

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

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

**ITA No. 2729/MUM/2016
Assessment Year: 2009-10**

ITO-1(1),
1st floor, Mohan Plaza,
Wayale Nagar, Khadakpada
Kalyan.

Shri Abdul Kayyum Khan
Vs. M/s Anjur Steel Traders
1105/2-3, Dharni Arcade,
Opp. Octroi Naka,
Bhiwandi-421302.

PAN No. ANGPK6700L

Appellant

Respondent

Revenue by : Shri V. Jenardhenan, DR
Assessee by : None

Date of Hearing : 01/08/2017
Date of pronouncement : 11/10/2017

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the Revenue. The relevant assessment year is 2009-10. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-1, Mumbai and arises out of the assessment completed u/s 144 r.w.s 147 of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the Revenue read as under:

1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in giving relief to the assessee out of total bogus purchases even though-

- i. The assessee could not produce primary evidences like Octroi Receipts, Delivery Challan etc. evidence to prove the genuineness of the purchases before the AO and before CIT(A).
 - ii. The affidavits filed by the entry providers before Sales Tax Authorities cannot be ignored having evidentiary value.
2. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in not following the order of ITAT, Pune in ITA No. 1411-1415 dated 20.02.2015 in the case of M/s Kolte Patil Developers Ltd. wherein 100% addition of bogus purchases was confirmed.
 3. The order of the Ld. CIT(A) may be vacated and that of the Assessing Officer may be restored.
3. Briefly stated, the facts of the case are that the Assessing Officer (AO) on examination of the information received from the Sales Tax Department, Government of Maharashtra found that the assessee had made bogus purchases from the following entry providers:

Sr. No.	Name of the entry provider	Maharashtra Vat No.	AY	Amount in the purchase bills taken by the assessee in Rs.
1.	Vitarag Trading Co.	27830385697V	2009-10	14,80,350/-
2.	Sampark Steels	27170360840V	2009-10	10,89,344/-
3.	Rekha Trading Co.	27520270001V	2009-10	5,17,547/-
4.	Impex Trading Co.	27190553859V	2009-10	3,04,512/-
5.	Navdeep Trading Co.	27540616280V	2009-10	4,80,996/-
6.	Prayan Trading Co.	27740535951V	2009-10	14,51,479/-
Total				53,24,228/-

After recording the reasons, the AO issued on 25.03.2013 notice u/s 148 to the assessee through RPAD. The said notice could not be served on the assessee by the postal authorities. Thereafter, the AO

issued notice u/s 143(2) and 142(1) along with questionnaire on 19.08.2013. Again the said notices were returned back by the postal authorities as unserved. Finally, the AO issued a show cause notice on 26.02.2014 to the assessee which was again returned back by the postal authorities as unserved. In view of the above, the AO made an addition of the above bogus purchase of Rs.53,24,228/- to the income of the assessee.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). Again there was no compliance by the assessee before the Ld. CIT(A). We find that the Ld. CIT(A) has followed the judgment of the Hon'ble Gujarat High Court in the case of *Simit P. Shah* 356 ITR 451 and directed the AO to restrict the disallowance to 15% of the said purchases.

5. Before us, the Ld. DR submits that there was no compliance by the assessee to the statutory notice issued by the AO. Also there was no compliance by the assessee to the notice issued by the Ld. CIT(A). Therefore, the Ld. CIT(A) should have confirmed the addition of Rs.53,24,228/- instead of restricting it to 15%.

There was no compliance by the assessee before the Tribunal on the date fixed for hearing.

6. We have heard the Ld. DR and perused the relevant materials on record. 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 has 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 rightly restricted the addition to 15% of the bogus purchases by following the judgment of the Hon'ble Gujarat High Court in *Simit P. Seth* (supra). Thus we uphold the order of the Ld. CIT(A).

7. In the result, the appeal is dismissed.

Order pronounced in the open Court on 11/10/2017.

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

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

Mumbai;

Dated: 11/10/2017

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