

**IN THE INCOME TAX APPELLATE TRIBUNAL 'F' BENCH, MUMBAI
BEFORE SHRI B.R. BASKARAN, AM AND SHRI RAVISH SOOD, JM**

आयकर अपील सं./ I.T.A. Nos. 125 to 127/Mum/2016

(निर्धारण वर्ष / Assessment Year's: 2009-10, 2010-11 & 2011-12)

Vinod H. Sanghvi, 297, Tardeo, 1 st Floor, Willie Mansion; Opp. Bank Of India Mumbai- 400 007	बनाम/ Vs.	DCIT-15(2) (Old), ACIT 19(3) (Present) 2 nd Floor, Matru Mandir, Tardeo Road, Mumbai-400 007
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No.		AFMPS3101F
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

आयकर अपील सं./ I.T.A. Nos.121 to 123/Mum/2016

(निर्धारण वर्ष / Assessment Years: 2009-10, 2010-11 & 2011-12)

DCIT-15(2) (Old), ACIT 19(3) (Present) 2 nd Floor, Matru Mandir, Tardeo Road, Mumbai-400 007.	बनाम/ Vs.	Vinod H. Sanghvi, 297, Tardeo, 1 st Floor, Willie Mansion; Opp. Bank Of India Mumbai- 400 007
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No.		AFMPS3101F
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Assessee by	:	Shri. Raj Kumar Singh
प्रत्यर्थी की ओर से/ Revenue by	:	Ms. Pooja Swaroop

सुनवाई की तारीख/ Date of Hearing	:	25.10.2017
घोषणा की तारीख / Date of Pronouncement	:	27.10.2017

आदेश / **ORDER**

PER RAVISH SOOD, JUDICIAL MEMBER:

The present set of cross appeals filed by the assessee and the revenue are directed against the consolidate order passed by the CIT(A)-30, Mumbai, in the case of the aforementioned assessee, viz. Vinod H. Sanghvi for A.Y. 2009-10, 2010-11 and A.Y. 2011-12, each dated. 15.10.2015, which in itself arises from the respective assessment orders passed under Sec.143(3) r.w.s 147, dated. 21.03.2014 for A.Y. 2009-10; under Sec. 143(3), dated. 15.03.2013 for A.Y. 2010-11 and under Sec. 143(3) r.w.s 147, dated 21.03.2014 for A.Y. 2011-12. That as common issues are involved, therefore, the said respective appeals are taken up together and disposed of by way of a consolidate order. That as the CIT(A) had taken the case of the assessee for A.Y. 2010-11 as the lead case, therefore, we shall first take up the cross appeals of the assessee and the revenue for A.Y. 2010-11. The assessee vide his appeal marked as ITA No. 126/Mum/2016 had assailed the order of the CIT(A) by raising the following grounds of appeal before us:

- “1. *That on the facts and circumstances of the case and in law the ld. Assessing officer has erred in making an addition u/s 69C of Rs. 3,66,65,814/- in respect of peak amount of alleged bogus purchases from various parties without giving reasonable & adequate opportunity and also without properly appreciating the facts of the case & applicable tax law provisions. Thus appellant prays that alleged addition made at Rs. 3,66,65,814/- u/s 69C being wrong on facts & bad in law required to be deleted.*

2. *That the appellant craves the leave to add, alter, amend and substitute and to raise new or additional grounds of appeal at the time of hearing.”*

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

- “1. *Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) was justified in confirming addition @ 17.5% of total purchases held as bogus.*
2. *The appellant prays that the order of the Learned CIT(A) on the above ground be set aside and that of the A.O be restored.*
3. *The appellant craves leave to amend or take any ground or add a new ground which may be necessary.”*

2. Briefly stated, the facts of the case are that the assessee who is engaged in the business of dealing in ferrous and non-ferrous metals had filed his return of income for A.Y. 2010-11 on 30.09.2010, declaring total income of Rs. 14,37,324/-. The return of income of the assessee was processed as such under Sec. 143(1) of the ‘Act’. The case of the assessee was thereafter taken up for scrutiny assessment under Sec. 143(2).

