

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "E" MUMBAI**

**BEFORE SHRI D.T. GARASIA (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 3134/MUM/2016  
Assessment Year: 2008-09**

**&**

**ITA No. 3135/MUM/2016  
Assessment Year: 2010-11**

ITO-29(2)(4)  
Room No. 205, 2<sup>nd</sup> floor,  
C-11 Bldg.,  
Pratyakshakar Bhavan,  
Bandra Kurla Complex,  
Bandra(E),  
Mumbai-400051

Vs.

Mr. Navin J. Doshi,  
D-705 Kalp Nagari,  
Balrajeshwar Road,  
Mulund-W  
Mumbai-400080.

**Appellant**

**PAN No. ADDPD0288P  
Respondent**

Revenue by : Mr. T.A. Khan, DR  
Assessee by : None

Date of Hearing : 10/10/2017  
Date of pronouncement : 30/10/2017

**ORDER**

**PER N.K. PRADHAN, A.M.**

The captioned appeals filed by the Revenue are directed against the order of the Commissioner of Income Tax (Appeals)-40, Mumbai and arise out of the assessment completed for AY 2008-09 & AY 2010-11 u/s 143(3) r.w.s. 147 of the Income Tax Act 1961 (the 'Act'). As common

issues are involved, we are proceeding to dispose them off through a consolidated order for the sake of convenience.

2. The grounds of appeal filed by the Revenue read as under:

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition u/s 69C to Rs.27,26,572/- in AY 2008-09 and Rs.39,21,660/- in AY 2010-11.
2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that notices u/s 133(6) issued to the parties from whom the alleged bogus bills were obtained were returned unserved by post and also, the assessee failed to produce the parties for verification.
3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that the assessee failed to prove the genuineness of the purchases.
4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition u/s 69C overlooking the explicit findings of the investigation carried out by the Sales Tax Department corroborated by the enquiries of the Assessing Officer.

3. Facts being similar, we begin with the AY 2008-09. Briefly stated, the facts of the case are that the assessee filed his return of income for the above assessment year on 24.09.2008 declaring total income of Rs.3,07,930/-. The same was processed u/s 143(1). Then the Assessing Officer (AO) received information from the Director General of Income Tax, (Inv.), Mumbai that the assessee had indulged in obtaining bogus bills from 14 parties amounting to Rs.2,18,12,572/-. Therefore, the AO issued notice u/s 148 reopening the assessment made u/s 143(1). During the course of reassessment proceedings, the AO vide order sheet

noting dated 20.02.2014 requested the assessee to produce the above parties for verification along with their books of accounts, bills and vouchers. However, the assessee failed to produce the said parties before the AO for examination. The assessee also failed to file the confirmation from the above parties.

During the course of reassessment proceedings, the AO deputed the Ward Inspector to conduct spot enquiries. The Inspector reported to the AO that no such parties were existing at the given address. The AO brought to the notice of the assessee the above facts vide order sheet entry dated 14.03.2014. In reply to it, the assessee submitted that merely because the parties could not be produced and notices could not be served upon the parties, the purchase made cannot be doubted as all the material evidences were produced before the AO.

However, the AO was not convinced with the above explanation of the assessee as the latter failed to produce the said parties along with their books of accounts, purchase bills, sale bills, bank statements etc. for verification. The AO also noted that the Sales Tax Department, Government of Maharashtra has cancelled the MVAT registration certificate of the above parties w.e.f. 01.04.2006. Therefore, the AO made a disallowance of Rs.2,18,12,572/- u/s 69C of the Act.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that the Ld. CIT(A) has followed the judgment of the Hon'ble Gujarat High Court in *CIT vs. Simit P. Sheth* (2013) 38 taxmann.com (Guj) and estimated the profit @ 12.5% on the

said purchases of Rs.2,18,12,572/-. The profit thus comes to Rs.27,26,572/-.

5. Before us, the Ld. DR submits that the assessee failed to produce the said parties before the AO along with their books of accounts, purchase bills, sales bills, bank statements etc. Therefore, the addition of Rs.2,18,12,572/- made by the AO be confirmed.

6. We find that the case was fixed for hearing before the Tribunal on various dates i.e. 08.02.2017, 04.07.2017, 06.07.2017 and 10.10.2017. Neither the assessee nor his authorized representative appeared before the Tribunal on the above dates.

7. We have heard the Ld. DR and perused the relevant materials on record.

In the case of *Simit P. Sheth* (supra), the Hon'ble Gujarat High Court has held that where purchases were not bogus but were made from parties other than those mentioned in the books of account, not entire purchase price but only profit element embedded in such purchases can be added to income of the assessee. That being the position, not the entire purchase price but only the profit element embedded in such purchases can be added to the income of the assessee. The Hon'ble High Court referred to a similar view taken in the case of *CIT vs. Vijay M. Mistry Construction Ltd.* [2013] 355 ITR 498 (Guj) and *CIT vs. Bholanath Poly Fab (P) Ltd.* [2013] 355 ITR 290 (Guj).

Facts being similar, we uphold the order of the Ld. CIT(A) in estimating the profit @ 12.5% on the said purchases of Rs.2,18,12,572/- for the AY 2008-09 and Rs.3,13,73,278/- for the AY 2010-11. Thus we confirm the profit of Rs.27,26,572/- for the AY 2008-09 and Rs.39,21,660/- for the AY 2010-11 estimated by the Ld. CIT(A).

8. In the result, the appeals are dismissed.

**Order pronounced in the open Court on 30/10/2017.**

Sd/-  
(D.T. GARASIA)  
JUDICIAL MEMBER

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai;

Dated: 30/10/2017

*Rahul Sharma, Sr. P.S.*

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**