

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "J", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND  
SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER**

**ITA NO.921/MUM/2017 (A.Y: 2009-10)**

D.C.I.T Circle 7(3)(1)  
Room No. 669A,  
Aayakar Bhavan,  
M.K. Road, Church Gate,  
Mumbai-400 020

v. M/s. Paxchem Ltd.,  
Plot No. A-34, T.T.C. Industrial Area,  
Pawane, Mumbai – 400 710

**PAN NO: AACCP 0919 J**

**(Appellant)**

**(Respondent)**

**Assessee by : Shri N.Jayendran**

**Department by : Ms. Arju Garodia**

**Date of Hearing : 04.10.2017**

**Date of Pronouncement : 31.10.2017**

**ORDER**

**PER C.N. PRASAD (JM)**

1. This appeal is filed by the Revenue against the order of Learned Commissioner of Income Tax (Appeals) -13, Mumbai dated 23.11.2016 for the Assessment Year 2009-10.

2. The only grievance of the Revenue in its appeal is Ld.CIT(A) erred in deleting the addition of ₹.43,67,589/- on account of bogus purchases.

3. Briefly stated the facts are that, the assessment in this case was reopened u/s. 147 of the Act based on the information received from the Sales Tax Department and DGIT(Investigation), Mumbai wherein they have gathered that some business men have indulged in acceptance of the bogus purchases bills from the hawala bill providers. As per the information the assessee is one of the beneficiaries of such bogus purchases bills issued by various parties. Based on this information the assessment was reopened u/s. 147 of the Act and in the course of re-assessment proceedings the assessee was required to prove the genuineness of the purchases made from various parties referred to in Page No. 2 of the Assessment Order. The assessee submitted various details like copies of invoices, delivery challans, goods received notes, certificate from bank and confirmations from the suppliers along with ledger account copies and submitted that the purchases made by the assessee are genuine. However, the Assessing Officer rejected the submissions of the assessee holding that no lorry receipts, proof of transport of material, octroi receipt etc has been furnished. He also observed that one Mr. Naresh M. Budela and Proprietor Rupesh J. Sanghvi deposed before the Sales Tax Department that they were actually not doing activity of sales and purchases of goods and were indulged only in providing Paper Book bills and it was stated by the Assessing Officer that

the said parties from whom the Assessee made the purchases are running the above concerns. Therefore, he concluded they are only dubious persons and there were no real transactions carried on by them and hence the purchases shown by the assessee are not genuine.

4. On appeal the Ld.CIT(A) taking note of the evidence furnished by the assessee before him and also the Sales Tax Authorities, Assessment Orders of the Assessing Officer, came to the conclusion that the purchases are genuine. He also gave a finding that assessee company produced the invoices along with the ledger accounts delivery challans, bank statements and confirmations of the six parties with these observations the Learned Counsel for the assessee deleted the addition made by the Assessing Officer.

5. The Ld.DR vehemently supported the orders of the Assessing Officer. It was submitted that the assessee is into manufacturing activity of specialized chemicals. Ld.DR further submits that no stock records were maintained and there was no one to one correlation between purchases and consumption in the stock records. It was submitted that the assessee did not produce the parties and on independent enquiry made by the Assessing Officer it was found that the purchases made by the assessee were not genuine.

6. On the other hand, the Learned Counsel for the assessee submits that the Assessing Officer except relying on the information of Sales Tax Department that certain entities provided only accommodation entries, no independent enquiry were made. The Learned Counsel for the assessee submits that the Sales Tax Department has not pointed out any infirmity in the tax calculations and payment to the department and in fact Sales Tax Department has given clean chit to the assessee. The Learned Counsel for the assessee submits that all the necessary information as required by the Assessing Officer including the invoices, copies of ledger account, delivery challans, confirmations, bank statement etc were filed and all these evidences goes to shows that the purchases were genuine. Learned Counsel for the assessee further submits that assessee's turnover is around ₹.22 Crores during this Assessment Year and the Assessing Officer treated the purchases of only ₹.43 Lakh as bogus purchases. Learned Counsel for the assessee submits that assessee having a turnover of ₹.22 Crores there is no need for recording bogus purchases of ₹.43 Lakhs. He further submits that the Gross Profit rate shown by the assessee is 38% and the net profit is at 7.41%. Learned Counsel for the assessee further referring to Page No.20 of the Paper Book submits that the Sales Tax Department had in fact allowed set off of taxes and the party wise details were given to show that the purchases

are genuine and they did not avoid payment of Sales Tax. Further, Learned Counsel for the assessee submits that it is the observation of the Assessing Officer that there were no lorry receipts furnished by the assessee to which he submits that since assessee made some local purchases there were no lorry receipts.

