

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" MUMBAI**

**BEFORE SHRI MAHAVIR SINGH (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 1194/MUM/2016
Assessment Year: 2009-10**

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**C.O. No. 144/MUM/2017
Assessment Year: 2009-10**

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**ITA No. 1195/MUM/2016
Assessment Year: 2010-11**

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**C.O. No. 143/MUM/2017
Assessment Year: 2010-11**

ITO-19(3)(4),
MatruMandir,
Mumbai-400007

Vs.

Smt. Sunita Amit
Patanwala, 28, 3rd floor,
ShardaSadon, Topiwala
Lane, Lamington Road,
Mumbai-400007
PAN No. AADPP7555N

(Appellant)

(Respondent)

Revenue by : Shri Suman Kumar, DR
Assessee by: ShriVimal Punmiya, AR

Date of Hearing : 05/07/2017
Date of pronouncement: 25/09/2017

ORDER

PER N.K. PRADHAN, A.M

The captioned appeals filed by the Revenue and the Cross Objections by the assessee are directed against the order of the Commissioner of Income Tax (Appeals)-30, Mumbai and arises out of the assessment completed u/s 143(3)r.w.s. 147 of the Income Tax Act 1961, (the 'Act'). Facts being similar, we begin with A.Y. 2009-10.

2. The appeal filed by the Revenue is against the order of the Ld. CIT(A) estimating the disallowance @ 18.5% of the bogus purchases in place of the addition of peak cash credit of Rs.58,22,350/- made by the AO.

2.1 The Cross Objection by the assessee is against the estimation @ 18.5% made by the Ld. CIT(A) of the alleged bogus purchases instead of deleting in *toto*.

3. Briefly stated, the facts of the case are that the Assessing Officer (AO) received information from the Director General of Income Tax (Inv.), Mumbai that the assessee had taken accommodation entries from the following parties to inflate his purchases. The details of the transactions are as under:

Sr. No.	Name of Hawala Party	Bill amount in Rs.
1.	LP Traders	3,69,096
2.	Supreme Enterprrie	1,28,570
3.	Rumeet Enterprises	20,74,667

4.	Grifton India Riddhi Enterprises	10,39,860
5.	Rahul Traders	9,64,347
6.	Hardik Enterprises	12,35,979
7.	Naman Enterprises	22,84,916
8.	Tara Enterprises	2,04,225
9.	Yash Enterprises	2,49,600
10.	Shri Amaaya Enterprises	10,10,467
11.	Dev Enterprises	18,05,024
12.	ManavImpex	7,78,115
	Total	1,21,44,866

In order to verify the genuineness of transactions, notices u/s 133(6) were issued by the AO to the parties mentioned above at the addresses provided by the assessee through registered post. Notices issued to M/s Dev Enterprises, M/s Rahul Traders, M/s Rumeet Enterprises, M/s L.P. Traders, M/s Grifton India/Riddhi Enterprises, M/s Hardik Enterprises were returned by postal authorities with remark “not known”/ “Left”.

In response to the notices issued by the AO, following parties have stated they have not done any transactions with the assessee:

1. ManavImpex
2. Shree Amaaya Enterprises
3. Naman Enterprises
4. Supreme Enterprises
5. Yash Enterprise

The AO noted that the assessee indulged in procuring bogus bills and this is confirmed by the denial of the parties who are stated to be the supplier of goods to the assessee. Taking into account the facts, the AO made an addition of Rs.58,22,350/- by working out peak amount of investment by the assessee for the above purchases.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) has directed the AO to estimate the profit to the extent of 18.5% on the total amount of purchases made from the bogus parties mentioned in the assessment order as the profit element embedded in such purchases and to reduce 6% of the average GP from the estimated profit of 18.5%. The net addition thus confirmed by the Ld. CIT(A) is estimation of profit @ 12.5% on the bogus purchases.

5. Before us, the Ld. DR submits that the Ld. CIT(A) should have confirmed the addition of Rs.58,22,350/- made by the AO u/s 69C based on the working of peak amount of investment. It is stated by him that there is no basis to restrict the disallowance by estimating profit @ 12.5% on the bogus purchases on the part of the Ld. CIT(A). Thus it is stated by him that the order of the Ld. CIT(A) be set aside and the order of the AO be restored.

6. *Per contra* the Ld. counsel of the assessee submits that the Ld. CIT(A) erred in sustaining addition up to 18.5% on alleged bogus purchases instead of deleting in *toto*. It is stated by him that the burden

of showing that the assessee had undisclosed income is on the Revenue. Further he submits that the addition cannot be made without evidence.

7. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decisions are given below.

The fact remains that in response to the notice issued u/s 133(6) by the AO, five parties namely ManavImpex, Shree Ammaya Enterprises, Naman Enterprises, Supreme Enterprises and Yash Enterprises have replied that they have not done any transactions with the present assessee. The assessee also failed to file the correct address before the AO of the other parties.

In the case of *CIT vs. Simit P. Sheth* (2013) 38 taxmann.com (Guj), the Hon'ble Gujarat High Court has held that where purchases were not bogus but were made from parties other than those mentioned in the books of account, not entire purchase price but only profit element embedded in such purchases can be added to income of the assessee. That being the position, not the entire purchase price but only the profit element embedded in such purchases can be added to the income of the assessee. The Hon'ble High Court referred to a similar view taken in the case of *CIT vs. Vijay M. Mistry Construction Ltd.* [2013] 355 ITR 498 (Guj) and *CIT vs. Bholanath Poly Fab (P) Ltd.* [2013] 355 ITR 290 (Guj).

We find that the Ld. CIT(A) has estimated the profit @ 12.5% of the concerned purchases. It is not @ 18.5% as submitted by the Ld. counsel in the cross objection filed.

Taking into account the facts and circumstances of the case and following the decision of the Hon'ble Gujarat High Court mentioned hereinbefore we uphold the order of the Ld. CIT(A).

8. Facts being similar, our decision above for the AY 2009-10 equally applies to AY 2010-11.

9. In the result, the appeal filed by the Revenue and the Cross Objection filed by the assessee for the AY 2009-10 & 2010-11 are dismissed.

Order pronounced in the open Court on 25/09/2017.

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 25/09/2017

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai