

**IN THE INCOME TAX APPELLATE TRIBUNAL "J", BENCH MUMBAI**  
**BEFORE SHRI R.C.SHARMA, AM**  
**&**  
**SHRI SANDEEP GOSAIN, JM**

**ITA No.1672/Mum/2017**  
**(Assessment Year :2009-10)**

Asst. CIT CIR 6 (2)(2) R.No.563, Aayakar Bhavan M.K. Road, Churchgate Mumbai – 400 020	Vs.	M/s. Exim Trade Links (India) P. Ltd., 31/33, Nishanpada, Dongri Mumbai – 400 009
<b>PAN/GIR No.</b>		<b>AAACE8448B</b>
<b>Appellant)</b>	<b>..</b>	<b>Respondent)</b>

Revenue by	Ms. Arju Garodia
Assessee by	Shri Sanjay C. Shah
<b>Date of Hearing</b>	<b>24/08/2017</b>
<b>Date of Pronouncement</b>	<b>20/09/2017</b>

**आदेश / O R D E R**

**PER R.C.SHARMA (A.M):**

This is an appeal filed by the revenue against the order of CIT(A)-12, Mumbai dated 01/12/2016 for A.Y. 2009-10 in the matter of order passed u/s.143(3) of the IT Act.

2. The following grounds have been taken by the revenue:-

1. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming 12.5% only of the amount of Rs.56,56,092/- added u/s 69C of the Act, on account of bogus purchase and deleting the balance"

2. "On the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in not appreciating the fact that during the course of the assessment proceedings the assessee failed to furnish various details called for by the AO, that is whether parties from whom the above purchases were made were genuine and existed and were not mere entry providers, as recorded by the A.O. in para 6.9 of the order.

3. *"The appellant prays that the order of Ld. CIT(A) on the above grounds be set aside to the file given facts of the case." :*

4 *"The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."*

3. Rival contentions have been heard and record perused.

4. Facts in brief are that on the basis of information from sales tax department, the AO added entire amount of alleged bogus purchases amounting to Rs.56.56 lakhs.

5. By the impugned order, CIT(A) restricted the addition to the extent of 12.5% after having the following observation:-

*I have carefully perused the assessment order and the appellant's written submission. During the course of appellate hearing, that the appellant submitted all ledger accounts of the conceited parties, sale and purchase bills, delivery challans, details of transportation, the supporting vouchers and copy of bank statements. It is seen that nothing has been brought out on record by the A.O. to prove that the purchases are bogus. The A.O. is also ignoring, the fact that corresponding sales have been reflected in the books and A.O. has not negated this finding. Reliance is placed on the following judicial decisions of Hon. Apex Court, Hon. Gujarat High Court, Hon. Mumbai High Court and Hon. Mumbai IT AT wherein the Hon. High Courts, Hon. IT AT and Hon. Supreme Court has opined and deleted the additions in cases of bogus purchases :*

1. *Munjal Sales Corpn Vs CIT (2008) 168 Taxman 43 (SC)*

2. *CIT Vs Reliance Utilities & Power Ltd. (2009) 178 Taxman 135 (Bom)*

3. *Yatish Trading Co. (P) Ltd. Vs. ACIT (2011) 129 ITD 237/9*

*taxmann.com 164 (Mum)*

4. *ITO Vs Strides Arcolab Ltd. (2012) 138 ITD 323/24 taxmann.com 89(Mum)*

5. *Morgan Stanley India Securities P. Ltd. Vs ACIT in ITA No. 5072/M/2005 IT AT, Mumbai.*

6. *Four Dimensions Securities (India) Ltd. Vs Addl.CIT in ITA No. 0693/M/2011ITAT, Mumbai*

7. *Kodak India (P) Ltd. Vs AddL CIT (IT Appeal no. 7349/Mum/2012 dated 30/4/2013)*

8. *ACIT 11(2) Vs. Iqbal M. Chagala, Palloni Mansion' ITA no. 877/Mum/2013, ITAT, Mumbai*