7. We have heard the rival submissions, perused the orders of the authorities below. This aspect of the matter has been elaborately considered with references to the evidences furnished by the assessee by the Ld.CIT(A) and concluded that the purchases are genuine observing as under:

*“3.3 Decision - I have carefully considered the AO's order as well as the AR's submissions. The AO has made the addition in question on account of two principal reasons. Firstly, the DCST had raised a demand of 29.17 lakhs in the appellant's case while finalizing the Sales Tax assessment. Secondly, according to the AO, information had been received from Sales Tax Department that six parties (which have been listed earlier in paragraph no. 3.1) had made sales of 43.67 lakhs to the appellant without any actual delivery of goods. According to the AO this was strong enough basis for adding back the said bogus purchases of 43.67 lakhs. Before me the AR has pleaded that the demand raised by the DCST has been subsequently reversed by the JCST(A). As such, the Sales Tax authorities had themselves given a clean chit to the appellant No addition on account of bogus purchases is hence uncalled for.*

*3.3.1 The matter of Sales Tax assessment and appeal needs some elucidation. The Sales Tax Department*

passes orders of assessment and appeal like any other revenue-generating department. While the amount of Sales Tax liability to be paid is determined in these proceedings, the crucial component thereof is the set-off admissible. This is the amount of Sales Tax already paid by the seller which is available to the purchaser while determining the Sales Tax payable by the purchasing party. This amount of set-off is determined both in assessment as well as in appeal. A reduced claim of set-off would hence mean that the entire claim as made by a Sales Tax assessee has not been accepted by the Sales Tax authorities. As per the order of Shri R. M. Thombre, DCST (Refund Audit Branch-11, Mumbai) dated 7th October 2014 (order no. ASO/Mum-VAT-E-714/1314/4159281) the appellant had claimed a set-off of 42.54 lakhs in its Sales Tax return. However, set-off only to the extent of 40.7 lakhs had been determined as per the said assessment order. A copy of the said assessment order has been placed on the appellate record as part of the paper-book. Subsequently as per the order of Shri S. N. Mane, JCST(A) dated 30th October 2015 (order no. JC/App/VI/VAT-508/14-15/B-3457), the set-off determined in appeal was 42.17 lakhs. In other words, while the appellant had made a claim of set-off of 42.54 lakhs, the set-off had been determined in appeal at ₹.42.17 lakhs. It would hence appear that the total amount of set-off as claimed by the appellant was ₹.42.54 lakhs, while set-off granted to it in appeal was 42.17 lakhs, thus leaving set-off of ₹.0.37 Lakh which had not been granted even in appeal. It would hence become apparent that though not a clean chit, the Sales Tax Department has granted the appellant an almost clean chit, it having accepted almost the entire claim of the appellant in appeal.

3.3.2 Coming to the second principal reason for the AO to have made the impugned addition of 43.67 lakhs, it can be seen that this matter also needs some elucidation. According to the AO, certain information had been received from the Sales Tax Department that the appellant had made bogus purchases to the extent that there was no actual movement of goods and only accommodation entries had been taken. As seen from the order of the AC

at paragraph no. 6.3(111), the statements of S/Shri N. M. Budela and R. K. Sanghvi had been recorded by the Sales Tax authorities. These statements had revealed that they were not actually engaged in either sales or purchases of goods but were engaged in the business of providing accommodation bills. It is however nowhere clear in the assessment order as to how the statements of S/Shri N. M. Budela and R. S. Sanghvi have any connection with the appellant, since no proof has been brought on record that the appellant had any dealings with either them or them. Moreover, copies of these statements have never been provided to the appellant which has also not been given any chance of cross-examination of these two persons. Coming to the six parties from whom bogus purchases had been allegedly made, their details have been given in paragraph no. 3.1 of this order. It is once more not clear as to how this information had been obtained by the AO. The assessment order is silent in this regard. No letter of the Sales Tax Department or for that matter no document of any sort had been handed over to the appellant in this regard. As is clear from the AO's order, only names of the six parties and the amounts of purchases made from them are available. The answer of the MD of the appellant-company extracted in the assessment order shows that he had produced the invoices along with the ledger accounts, delivery challans, bank statements (evidencing account cheque payments) and confirmations of the six parties. Against this wealth of information provided by the appellant the only issue on the basis of which the addition has been made by the AO seems to be the lack of any third party evidence in the form of either any lorry receipt or any octroi receipt, as has been explained by him in paragraph no. 6.3(v) of his order. To my mind, it is clear that the appellant has more than discharged its onus by producing extensive documentation viz, copies of ledger accounts, bank statements evidencing account payee cheque payments, confirmations from the concerned parties, invoices and delivery challans. Thus, on a factual basis, I am of the considered view that the appellant had more than adequately discharged its onus to demonstrate the genuineness of the purchases made.

