

**आयकर अपीलीय अधिकरण "H" न्यायपीठ मुंबई में।****IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI****BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER  
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 2952/Mum/2017

(निर्धारण वर्ष / Assessment Year : 2009-10)

आयकर अपील सं./I.T.A. No. 2953/Mum/2017

(निर्धारण वर्ष / Assessment Year : 2011-12)

DCIT 1(2)(2), R.no.535, 5thFloor, Aaykar Bhavan, M.K Road, Mumbai 400020.	<b>बनाम/</b>  v.	M/s. Parth Chem Impex Private Ltd., B-1602, Kailash Tower, M.G. Road, Kandiwali (W) Mumbai 400067
स्थायी लेखा सं./PAN :AADCP4839L		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )

Revenue by :	Shri M.C. Omi Ningshen ,DR
Assessee by:	Shri Satya Prakash Singh

सुनवाई की तारीख /**Date of Hearing** : **26.09.2017**घोषणा की तारीख /**Date of Pronouncement** : **29.09.2017****आदेश / O R D E R****PER RAMIT KOCHAR, Accountant Member**

These two appeals , filed by the Revenue, being ITA No. 2952/Mum/2017 & ITA No. 2953/Mum/2017 are directed against separate appellate orders both dated 31.01.2017 passed by learned Commissioner of Income Tax (Appeals)-2, Mumbai (hereinafter called "the CIT(A)"), for assessment year 2009-10 & 2011-12 respectively, appellate proceedings had arisen before learned CIT(A) from separate assessment orders both dated 28.03.2014 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3) r.w.s. 147 of the Income-tax Act, 1961 (hereinafter called "the Act") for assessment years 2009-10 and 2011-12 respectively.

2. The grounds raised by the Revenue in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") for the assessment year 2009-10 read as under:-

*5.(sic 1)"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in deleting the addition of Rs.24,21,116/- & Rs.38,55,200/- made on account of commission earned by assessee from the business providing accommodation entry of sales and booking of fictitious losses, respectively on such purchase and sales ,without appreciating the facts brought out by assessing officer that Director of the assessee company, Shri Ambrish Doshi, had categorically admitted, before the DDIT(Inv.), in his statement recorded u/s 131 ,on 30.11.2012,of having indulged in such activity of taking accommodation entry of Purchases of Rs.96,84,464/-and giving accommodation entry of Sales of Rs.58,29,265/- without actually effecting any such purchase & sales and also admitted of having booked artificial losses of Rs.38,55,200/- on such paper transactions?"*

*6.(sic 2) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in allowing the appeal of the assessee without appreciating the facts brought out by the assessing officer, that during assessment proceedings the "Reasons for reopening" were communicated to the assessee company vide letter dtd. 29.1.2014, conveying the information gathered by Investigation Wing, and despite being given opportunity to produce documentary evidence such as delivery challan, transport receipt , octroi receipt, in respect of so called purchases & sales ,the same were not furnished, and hence the additions made by assessing officer on account of commission earned by assessee from the business providing accommodation entry of sales and booking of fictitious losses was legally correct, and should have been upheld?"*

*The appellant craves leave to add to, amend or withdraw the aforesaid ground of appeal."*

3. The grounds raised by the Revenue in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") for the assessment year 2011-12 read as under:-

*1. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in deleting the addition of Rs.1,03,96,884/- & Rs.2,81,439/- made on account of commission earned by assessee from the business providing accommodation entry of sales and booking of fictitious losses, respectively on such purchase and sales, without appreciating the facts brought out by assessing officer that Director of the assessee company, Shri Ambrish Doshi, had categorically admitted, before the DDIT(Inv.), in his statement recorded u/s 131, on 30.11.2012, of having indulged in such activity of taking accommodation entry of Purchases of Rs.4,15,87,539/- and giving accommodation entry of Sales of Rs.4,13,06,100/- without actually effecting any such purchase & sales and also admitted of having booked artificial losses of Rs.2,81,439/- on such paper transactions?"*

