

**IN THE INCOME TAX APPELLATE TRIBUNAL 'K' BENCH, MUMBAI
BEFORE SHRI RAJENDRA, AM AND SHRI RAVISH SOOD, JM**

आयकर अपील सं./ I.T.A. Nos. 72 & 73/Mum/2017

(निर्धारण वर्ष / Assessment Year's: 2010-11 & 2011-12)

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| Naozer Bejon Baldawala, Buildtech India , 27 Kailash Darshan, Kennedy Bridge, Nana Chowk, Mumbai-19, 400007 | बनाम/ Vs. | ACIT-19(2), Matru Mandir Building, Nana Chowk, Opp. Bhatia Hospital, Tardeo Road, Mumbai-400007 |
| स्थायीलेखासं / जीआइआरसं / PAN/GIR No. | | AACPB7254K |
| (अपीलार्थी/ Appellant) | : | (प्रत्यर्थी / Respondent) |

आयकर अपील सं./ I.T.A. Nos.233 & 234/Mum/2017

(निर्धारण वर्ष / Assessment Years: 2010-11 & 2011-12)

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| ACIT-19(2), Room No.207, Matru Mandir Building, Nana Chowk, Mumbai-400007 | बनाम/ Vs. | Naozer Bejon Baldawala, Buildtech India , 27 Kailash Darshan, Kennedy Bridge, Nana Chowk, Mumbai-19, 400007 |
| स्थायीलेखासं / जीआइआरसं / PAN/GIR No. | | AACPB7254K |
| (अपीलार्थी/ Appellant) | : | (प्रत्यर्थी / Respondent) |

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| अपीलार्थी की ओर से/ Assessee by | : | S/Shri M M Golvala/Danshit Naik |
| प्रत्यर्थी की ओर से/ Revenue by | : | Shri. V. Jenardhanan, D.R. |

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| सुनवाई की तारीख/ Date of Hearing | : | 11.10.2017 |
| घोषणा की तारीख / Date of Pronouncement | : | 25.10.2017 |

आदेश / O R D E R

PER RAVISH SOOD, JUDICIAL MEMBER:

The present set of cross appeals filed by the assessee and the revenue are directed against the respective orders passed by the CIT(A)-30, Mumbai, in the case of the aforementioned assessee, viz. Naozer Bejon Baldawala for A.Y. 2010-11 and A.Y. 2011-12, each dated. 24.10.2016, which in itself arises from the respective assessment orders passed u/s 143(3) r.w.s 147, dated. 25.03.2015 and 26.03.2015, respectively. That as common issues are involved, therefore, the said respective appeals are taken up together and disposed of by way of a consolidate order. We first advert to the cross appeals of the assessee and the revenue for A.Y. 2010-11. The assessee vide his appeal marked as ITA No. 73/Mum/2017 had assailed the order of the CIT(A) by raising the following grounds of appeal before us:

- “1. The learned Commissioner of Income Tax (Appeals) erred in confirming disallowance of purchases to the extent of 25% of Rs.1,07,13,732/- i.e. to the extent of Rs.26,78,433/- and in not deleting the entire disallowance as prayed for.
2. The learned Commissioner of Income Tax (Appeals) erred in not appreciating the factual matrix of the case.
3. Without prejudice to the above and in the alternative the learned Commissioner of Income Tax (Appeals) erred in not restricting the addition with reference to the gross profit of the appellant.
4. The appellant craves to add, alter or amend any of the grounds of appeal at any time of hearing.”

The revenue on the other hand had challenged the order of the CIT(A) on the following grounds:

- “1. On the facts and circumstances of the case and in law, whether, Ld. CIT(A) was justified in sustaining only an addition @ 25% profit rate on total purchases of Rs.1,07,13,732/-made from 20 parties.
2. The appellant prays that the order of the Learned CIT(A) on the above grounds be set aside and that of the A.O be restored.

3. *The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.*

The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.

