

**आयकर अपीलीय अधिकरण “एक-सदस्य मामला” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI**

श्री शमीम याहया, लेखा सदस्य के समक्ष ।  
**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 542/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2009-10)

Kapoor Industries 161-A, Sai Kutir, LBS Marg, Kurla West, Mumbai-400 070	<b>बनाम/</b> Vs.	ITO-26(2)(1), Room No. 601, 6 <sup>th</sup> Floor, C-12, Pratyakshkar Bhavan, BKC, Bandra, Mumbai-400 051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AA AFK 4742 M		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri Dinesh Rasiklal Shah
प्रत्यर्थी की ओर से/Respondent by	:	Shri V. Jenardhanan
सुनवाई की तारीख / Date of Hearing	:	03.07.2017
घोषणा की तारीख / Date of Pronouncement	:	07.09.2017

**आदेश / ORDER**

Per Shamim Yahya, A. M.:

This appeal by the assessee is directed against order of learned CIT(A)-38, Mumbai dated 30.11.2016 and pertains to assessment year 2009-10.

2. The issue raised is that CIT(A) erred in sustaining disallowance of 25% of bogus purchase amounting to Rs.8,55,497/-.
3. The grounds of appeal read as under:

1. *ITO-26(2)(1) has erred in the facts and circumstances of case as well as in law in making addition of Rs.8,55,497/- (25 percentage of purchase of Rs, 34,21,988/-) on account of bogus purchases and assessing income at Rs. 14,55,850/- & raising disputed tax demand of Rs.4,64,820/- and Learned CIT (A) - 38 confirming the same.*
  2. *The A.O has treated bogus purchases merely on the Basis of third party evidences i.e. nonpayment of MVAT by these parties in spite of the facts the appellants has fulfilled primary onus of proving the genuineness of . purchase of goods and sale of same items-goods.*
  3. *The 25% of addition made out of purchases made from Six parties for alleged inflation of expenses made by the appellants be deleted [i.e. 25% of total purchases from Six parties Rs.34,21,988/-].*
  4. *Consider the following Gross Profit Chart and Consider the fact that the Gross Profit are the most competitive.*

	AY 2008-09	AY 2009-10	AY 2010-11
GP	21.64%	30.19%	30.99%
  5. *The AO has made addition on account of bogus purchases from six parties without verifying the fact that the purchases were genuine and payment was also made through account payee cheque and the Income Tax Department has not proved that appellants has received any cash back from such parties. The sales of the appellants are also accepted by the Income Tax Department. Once the sales are accepted, purchases ought to have been made as without purchases there cannot be any sales.*
4. In this case, the assessee is a partnership firm engaged in the business of manufacturing of flanges and industrial spare pipe fittings. The return of income for A.Y. 2009-10 was filed by the assessee on 30.09.2009 declaring the total income of Rs.6,00,350/-. Subsequently, the information has been received from DGIT (Inv) wing, Mumbai through CIT-21, Mumbai, forwarding there with a list of concerns which have been investigated by the Sales Tax Authorities and have held to be as Hawala billers. The names of the persons who have obtained the bogus bills from

such Hawala billers along with the transaction details of each person has also been received by the AO. The Sales Tax Authority displayed the names of these hawala dealers on the website of Sales Tax Department of Maharashtra Government, who has only issued bills without any delivery of goods.

5. The AO conducted independent inquiry at the premise of the alleged concerns & found them to be non-existent at the given addresses. It was also gathered by the AO that no such party had ever carried on any business from the said premises, therefore on perusal of the assessment records vis-a-vis the information & independent inquiries carried out in this regard, it was observed by the AO that during F.Y 2008-09 relevant to A.Y 2009-10, the assessee had obtained bogus bills/ accommodation entries from the following hawala dealers to the extent of Rs.34,21,988/-in respect of purchases which were not genuine, as under:-

