

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

ITA No. 3905/Mum/2017  
(निर्धारण वर्ष / Assessment Year:2009-10)

DCIT-11(2)(1), Room No. 477, Aaykar Bhavan, M.K. Road, Mumbai-400 020	<b>बनाम/ Vs.</b>	M/s Shree Ganesh Retails Pvt. Ltd., 27, Hill Road, Near Parsi Agiyari, Bandra (W), Mumbai-400 050
स्थायी लेखा सं./जीआइआर सं./PAN No. AAJCS6073R		
(अपीलार्थी / <b>Revenue</b> )	:	(प्रत्यर्थी / <b>Assessee</b> )

अपीलार्थी की ओर से / <b>Revenue by</b>	:	Shri V. Jenardhanan, D.R
प्रत्यर्थी की ओर से / <b>Assessee by</b>	:	None

सुनवाई की तारीख / <b>Date of Hearing</b>	:	11.10.2017
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	25.10.2017

**आदेश / O R D E R**

**PER RAVISH SOOD, JUDICIAL MEMBER:**

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-18, Mumbai, dated 03.02.2017, which in itself arises from the order passed by the A.O u/s 143(3) r.w.s 147 of the 'Act',1961, dated 27.03.2015. The revenue assailing the order

passed by the CIT(A) had raised before us the following grounds of appeal:-

- “1. On the facts and circumstances of the case, the learned CIT(A) erred in restricting the disallowance to 12.5% of Rs.64,11,801/- in respect of bogus purchases without appreciating the fact that the Hon’ble Apex Court in the recent judgment in the case of N.K. Proteins Ltd (2017-TIOL-23-SC-IT) has decided the issue in favour of the revenue wherein the assessee was engaged in the trading activity.
2. The appellant prays that the order of the 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 grounds or add a new ground which may be necessary.”

2. Briefly stated, the facts of the case are that the assessee company which is engaged in the business of trading in readymade garments, hosiery, fabrics, shoes and allied items had filed its return of income on 30.09.2009, declaring total loss of Rs. 1,79,18,756. The return of income filed by the assessee was processed as such u/s 143(1) of the ‘Act’. That information was received by the A.O, that the assessee company had during the year under consideration obtained accommodation entries from certain entities which had been proclaimed by the Sales tax department as provider of accommodation bills, as under :-

Sr. No.	Particulars	Amount
1.	M/s Sheetal Trading Co.	Rs. 31,25,964/-
2.	M/s Payal Enterprises	Rs. 32,85,837/-
Total		Rs. 64,11,801/-

The case of the assessee on the basis of the aforesaid information was reopened by the A.O u/s 147 of the ‘Act’. The A.O in the course of the assessment proceedings in order to verify the genuineness of the aforesaid purchase transactions issued notices u/s 133(6) to the respective parties, therein calling upon them to furnish the requisite

detail in respect of the purchases claimed by the assessee to have been made from them. The aforesaid notices u/s 133(6) were however returned by the postal authorities with the remark 'left'. The A.O in the backdrop of the aforesaid facts thus called upon the assessee to furnish the requisite supporting evidence which could go to substantiate the genuineness and veracity of the purchase transactions which were claimed by the assessee to have been made from the aforementioned parties. The assessee in compliance to the directions of the A.O placed on record the copies of purchase bills, ledger accounts, bank statements etc. The A.O in the backdrop of the impeccable information received from the Sales tax department that the assessee had taken accommodation entries from the aforementioned hawala dealers, therefore, directed the assessee to produce the respective parties for necessary examination. However, the assessee failed to comply with the direction of the A.O and failed to produce the aforementioned parties before the A.O. The A.O not being satisfied with the documentary evidence which were placed on record by the assessee in its attempt to fortify the genuineness and veracity of the purchase transactions, and rather holding a strong conviction that merely making of the payments vide banking channels would not conclusively evidence the genuineness of the purchase transactions, therefore, characterized the purchase transactions as bogus transactions and disallowed the purchase expenses aggregating to Rs. 64,11,801/- claimed by the assessee to have been made from the aforementioned parties.

3. Aggrieved, the assessee assailing the order passed by the A.O carried the matter before the CIT(A). The CIT(A) after deliberating on the contentions of the assessee in the backdrop of the facts of the case, therein concluded that the assessee had failed to dislodge and

disprove the authenticity of the information received from MVAT authorities that the assessee had merely taken accommodation entries from the aforementioned hawala dealers and no genuine purchase transactions had ever taken place. The CIT(A) however not persuaded to be in agreement with the A.O that the entire purchase consideration of Rs. 64,11,801/- was liable to be disallowed, therein was of the view that as the sale transactions correlating to the aforementioned purchases had not been doubted and dislodged by the A.O, therefore, it could safely be concluded that the assessee had purchased the goods under consideration, though not from the aforementioned hawala parties, but from the open/grey market. The CIT(A) on the basis of his aforesaid conviction restricted the addition only to the extent of the profit element embedded in making of such purchases from the open/grey market. Thus, in the backdrop of the aforesaid observations the CIT(A) partly allowed the appeal of the assessee.

