filed her return of income for A.Y 2011-12 on 29.01.2011, declaring total income of Rs.4,45,245/-. The A.O was in receipt of information from the DGIT(Inv.), Mumbai, therein intimating that as per the information received from the Sales Tax Department, Government of Maharashtra, it emerged that the assessee had made bogus purchases from the following parties during the year under consideration:

<b>Sr. No.</b>	<b>Name of the party</b>	<b>Amount (Rs.)</b>
1.	DK Steel & Engg. Co.	24,58,395/-
2.	Dinesh Steels	36,92,315/-
	<b>Total</b>	<b>61,50,710/-</b>

That on the basis of the aforesaid information the A.O reopened the case of the assessee u/s 147 of the 'Act'.

**3.** That during the course of the assessment proceedings the A.O called upon the assessee to submit books of accounts, stock register, details of sales vis-a-vis purchase details, however, the assessee though filed part information but failed to produce the account books and the stock register. The A.O observed that a perusal of the purchase and sales details produced by the assessee revealed that the same could not be matched. It was further observed by the A.O that despite the fact that the assessee had total turnover of 3.02 crore, but however no expenditure was booked under the head transportation charges and freight charges. The assessee further failed to produce the delivery challans, lorry receipts, transportation details etc. in order to support the genuineness of the purchase transactions under consideration. That in the backdrop of the aforesaid facts the A.O issued a notice u/s. 133(6) of the Act to the aforementioned parties, however, all of the said notices were returned back unserved. The A.O again called upon the assessee to substantiate the genuineness and veracity of the purchase transactions by placing on record supporting documents, however, the assessee except for placing on record the copy of the ledger accounts and stressing on the fact that the payments towards the purchase consideration were made to the aforementioned parties vide cheques, failed to produce any other supporting documentary evidence, viz. delivery challans, lorry receipts, transportation details etc. The A.O in the backdrop of the aforesaid facts concluded that the assessee had failed to discharge the onus as stood cast upon her in respect of the genuineness and veracity of the purchase transactions, and thus concluded that the assessee had merely obtained accommodation bills from the

aforementioned parties and no genuine purchase of goods was made from them. The A.O thus rejected the books of account of the assessee u/s. 145(3). It was thus observed by the A.O that the assessee who had made the purchases from the open/grey market, had thereafter only with the purpose of routing the said transactions through its books of accounts, obtained accommodation bills from the aforementioned parties. The A.O thus after rejecting the claim of the assessee that it had made genuine purchases from the aforementioned parties, therein concluded that though it remained as a matter of fact that the assessee had not purchased the goods from the aforementioned parties, but the goods under consideration had in fact entered the assessee's regular business premises. The A.O thus being the view that as the assessee had failed to give any evidence or cogent explanation as to how the goods under consideration which had not been purchased from the aforementioned parties, had still come in his possession, thus concluded that the assessee had incurred expenditure on such purchases, which he however had failed to fully explain with documentary evidence. The A.O thus on the basis of his aforesaid conviction made an addition of the entire amount of the bogus purchase of Rs.61,56,710/- in the hands of the assessee.

**4.** The assessee being aggrieved with the order passed by the A.O carried the matter in appeal before the CIT(A). The CIT(A) after deliberating on the contentions of the assessee in the backdrop of the facts of the case, therein concluded that it remained as a matter of fact that the assessee had failed to substantiate the genuineness and veracity of the purchases transactions which were claimed by her to have been made from the aforementioned parties, which were categorized by the Sales Tax Department, Government of Maharashtra as hawala parties. The CIT(A) however observed that though the

assessee had failed to prove the genuineness and veracity of the purchase transactions claimed to have been made from the aforementioned parties, however, observed that as the corresponding sales had not been doubted by the A.O, therefore, it could safely be concluded that the assessee after making purchases of the goods under consideration from the open/grey market, had taken bogus bills from the aforesaid hawala parties. The CIT(A) thus in the backdrop of his aforesaid observations concluded that now when the corresponding sales of the goods under consideration were not doubted, therefore, the addition in the hands of the assessee was liable to be restricted to the amount of profit margin which the assessee had generated from making the purchase from the open/grey market. The CIT(A) thus on the basis of his aforesaid view relied on the judgment of the **Hon'ble High Court of Gujarat** in the case of **CIT Vs. Simit P. Sheth (2013) 356 ITR 451(Guj)** and estimated the profit margin at 12.5% of the aggregate value of the bogus purchases made by the assessee from the aforementioned parties.

5. The revenue being aggrieved with the order of the CIT(A) had carried the matter in appeal before us. That despite being put to notice as regards the date of hearing of the appeal, the assessee respondent had failed to make an appearance before us. We thus being left with no other alternative proceed with and dispose of this appeal as per Rule 25 after hearing the appellant revenue. The Id. Departmental Representative (for short 'D.R') during the course of hearing of the appeal relied on the order passed by the A.O and averred that in the backdrop of the facts involved in the case, the A.O had rightly made an addition of the entire amount of bogus purchases in the hands of the assessee. It was submitted by the Id. D.R that the CIT(A) had erred in restricting the addition to 12.5% of the aggregate

value of bogus purchase claimed by the assessee to have been made from the aforementioned parties. It was thus submitted by the ld. D.R that the order passed by the CIT(A) may be set aside and that of the A.O be restored.

**6.** We have heard the ld. D.R, perused the orders of the lower authorities and the material available on record. We have given a thoughtful consideration to the facts of the case and are of the considered view that though it remains as a matter of fact that the assessee had not carried out any genuine purchase transactions from the aforementioned parties, but then the fact that the corresponding sales of the goods under consideration stood duly accounted for in the books of accounts of the assessee, had not been doubted by the lower authorities. We are of the considered view that now when the sales of the goods under consideration have duly been routed through the books of the accounts of the assessee, therefore, it could safely be concluded that the assessee had purchased the goods from the open/grey market. We are of the considered view that in the totality of the facts involved in the case of the present assessee, the CIT(A) had rightly observed that the addition was liable to be restricted only up to the amount of profit margin involved in making of purchases of the goods from the open/grey market. We have given a thoughtful consideration to the observations of the CIT(A) and find that he had by way of a very well reasoned order restricted the addition in the hands of the assessee to the extent of the profit margin relatable to aggregate value of the purchases under consideration. We further find that no infirmity emerges on the part of the CIT(A) by adopting the profit margin at the rate of 12.5% by relying on the judgment of the **Hon'ble High Court of Gujarat** in the case of **CIT Vs. Simit P. Sheth (2013) 356 ITR 451(Guj)**. We thus being of the considered view that there is

no reason on our part to dislodge the well reasoned observations of the CIT(A), thus uphold his order.

7. The appeal filed by the revenue is dismissed.

Order pronounced in the open court on 13.09.2017

Sd/-

(RAJENDRA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 13.09.2017

Ps. Rohit Kumar

Sd/-

(RAVISH SOOD)

JUDICIAL MEMBER

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

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT,

**Mumbai**