S.No	Name of the bill provider	Tin No.	Amount(Rs)
1	SiddhiVinayak Steel	27050389521V	11,05,379
2	Chanchal Tube Corporation	27460355491V	4,43,949
3	Asian Steel	27860346638V	3,76,959
4	Suraj Tube Corporation	27550304371V	4,94,197
5	Rehbar Enterprises	27320269723V	3,37,324
6	B P T Tube Corporation	27520366225V	6,64,180
	Total		34,21,988/-

6. In view of the above, the AO observed that there is inflation of expenditure resulting in escapement of income to the extent of Rs.34,21,988/- for A.Y. 2009-10 in the case of the assessee and, therefore, after verifying the aforesaid information, the case for the Assessment Year under consideration was reopened by the AO after recording the reasons for reopening and notices u/s. 148 of the I.T Act was issued to the assessee. In response to the notice u/s. 148 of the IT act, the assessee has submitted the copy of return of income. Subsequently during the course of assessment proceedings, the assessee submitted the list of purchase parties, sale parties, sundry creditors & debtors with name & address, bank statement in respect of proprietary concern. However, in order to verify the genuineness of the purchases, the AO issued notice u/s. 133(6) of the I.T Act, to these parties on the addresses provided by the assessee. The said notices were returned by the postal authority with the remarks "Not Known". These facts were brought to the notice of the assessee by the AO vide show cause notice dated 04.02.2015. The assessee was asked to produce the parties along with books of accounts. Thereafter, the AO accorded opportunity to the assessee to substantiate his claim of purchases made from the aforesaid parties by producing the said parties along with their books of accounts, sales invoices, bank statement, quantity and quality of goods sold by them, delivery challans, mode of transport used by them for delivery along with stock register for verification and to prove the genuineness of the purchases made from these parties. He was also given a show cause notice stating that, if he is not able to produce the alleged parties with their

books of accounts, the amount involved will be treated as bogus purchase and will be added to the total income of the assessee for the year under consideration. However, the AO observed that the assessee was able to produce only copies of tax invoice of the statement of Apna Sahakari Bank Ltd. However, as assessee submitted his inability to produce the parties. The A.O. observed that the assessee had failed to produce any of the suppliers or any further material evidence despite granting enough opportunities to prove contrary to the supplier's disposition before the Sales Tax Authorities. Hence, A.O. opined that it is a settled law that onus lies on the assessee to prove the genuineness of any expenditure which is claimed as deduction in computing its taxable income. That, therefore, the onus in the instant case, squarely lies on the assessee to prove the genuineness of the purchase of materials made from the aforesaid parties which has been alleged as bogus by the Sales tax Authorities and facts stated above. In view of the above facts and circumstances of the case, the A.O. observed that these purchases are bogus as the assessee has merely indulged in inflating expenses by introducing bogus purchases. The A.O. contended that the aforesaid purchases themselves were not bogus but were made from open market while the relevant bills were obtained from bogus billing parties to whom cheques were issued by the assessee. therefore, the A.O. estimated profit @ 25% on the above alleged transactions, over and above that declared by the assessee which was worked out at Rs.8,55,497/- and was added by the A.O. to the total income of the assessee.

7. Upon assessee's appeal, the learned CIT(A) conformed the order of the assessing officer.

8. Against above order of learned CIT(A), the assessee is in appeal before the ITAT. Assessee has not challenged the validity of reopening before the ITAT. He has only challenged the merits of the addition claiming that documentary evidence was produced before the assessing officer in support of the proposition that the purchases were genuine. Further, the assessee's counsel has placed reliance upon tribunal decisions where only gross profit addition out of the bogus purchases was sustained.

9. I have heard both the counsel and perused the records. I find that credible and cogent information was received in this case by the assessing officer that certain accommodation entry provider/bogus suppliers were being used by certain parties to obtain bogus bills. The assessee was found to have taken accommodation entry/bogus purchase bills during the concerned assessment year from different parties. Based upon this information assessment was reopened. The credibility of information relating to reopening has not been assailed by the assessee. Furthermore, it is noted that in such factual scenario assessing officer has made the necessary enquiry. The issue of notice to all the parties have returned unserved. Assessee has not been able to provide any confirmation from any of the party. Assessee has also not been able to produce any of the parties. Assessee has also note been able to produce necessary evidence for transportation of the goods. In this factual scenario, it is amply

clear that assessee has obtained bogus purchase bills. Mere preparation of documents for purchases cannot controvert overwhelming evidence that the provider of these bills are bogus and non-existent. I find it further strange that assessee has made purchases from these parties and is taking a ground that revenue should produce them for his cross examination.