2. Briefly stated, the facts of the case are that the assessee who is engaged in the business of development of properties, painting and renovation had filed his return of income on 29.09.2009, declaring total income of Rs. 43,19,670/-. The return of income filed by the assessee was processed as such u/s 143(1) of the 'Act'. The case of the assessee was reopened under Sec. 147, on the basis of the information received from the DGIT (Inv.), Mumbai that the assessee was one of the beneficiaries of the accommodation entries provided by some of the MVAT dealers who were indulging in issuing bogus sale/purchase bills.

3. That during the course of the assessment proceedings the A.O on the basis of the information received from the DGIT (Inv.), Mumbai, observed that the assessee had taken accommodation entries for purchases aggregating to Rs.1,07,13,732/- from the following parties:-

| S. No. | Name of the Hawala Party | Bill Amount |
|--------|------------------------------------|-------------|
| 1. | Surachi Multitrade Private Limited | 7,51,268/- |
| 2. | Balaji Trading | 4,38,331/- |
| 3. | Universal Trading Co. | 34,768/- |
| 4. | Rashmi Enterprises | 4,11,674/- |
| 5. | V M Udyog | 2,33,129/- |
| 6. | G.R. Trade Link | 3,45,802/- |
| 7. | R K Enterprises | 4,31,818/- |
| 8. | Deep Enterprises | 8,67,162/- |

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|-------|---------------------------------|---------------|
| 9. | Liberty Trading Corporation | 2,82,346/- |
| 10. | Global Trade Impex | 10,13,349/- |
| 11. | Akshar Distributor Pvt. Ltd. | 2,00,460/- |
| 12. | Seemant Trading Co. | 4,52,046/- |
| 13. | Hiten Enterprises | 10,40,576/- |
| 14. | Tulsaini Rading Private Limited | 5,43,165/- |
| 15. | Mahavir Sales Corporation | 9,94,475/- |
| 16. | Rohit Enterprises | 11,27,055/- |
| 17. | Swastik Enterprises | 2,75,777/- |
| 18. | Sachi Mercantile Pvt. Ltd. | 8,01,196/- |
| 19. | Deep Traders | 16,524/- |
| 20. | Cimco Corporation | 4,62,811/- |
| Total | | 1,07,13,732/- |

The A.O directed the assessee to produce the aforementioned parties, as well as place on record documentary evidence to substantiate the genuineness and veracity of the purchases claimed to have been made from the said parties, viz. (i) copy of ledger accounts; (ii) copy of invoices; (iii) copy of delivery challans; (iv) evidence in respect of transportation of goods; (v) copy of the bank statement; (vi) chart correlating the purchases and sales of the goods involved in the transactions made with the aforementioned parties; and (vii) details of the stock inventory. The assessee in compliance to the aforesaid directions of the A.O, though placed on his record the copies of the ledger accounts and the bank statements reflecting the payments made to the aforementioned parties for the purchases claimed to have been made from them, but however failed to produce either of the aforesaid parties for examination before the A.O. The A.O being of the view that as neither the assessee had produced the parties for

necessary examination, nor the documentary evidence placed on record by the assessee in order to substantiate the genuineness and veracity of the purchase transactions did inspire any confidence, therefore, observed that the assessee had failed to discharge the onus as was so cast upon him. The A.O after deliberating on the facts of the case concluded that in the absence of the relevant supporting documents which could go to evidence the genuineness of the transactions of purchase of goods claimed by the assessee to have been made from the aforementioned parties, the same could not be allowed as an expenditure for the following reasons :

- “(i) The assessee could not produce the parties involved for cross examination.*
- (ii) The assessee has not made available the details of transportation of the material purported to have purchased from the aforesaid Hawala dealers, such as transportation receipts, delivery challans. The items shown to have purchased from these parties are of such in nature that they require separate transportation.*
- (iii) The assessee has not furnished any ledger account confirmation from the aforesaid dealer. The assessee has also not furnished any details as to how the items purchased from the aforesaid hawala dealers were utilized/consumed in the process of business.*
- (iv) The deduction of VAT in the bill also does not bolster the case of the assessee. It is because of the fact that such deduction does not prove genuineness of particular transaction in terms of supply of material. Such deduction is basically lined with the payment aspect only and cannot establish the purpose for which payment is made.*
- (v) The production of invoice is of no help to the assessee, since in the activity of accommodation entry, such documents are meticulously maintained both by the entry provider and entry seeker. It is also not important whether the amount is small or big and whether the assessee is having loss of profit. There may be number of reasons for seeking the accommodation entry as it leads of generation of the case in the hands of the assessee.*
- (vi) The onus was upon the assessee to prove the genuineness of expenditure claimed as it was the assessee which has made the claim.*