4. The revenue being aggrieved with the order of the CIT(A) had carried the matter in appeal before us. We find that the respondent assessee despite being intimated about the hearing of the appeal had neither put up an appearance, nor filed any application seeking adjournment before us. We thus in the backdrop of the aforesaid facts, being left with no other alternative, therefore, proceed with in terms of Rule 25 of the Appellate Tribunal Rules, 1963, and therein dispose of the appeal after hearing the appellant revenue. The Learned Departmental Representative (for short 'D.R.')

submitted that the A.O had rightly disallowed the entire purchases aggregating to Rs. 64,11,801/- which were claimed by the assessee to have been made from the aforementioned bogus parties, viz. M/s Sheetal Trading Co. and M/s Payal Enterprises. It was further submitted by the Ld. D.R. that the CIT(A) had erred in restricting the disallowance to the extent

of 12.5% of the total purchases of Rs. 64,11,801/-. The Ld. D.R in order to drive home his aforesaid contention relied upon the order passed by the **Hon'ble Supreme Court** while dismissing the 'Special Leave Petition' ('SLP') of the assessee in the case of **N.K Proteins Ltd. Vs. DCIT [SLP(C)...CC No(s).769 of 2017]**, and submitted that the addition of the entire amount of the 'bogus purchases' of Rs. 64,11,801/- was called for in the hands of the assessee. It was submitted by the ld. D.R that the CIT(A) had erred in restricting the addition in the hands of the assessee only upto 12.5% of the value of the purchases under consideration. It was thus submitted by the Ld. D.R. that the order of the CIT(A) may be set aside and that of the A.O be restored.

5. We have heard the Ld. D.R., 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 in the backdrop of the fact that the notices issued by the A.O to both of the aforementioned parties were returned by the postal authorities with the remarks 'left', the very existence of the said parties came under serious doubt. We find that it remains as a matter of fact that the assessee even otherwise had failed to substantiate the genuineness and veracity of the aforementioned purchase transactions on the basis of irrefutable documentary evidences. We further find that despite specific directions of the A.O, the assessee had failed to produce the aforementioned parties for examination by the A.O. We find ourselves to be in agreement with the A.O that the assertion of the assessee that it had made the payments to the aforementioned parties towards the purchase consideration through banking channel would not conclusively prove the authenticity of the aforementioned purchase transactions. We further

are in agreement with the view taken by the CIT(A) that as the consumption/sale of the goods under consideration had not been doubted by the A.O, therefore, it could safely be concluded that the assessee had made purchases of the goods under consideration, though not from the aforementioned parties, but from the open/grey market, as a result whereof the addition in the hands of the assessee was liable to be restricted to the extent of the profit element that would be involved in making of the purchases from the open/grey market. We have given a thoughtful consideration to the reliance placed by the ld. D.R on the order passed by the **Hon'ble Supreme Court** while dismissing the 'Special Leave Petition' ('SLP') of the assessee in the case of **N.K Proteins Ltd. Vs. DCIT [SLP(C)...CC No(s).769 of 2017]**, and are of the considered view that the same is distinguishable as against the facts involved in the case of the present assessee. We find that the reliance placed by the ld. D.R on the order of the **Hon'ble Supreme Court** while dismissing the 'SLP' of the assessee in the case of **N.K Proteins Ltd. (supra)** is distinguishable on facts. We are of the considered view that in the case of **N.K Proteins Ltd. (supra)** search proceedings were conducted on the assessee, in the course of which certain signed blank cheques and vouchers of the parties from whom the assessee claimed to have been making purchases were found. It was thus in the backdrop of the aforesaid factual matrix, that the revenue held that the cash deposited in the bank accounts of the said respective supplier parties was the Undisclosed income of the assessee, and the purchases made there from, as bogus. We are of the considered view that as observed by us hereinabove, the facts involved in the case of the present assessee are absolutely distinguishable as against the peculiar and irrebutable facts as had emerged in the case of **N.K Proteins Ltd. (supra)**. We are thus of the considered view that the judicial pronouncement relied

upon by the Ld. D.R. being distinguishable on facts as against those involved in the case before us, therefore, the same would not support his contentions. We are further of the considered view that the CIT(A) taking cognizance of the facts involved in the case of the assessee, had in all fairness by relying on the judgment of the **Hon'ble High Court of Gujarat** in the case of **CIT Vs. Simit P. Sheth (2013) 38 Taxmann. Com, 385 (Guj)** had rightly estimated the suppressed profit involved in making of the aforesaid bogus purchases to the extent of 12.5% of the aggregate of the purchases which were claimed by the assessee to have been made from the aforementioned parties. We find no infirmity in the aforesaid well reasoned order of the CIT(A) and finding ourselves as being in agreement with the view taken by him, thus uphold his order.

6. The appeal of the revenue is dismissed.

Order pronounced to the open court on 25/10/2017

Sd/-  
(Rajendra)  
Accountant Member  
मुंबई Mumbai;दिनांक 25.10.2017

Sd/-  
(Ravish Sood)  
Judicial Member

**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**