*2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in allowing the appeal of the assessee without appreciating the facts brought out by the assessing officer, that during assessment proceedings the "Reasons for reopening" were communicated to the assessee company vide letter dtd. 29.1.2014, conveying the information gathered by Investigation Wing, and despite being given opportunity to produce documentary evidence such as delivery challan, transport receipt, octroi receipt, in respect of so called purchases & sales, the same were not furnished, and hence the additions made by assessing officer on account of commission earned by assessee from the business providing accommodation entry of sales and booking of fictitious losses was legally correct, and should have been upheld?"*

*3. Whether on the facts and in the circumstances of the case and in law the LD. CIT(A) has erred in deleting G.P.addition of Rs.60,70,433/-*

*by applying the decision of Jurisdictional Tribunal in the case of innovators Facade(ITA No. 5450,5451 & 5452/Mum/2015) which has been not accepted by the Revenue and appeal u/s 260A has been filed by the PCIT-Thane before the High Court?*

*The appellant craves leave to add to, amend or withdraw the aforesaid ground of appeal.”*

4. The brief facts of the case are that the assessee company is stated to be engaged in the business of manufacturing and trading of chemicals. The year wise compatibility of the G.P ratio for the last two assessment years read as under:-

A . Y .	SALES	GROSS PROFIT	GP%
2008-09	60,38,37,957	1,32,21,006	2.18%
2009-10	68,30,57,218	2,47,50,163	3.62%

Information was received by the A.O from DDIT (Investigation), Mumbai which was further based on the information received from the Maharashtra VAT department that assessee has indulged in the bogus accommodation entries towards purchases. The assessment of the assessee for the impugned assessment year was reopened u/s 147. Notice u/s. 148 of the Act was issued by the A.O on 06.03.2013 which were served on the assessee. The reasons for reopening of the assessment were recorded by the AO as under:-

*" In this case, Return of Income was filed by the assessee on 29.09.2009 declaring total income of Rs 70,55,060/-. An inquiry u/s 131 of the IT Act was conducted by DDIT (Inv.) Unit-VII (1), Mumbai. As per inquiry report, the assessee has taken bogus purchase accommodation entry from the following 15 concerns and in turn has provided bogus sales accommodation to 44 beneficiary concerns:*

PARTYWISE BOGUS PURCHASE					
S.No.	Name of the party	TIN	FY 2008-09	FY 2009-10	FY 2010-11
2	RITESH CORPORATION	27810669045	1400131.00	17037280.00	PURCHASE 0.00
3	SATHAPADINDRIMPEX PRIVATE LIMITED	27607598820	8284334.00	507000.00	0.00

4	LAXMAN SALES P LTD.	27810723642	0.00	1664000.00	0.00
5	SHUBHAN ENTERPRISE	27770666157	0.00	33112040.00	0.00
6	ABHILASHA SALES P LTD.	27450723466	0.00	1248000.00	0.00
7	RAJ TRADERS	27450262425	0.00	28071160.00	0.00
8	EVERREADY MARKETING PVT. LTD.	27270723080	0.00	4779840.00	0.00
9	MIHIR SALES P LTD.	27100669193	0.00	4686110.00	0.00
10	MOTION TRADERS P. LTD.	27060669215	0.00	2488096.00	0.00
11	ASHLEY TRADERS P LTD.	27790723085	0.00	3070080.00	0.00
12	NATIONAL TRADING P LTD.	27210561220	0.00	0.00	2320500.00
13	BALAJI TRADING CO.	27810723074	0.00	0.00	11741919.00
14	MAHAVIR ENTERPRISES	2787721295	0.00	0.00	18236820.00
15	SS ENTERPRISES	27950562074 V	0.00	0.00	9288300.00
			9684465.00	97183606.00	41587539.00
				Grand total	148455610.00

*M/s Parth Chem Impex Pvt. Ltd. has taken bogus purchase accommodation entry from 15 (fifteen) concerns and in turn has provided bogus sales accommodation to 44 (forty four) beneficiary concerns (listed in the feedback report). M/s Parth Chem Impex Pvt. Ltd. has booked a loss of Rs 38,55,2001- for the FY 2009-10 on such paper transactions.*

*The details are as under:*

<i>S.No.</i>	<i>FY</i>	<i>Purchase</i>	<i>Sales</i>	<i>Loss</i>
1	2008-09	96,84,465	58,29,265	38,55,200
2	2010-11	4,15,87,539	4,13,06,100	2,81,439
	Total	512,72,004	4,71,35,365	41,36,639

*From the above, it is clear that there was a bogus purchase of Rs 96,84,465/- and bogus sales of Rs 58,29,265/-. Therefore, I have reason to believe that there is an escapement of assessment for the AY 2009-10. I am fully satisfied that this is a fit case for re-opening the assessment u/s 147 of the IT Act, 1961.*

*Therefore, Notice u/s 148 has been issued".*

Reasons for reopening of the concluded assessment were conveyed to the assessee by the A.O vide letter dated 29.01.2014 . The assessee did not raised any objection to reopening of the concluded assessment and the A.O disposed of the objection as under:-

*“The AO has received the information from the DGIT(Inv.), Mumbai who has received the information from the Sales Tax Department. Hence the action of the A.O. to initiate the reassessment proceedings is correct and justified. Further till date the assessee has not able to produce the parties to prove the genuineness of the transaction.*

*The Hon'ble Delhi High Court in the case of AGR Investment Ltd. vs. Additional commissioner of income tax 333 ITR 146 has held as under:*

*“ Reassessment-Notice under s. 148 -Maintainability of writ- There was specific information from the office of the Director of IT (Inv.) as regards transactions entered into by the assessee company with several concerns which had given accommodation entries and that they were not genuine transactions-Same constituted fresh information in respect of the assessee -There is no change of opinion- There was material on the basis of which notice under s. 148 was issued”*

Thus, the AO disposed of objections against reopening of the assessment u/s 147 by rejecting the same.

Thus the A.O upheld the reopening of the concluded assessment . The AO asked assessee to furnish following information:-

- 1. 'Please furnish. complete details as per questionnaire dated 01.08.2013.*
- 2. Please furnish copy of detailed trial balance for FY 07-08, 08-09 & 09-10.*
- 3. Produce the purchase & sale bills & books of a/ c's and supporting documents for A Y 2009-1 0 on the date of hearing.*
- 4. Please produce supporting documents in support of purchases booked by you with justification.”*

The assessee was also asked by the A.O vide notices under 142(1) dated 20.01.2014 to produce the parties and prove the genuineness of the following parties, as under:

“1. You are requested to produce the parties as per Annexure A and prove their genuineness and that actual delivery of goods were received by you.

PARTY WISE BOGUS PURCHASE					
S.No.	Name of the party	TIN	FY 2008-09	FY2009-10	FY 20/0-11
			PURCHASE	PURCHASE	PURCHASE
1	STHAPNA TRADE IMPEX PRIVATE LIMITED	27610598830	8284334.00	507000.00	0.00
2	RITESH CORPORATION	27810669045	1400131.00	17037280.00	0.00
3	JAIN TRADING CO	27900708620	0.00	520000.00	0.00
4	LAXMAN SALES P LTD.	27810723642	0.00	1664000.00	0.00
5	SHUBHAN ENTERPRISE	27770666157	0.00	33112040.00	0.00
6	ABHILASHA SALES P LTD.	27450723466	0.00	1248000.00	0.00
7	RAJ TRADERS	27450262425	0.00	28071160.00	0.00
8	EVERREADY MARKETING PVT. LTD.	27270723080	0.00	4779840.00	0.00
9	MIHIR SALES P LTD.	27100669193	0.00	4686110.00	0.00
10	MOTION TRADERS P. LTD.	27060669215	0.00	2488096.00	0.00
11	ASHLEY TRADERS P LTD.	27790723085	0.00	3070080.00	0.00
12	NATIONAL TRADING P LTD.	27210561220	0.00	0.00	2320500.00
13	BALAJI TRADING CO.	27810723074	0.00	0.00	11741919.00
14	MAHAVIR ENTERPRISES	2787721295	0.00	0.00	18236820.00
15	SS ENTERPRISES	27950562074 V	0.00	0.00	9288300.00
			9684465.00	97183606.00	41587539.00
				Grand total	148455610.00