- (vii) The Sales Tax Department certified that the aforesaid parties are hawala operators after conducting independent enquiries.*
- (viii) The contention that the payments are made by account payee cheque is not a fool proof method of substantiating the assessee's claim, as it was already accepted by the parsons, who have given statement, deposition of affidavit before the Sales tax authorities that cash is given back after deduction of commission/brokerage once the cheque is realized.*
- (ix) The Sales Tax Department made a finding and uploaded in its website the name of entities which are invoiced in giving bogus bills only after it carried out detailed enquiry and investigation.*
- (x) If all evidences point to the fact no actual goods were supplied by the above parties, then the argument of the assessee that it purchased goods in good faith is not tenable."*

The A.O on the basis of his aforesaid observations, held that on the basis of his independent inquiries, findings of the sales tax department and the details submitted by the assessee, it could fairly be concluded that the assessee had not purchased goods from the aforementioned parties and had only taken accommodation bills from them to inflate the expenses and scale down the profitability in order to reduce his tax burden. Thus, the A.O being of the view that the purchases claimed by the assessee were unverifiable, therefore, rejected the books of account under Sec. 145(3).

4. The A.O further observed that the assessee who was engaged in the business of painting, renovation and civil construction as a contractor had failed to demonstrate beyond doubt that the material claimed to have been purchased from the aforementioned parties was consumed in the course of his aforesaid business. The A.O on the basis of his aforesaid observations concluded that now when the assessee had even failed to substantiate the consumption of the goods under consideration, therefore, disallowed the entire purchases of Rs. 1,07,13,732/- claimed by the assessee to have been made from the aforementioned parties and assessed the income at Rs. 1,50,33,400/-.

5. Aggrieved, the assessee carried the order passed by the A.O in appeal before the CIT(A). The CIT(A) at the very outset not being persuaded to accept the challenge thrown by the assessee to the validity of the reassessment proceedings, therein upheld the same. The assessee assailing the addition made by the A.O in respect of bogus purchases, therein submitted before the CIT(A) that the same was made merely on the basis of an information received by the A.O and was not backed by any cogent evidence. The assessee submitted before the CIT(A) that it had duly substantiated the genuineness and veracity of the purchase transactions by placing on record documentary evidence in support of the entire chain of sequence of events forming part of the respective purchase transactions, i.e. from purchase invoice till the making of payment. It was submitted by the assessee that though he was unable to produce the supplier parties for reasons beyond his control, but however, by placing on record documentary evidence in support of the genuineness and veracity of the purchase transactions, the primary burden as cast on him to prove the authenticity of the purchase transactions stood duly discharged. The assessee further assailed the invoking of the provisions of Sec. 145(3) by the A.O for the reason that the accounts of the assessee were correct and complete. It was further submitted that the assessee in order to substantiate the genuineness of the purchase transactions had during the course of the assessment proceedings furnished with the A.O the control sheet showing material purchases, its consumption etc., purchase invoices, delivery challans, as well as ledger accounts showing bills/payments by the assessee to the supplier parties. The assessee submitted before the CIT(A) that by placing on record the aforesaid documentary evidence which proved the authenticity of the purchase transactions to the hilt, the primary

onus as was so cast upon him stood duly discharged. The assessee averting to the reason for not producing the register of consumption and proof of transportation of the goods, therein submitted that as its business of repair and renovation, which remained under the supervision of the site engineers was during the year under consideration spread at about 20 sites all over the city, therefore, the requisite information could not be consolidated and furnished to the A.O. It was submitted by the assessee that the observations of the A.O that no actual delivery of the goods had taken place was beyond comprehension, because if that would had been so, then it would not had been possible to have carried out the extensive repair and renovation work of various societies during the year under consideration. The assessee further submitted that even if the books of account were to be rejected, the A.O remained under a statutory obligation to have made a fair estimate on the basis of the past records of the assessee. Thus, taking support of his aforesaid contentions the assessee submitted before the CIT(A) that the entire addition made by the A.O was liable to be deleted. Alternatively, it was submitted by the assessee that even if the purchases made by the assessee remained unverifiable, the disallowance was liable to be restricted only to the extent of 12.5% of the aggregate value of the purchases claimed by the assessee to have been made from the aforementioned parties.