3. That during the course of the assessment proceedings it was observed by the A.O that the assessee had claimed to have made purchases from 12 parties whose names figured in the list of persons/dealers who after detailed investigation were blacklisted by the Sales tax authorities of the Government of Maharashtra for being engaged in the business of providing accommodation entries. The A.O in the backdrop of the aforesaid facts, in order to verify the genuineness and veracity of the purchases claimed by the assessee to have been made from the said parties issued Notices under 133(6) to them, which however were returned by the postal authorities either with the remarks ‘Not known’, ‘Left’ or ‘No such address’, or in certain

cases the same were served but were not complied with by the parties. The details of the said parties alongwith the fate of the notices forwarded to them under Sec. 133(6), is as under:

S. No.	Name of the Party	Amount	Remarks [as regards Notices sent u/s 133(6)]
1.	M/s Aman Impex	16,63,457	Not Known
2.	M/s Chair Impex Trading Pvt. Ltd.	19,87,336	Not Claimed
3.	M/s Chirag Steel Centre	10,41,003	Not Known
4.	M/s Devang Metals	10,32,140	Left
5.	M/s Kanak Steel (India)	17,64,703	Not Known
6.	M/s Kanak Guru Tubes & Metals Pvt. Ltd.	3,25,47,465	Not Known
7.	M/s Kwality Enterprises	11,62,512	No Reply
8.	M/s Manbhadra Metal Industries	24,55,947	Not Known
9.	M/s Ramani Metal Corporation	43,73,564	No reply
10.	M/s SK Engg. Co.	20,52,484	No reply
11.	M/s Sunny International	11,73,182	No reply
12.	M/s Valiant Steel Engg Co.	35,40,680	Not Known
	Total	5,47,94,473	

4. 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 them, viz. (i) copy of ledger accounts; (ii) purchase bills; (iii) copy of delivery challans; (iv) evidence in respect of transportation of goods; (v) copy of the bank statement; and (v) name of the transporter. The A.O further during the course of the assessment proceedings once again directed the assessee to produce the aforesaid parties for examination so that the authenticity of the purchase transactions could be verified to the hilt. The assessee in compliance to the 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 him. The A.O after deliberating on the incomplete information that was placed on record by the assessee, therein concluded that the same did not inspire any confidence as regards the genuineness and veracity of the purchase transactions. The A.O specifically observed that the assessee had absolutely failed to divulge the details as regards payment of the transport charges pertaining to delivery of the goods under consideration. The A.O further observed that the assessee had been woefully silent about the specific finding of the postal authorities that the aforementioned parties were not available at the addresses given by the assessee. That in the backdrop of the aforesaid facts the A.O concluded that the assessee by neither producing the aforesaid parties for examination before him, nor placing on record the documentary evidence to substantiate the genuineness and veracity of the purchase transactions, had thus, failed to prove the veracity of the purchase transactions. However, the A.O observed that as the assessee had been able to correlate the quantitative details, therefore, it could safely be concluded that the assessee had made the purchases of the goods under consideration, though not from the aforementioned parties, but from certain unidentified parties in cash. The A.O held a conviction that the assessee after making cash purchases of the goods under consideration, had thus, with the intent to route the purchase and sale of the said goods through its books of account had taken accommodation entries from the aforementioned parties. The A.O observed that despite sufficient opportunity the assessee had failed to place on record the source from where the goods under consideration were purchased by him. Thus, in the backdrop of the aforesaid facts the A.O taking support of the order of the ITAT, Ahmedabad Bench in

the case of M/s Vijay Proteins Ltd. Vs. ACIT (1996) 58 ITD 428, therein held a conviction that an addition in respect of peak amount of investment made by the assessee for making of purchases of the aforementioned goods from unidentified parties, would be justified. The A.O calculated the peak addition in the hands of the assessee, on the following basis :

- a). Cash was paid by the assessee on the date on which bogus purchase bills had been entered in the books of account;
- b). Cash was received back by the assessee on the date on which cheque was issued by it to the bogus parties; and
- c). Ledger accounts of all the abovementioned hawala parties were merged in order to work out the actual cash receipts and payments made by the assessee on day to day basis.

