

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "A", MUMBAI**

**BEFORE D.T. GARASIA, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.3310/M/2016
Assessment Year: 2011-12**

**ITA No.3311/M/2016
Assessment Year: 2009-10**

Dy. Commissioner of Income Tax-15(1)(1), Room No.517, 5 th Floor, Aayakar Bhavan, Maharshi Karve Road, Mumbai - 400020	Vs.	M/s. Alan Electronic Systems Pvt. Ltd., A-34, 2 nd Floor, Crescent Industrial Estate, Kanjurmarg (East), Mumbai – 400 042 PAN: AABCA 9296N
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Rahul Hakani, A.R.
Revenue by : Shri Rajesh Kumar Yadav, D.R.

Date of Hearing : 02.08.2017
Date of Pronouncement : 15.09.2017

ORDER

Per D.T. GARASIA, Judicial Member:

The above titled appeals have been preferred by the Revenue against the common order dated 05.02.2016 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10 & 2011-12. Since the facts and issues involved in both the appeals are identical in nature, hence the same are taken together for disposal by this common order.

2. The short facts of the case are as under:

The assessee is a Company engaged in the business of Manufacturing of Electronic items. The return of income for the year under appeal was filed on 30.09.2009 declaring total income of Rs.60,05,280/-. Assessment u/s. 143(3)

r.w.s 147 was completed by the Ld. Assessing Officer (hereinafter referred to as the AO) on 14.03.2014 determining income at Rs.76,61 780/-. The AO observed that the assessee had debited purchases of Rs.15,21,265/- from two suppliers whose TIN matched with the information received from the Sales Tax Department regarding bogus parties with whom the assessee had made purchases. On the basis of information received from the Investigation Wing of Income Tax Department, Mumbai, it was found that the assessee had obtained bogus purchase bills total amounting to Rs.15,21,265/- from 2 companies which were stated to be hawala operators. AO, on going through the submissions and contentions of the assessee, concluded that the assessee failed to prove with supporting documentary evidences that the material was actually delivered in its premises and also failed to file evidences of deliveries to establish that the material was consumed for business activities. Also the assessee failed to furnish the confirmation from the party that it had actually sold and delivered material to the assessee company and hence, the sum in respect of investment made out of unaccounted money by the assessee for purchase of materials from the parties of Rs.15,21,265/- was treated as, bogus purchases and added to the returned income of the assessee. Penalty proceedings u/s. 271(1)(c) of the Act was initiated for concealing and furnishing inaccurate particulars of income.

3. Matter carried to the Ld. CIT(A) and the Ld. CIT(A) has allowed the claim by observing as under:

“2.4.31 As narrated earlier, the Ld. A.O. in this case has held that the parties from whom the purchases were made by the appellant were found to be bogus and that is the reason for which it was not produced during the assessment proceedings. Not having doubted the consumption/sales, the motive behind obtaining bogus bills thus, appears to be inflation of purchase price so as to suppress true profits. Considering the facts of the case as well as the various case laws cited (supra) especially in the cases of CIT vs. Simit P. Sheth, Bholanath Poly Fab and Sanket Steel Traders (supra), I estimate the suppressed profit to the extent of 12.5% of the purchases made from the bogus entities as the suppressed profit element embedded in such purchases. This estimation is in

addition to the GP shown by the appellant. Accordingly, these grounds are partly allowed.

2.5. In the result, the appeal for **A.Y.2009-10 is Partly Allowed.**”

4. Hence, the Revenue is in appeal before us.

5. We have heard the rival contentions of both the parties. Ld. D.R. relied upon the decision of the Tribunal, Ahmedabad Bench in the cases of Shwetambar Steels vs. ITO Ahmedabad and Ganesh Rice Mills vs. CIT (294 ITR 316). The facts in the present case shows that assessee could not produce the parties from whom goods are stated to have been purchased. The suppliers were found to be engaged in providing bogus bill without actual dealing of goods. In this regard, the assessee has stated that they had submitted quantitative details of stock with respect of the sales with purchases from the parties during the assessment proceedings. The assessee has submitted the detail of corresponding sales in respect of the purchase from the said parties. As mentioned above the AO has never disputed or examined the aspect of sales receipts. Since the sales made by the assessee was not doubted or disputed by the AO and he has accepted the sales receipts of the assessee as it is, therefore, the AO cannot deny that purchases were not made by the assessee and the material was not used for its sales. What is under dispute is the purchases from the parties from whom bills have been taken and cheques have been issued to them. Purchases are not in dispute but the parties from whom purchase are shown to have been made are disputed and suspicious. The AO had made the addition as some of the suppliers were declared hawala dealers by the VAT Department. This may be a good reason for making further investigation but the AO did not make any further investigation and merely completed the assessment on suspicion. Once the assessee has brought on record the details of payments by account payee cheque, it was incumbent on the AO to have verified the payment details from the bank of the assessee and also from the

bank of the suppliers to verify whether there was any immediate cash withdrawal from their account. No such exercise has been done or findings recorded, There was no detailed investigation made by the AO himself. It is also found that the payments have been made by account payee cheque which are duly reflected in the bank statement of the assessee. There is no evidence to show that the assessee has received cash book from the suppliers. Merely because the suppliers did not appear before the AO or some confirmation letters were not furnished, one cannot conclude that the purchases were not made by the assessee. This view is supported by the decision of Nikunj Eximp Enterprises vs. CIT 216 Taxman 171 (Bom). To this extent I am in view with the assessee, if assessee has fulfilled its onus making the payment by cheque and has supplied the addresses of the sellers then it cannot be presumed that supplier were bogus simply because the sellers were not found at the given address. There is a considerable time gap between the period of purchase transaction and period of scrutiny proceedings. The AO has not brought any material on record to show that there is suppression of sales. It is basic rule of accountancy as well as of taxation laws that profit from business cannot be ascertained without deducting cost of purchase from sales. Estimation of profit ranging from 12.5% to 15% has been upheld by the Hon'ble Gujarat High Court in the case of IT vs Simit P Sheth 356 ITR 451 (Guj.). Respectfully following the decision of Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth 38 taxman 385 (Guj), we dismiss the departmental appeal.

6. In the result, both the appeals of the Revenue are dismissed.

Order pronounced in the open court on 15.09.2017.

Sd/-
(G. Manjunatha)
ACCOUNTANT MEMBER

Sd/-
(D.T. Garasia)
JUDICIAL MEMBER

Mumbai, Dated: 15.09.2017.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.