3.3.3 Several courts have held that non-confrontation of the assessee and mere non-production of the supplier cannot be held against the assessee when it comes to additions made on the basis of declarations stated to have been made before the Sales Tax authorities. For instance, the Hon'ble Jodhpur Tribunal in the case of Jagdamba Trading Company [2006-(ID2)GJX-0689-TJOD] had struck down an addition on account of bogus purchases made from allegedly bogus parties which had never been made subject-matter of a cross-examination by the assessee. The Hon'ble Bombay High Court in the case of Kishinchand Chellaram v. CIT (19 CTR 360) had held that unless the assessee is confronted and an opportunity of cross-examination given, nothing can be read in evidence against the assessee. In the case of CIT v. Nikunj Eximp Enterprises Private Limited (372 ITR 619), the Hon'ble Delhi High Court had observed that merely because the supplier had not appeared before the AO, it cannot be concluded that purchases had not been made by the assessee. Such disallowance made merely on the basis of assumptions - which were made because of non-production of sellers - was held to be untenable. In the case under consideration I have noted that matters have not even progressed to that level. Rather the appellant has not been confronted with any statements of the allegedly bogus parties. It has not even been asked to produce these parties. On the other hand, there is no evidence to suggest that the AO had either made independent inquiries through his Inspector or had sought to summon the alleged hawala parties to record their statements under the Act. The appellant has naturally not been allowed any opportunity to cross-examine them either. The presumption was that the information received from the Sales Tax Department was absolutely correct and reliable and that it needed no further verification or corroboration. So much so that that information has not even been reproduced in the order. Rather it has been simply mentioned that certain information had been received. Here it is also noteworthy that no inconsistency of any sort has been pointed out by the Assessing Officer insofar as the documentation filed by the appellant is concerned. In the context of these observations, certain other decisions would be noteworthy.

*In the case of CIT v. M. K. Brothers (163 ITR 249), the Hon'ble Gujarat High Court had approved the decision of the Hon'ble Tribunal when it had held that additions made on the basis of statements made before the Sales Tax authorities alone cannot be evidence that bogus bills had been issued to the assessee, the payments having been made by way of account payee cheques. In its decision in the case of ITO v. Permanand (107 TTJ 395), the Hon'ble Jodhpur Tribunal had held that additions made on the basis of observations made by the Sales Tax authorities without making independent inquiries could not be sustained. This is precisely what has happened in the case under consideration.*

8. Further, the Hon'ble Gujarat High Court in the case of Bholanath Polyfab Pvt. Ltd [355 ITR 290] held that when the assessee made purchases and sold the finished goods as a natural corollary not the entire amount covered under such purchases would be subject to tax but only the profit element embedded therein. Similar view has been taken by the Hon'ble Gujarat High Court in the case of CIT v. Simit P. Seth [38 taxman.com 385]. Simply because the parties were not produced the entire purchases cannot be added as held by the Bombay High Court in the case of CIT v. Nikunj Eximp [216 Taxman.com 171]. However, at the same time keeping in view the nature of business of the assessee and the fact that the assessee is making some local purchases without any transportation bills lorry receipts etc, the possibility of making purchases in gray market on cash cannot be ruled out. Therefore, keeping in view the net profit rate shown by the assessee at 7.41% and the totality of facts

and circumstances into consideration we direct the Assessing Officer to disallow 5% of the above purchases to meet the anomalies and could cover up the leakages of Revenue.

9. In the result appeal of the Revenue is partly allowed.

Order pronounced in the open court on the 31<sup>st</sup> October, 2017.

Sd/-  
**(RAJESH KUMAR)**  
**ACCOUNTANT MEMBER**

Mumbai / Dated /10/2017  
VSSGB, SPS

Sd/-  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to:**

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

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mum**