5. The A.O issued a 'Show Cause' notice (for short 'SCN') to the assessee to explain that now when he had failed to establish the authenticity of the purchase transactions, therefore, why an addition of the peak credit addition of Rs. 3,66,65,814/- may not be made in its hands under Sec. 69C of the 'Act'. The A.O after deliberating on the explanation of the assessee, however, did not find favor with the same, and thus taking cognizance of the fact that the assessee had failed to discharge the onus as stood cast upon him to substantiate the genuineness and veracity of the purchases which were claimed to have been made from the aforementioned parties, therefore, on the basis of his said conviction made an addition of Rs. 3,66,65,814/- in the hands of the assessee.

6. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) after deliberating on the contentions of the assessee

as regards the authenticity of the purchase transactions, however, was not persuaded to accept the same. The CIT(A) taking cognizance of the fact that the notices issued under Sec. 133(6) to the aforementioned parties from whom the assessee had purportedly made purchases were returned by the postal authorities with the remarks “not known”, “left” and “unclaimed”. The CIT(A) observed that the assessee despite being afforded sufficient opportunity had failed to produce the aforementioned parties for examination before the A.O. The CIT(A) further took cognizance of the fact that the assessee had failed to place on record the purchase orders, transportation bills, octroi receipts, weighing bills, goods receipt notes (GRN), subsequent sale/manufacturing details, despite sufficient opportunity having been afforded to him during the course of the assessment proceedings. The CIT(A) observed that now when the Sales tax Department had classified the aforementioned parties as Hawala dealers and intimated to the Income-tax department that the assessee was one of the beneficiary, therefore, a very heavy onus was cast upon the assessee to dislodge the said observations and prove on the basis of infallible evidence that he had made genuine purchases from the said parties. The CIT(A) observed that the assessee had failed to discharge the onus as stood cast upon him and could not prove the genuineness and veracity of the purchase transactions under consideration to the hilt. The CIT(A) took strong cognizance of the fact that the assessee had failed to produce the copies of consignments, if any, received from the transport contractor showing that the material purchased from the consignors was actually delivered to him and freight was paid on the same. The CIT(A) further deliberated on the fact that the assessee had failed to place on record documentary evidence which could go to prove the genuineness and veracity of the aforesaid purchase transactions, viz. goods consignment notes; transport bills and the

delivery challans issued by the aforementioned parties or octroi receipts issued to substantiate delivery of goods to the assessee. Thus, in the backdrop of his aforesaid observations the CIT(A) concluded that the assessee had failed to place on record independent and reliable evidence to prove complete trail as regards movement of consignment from the aforementioned parties to the place of the assessee. The CIT(A) being of the view that the fact that the payments were made by the assessee to the aforementioned parties vide banking channels would not conclusively prove the genuineness and veracity of the said purchase transactions. The CIT(A) further took note of the fact that the perusal of the bills/invoices revealed that the column for vehicle number was left blank in each of the delivery challan/invoice. The CIT(A) taking support of host of judicial pronouncements concluded that now when the assessee had claimed to have made purchases from the aforementioned parties, therefore, the onus was cast upon him to substantiate the veracity of the said purchases transactions. The CIT(A) being of the view that the question of rejection of the books of account of the assessee under Sec. 145(3) would normally arise only when the profitability ratio shown by the assessee was not accepted by the A.O having regard to the profits declared by the assessee in the preceding years and the profits shown by other assesses in the same line of business or certain major discrepancies/defects were noticed in the books of account of the assessee, therefore, on the basis of his said observations concluded that it was not obligatory on the part of the A.O to have rejected the books of account of the assessee before characterizing the purchases as ingenuine and disallowing the same in the hands of the assessee. The CIT(A) further being of the view that as the assessee had not discharged the primary onus as stood cast upon him to prove the genuineness and veracity of the purchase transactions under

consideration, therefore, he could not assail the validity of the assessment for the reason that no cross-examination of the aforementioned parties was allowed to him.