2. You are requested to show cause why the purchase from the above parties booked by you should not be treated as bogus purchase and the same should not be added to the total income.

3. Various opportunities and sufficient time has already been given to you. You are therefore required to file complete detail called for till date by 31.01.2014 failing which the assessment will be completed on the basis of details available on record.”

The assessee was also asked to justify claim of expenses debited in books of accounts supported with evidences along with books of accounts which were directed by the AO to be produced before him .

The assessee submitted purchases ledger , revised VAT return filed with the department.

The Director of the company Shri. Ambrish Bhikalal Doshi statements were recorded by Investigation Wing, Mumbai on 30.11.2012 , where in reply to question no. 12 to Q.no. 17 , Mr Ambrish Bhikalal Doshi, Director of the assessee company confirmed that the accommodation bills were obtained from these parties and there is no actual purchase of goods from these parties rather these were paper transactions. It was submitted that there was no purchases , sale of goods nor there was movement of goods representing by these paper purchase and sale bills. It was stated that only non-genuine purchase bills were obtained from these parties and no material was received. It was also stated that the assessee is in trading business and since no material were received from these concerns and hence only bogus sales were made against the same.

Thus it was observed by the A.O that the assessee is not able to prove genuineness of the purchases . The A.O concluded as under:-

“ 1. The assessee has booked purchases from the following parties which have been declared as “Hawala dealers” by the Sales Tax Department as under:-

STHAPNA TRADE IMPEX PVT LTD	AAKCS6555K	2008-09	8,284,333
RITESH CORPORATION	AZFPK3051K	2008-09	1,400,131
		<b>TOTAL</b>	<b>96,84,464</b>

2. The assessee has not produced the parties for verification.

3. The assessee has not produced any documentary evidence to prove the identity of the purchase party.

4. Further the assessee has merely produced the purchase bills. The assessee has not been able to establish the genuineness of these purchases.

5. The assessee has not been able to produce the following:

- i. Delivery challan
- ii. Transport receipt.
- iii. Octroi receipt etc.

**6. The assessee has also not been able to establish how these purchases have been used in the business.**

7. *The regular purchases bills are usually accompanied by:*

- (a) delivery challan,*
- (b) transport receipt,*
- (c) excise invoice/ custom invoice,*
- (d) order number*
- (e) lorry number*

*Whereas, the purchases booked through parties declared as "Hawala dealers" by the Sales Tax were not accompanied by the above documents.*

8. *The assessee has categorically admitted on Oath in the statement given to the Investigation Wing that he has not made actual purchases but obtained mere accommodation bills. Hence, the purchases shown by the assessee are ungenune.*

9. *Since the purchases booked by the assessee are not verifiable, the books of accounts of the assessee are not reliable. Therefore, the book results are rejected u/ s 145 of the Act.*

7.2. *Therefore, the purchases shown by the assessee in respect of the above mentioned parties amounting to Rs 96,84,465/- are prima facie not genuine.*

7.3. *Further, information has been received from the DGIT (Inv.), Mumbai, forwarding thereon the information received from Sales Tax authorities wherein the parties have been declared "Hawala dealer". Further, these parties have categorically stated on Oath that they have merely issued accommodation bills and that no actual delivery of goods was given.*

7.4 *Since the assessee has not discharged its prima facie onus of proving the identity of the parties and the genuineness of the purchases, the purchases from the parties is required to be disallowed and added to the total income.*