6. The CIT(A) after deliberating on the aforesaid contentions of the assessee in the backdrop on the facts of the case was however not persuaded to subscribe to the same. The CIT(A) agreed with the findings of the A.O that the assessee had failed to substantiate the genuineness and veracity of the transactions of purchase of goods claimed to have been made from the aforementioned parties. The CIT(A) while so concluding, specifically took note of the fact that not

only the notices u/s 133(6) could be served on the aforementioned parties, but even otherwise the assessee despite specific directions by the A.O had failed to produce the abovementioned parties for examination before the A.O. However, the CIT(A) was not persuaded to subscribe to the view taken by the A.O that the assessee had not carried out any purchases from the aforementioned parties. The CIT(A) observed that the execution of the renovation works of the different societies by the assessee during the year and receiving of the amounts in lieu thereof would not have been possible in the absence of the purchases under consideration. The CIT(A) observed that now when the contract receipts accounted for by the assessee in his books of account had not been doubted by the A.O, therefore, it could safely be concluded that the assessee had purchased the goods under consideration, though not from the aforementioned bogus parties, but from certain unknown entities. The CIT(A) observed that now when the duly accounted contract receipts of the assessee received from the execution of the contract works of different societies by the assessee was not doubted and dislodged by the A.O, therefore, he could not have gone ahead and made addition in respect of the entire purchases, without explaining as to how the works could have been carried out without the goods in question. Thus, it was concluded by the CIT(A) that though the source of purchases as claimed by the assessee could safely be rejected, but however, in the backdrop of the aforesaid facts the purchase of goods could not be doubted. The CIT(A) on the basis of the aforesaid facts observed that it could safely be held that the assessee had obtained the bogus bills from the aforementioned parties with the intent to inflate the purchase price. The CIT(A) holding a conviction that the assessee had made the purchase of the goods, though not from the aforementioned parties, but from certain

unknown entities operating in the open/grey market, therefore, concluded that the additions in the hands of the assessee were liable to be restricted only to the extent of the profit element involved in making of such purchases from the unknown entities.

7. That deliberating on the facts which had a bearing on the estimation of the profit percentage in the business of contract work of repairs and renovation of buildings, it was observed by the CIT(A) that the profit involved in the trade line of the assessee was found to be more than the profit percentage as was declared by the assessee. The CIT(A) further observed that the assessee had by way of an alternative contention requested that the addition in its case may be restricted by estimating the profit percentage ranging from 12.5% to 25%. The CIT(A) on the basis of his aforesaid observations concluded that the profit percentage in respect of the bogus purchases in the hands of the assessee could fairly be estimated @ 25%, over and above the profit percentage already declared by him. Thus, the CIT(A) on his aforesaid observations directed the A.O to restrict the addition in the hands of the assessee @ 25% of the total bogus purchases of Rs. 1,07,13,732/-. Accordingly, the appeal of the assessee was partly allowed by the CIT(A).

8. The assessee being aggrieved with the order of the CIT(A) had carried the matter in appeal before us. The Learned authorised representative (for short 'A.R.') for the assessee at the very outset submitted that though the A.O had heavily relied on the statements of the aforementioned supplier parties for drawing of adverse inferences as regards the genuineness and veracity of the purchase transactions, however, despite specific requests no opportunity to cross examine the said respective parties was allowed by the A.O. The Ld. A.R. in order to