7. The CIT(A) found himself as being in agreement with the view of the A.O that the assessee had failed to substantiate the genuineness and veracity of the purchase transactions and could not disprove the findings of the A.O regarding the non-existence of the parties. However, the CIT(A) observed that now when the A.O had not doubted the genuineness of the sales, therefore, he could not have gone ahead and made addition of the peak investment in making of the said purchases by the assessee. The CIT(A) thus concluded that now when it remained as a matter of a conceded fact that the assessee had made purchases of the goods under consideration, though not from the aforementioned bogus parties, but from certain unidentified source, therefore, the addition in the hands of the assessee was liable to be restricted only to the extent of the profit element that would be involved in making of such purchases. The CIT(A) in support of his aforesaid conviction relied on the judgment of the **Hon'ble High Court of Gujarat** in the case of **Bholanath Polyfab Pvt. Ltd. 355 ITR 290 (Guj)**. The CIT(A) in the backdrop of his aforesaid observations deliberated on the aspect of quantification of the estimated profit element in respect of the said bogus purchase transactions. The CIT(A) taking cognizance of the observations of the **Hon'ble Gujarat High Court** in the case of **CIT Vs. Simit P. Sheth (2013) 38 taxmann.com 385 (Guj)**, therein observed that the Hon'ble High Court had concluded that no uniform yardsticks could be applied to estimate the rate of profit, as the same varied with the nature of business. The CIT(A) in the backdrop of his aforesaid deliberations estimated the profit element in the hands of the assessee @17.5%. The CIT(A) further taking cognizance of the order of the ITAT, Mumbai, in

the case of Madukant B Gandhi Vs. ITO in ITA No. 1950/Mum/2009; dated 23/02/2010, therein further directed the A.O to reduce the profit that was already declared by the assessee on the aforesaid purchases and reduce the same from the estimated net profit of 17.5% on the purchases made from the said twelve parties. Thus, the CIT(A) on the basis of his aforesaid observations partly allowed the appeal of the assessee.

8. Both the assessee and revenue being aggrieved with the order of the CIT(A) had carried the matter in appeal before us. The Id. Departmental representative (for short 'D.R') taking us through the facts of the case submitted that the A.O after concluding that the assessee had not made any purchases from the aforementioned bogus parties had thus in all fairness made an addition of the peak credit of the investment of the assessee towards making of purchases from certain unidentified sources. It was submitted by the Id. D.R that though the CIT(A) had accepted that no purchases were made by the assessee from the abovementioned bogus parties, but however, he had erred in setting aside the addition of peak investment of Rs. 3,66,65,814/- and had wrongly restricted the same to 17.5% of the said bogus purchases, subject to a further relief of the profit that had already been disclosed by the assessee on the said purchases. The Id. D.R submitted that as the CIT(A) had failed to appreciate the facts of the case in the right perspective, therefore, his order may be set aside and that of the A.O be restored. Per Contra, the Ld. Authorized representative at the very outset submitted that as the assessee had duly substantiated the genuineness of the purchase transactions on the basis of documentary evidences, viz. stock register, delivery challans, confirmations etc. of the supplier parties, therefore, no disallowance of any part of the said purchases was called for in the

hands of the assessee. However, on a specific query by the bench the ld. A.R accepted that there was no compliance by either of the parties to notices issued under Sec. 133(6). Alternatively, the ld. A.R submitted that as during the year under consideration the rate of VAT on ferrous and non-ferrous items in which the assessee was trading was 4%, therefore, even if the genuineness of the purchase transactions was to be disbelieved, the addition was liable to be restricted to the extent of VAT of 4% of the value of the purchases under consideration. The ld. A.R to support his aforesaid contention as regards the rate of VAT as was applicable during the year under consideration, therein drew our attention to the purchase invoices (Page 38-39) of his 'Paper book-1' (for short 'APB-1') wherein the VAT rates were reflected at 4%.

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 from a perusal of the records it can safely be gathered that the assessee had failed to substantiate the genuineness and veracity of the purchase transactions under consideration. We are of the considered view that the information received by the A.O from the Sales Tax Authorities, Government of Maharashtra that the parties under consideration were engaged in providing accommodation entries without any actual sale of the goods, as accepted by them in their respective statements and affidavits filed with the sales tax authorities, thus, did cast a very heavy onus on the assessee to substantiate the authenticity of purchases which were claimed by the assessee to have been made from them. We are further of the view that the returning by the postal authorities of the notices issued u/s 133(6) to the aforementioned parties by the A.O, with the remarks "not known", "left" and

