

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "L", MUMBAI**

**BEFORE SHRI B.R. BASKARAN (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 2504/MUM/2017  
Assessment Year: 2009-2010**

The Income Tax Officer, Wd-3(2), Room No. 4, B-Wing, 6 <sup>th</sup> Floor, Ashar IT Park, Wagle Estate, Thane (W)- 400604	<b>Vs.</b>	Shri Rammangal S. Gupta, 9, Kedar Bunglow, Shivaji Nagar, Wagle Estate, Thane – 400604  PAN: AAVPG3060H
<b>(Appellant)</b>		<b>(Respondent)</b>

Revenue by : Shri T.A. Khan (Sr. DR)  
Assessee by : Shri Mehul Shah (AR)

Date of Hearing: 27/09/2017  
Date of Pronouncement: 29/09/2017

**ORDER**

**PER RAM LAL NEGI, JM**

This appeal has been preferred by the revenue against order dated 10/01/2017 passed by Ld. CIT (Appeals) - 2, Nashik for the assessment year 2009-2010, whereby the Ld. CIT(A) has partly allowed the appeal filed by the assessee against assessment order passed under section 143(3) read with section 147 of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that the assessee engaged in trading of iron and steel goods, filed its return of income for the assessment year under consideration declaring the total income of Rs.2,55,220/-. The assessment was accordingly completed under section 143 (3) of the Act, after making addition of

Rs. 62,940/-under section 68 of the Act and Rs. 3,00,000/- as agricultural income.

3. The assessment was reopened under section 147 of the Act on the basis of information received from Sales Tax Department, government of Maharashtra to the effect that certain parties have issued bogus bills without selling goods and the assessee was one of the beneficiaries who obtained bogus bills for Rs.61,90,074/- from six parties. Accordingly, the assessee was asked to file return of income in response to notice under section 148 within 30 days from the date of receipt of notice. Further notices under section 143 (2) and 142 (2) were issued asking the assessee to submit details of purchase and the parties from whom the purchases were made during the year relevant to the assessment year under consideration. The assessee submitted the details of purchasers and asked to treat the submission filed during scrutiny assessment as the submission in response to notice under section 142 (1) of the Act.

4. In order to verify the genuineness of the transactions, information was sought under section 133 (6) from the concerned parties, however the notices were return back un-served. The assessee also failed to produce the parties before the AO. Accordingly, the AO issued show cause notice to the assessee as to why the purchases so made during the relevant period should not be treated as bogus. In response thereof the assessee filed written reply and submitted that the goods purchased from the said parties were sold to different customers. All payments to the parties were made through account payee cheques. Since, the entire details have been furnished along with the documentary evidence to prove the genuineness of the transaction, there is no reason for treating the purchases in question as bogus. The AO rejected the contention of the assessee and added the entire amount of bogus purchase to the income of the assessee.

5. In the first appeal, the Ld. CIT(A) partly allowed the appeal of the assessee and restricted the addition to 10% of the total bogus purchases made

by the assessee during the relevant year. The revenue is in appeal against the impugned order passed by the Ld. CIT(A) by raising the following effective grounds of appeal:-

1. *“On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in relying on the decision of Supreme Court in case of Kanchwala Gems Vs. JCIT 288 ITR 10(SC) and Hon’ble Court’s decision in the case of Vijay Protein, Sanjay Oil Cake Industries, etc.*
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. *On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in giving relief to the assessee to the extent of suppressed G.P. 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.*
4. *The order of the CIT (A) may be vacated and that of the Assessing Officer may be restored.”*

6. Before us, the Ld. departmental representative (DR) relying on the assessment order passed by the AO submitted that the Ld. CIT(A) has erred in restricting the addition to 10% of the bogus purchases. The Ld. DR further submitted that action of the Ld. CIT(A) is not in accordance with the principles of law laid down by the Hon’ble Supreme Court, the High Courts and the various Benches of the Income Tax Tribunal. Since, the assessee has failed to produce Octroi receipts, Delivery challan and other relevant documents, the learned CIT(A) ought to have confirmed the addition made by the AO.

7. On the other hand the Ld. counsel for the assessee relying on the findings of the learned CIT(A) submitted that since the AO has accepted the sales hundred percent addition cannot be made. The Ld. counsel further submitted that in order to prove the genuineness of purchases in question, the assessee has submitted copies of purchase bills and addresses of the parties and details of quantity purchased, consumed and sold. The assessee has also placed on record the Bank statement to prove that the payments were made through banking channels. The Ld. counsel further submitted that in view of the judgment of the Hon'ble High Court *CIT Vs. Nikunj Eximp Enterprises Pvt. Ltd. 372 ITR 619 (Bom)*, the Ld. CIT(A) rightly restricted the addition to 10 % of the total bogus purchases made by the assessee during the relevant financial year.