7.5. *Therefore, an amount of Rs.96,84,465/- is required to be added to the total income of the assessee."*

With respect to the correspondence sales of the bogus purchases. The A.O made the verification for following parties:-

- (a) Classic Ceramics, Morbi.*
- (b) Verona Granito Pvt. Ltd., Morbi*
- (c) Delta Tiles limited, 8-A, National Highway, At : Lalpar, Taluka Morbi.*
- (d) Jaysun Ceramics, Morbi*
- (e) Sun Hill Ceramics Pvt. Ltd., Morbi*

These above-stated parties confirmed that they made purchases from the assessee's and delivery of material was received. The AO observed that these

parties have documentary evidences in the form of transport receipt and delivery challans for physical receipt of goods . Thus, the AO rejected the contention of the assessee that these are merely paper transactions of sales in respect of bogus purchases from 'Havala Dealers' does not appear to be correct in view of the verification conducted by the AO .

The A.O held that trading purchases to the tune of Rs.96,84,465/- are not genuine and addition to the income of the assessee to the tune of 25% of the aforesaid amount was made by the AO along with 2% commission of such accommodation entries which led to total addition to the tune of Rs.24,21,116/-, vide assessment order dated 28-03-2014 passed by the AO u/s 143(3) r.w.s. 147. The AO relied upon decision of ITAT, Ahmedabad in the case of Vijay Proteins Limited v ACIT reported in (1996) 55 TTJ 76(Ahd.-trib.) : 56 ITD 428, while upholding additions to the tune of 25% of bogus purchases.

The A.O also disallowed business losses of Rs.38,55,200/- which was claimed by the assessee on account of difference between the bogus purchase and bogus sales. The AO referred to reply to the Q.No. 28 with respect to the statement given by the said director of the assessee company Shri. Ambrish Bhikalal Doshi on 30-11-2012 wherein the said director submitted that the assessee cannot justify the said losses and had shown his willingness to pay taxes , which led to the addition to the tune of Rs.38,55,200/- towards disallowance of business loss , vide assessment order dated 28-03-2014 passed by the AO u/s 143(3) r.w.s. 147.

5. Aggrieved by the assessment order dated 28-03-2014 passed by the AO u/s 143(3) r.w.s. 147, the assessee came in appeal before the learned CIT(A) who restricted the disallowance/addition to the income to 2% of bogus purchases vide appellate order dated 31-01-2017 by holding as under:-

“ 5.3 DECISION

*I have gone through the Assessment Order dated 28/03/2014 where prima facie the AO is of the opinion that the two suppliers (1) M/s. Sthapna Trade Impex Private Limited (2) M/s. Ritesh Corporation are found to be defaulter in the Sales Tax Department and further the appellant has not proved the genuineness of the transaction. Therefore, he has added 25% of the purchases from the above mentioned parties as bogus purchases and the difference of purchases and sales as loss*

on accommodation entries. However, the AR of the appellant argues that the appellant has during the appellate proceedings and during the course of the assessment proceedings submitted all the material and documents to prove the existence as well as the genuineness of the transactions entered with M/s. Sthapna Trade Impex Private Limited & M/s. Ritesh Corporation. Hence, it has to be deleted. From the assessment order, it is seen that the AO has not disputed the sales made by the appellant. Moreover, AO made verification with sales parties and they also have confirmed the sales made with the appellant which is discussed in para 7.6 of the Assessment order by the AO. However, having made the transaction with the Hawala suppliers as per the Investigation Wing, I am of the considered opinion that only profit element embedded in such purchases of Rs.96,84,464/- could be added to the appellant company and hence, the party totally cannot be treated as bogus one as long as the sales were not under dispute.

5.4 . In this connection, the AR relies on the following Jurisdictional Hon'ble ITAT decision in the case of *Innovators Facade vs. ACIT(Cir -2), Thane*, ITA No. 5450, 5451 and 5452/MUM/2015 dtd. 20.07.2016. I have gone through the decision in the case of *Innovators Facade vs. ACIT(Cir -2), Thane* wherein the issue has been decided by fixing the addition at 2% of the bogus purchases. The above citation is as under:-

"From the record we found that assessee had shown GP rate of 16.39% and 23.49 in the assessment year 2009-10 and 2010-11, which is much better than the gross profit rate shown in the assessment year 2008-09 at 11.41 %. Moreover the GP rate shown by the assessee is comparable to the GP rate shown by other assessee engaged in similar trade. However, to safeguard the interest of revenue and to cover the leakage of revenue, if anyone, and also totality of facts and circumstances of the case before us, we direct the AO to restrict the addition to the extent of 2% of alleged bogus purchases made. We direct accordingly.

Facts and circumstances in the year 2010-11 and 2011-12 are pari material following the reasoning given hereinabove; we restrict the ITA no. 5450 to 5452/Mum/2015 Assessment Year 2009-10 to 2011-12

*additions in these years also to the extent of 2% of alleged bogus purchases so made. We direct accordingly.*

*5.5. Respectfully following the jurisdictional ITAT decision dated 20.07.2016 in the case of Innovators Facade vs. ACIT(Cir -2), Thane, I am of the considered opinion that fixing the GP at 2% of bogus purchases will be fair and meet the ends of the justice which works out to Rs.1,93,689/- (2% of Rs. 96,84,464/-) [Addition of Rs. 96,84,464/- Rs. 1,93,689/- confirmed and the balance of Rs.94,90,775/- is to be deleted plus the addition on account of loss claimed on accommodation entries of Rs.38,55,200/- is to be deleted]*

Thus, the Ld. CIT(A) deleted the additions made on account of loss claim on account of accommodation entries to the tune of Rs.38,55,200/- and held the additions to the tune of 2% of bogus purchase, vide appellate order date 31-01-2017.

6. Aggrieved by the appellate order dated 31-01-2017 passed by learned CIT(A), the Revenue has come in appeal before the tribunal.

7. The Ld. D.R submitted that learned CIT(A) erred in deleting disallowance of business loss to the tune of Rs.38,55,200/-. Ld DR submitted that decision in the case law relied upon by learned CIT(A) in the case of Innovators Facade vs. ACIT(Cir -2), Thane, ITA No. 5450, 5451 and 5452/MUM/2015 dtd. 20.07.2016 to restrict disallowance to 2% is not accepted by the Revenue and appeal has been filed with Hon'ble Bombay High Court u/s 260A. It was submitted that the learned CIT(A) has wrongly relied upon the judicial decision pertaining to capital gains while on the other hand, the Ld. AR submitted that the assessee is trader in chemicals. It was submitted that assessment was reopened u/s 147. Notice u/s 148 was issued which was within four years from the end of the assessment year. The learned counsel for the assessee contended that the learned CIT(A) has rightly upheld the addition to the tune of 2% of alleged bogus purchases. It was submitted that learned CIT(A) rightly deleted the disallowance of business loss to the tune of Rs.38,55,200/-. It was submitted that statement was recorded of the director of the assessee Shri. Ambrish Bhikalal Doshi during the course of survey on 30-11-2012 wherein he has admitted that these are

bogus purchases and sale and there is no retraction of the said statements till date.

8. We have considered rival contentions and perused the material on record . We have observed that the assessee is engaged in the business of manufacturing and trading of chemicals. The assessee has achieved turnover and gross profit during the assessment year 2008-09 and 2009-10 as under:-

<b>AY</b>	<b>SALES</b>	<b>GROSS PROFIT</b>	<b>GP%</b>
2008-09	60,38,37,957	1,32,21,006	2.18%
2009-10	68,30,57,218	2,47,50,163	3.62%

Information was received by the A.O that assessee has made purchases to the tune of Rs. 96,84,465/- from hawala dealers Sthapna Trade Impex P. Ltd. and Ritesh Corporation from DDIT(Investigation) which was based on investigation conducted by DDIT(Inv),Mumbai as well information received from the Maharashtra VAT department who conducted enquiry under Maharashtra VAT laws and both the authorities came to the conclusion that the assessee has made purchases from accommodation entry providers who are only issuing paper bills without supplying any material physically. The reopening of the assessment u/s. 147 was made within four years from the end of the assessment year which was also upheld by learned CIT(A) and there is no challenge by the assessee to upholding of the reopening u/s 147 by learned CIT(A) as assessee has not filed any appeal against the said finding of the learned CIT(A) nor any Cross Objection is filed by the assessee which has now reached finality . Statement of Shri. Ambrish Bhikalal Doshi , Director were recorded by Investigation Wing,Mumbai on 30.11.2012 where in he has confirmed that assessee has made purchases from hawala traders Sthapna Trade Impex P. Ltd. and Ritesh Corporation during the impugned assessment year and there is no retraction of said statement given by the Director of the assessee company till date. During the course of re-assessment proceedings u/s 147, the A.O came to conclusion that these purchases are bogus accommodation entries which are paper transactions without supplying any material and addition of 25% of bogus purchases of Rs. 96,84,465/- were made by the AO by holding as under:-

“1. The assessee has booked purchases from the following parties which have been declared as “Hawala dealers” by the Sales Tax Department as under:-

STHAPNA TRADE IMPEX PVT LTD	AAKCS6555K	2008-09	8,284,333
RITESH CORPORATION	AZFPK3051K	2008-09	1,400,131
		<b>TOTAL</b>	<b>96,84,464</b>

2. The assessee has not produced the parties for verification.

3. The assessee has not produced any documentary evidence to prove the identity of the purchase party.

4. Further the assessee has merely produced the purchase bills. The assessee has not been able to establish the genuineness of these purchases.

5. The assessee has not been able to produce the following:

- i. Delivery challan
- ii. Transport receipt.
- iii. Octroi receipt etc.

**6. The assessee has also not been able to establish how these purchases have been used in the business.**

7. The regular purchases bills are usually accompanied by:

- (a) delivery challan,
- (b) transport receipt,
- (c) excise invoice/ custom invoice,
- (d) order number
- (e) lorry number

Whereas, the purchases booked through parties declared as "Hawala dealers" by the Sales Tax were not accompanied by the above documents.

8. The assessee has categorically admitted on Oath in the statement given to the Investigation Wing that he has not made actual purchases but obtained mere accommodation bills. Hence, the purchases shown by the assessee are ungenune.

9. Since the purchases booked by the assessee are not verifiable, the books of accounts of the assessee are not reliable. Therefore, the book results are rejected ix] s 145 of the Act.

7.2. Therefore, the purchases shown by the assessee in respect of the above mentioned parties amounting to Rs 96,84,465/- are prima facie not genuene.

7.3. Further, information has been received from the DGIT (Inv.), Mumbai, forwarding thereon the information received from Sales Tax authorities wherein the parties have been declared "Hawala dealer". Further, these parties have categorically stated on Oath that they have merely issued accommodation bills and that no actual delivery of goods was given.

7.4 Since the assessee has not discharged its prima facie onus of proving the identity of the parties and the genuineness of the purchases, the purchases from the parties is required to be disallowed and added to the total income.

7.5. Therefore, an amount of Rs.96,84,465/- is required to be added to the total income of the assessee."

The AO relied on the decision of Vijay Proteins Ltd. v. ACIT (1996) 55 ITTJ 76(Ahd.) and confirmed the additions to the tune of 25% of bogus purchases.

The sales as claimed to be corresponding with respect to the bogus purchases as claimed by the assessee were held to be genuine by the AO after verification and the business loss of Rs.38,55,200/- claimed by the assessee was disallowed by the A.O . Ld. CIT(A) confirmed additions to the tune of 2% of bogus purchases while at the same time disallowance of business loss of Rs.38,55,200/- was deleted by the Id.CIT(A).