“unclaimed”, further fortified the fact that they were non-existent and bogus parties. We find ourselves to be in agreement with the observations of the lower authorities that even otherwise the assessee had failed to substantiate the genuineness and veracity of the purchase transactions by not only failing to produce the parties for examination before the A.O, but even by failing to place on record irrefutable documentary evidence to substantiate the authenticity of the purchase transactions. 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, copies of the purchase bills and the bank statements indicating payments made to them, but however, despite specific directions the assessee had failed to place on record material as was called for by the A.O to prove the genuineness of purchase transactions to the hilt and dispel the doubts raised as regards the veracity of the same, viz. transportation details, documents evidencing delivery of goods at assesses place, details of the transport contractor who had delivered the goods etc. We are in agreement with the view of the CIT(A) 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 irrebutably 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 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 of the assessee had been accepted by the A.O, therefore, it could safely be concluded that the assessee had purchased the goods, though not from the aforementioned bogus parties, but from unidentified sources. We are persuaded to be in agreement with the CIT(A) that as the sales of the assessee had not been doubted, therefore, the A.O could not have made an addition towards peak investment in the hands of the assessee. We agree with the view of the CIT(A) that the addition in the hands of the assessee was liable to be restricted only to the extent of the profit element involved in making of such purchases by the assessee from the unorganized sector. We have further given a thoughtful consideration to the estimation of the profit element involved in making of such purchases by the assessee from the unidentified suppliers operating in the open/grey market. We are of the considered view that the assessee by making the purchases from the open/grey market would had procured the goods at a lower rate, i.e by saving on the VAT liability, cash discounts and certain other factors, as in comparison to the price at which the same would be available in the organized sector. We find that as the VAT involved on ferrous and non-ferrous items during the year under consideration was 4%, therefore, keeping in view the other monetary benefits which the assessee as observed by us hereinabove

would had benefited from by procuring the goods from the open/grey market, the same could safely be taken at an aggregate figure of 8%. We thus, in the backdrop of our aforesaid observations direct the A.O to restrict the addition in the hands of the assessee to 8% of the aggregate value of the purchases of 5,47,94,473/- (as tabulated hereinabove) claimed by the assessee to have been made from the aforementioned parties. We thus modify the order of the CIT(A) to the extent of estimation of the profit element involved in making of the purchases under consideration.

10. That the appeal of the assessee for A.Y 2010-11, marked as ITA No. 126/Mum/2016 is partly allowed and the appeal of the revenue, marked as ITA No. 122/Mum/2016 is dismissed.

ITA No. 125/Mum/2016
(Assesses appeal)
&
ITA No. 121/Mum/2016
(Revenues appeal)

A.Y. 2009-10

11. We shall now take up the cross appeals of the assessee and the revenue for A.Y. 2009-10. The assessee vide his appeal marked as ITA No.125/Mum/2016, had assailed the order of the CIT(A) by raising the following grounds of appeal before us:

- “1. *That on the facts and circumstances of the case and in law the ld. Assessing officer has erred in making disallowance u/s 69C of Rs. 1,86,43,641/- on account of purchases from ungenune parties and the ld. CIT(A) has erred in not deleting the said entire addition but has estimated disallowance on account of alleged bogus purchases @ 17.5% of such purchases, net of gross profit declared by the assessee appellant in accounts. In view of the same appellant prays that the alleged estimated disallowance confirmed by the ld. CIT(Appels) at Rs. 30,67,611/- being wrong on facts and bad in law, therefore the same may kindly be deleted.*

2. *That the appellant craves the leave to amend , alter, substitute and or to raise new or additional grounds of appeal at the time of hearing.”*

The revenue on the other hand had vide its appeal, marked as ITA No. 121/Mum/2016 had challenged the order of the CIT(A) on the following grounds:

- “1. *Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) was justified in confirming addition @ 17.5% of total purchases held as bogus.*
2. *The appellant prays that the order of the Learned CIT(A) on the above ground be set aside and that of the A.O be restored.*
3. *The appellant craves leave to amend or take any ground or add a new ground which may be necessary.”*

12. Briefly stated, the facts of the case are that the assessment under Sec. 143(3) was framed in the hands of the assessee on 12.12.2011, determining his total income at Rs. 11,80,720/-. The case of the assessee was reopened under Sec. 147, on the basis of the information received from the Sales Tax Authorities, Government of Maharashtra that the assessee was one of the beneficiaries of the accommodation entries provided by some of the MVAT dealers who were indulging in providing accommodation entries.