10. The sales tax Department in its enquiry have found the parties to be providing bogus accommodation entries. The assessing officer also issued notices to these parties at the addresses provided by the assessee. All these notices have returned unserved. Necessary evidence for transportation of goods have also not been produced. The onus was upon the assessee to rebut these. However, the assessee has not been able to produce any of the parties. Neither the assessee has been able to produce any confirmation from these parties, in such circumstances there is no doubt that these parties are non-existent. Hence, purchase bills from these non-existent/bogus parties cannot be taken as cogent evidence of purchases. In light of the overwhelming evidence, the revenue authorities cannot put upon blinkers and accept these purchases as genuine. This proposition is duly supported by honourable apex court decision in the case of Sumati Dayal (214 ITR 801) and Durga Prasad More (82 ITR 540). In the present case, the assessee wants that the unassailable fact that the suppliers are non existent and thus bogus should be ignored and only the documents

being produced should be considered. This proposition is totally unsustainable in light of above apex court decisions.

11. I further find that Hon'ble jurisdictional High Court in the case of Nikunj Enterprises has upheld 100% allowance for the purchases when the sales have not been doubted. However, the facts of that case were different. Furthermore, the sales in that case were basically to government departments. Hence, the ratio from this decision is not applicable on the facts of the case.

12. In these circumstances, the learned departmental representative has referred to Hon'ble Gujarat High Court decision in the case of Tax Appeal No. 240 of 2003 in the case of N K Industries vs Dy CIT, order dt 20/06.2016, wherein 100% of the bogus purchases was held to be added in the hands of the assessee and tribunals restriction of the addition to 25% of the bogus purchases was set aside. It was expounded that when purchase bills have been found to be bogus, 100% disallowance was required. The leave petition against this order alongwith others has been dismissed by the Hon'ble Apex Court vide order dt 16 .1 2017 .

13. Furthermore, I note that Hon'ble Rajasthan High Court has similarly taken note of decisions of the apex court on the issue of bogus purchases in the case of CIT Jaipur vs Shruti Gems in ITA No. 658 of 2009. The Hon'ble High Court has referred

to the decision of CIT Jaipur vs. Aditya Gems, D. B. in ITA No. 234 of 2008 dated 02.11.2016, wherein the Hon'ble Court had *inter alia* held as under:

*"Considering the law declared by the Supreme Court in the case of Vijay Proteins Ltd. Vs. Commissioner of Income Tax, Special Leave to Appeal (C) No.8956/2015 decided on 06.04.2015 whereby the Supreme Court has dismissed the SLP confirmed the order dated 09.12.2014 passed by the Gujarat High Court and other decisions of the High Court of Gujarat in the case of Sanjay Oilcake Industries Vs. Commissioner of Income Tax (2009) 316 ITR 274 (Guj) and N.K. Industries Ltd. Vs. Dy. C.I.T., Tax Appeal No.240/2003 decided on 20.06.2016, the parties are bound by the principle of law pronounced in the aforesaid three judgments.*

14. I find that the Hon'ble Higher Courts have accordingly affirmed the disallowance of bogus purchases as above. It is settled law that decisions of Hon'ble Supreme Court and High Courts take precedence over that of the tribunal. Accordingly, respectfully following the precedent as above, I do not find any infirmity in the order of learned CIT(A). Accordingly, I affirm the same.

15. In the result, this appeal filed by the assessee stands dismissed.  
परिणामतः निर्धारिती की अपील खारिज की जाती है ।

*Order pronounced in the open court on 07/09/2017*

Sd/-  
(Shamim Yahya)  
लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 07/09/2017

व.नि.स./Roshani, Sr. PS

**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 - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**