fortify his aforesaid contention, therein drew our attention to a letter dated 13.10.2014 wherein the assessee had during the course of the assessment proceeding specifically requested the A.O to allow cross examination of the aforesaid parties (Page 33) of 'Paper book' (for short 'APB'). The Ld. A.R taking us through Page 35 of the 'APB', therein averred that the assessee had vide his aforesaid letter dated 13.10.2014 submitted before the A.O that while for the genuineness and veracity of the purchase transactions under consideration, as well as consumption of the material purchased had been established on the basis of irrefutable evidence placed on record, however, only a bland statement that the supplier parties under consideration were engaged in the business of providing accommodation bills was provided to the assessee. It was thus submitted by the Ld. A.R. that the assessee had specifically submitted before the A.O that in case if any other document was to be acted upon by him for drawing of adverse inferences in the hands of the assessee, an opportunity to rebut the said documents would indispensably be required to be provided to the assessee in the backdrop of the principle of natural justice. The Ld. A.R. submitted that despite specific requests no opportunity to cross examine the supplier parties was allowed to the assessee, which was in blatant violation of the basic tenements of the principle of natural justice. It was further submitted by the Ld. A.R. that the CIT(A) instead of correcting the aforesaid mistake of the A.O, had rather gravely erred in allowing the same to perpetuate. The Ld. A.R. in support of his aforesaid contention that non production of the parties for cross examination would be sufficient to discard the statement of a party on the basis of which adverse inferences are drawn in the hands of the assessee, relied on the judgment of **Hon'ble High Court of Delhi** in the case of **Principal Commissioner of**

Income Tax Vs. Best Infrastructure (India) P. Ltd. (2017) 397 ITR 82 (Del). The Ld. A.R. further submitted that though the CIT(A) had rightly appreciated that now when the sales/receipts of the assessee had not been dislodged, therefore, the purchase of the goods involved in the said purchase transactions could not be doubted, but however, despite so observing, had erred in sustaining an addition to the extent of 25% of the aggregate value of the purchases made by the assessee from the aforementioned parties. Per contra, the Learned Departmental representative (for short 'D.R') submitted that as observed by the A.O, the inquiries made during the course of the assessment proceeding by way of notices sent u/s 133(6) therein revealed that the purchase transactions under consideration were not found to be genuine transactions. It was thus submitted by the Ld. D.R. that in the backdrop of the facts of the case the A.O had rightly disallowed the entire amount of the purchases, while for the CIT(A) had erred in restricting the same only to the extent of 25%.

9. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. We have given a thoughtful consideration to the facts of the case and are of the considered view that the assessee had failed to substantiate the genuineness and veracity of the purchase transactions under consideration. We find that though it had been observed by the lower authorities that on the basis of the notices issued u/s 133(6) to the respective supplier parties it stood revealed that the claim of expenses on account of purchase from the aforementioned parties were not found to be genuine transactions, but we are unable to comprehend from a perusal of the orders of both of the lower authorities as to what resultant inquiries and the result thereof had led them to arrive at such a conclusion. We are afraid to

say that the orders of both the said lower authorities are silent on this issue. Be that as it may, it remains as a matter of fact that the A.O had specifically directed the assessee to produce the respective parties for examination, so that the genuineness and veracity of the respective purchase transactions could be established beyond any scope of doubt. We find that the assessee had absolutely failed to produce the aforementioned parties, as a result whereof the verification of the genuineness of the purchase transactions under consideration, which were in itself haunted by serious doubts in the backdrop of the information receipt from the Sales Tax Department, Maharashtra, could not be verified and thus brought to a logical end by the A.O. We further find that as observed by the A.O, though the assessee had during the course of the assessment proceedings placed on record the copies of the ledger accounts of the aforementioned parties and the bank statements indicating payments made to them, but however, despite specific directions the assessee had failed to place on record material which could go to prove the genuineness of purchase transactions to the hilt and dispel the doubts raised as regards the veracity of the same, viz. transportation receipts, delivery challans and confirmations of the supplier parties. We are of the considered view that now when the assessee had claimed to have made purchases from the aforementioned supplier parties and had debited its profit and loss account to the said extent, then the onus was cast upon the assessee to place on record documents which could go to evidence the genuineness and veracity of the purchase transactions. We are further of the view that now when there were serious allegations in respect of the purchase transactions claimed by the assessee to have been made from the aforementioned parties, therefore a much more heavy onus was liable to be discharged by the assessee in order to irrebuttably