8. We have heard the rival submissions and also perused the material placed before us. The only grievance of the revenue is that the Ld. CIT(A) has wrongly restricted the addition to 10% of the amount of bogus purchases . We notice that the Ld. CIT(A) has upheld the action of the AO holding as under:

*“7.3 In this regard it has been noticed that the issue under appeal has been recently decided by Hon'ble ITAT, Pune, in the case of M/s. Chetan Enterprises, Nashik Vs. ACIT Circle-2, Nashik, ITA No. 365 & 366/PN/2016 and M/s Patco Precision Components Pvt. Ltd., Nashik Vs. ACIT Circle-2, Nashik, ITA No. 695/PN/2016. In this cases the above appellants have filed appeals against the orders of the undersigned, wherein the benefit on account of purchases in gray market was estimated at 10% and accordingly addition on account of hawala purchases was confirmed to the extent of 10% of the impugned hawala purchases. The Hon'ble ITAT had held in concluding para 13 of the order, while deciding the case of M/s Chetan Enterprises as under:-*

*“In paras hereinabove, the addition to the extent of 10% the quantum of hawala purchases has been added in the hands of assessee and the said addition would meet the ends of justice, as the purchases are admittedly made from hawala parties. The Assessing Officer is directed to compute the quantum in respect of*

*evidences furnished by him to the assessee in the form of statements recorded of other persons. Where no such statements or any other evidences in respect of any person is made available to the assessee, in respect of any person is made available to the assessee, then such quantum is not to be included in this hands of assessee for raised by assessee in both the appeals are allowed as indicated above.”*

*Similarly, while deciding the appeal in the case of M/s Patco Precision Components Pvt. Ltd., the Hon’ble ITAT has directed the A.O. in concluding para 14, as under:-*

*“The assessee had asked for copies of statements recorded by Sales Tax Department of the suppliers and to allow cross examination. The Assessing Officer in the present case also has not supplied the said statements to the assessee and the case of the assessee, though was that, the first aspect in the present case is the availability of statements recorded by Sales Tax Department and in the case, no such evidence is available then there is no basis for making the aforesaid addition. As directed in the above appeals, the matter is set aside to the file of Assessing Officer to verify the contention of assessee in this regard. In case no document is available with Assessing Officer, then no addition is warranted on account of hawala purchases. Otherwise, the addition has to be restricted to 10% of quantum of purchases as directed in earlier appeals”.*

*From the above decisions of Hon’ble ITAT, Pune, it is evident that the Hon’ble ITAT has held that where the statements recorded by Sales Tax department in support of the impugned hawala purchases is available on the record of the A.O, then the addition is to be restricted to 10% of the hawala purchases and where the above mentioned statements are not available on the record of the A.O., then the addition is to be fully deleted.*

*Therefore, respectfully following the above mentioned decision of Hon’ble ITAT, Pune, the A.O. is directed, in the case under appeal, to delete the total addition on account of hawala purchases if the statements recorded by Sales tax department in support of the impugned hawala purchases is not available on the record of the A.O. and if the above mentioned*

*statements are available on the record of the A.O. then the addition is to be restricted to 10% of the hawala purchases of Rs. 61,90,074/-“*

9. In our considered the findings of the Ld. CIT(A) are based on the evidence on record and in accordance with the principles of law laid down by the courts of law and the various Benches of the Income Tax Tribunals. The Hon'ble Bombay High Court In *CIT Vs. Nikunj Eximp Enterprises Pvt. Ltd.* 372 ITR 619 (Bom) has held that merely because the suppliers had not appeared before the Assessing Officer or the CIT (A) one could not conclude that the purchases were not made by the respondent/assessee. The Hon'ble Gujrat High Court in *CIT vs. Simit P. Seth* 356 ITR 451(Guj) upheld the decision of the Tribunal and sustained the addition 12.5% of the total bogus purchases holding that only profit element embedded in such purchases can be added to income of the assessee.

10. So, in the light of the law laid down by the Hon'ble High Courts in the cases referred above, we uphold the decision of the Ld. CIT(A) and in the interest of justice, restrict the addition to 10% of the total amount of bogus purchases made by the assessee during the year relevant to the assessment year under consideration. We accordingly dismiss all the grounds of the appeal of the revenue and direct the AO to compute the addition in terms of this order.

In the result, appeal filed by the revenue for the assessment year 2009-2010 is dismissed

Order pronounced in the open court on 29<sup>th</sup>. Sept., 2017.

Sd/-

(B.R. BASKARAN)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 29/09/2017

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

*Alindra PS*

**आदेश 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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

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