We have observed that the assessee has made bogus purchases from Sthapna Trade Impex P. Ltd. and Ritesh Corporation to the tune of Rs. 96,84,465/- which has been confirmed by the said suppliers to be bogus transactions being accommodation entries wherein only paper invoices were issued without supplying goods physically. The assessee could not produce said parties before the A.O. nor the assessee could prove utilization / consumption of the said material . Thus, quantitative reconciliation of the stock/material was not done by the assessee before the authorities below. Nor any paper book is filed before the tribunal to support the contentions of the assessee. The assessee also could not produce evidence as to the delivery of material to the assessee such as lorry receipts , delivery challans . octroi receipts etc. to prove delivery of material by the supplier to the assessee. The A.O has made random verification with respect to the sales and has come to the conclusion that sales are genuine and business losses were disallowed by the AO. We have observed that there is categorically finding by the AO that assessee has not proved utilization/consumption of the material purchased by the assessee and corresponding quantitative reconciliation

with the said sales entries were not produced by the assessee before the AO . The learned CIT(A) has restricted disallowance to 2% of bogus purchases without bringing on record as to how deficiencies as pointed out by the AO were met by merely relying on decision of tribunal in the case of Innovators Facade vs. ACIT(Cir -2), Thane, ITA No. 5450, 5451 and 5452/MUM/2015 dated 20.07.2016 while in the said case consumption / utilisation of material was proved , delivery challans , purchase orders were produced while in the instant case no such evidences are brought on record by the assessee and hence the said case is distinguishable on facts. The disallowance of business loss was also deleted by learned CIT(A) without any categorical finding . The assessee is into business of manufacturing and/or trading in chemicals and it is not known where the material so purchases although through paper invoices was allegedly shown to be used / consumed in manufacturing or was sold as such as retailer . Mere assertions are made by director at the time of recording of the statement before the AO that these bogus purchases are squared by bogus sales while no evidence is on record to prove the same. Thus, in our considered view the appellate order of learned CIT(A) cannot be sustained and is hereby order to be set aside and in our considered view this matter need to be set aside and resorted to the file of the A.O for denovo determination of the issue on merits in accordance with law and assessee is directed to prove utilization /consumption of the said material allegedly purchased from accommodation entry providers to the tune of Rs.96,84,200/- and/or reconciled the same with the accommodation sales or other sales so made by the assessee and also to prove genuineness of the said purchases and sales . Similarly alleged bogus sale also need to be quantitatively reconciled and genuineness of the alleged sale transaction be proved. The onus is on the assessee. At this stage we are reminded of the recent decision of Hon'ble Supreme Court in the case of N. K. Proteins Ltd. v. DCIT (2017-TIOL-23-SC-IT). We order accordingly

9.The appeal of the Revenue in ITA no. 2952/Mum/2017 for AY 2009-10 is allowed for the statistical purposes.

10. Now, we come to appeal in ITA no. 2953/Mum/2017 for AY 2011-12 wherein the facts are similar and ratio of our decision in ITA no. 2952/

Mum/ 2017 for AY 2009-10 shall apply mutatis mutandis to appeal for AY 2011-12.

11.The appeal of the Revenue in ITA no. 2953/Mum/2017 for AY 2011-12 is allowed for the statistical purposes.

12.Thus both the appeals of the Revenue in ITA no. 2952 & 2953/Mum/2017 for AY 2009-10 and 2011-12 respectively are allowed for the statistical purposes.

Order pronounced in the open court on 29 .09.2017

आदेश की घोषणा खुले न्यायालय में दिनांक: 29.09.2017 को की गई ।

Sd/-

(JOGINDER SINGH )  
JUDICIAL MEMBER

Sd/-

(RAMIT KOCHAR)  
ACCOUNTANT MEMBER

Mumbai, dated: 29.09.2017

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench, E
6. Master File

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BY ORDER

DY/ASSTT. REGISTRAR  
ITAT, MUMBAI