

**IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH “F”, MUMBAI  
BEFORE SHRI SHAMIM YAHAYA, ACCOUNTANT MEMBER AND  
SHRI PAWAN SINGH, JUDICIAL MEMBER**

**ITA No.2500/Mum/2017 (Assessment Year- 2010-11)**

**ITA No.2502/Mum/2017 (Assessment Year- 2011-12)**

|                                                                                                      |            |                                                                                                                                                        |
|------------------------------------------------------------------------------------------------------|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| I.T.O.20(3)(1), 6 <sup>TH</sup> Floor , Room<br>No. 622, Piramal Chambers,<br>Lalbaug, Parel, Mumbai | <b>Vs.</b> | Sh. Rehan Shaikh,<br>308,F Wing, 3 <sup>rd</sup> Floor,<br>K.C. Marg, J.J. Colony,<br>Near Telephone City,<br>Mumbai-400008.<br><b>PAN: ACFPS6897J</b> |
| (Appellant)                                                                                          |            | (Respondent)                                                                                                                                           |

Assessee by : In Person

Revenue by : Sh. M.C. Omi Ningshen  
(DR)

Date of hearing : 20.09.2017

Date of Pronouncement : 20.09.2017

**Order Under Section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. These two appeals by revenue under section 253 of the Income-tax Act (the Act) are directed against the orders of ld.Commissioner of Income-tax (Appeals)-32[CIT(A)], Mumbai dated 27.01.2017 for the Assessment Year (AY) 2010-11 and 2011-12. The facts of both the appeals are almost identical except variation of figure of additions, the revenue has raised identical grounds of appeal and both the appeal was heard together and is decided by common order. For appreciating the facts we are referring the

facts for AY 2010-11, the revenue has raised the following grounds of appeal:

- (i) On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in granting relief of Rs. 68,74,464 /-by restricting the addition to 6.65% of the alleged bogus purchases from hawala parties.
- (ii) On the facts and in the circumstances of the case and in law, the Id CIT(A) has failed to appreciate the fact that the onus is on the assessee to explain and substantiate the genuineness and true nature of purchases transaction.
- (iii) On the facts and in the circumstances of the case and in law the learned Commissioner (Appeal) has failed to appreciate that the hawala dealers have admitted on oath before the Sale Tax Authorities that they have not sold any material to anybody.
- (iv) On the facts and in the circumstances of the case and in law, the Id CIT(A) erred in concluding that assessee had made cash purchases from other parties which were not recorded in the books without mentioning how this and what evidence before him such finding was arrived at. If such evidence of such purchases was given the same should have been remanded to the assessing officer for his examination and comments.
- (v) The appellant prays that the order of CIT(A) on the above grounds be reverse and the order of assessing officer be restored.

2. Brief facts of the case are that the assessee filed his return of income for relevant assessment year on 22 September 2010 declaring total income of Rs. 3,48,730 /-. The return was processed under section 143 (1) of the Act. Subsequently, on the basis of information received from Director-General of income tax (Investigation) Mumbai, that assessee is one of the beneficiaries who has availed accommodation entries of bogus purchases. The assessment was reopened under section 147 of the Act. The assessing officer after recording the reasons of reopening of the assessment issued

notice under section 148 of the Act. The assessing officer recorded that despite the service of notice under section 148 the assessee neither responded nor file any return of income in response to the said notice. During the course of re-assessment proceedings the assessing officer has observed that assessee has availed shown purchases from 10 parties. All those parties with the cost of the purchases, has been referred by the assessing officer in para 3 of his order. As per the information received by assessing officer that all those parties were involved in providing accommodation entries without delivery of goods. The assessing officer issued show cause notice to the assessee as to why the transaction made from the said hawala parties should not be treated as non-genuine purchases. No reply was given by the assessee, nor did the assessee attend the assessment proceedings. The assessing officer on the basis of information received from the investigation wing of the department treated the entire purchases as bogus/non-genuine and made addition of aggregate amount of all purchases from the said 10 parties. On appeal before Commissioner (Appeals) the addition was restricted to 6.65% of the total of the alleged bogus purchases. Thus, aggrieved by the order of Commissioner (Appeals) the revenue /assessing officer has filed the present appeal before us.