13. That during the course of the assessment proceedings the A.O on the basis of the aforesaid information 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 Party	Amount	Remarks [as regards Notices sent u/s 133(6)]
1.	G.K Industrial Corporation	1027709	No reply to notice u/s 133(6) received till date
2.	P M Steel Alloys	48672	No reply to notice u/s 133(6) received till date
3.	Vijay Industries	630433	No reply to notice u/s 133(6) received till date
4.	Manibhadra Metal Industries	1438140	No reply to notice u/s 133(6) received till

			date
5.	R K Metal	1146704	No reply to notice u/s 133(6) received till date
6.	Reliable Metal (India)	245775	No reply to notice u/s 133(6) received till date
7.	Nerolac Metal (India)	555241	No reply to notice u/s 133(6) received till date
8.	Aman Impex	3065093	No reply to notice u/s 133(6) received till date
9.	S K Engineering Co.	9356940	No reply to notice u/s 133(6) received till date
10.	Moksha Metals Pvt. Ltd.	803563	No reply to notice u/s 133(6) received till date
11.	Malwa Metal Corpn.	829243	No reply to notice u/s 133(6) received till date
12.	Shree Keshar Impex Metals Private Ltd.	2454905	No reply to notice u/s 133(6) received till date
	Total	2,16,02,418	

14. The A.O after deliberating on the facts of the case, being of the view 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 irrefutable documentary evidences fortifying the veracity of the said purchase transactions, therefore, made an addition of the Peak Investment of Rs. 1,86,43,641/-, which as per the A.O was made by the assessee towards making of purchases from the unidentified suppliers from the sources which were only to the knowledge 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 the profit element that was involved in

making of the purchases under consideration from the unidentified parties operating in the open/grey market. The CIT(A) in the backdrop of his aforesaid observations estimated the profit element @17.5% of the aggregate value of the purchases claimed by the assessee to have been made from the aforesaid parties, subject to a further relief of the profit that had already been disclosed by the assessee on the said purchases. That both the assessee and the revenue being aggrieved with the order of the CIT(A) had carried the matter in appeal before us by way of filing the present cross-appeals.

15. We find that as 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. 126/Mum/2016 and appeal of the revenue, marked as ITA No. 122/Mum/2016, 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, therefore, direct the A.O to restrict the addition in the hands of the assessee to 8% of the aggregate value of the purchases of 2,16,02,418/- (as tabulated hereinabove) claimed by the assessee to have been made from the aforementioned parties. We therefore in light of our aforesaid observations modify the order of the CIT(A) to the extent of estimation of the profit element involved in making of the purchases under consideration.

16. That the appeal of the assessee for A.Y 2009-10, marked as ITA No. 125/Mum/2016 is partly allowed and the appeal of the revenue, marked as ITA No. 121/Mum/2016 is dismissed.

ITA No. 127/Mum/2016
(Assesses appeal)
&
ITA No. 123/Mum/2016
(Revenues appeal)

A.Y. 2011-12

17. We shall 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. 127/Mum/2016, had assailed the order of the CIT(A) by raising the following grounds of appeal before us:

- “1. That on the facts and circumstances of the case and in law the ld. Assessing officer has erred in making disallowance u/s 69C of Rs. 76,92,768/- on account of purchases from ungenune parties and the ld. CIT(A) has erred in not deleting the said entire addition but has estimated disallowance on account of alleged bogus purchases @ 17.5% of such purchases, net of gross profit declared by the assessee appellant in accounts. In view of the same appellant prays that the alleged estimated disallowance confirmed by the ld. CIT(Appeals) at Rs. 12,20,251/- being wrong on facts and bad in law, therefore the same may kindly be deleted.
2. That the appellant craves the leave to amend , alter, substitute and or to raise new or additional grounds of appeal at the time of hearing.”

The revenue on the other hand had vide its ITA No. 123/Mum/2016 challenged the order of the CIT(A) on the following grounds:

- “1. Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) was justified in confirming addition @ 17.5% of total purchases held as bogus.
2. The appellant prays that the order of the Learned CIT(A) on the above ground be set aside and that of the A.O be restored.
3. The appellant craves leave to amend or take any ground or add a new ground which may be necessary.”

18. Briefly stated, the facts of the case are that the assessee had filed his return of income for A.Y. 2011-12 on 29.09.2011, declaring total income of Rs. 18,33,754/-. The return of income filed by the

assessee was processed as such under Sec. 143(1) of the 'Act'. The case of the assessee was reopened under Sec. 147 on the basis of information received from the Sales Tax Authorities, Government of Maharashtra that the assessee was one of the beneficiaries of the accommodation entries provided by some of the MVAT dealers who were indulging in providing accommodation entries.

19. That during the course of the assessment proceedings the A.O on the basis of the aforesaid information observed that the assessee had taken accommodation entries for purchases aggregating to Rs. 93,88,570/- from the following parties:-

S. No.	Name of the Party	Amount	Remarks [as regards Notices sent u/s 133(6)]
1.	Veer Industries	154856	Return undelivered by the postal authorities.
2.	Ratandeep Tubes	182769	Return undelivered by the postal authorities.
3.	Sunshine Enterprises	298799	Return undelivered by the postal authorities.
4.	Sunidhi Metal	729961	Return undelivered by the postal authorities.
5.	Champion Steel (India)	300425	Return undelivered by the postal authorities.
6.	Chirag Steel Centre	752180	Return undelivered by the postal authorities.
7.	Darshat Trading Pvt. Ltd.	291329	Return undelivered by the postal authorities.
8.	S K Engineering Co.	1213542	Return undelivered by the postal authorities.
9.	Good Luck Metal mpex	312000	Return undelivered by the postal authorities.
10.	Bright Steel India	473170	Return undelivered by the postal authorities.
11.	Rajendra Impex	607116	Return undelivered by the postal authorities.
12.	Navkar Impex	1371299	Return undelivered by the postal authorities.
13.	Pioneer Enterprises	2701124	Return undelivered by the postal authorities.
	Total	Rs. 93,88,570	

20. The A.O after deliberating on the facts of the case, therein being of the view 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 irrefutable documentary evidences fortifying the veracity of the said purchase transactions, therefore, made an addition of the Peak Investment of Rs. 76,92,768/- which as per the A.O was made by the assessee towards making of purchases from the unidentified suppliers. 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 the profit element that was involved in making of the purchases under consideration from the unidentified parties operating in the open/grey market. The CIT(A) estimated the profit element involved in making of such purchases @17.5% of the aggregate value of the purchases claimed by the assessee to have been made from the aforesaid parties, subject to a further relief of the profit that had already been disclosed by the assessee on the said purchases. That both the assessee and the revenue being aggrieved with the order of the CIT(A) had carried the matter in appeal before us by way of filing the present cross-appeals.

21. We find that as 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. 126/Mum/2016 and appeal of the revenue, marked as ITA No. 122/Mum/2016, 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, therefore, direct the A.O to restrict the addition in the hands of the assessee to 8% of the aggregate value of the purchases of Rs. 93,88,570/- (as tabulated hereinabove) claimed by the assessee to have been made from the aforementioned parties. We thus modify the order of the CIT(A) to the extent of estimation of the profit element involved in making of the purchases under consideration.

22. That the appeal of the assessee for A.Y 2011-12, marked as ITA No. 127/Mum/2016 is partly allowed and the appeal of the revenue, marked as ITA No. 123/Mum/2016 is dismissed.

23. That all the three appeals of the assessee, marked as ITA No. 125/Mum/2016, 126/Mum/2016 and 127/Mum/2016 for A.Y. 2009-10, A.Y. 2010-11 and A.Y. 2011-12 are partly allowed, while for all the three appeals of the revenue, marked as ITA No. 121/Mum/2016, 122/Mum/2016 and 123/Mum/2016 for A.Y. 2009-10, A.Y. 2010-11 and A.Y. 2011-12 are dismissed.

Order pronounced in the open court on 27/10/2017.

Sd/-

(B.R Baskaran)
Accountant Member

Sd/

(Ravish Sood)
Judicial Member

मुंबई Mumbai; दिनांक 27/10/2017

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.