evidence the genuineness and veracity of the purchase transactions under consideration. We find that the assessee had failed to substantiate the authenticity of the purchase transactions, and to the extent the material was placed on record by him, the same to our considered view was seriously falling short of the quality of onus which was required to be discharged by him. We further find that our aforesaid view that the transactions of purchase of goods as claimed by the assessee to have been made from the aforementioned parties could not be held to be genuine, further stands fortified from the very fact that the assessee had during the course of proceedings before the CIT(A) himself offered that the addition in his hands may be restricted to the profit element embedded in the purchase transactions under consideration, which may fairly be estimated within the range of 12.5% to 25%. We are of the considered view that not only the material placed on record by the assessee in his attempt to substantiate the genuineness of the purchase transactions is found to be seriously short of the quality of onus as stood cast upon him and thus does not inspire any confidence as regards the genuineness of the purchase transactions, but rather, the suo motto offer of the assessee for an addition within the range of 12.5% to 25% of the aggregate value of the purchase transactions under consideration towards profit involved in making of such purchases, safely can be characterized as an admission by the assessee that all was not well with the purchase transactions under consideration. We have given a thoughtful consideration to the facts of the case and are of the considered view that now when the assessee had failed to discharge the onus as stood cast upon him as regards proving the authenticity of the purchase transactions under consideration, therefore, the same without any choice had been held as ingenuine transactions by the

CIT(A). We are further of the considered view that the CIT(A) had fairly concluded that now when the sales/receipts of the assessee from the execution of the contracts had been accepted by the A.O, therefore, it was beyond comprehension that the assessee would have been able to execute the said contracts of painting, renovation and repair of the societies without purchasing the material. We are persuaded to be in agreement with the setting aside of the addition of the entire value of purchases claimed by the assessee to have been made from the aforementioned parties, and restricting of the same by the CIT(A) to the extent of the profit element involved in making of such purchases from unidentified parties operating in the open/grey market. We are further of the considered view that the CIT(A) after holding a conviction that the addition in the hands of the assessee was liable to be restricted to the extent of the profit involved in making of such bogus purchase, was thus left with no other alternative but to fairly estimate such profit in the hands of the assessee. We have deliberated on the facts involved in the present case and find that the estimation of the profit element involved in making of the purchase under consideration had fairly been adopted by the CIT(A) @25% after considering certain important factors, viz. (i). the gross profit declared by the assessee as deliberated upon by the CIT(A) in the backdrop of the profit percentage involved in the trade line of the assessee did not inspire much of confidence; and (ii). the assessee had himself offered that addition within the range of 12.5% to 25% of the aggregate value of the purchase transactions under consideration may be made as regards the profit embedded in respect of the purchase transactions under consideration. We have given a thoughtful consideration to the estimation of the profit element as regards the bogus purchases under consideration at 25% by the CIT(A), and are persuaded to be in

agreement with him. We are of the considered view that the CIT(A) after rejecting the books of account of the assessee, had therein deliberated on the gross profit of the assessee as against that reflected in the trade line being of the view that the same did not inspire much of confidence, had thus discarded the same by observing that the profit involved in the trade line of the assessee was found to be comparatively more. Thus, the aforesaid observations of the CIT(A) laid down the very foundation of his conviction that the purchases debited by the assessee in his books of account were inflated. We find that no attempt had been made by the Id. A.R before us to either dislodge the said observation of the CIT(A), or to prove that the same was perverse. We further are of the considered view that now when the assessee himself had come forth with an alternative offer that an addition towards profit involved in respect of the purchases transactions under consideration may be made, though with a rider that the same be restricted within the range of 12.5% to 25% of the aggregate value of the purchases involved, therefore, now when the CIT(A) after deliberating on the facts had in all fairness estimated the profit element @25%, which we find is within the range of the offer made by the assessee, therefore, the assessee cannot be permitted to turn around and agitate the estimation of the profit element to which he himself had agreed before the CIT(A). We though are not oblivious of the fact that the offer made by the assessee that the addition be restricted in his hands within the range of 12.5% to 25% of the aggregate value of the purchases was by way of an alternative contention raised by him, however, the making of such a concession cannot be backed out by the assessee after the same was considered by the CIT(A) in the process of estimation of the profit by him. We are unable to persuade ourselves to subscribe to the contention of the Id.

