

THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" Bench, Mumbai  
Before Shri B.R. Baskaran (AM)

I.T.A. No. 4768/Mum/2017 (Assessment Year 2009-10)

Shri Irfan Habib Lakdawala Gala No. 8, 88-89, Lakdi Bunder Mumbai-400 010. PAN : ABDPL1730C (Appellant)	Vs.	ITO 20(1)(5) Mumbai  (Respondent)
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Assessee by	Ms. Priti Shukla
Department by	Ms. N. Hemalatha
Date of Hearing	1.11.2017
Date of Pronouncement	8.11.2017

O R D E R

The appeal filed by the assessee is directed against the order dated 24.4.2017 passed by the learned CIT(A)-32, Mumbai and it relates to A.Y. 2009-10. The assessee is aggrieved by the decision of the learned CIT(A) in partially confirming the addition relating to bogus purchases.

2. I heard the parties and perused the record. The assessee is a trader in timber and plywood products. Consequent to information received from the sales tax department that certain dealers are indulging in providing accommodation bills without actually supplying the materials and upon noticing that the assessee has purchased goods to the tune of ₹ 97.80 lakhs from ten such dealers, the Assessing Officer reopened the assessment by issuing notice u/s. 148 of the Act. The Assessing Officer, during the course of assessment proceeding, issued notice u/s. 133(6) of the Act to the suppliers but all of them were returned back by the postal authority. The assessee also could not obtain confirmation letters from those suppliers nor he could produce them before the AO. Further the Assessing Officer asked the assessee to furnish details to prove the genuineness of the purchases. However,

assessee could furnish copies of purchase invoices, ledger account, copy of bank statement and corresponding sales made. The assessee could not furnish delivery challans, transport receipts, octroi payment evidences and proof to show the receipt of material. Since the assessee had reconciled purchase of materials with sales, by following the decision rendered by Hon'ble Gujarat High Court in the case of Simit P. Sheth (356 ITR 451), the Assessing Officer estimated the profit on such purchase at 12.5% and accordingly added a sum of ₹ 12.22 lakhs to the total income of the assessee. The learned CIT(A) restricted the addition to ₹ 5.58%, being the gross profit rate declared by the assessee and accordingly sustained the addition to the extent of ₹ 5,45,750/- and granted relief of ₹ 6,76,807/-. Still aggrieved, the assessee has filed this appeal before us.

3. Learned counsel appearing for the assessee submitted that the coordinate Bench of the Tribunal has sustained addition in some cases to the extent of 2% of the value of purchases and in some cases it has fully deleted the disallowances. She further submitted that Hon'ble Bombay High Court has also deleted the entire disallowance in the case of Nikunj Exim Enterprises (372 ITR 619). Accordingly, learned AR contended that further relief should be granted to the assessee.

4. On the contrary, learned Departmental Representative submitted that the assessee could not furnish proof to show receipt of materials and hence the learned CIT(A) has taken the view that the assessee might have obtained material from the grey market. Even though the Assessing Officer sustained the addition to 12.5% by following decision rendered by Hon'ble Gujarat High Court in the case of Simit P. Sheth, the learned CIT(A) has reduced the same to 5.58%, being the GP rate declared by the assessee. Accordingly the learned Departmental Representative submitted that the order passed by the learned CIT(A) does not call for any interference.

5. Having heard the rival submissions, I am of the view that the order passed by the learned CIT(A) does not call for any interference. The coordinate Bench in the case of M/s. Fancy Wear (ITA No. 1596/Mum/2016 dated 20.9.2017) has expressed the view that the issue relating to bogus purchases is factual one and the same has to be decided on the basis of the facts available on record. Relevant observations are available in paragraph 5 of the order. In the instant case, the assessee could not furnish proof relating the receipt of material from suspicious dealers, proof for transportation and octroi payments. Since the assessee has reconciled the purchases and sales, the learned CIT(A)/AO has taken the view that the assessee might have source materials from grey market. The Ld CIT(A) has estimated profit at 5.58%, being the gross profit rate declared by the assessee as against 12.5% estimated by the Assessing Officer. In my view the learned CIT(A) has taken reasonable view of the mater and accordingly I affirm the same.

6. In the result, appeal filed by the assessee is dismissed.  
Order has been pronounced in the Court on 8.11.2017.

Sd/-  
(B.R.BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 8/11/2017

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,

(Senior Private Secretary)  
ITAT, Mumbai

PS