9. Hon. Mumbai High Court decision in the case of Babulal C. Borana Vs ITO (2006) 282 ITR 251.
  10. Hon. Gujarat High Court decision in case of CIT Vs MX Bros (1987) 163 ITR 249
  11. Hon. Gujarat High Court decision in case of CIT Vs Nangalia Fabrics P. Ltd. (2014) 220 Taxman 17
  12. Hon. Mumbai ITAT judgment date 17.6.2016 in the case of M/s. Om Shree International Vs ACIT in ITA No. 3304/M/2014 and ITA No. 4575/M/2012.
  13. Kishanchand Chelaram Vs. CIT-125 ITR 713-SC.
  14. H.R. Mehta Vs ACIT in ITA No.58 of 2001 (Bom)
  15. CIT Vs. Nikunj Eximp Enterprises Pvt. Ltd. [372 ITR 619 (Bom)2015]
  16. ACIT Vs. Ramila Pravin Shah (ITA I<sup>f</sup>o.5246/Mum/2013)
  17. ACIT Vs. Tristar Jewellery Exports Pi. Ltd. (ITA No.7593/Mum/2011)
  18. ITO Vs. Deepak Popatlal Gala (I A No.5920/Mum/2013 and ITA No.6203/Mum/2013)
  19. DCIT Vs. Rajiv G. Kalathil (ITA No.6,27/Mum/2012/RGR)
  20. Ramesh Kumar & Co. Vs. ACIT in ITA No.2959/MUM/2014 dt.28.11.2014.
  21. Shri. Ganpatraj A. Sanghavi Vs. ACIT. in ITA No.2826/Mum/2013 dt.5.11.2014.
  22. West Coast Paper Mills Vs. JCIT [100 TTJ 833 (Mum)]
  23. ITO Vs. A. C. Export [13 DTR 98 (Mum)]
  24. Unitex Products [22 SOT 429 (Mum)], •
  25. Teletronics Dealing System Pvt, Ltd. 53 Taxmann.com 20 (Mum)].
  26. Free India Assurance Services Ltd. Vs. DCIT (132 ITD 60) Mumbai Tribunal.
  27. Balaji Textiles Industries Pvt. Ltd. [49 ITD 177 (Mum).]
- Perusal of the appellant's written submission shows that the appellant has stated in Para 4 Page 9 as under:-
- "The appellant would also like to submit that at, per order u/s.143(3) r.w.s.147 of the Income Tax Act, 1961 for A.Y. 2008-2009, the Ld. AO. has disallowed on alleged hawala purchases to the extent of 12.5% of the total purchase amount i.e. Rs.46,45,760/-. 12.5% is the proportion of additional profit on unapproved/non genuine purchases and added to the total income returned. Thus Without prejudice, following the principle of consistency, disallowance for above referred assessment year should be taken at 12.5% of the total purchase amount i.e. Rs.56,56,092/-,"

So the A.O. is directed to disallow only 12.5% of Rs.56,56,092/- as bogus purchases. Ground of Appeal No.1 is partly allowed.

6. Against the above order of CIT(A), revenue is in further appeal before us.

7. We have considered rival contentions and carefully gone through the orders of the authorities below.

8. We had also deliberated on the judicial pronouncements referred by lower authorities in their respective orders as well as cited by learned AR and DR during the course of hearing before us.

9. From the record, we found that after applying various judicial pronouncements as referred above, the CIT(A) has restricted the addition to the extent of 12.5% on account of additional profit having been earned by assessee on such bogus purchases.

10. Nothing was placed before us by learned DR so as to persuade us to deviate from the finding recorded by CIT(A), resulting into restricting addition to the extent of 12.5%. Accordingly, we do not find any reason to interfere in the order of CIT(A).

**11. In the result, appeal of the Revenue is dismissed.**

Order pronounced in the open court on this      20/09/2017

**Sd/-**  
**(SANDEEP GOSAIN)**  
JUDICIAL MEMBER

**Sd/-**  
**(R.C.SHARMA)**  
ACCOUNTANT MEMBER

Mumbai; Dated                      20/09/2017

Karuna 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.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)  
ITAT, Mumbai