A.R that the CIT(A) had erred in estimating the profit in context of the purchase transactions under consideration @25% in the hands of the assessee. We also do not find force in the contention of the ld. A.R that as A.O had not allowed cross examination of the supplier parties, therefore, the addition made in the hands of the assessee was liable to be scrapped on the said count itself. We though find ourselves to be in agreement with the proposition of the ld. A.R that where adverse inferences are drawn in the hands of an assessee by relying on the statement of a third party, then not affording of cross examination of the said person despite request by the assessee would be fatal to the validity of the assessment proceedings. However, we are of the considered view that the case of the assessee before us does not fall within the all fours of the proposition as had been canvassed before us. We find that in the case of the present assessee, though the proceedings had been initiated by the A.O on the basis of the information gathered from the MVAT authorities that the assessee had taken accommodation entries from the aforementioned parties, but then, the A.O had not merely proceeded with and based the addition in the hands of the assessee on the basis of the said stand alone information itself. We find that the A.O after making independent inquiries and conclusively proving that the assessee had failed to substantiate the genuineness and veracity of the purchase transactions and therein discharge the onus as stood cast upon him, had only thereafter concluded that the purchase transactions under consideration were found to be ingenuine. We are of the considered view that no infirmity as regards sustaining of the observations of the A.O and the addition emerging there from does arise from the order of the CIT(A), solely for the reason that the assessee was not allowed cross examination of the aforementioned parties. We are of the

considered view that the contention of the assessee would have carried substantial force, if despite the fact that the assessee had discharged the primary onus as stood cast upon him as regards proving of the authenticity of the purchase transactions, the A.O however had made the addition on the basis of the statements of the aforementioned parties, without allowing any opportunity of cross examination to the assessee. We are of the considered view that as the assessee had failed to discharge the primary onus as stood cast upon him, which therein had led the A.O to draw adverse inferences as regards the genuineness of the purchases transactions under consideration, therefore, the contention of the ld. A.R that the addition made by the A.O was liable to be vacated on the very ground that no cross-examination of the aforementioned parties was not allowed to him, cannot be accepted. We thus, in the backdrop of our aforesaid observations are persuaded to be in agreement with the view taken by the CIT(A) and finding no reason to dislodge his well reasoned order, thus, uphold the same.

10. That the appeal of the assessee, marked as ITA No. 73/Mum/2017 and the appeal of the revenue, marked as ITA No. 233/Mum/2017, are dismissed.

11. We now take up the cross appeals of the assessee and the revenue for A.Y. 2011-12. The assessee vide his appeal marked as ITA No. 72/Mum/2017, had assailed the order of the CIT(A) by raising the following grounds of appeal before us:

- “1. *The learned Commissioner of Income Tax (Appeals) erred in confirming disallowance of purchases to the extent of 25% of Rs.68,97,619/- i.e. to the extent of Rs.17,24,405/- and in not deleting the entire disallowance as prayed for.*
2. *The learned Commissioner of Income Tax (Appeals) erred in not appreciating the factual matrix of the case.*

3. *Without prejudice to the above and in the alternative the learned Commissioner of Income Tax (Appeals) erred in not restricting the addition with reference to the gross profit of the appellant.*
4. *The appellant craves leave to add, alter or amend any of the grounds of appeal at any time of hearing.”*

The revenue on the other hand had challenged the order of the CIT(A) on the following grounds:

- “1. *On the facts and circumstances of the case and in law, whether, Ld. CIT(A) was justified in sustaining only an addition @ 25% profit rate on total purchases of Rs. 68,97,619/-made from 10 parties.*
2. *The appellant prays that the order of the Learned CIT(A) on the above grounds be set aside and that of the A.O be restored.*
3. *The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.*

The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing officer be restored.”