3. We have heard ld DR for the revenue and the assessee who was present in percent. The ld. DR for the Revenue supported the orders of assessing

officer and argued that the Investigation Wing of the Income-tax Department made full-fledged enquiry. The parties from whom the assessee has shown the purchases are bogus Hawala dealers. The hawala dealers are indulged in issuing bogus bills without delivery of any material or goods. The assessee obtained accommodation bills only in order to inflate the expenses and to bring down the profitability in order to avoid the tax. The ld. DR further argued that the assessee has not appeared before the assessing officer despite giving sufficient opportunity during the assessment proceedings. The ld Commissioner (Appeals) restricted the addition at the rate of 6.65% which is at a very lower side. The ld DR prayed that the disallowance may be raised to on reasonable basis. In alternative ld DR argued that matter may be remanded for verification of fact of the file of assessing officer as ld Commissioner (Appeals) restricted the disallowance without giving any opportunity to the assessing officer. On the other hand the assessee who is present in person prayed that he left the decision on the discretion of the Tribunal.

4. We have considered the rival submission of the parties and have gone through the orders of authorities below. We have noted that the assessing officer made the addition on the basis of information received from the investigation wing of the income tax Department. The assessing officer has not carried out an investigation or enquiry before making disallowance of the entire purchases from the alleged bogus dealers. The assessing officer

has no where recorded that as to how, under which manner, or mode of service, notice sent by him to the assessee during the reassessment proceeding was served. The assessing officer completed the assessment under section 144 of the Act. The assessing officer has not brought any material on record before making the disallowance of the entire purchases from the said bogus parties. The Id Commissioner (Appeals) while considering the contention of the assessee observed that the assessing officer disallowed the entire purchases from the all 10 bogus supplier. It was further observed that the assessing officer has lost his sight of the fact that Gross Profit (GP) already recorded in the books of the assessee for the assessment year under consideration was 6.65%. It was further observed that by adding 100% of the purchases the result of GP would be 106.65%. After examining the entire facts of the case and the submissions made by assessee, the Id. CIT(A) sustained the addition to 6.65% on the basis of decision of Hon'ble Gujarat High Court in CIT vs. Simit P. Sheth [2013] 356 ITR 451 (Guj.).

5. We are also of the considered opinion that under Income Tax Act only real income can be taxed by the Revenue. We may further conclude that even if the transaction is not verifiable, the only taxable is the taxable income component and not the entire transaction. And after considering the facts of the case and the rival contentions of the parties we are of the opinion that in order to fulfill the gap of revenue leakage the disallowance

of reasonable percentage of such purchases would meet the end of justice. The Hon'ble Bombay High Court in CIT Vs Hariram Bhambhani in ITA No. 313 of 2013 decided on 04.2.2015 also held that revenue is not entitled to bring the entire sales consideration to tax, but only the profit attributable on the total unrecorded sales consideration alone can be subject to income tax. We have seen that the learned Commissioner (Appeals) passed the order after considering the all facts of available before him, thus we do not find any illegality or infirmity in the order impugned before us. In the result the grounds of appeal raised by revenue is dismissed.

6. With these observations, appeal filed by the revenue is dismissed.
7. In ITA No.2502/M/2017, an appeal for assessment year 2011-12 the revenue has raised identical grounds of appeal, facts of the year under consideration is almost similar except variation of disallowance made by assessing officer and restricted by Id Commissioner (Appeals). Considering the fact that we have already dismissed the appeal of revenue for assessment year 2010-11 on identical facts, hence, keeping in view the principle of consistency, this appeal is also dismissed with similar observation. In the result appeal of the revenue is dismissed.
8. In the result appeal for both the assessment year are dismissed.

Order pronounced in the open court on 20th day of September 2017.

Sd/-

**(SHAMIM YAHAYA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Mumbai; Dated 20/09/2017

**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,

(Asstt.Registrar)  
**ITAT, Mumbai**