12. Briefly stated, the facts of the case are that the assessee had filed his return of income on 30.09.2011, declaring total income of Rs. 61,25,234/-. The return of income filed by the assessee was processed as such u/s 143(1) of the ‘Act’. The case of the assessee was reopened under Sec. 147, on the basis of the information received from the DGIT (Inv.), Mumbai that the assessee was one of the beneficiaries of the accommodation entries provided by some of the MVAT dealers who were indulging in issuing bogus sale/purchase bills.

13. That during the course of the assessment proceedings the A.O on the basis of the information received from the DGIT (Inv.), Mumbai, observed that the assessee had taken accommodation entries for purchases aggregating to Rs. 68,97,619/- from the following parties:-

| S. No. | Name of the Hawala Party | Bill Amount |
|--------------|------------------------------------|--------------------|
| 1. | Raj Traders | 7,038/- |
| 2. | Universal Trading Co. | 1,35,599/- |
| 3. | Vruksha Enterprises | 13,78,256/- |
| 4. | Hiten Enterprises | 8,42,668/- |
| 5. | Aarco Enterprises | 3,10,601/- |
| 6. | Rajshree Enterprises | 7,53,339/- |
| 7. | Kotsons Impex Pvt. Ltd. | 2,90,961/- |
| 8. | Ghatalia Steels/Devine Enterprises | 10,95,839/- |
| 9. | Shriyas marketing Agency | 7,38,737/- |
| 10. | Shree Ganesh Trading Co. | 13,44,581/- |
| Total | | 68,97,619/- |

14. The A.O after deliberating on the facts of the case, therein observed that as the assessee had failed to substantiate the genuineness and veracity of the aforesaid purchase transactions by either producing the aforementioned parties or by placing on record irrebutable documentary evidences fortifying the veracity of the said purchase transactions, therefore, made an addition of the entire value of purchases of Rs. 68,97,619/- in the hands of the assessee. That on appeal the CIT(A) though agreed with the A.O that the assessee had failed to prove the genuineness of the purchase transactions, but however, being of the view that as the assessee had purchased the goods, though not from the aforementioned bogus parties, but from the unidentified parties, therefore, concluded that the addition in the hands of the assessee was liable to be restricted to the extent the assessee had inflated the purchases. The CIT(A) on the basis of his aforesaid conviction restricted the addition in the hands of the assessee to the extent of profit element that was involved in making of

the purchases under consideration from the unidentified parties operating in the open/grey market, which was estimated by the CIT(A) @25% of the aggregate value of the purchases. That both the assessee and the revenue being aggrieved with the order of the CIT(A) had therein carried the matter in appeal before us by way of filing the present cross-appeals.

15. We find that the facts and the issue involved in the present cross appeals before us are the same as were involved in the cross appeals of the assessee and the revenue for A.Y. 2010-11, which had been adjudicated by us hereinabove, therefore, our order passed while disposing of the appeal of the assessee, marked as ITA No. 73/Mum/2017 and appeal of the revenue, marked as ITA No. 233/Mum/2017, for A.Y. 2010-11, shall apply *mutatis mutandis* for disposing of the present cross-appeals of the assessee and the revenue before us. We thus in terms of our observations recorded while disposing of the appeals of the assessee and the revenue for A.Y. 2010-11, dismiss the present cross appeals of the assessee and the revenue for A.Y. 2011-12.

16. That the appeal of the assessee, marked as ITA No. 72/Mum/2017 and the appeal of the revenue, marked as ITA No. 234/Mum/2017, are dismissed.

17. That both the appeals of the assessee and the revenue, marked as ITA No. 73/Mum/2017 and ITA No. 72/Mum/2017, and the appeals of the revenue, marked as ITA No. 233/Mum/2017 and ITA No. 34/Mum/2017, for A.Y. 2010-11 are A.Y.2011-12, respectively, are dismissed.

Order pronounced in the open court on 25/10/2017.

Sd/-
(Rajendra)
Accountant Member

Sd/-
(Ravish Sood)
Judicial Member

मुंबई Mumbai;दिनांक 25.10.2017

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
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.