

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "SMC", MUMBAI**

BEFORE SHRI D.T. GARASIA, JUDICIAL MEMBER

**ITA No.2138/M/2017
Assessment Year: 2008-09**

**ITA No.2139/M/2017
Assessment Year: 2010-11**

**ITA No.2140/M/2017
Assessment Year: 2011-12**

Late Mr. Devendra A. Gandhi through Legal Heir Smt. Chandanben D. Gandhi, Phonex Industrial Engineers, 32, Old Nagardas Road, Andheri (East), Mumbai-400 012 PAN: AABPG8605J	Vs.	Income Tax Officer-24(1)(5), Piramal Chambers, Mumbai – 400 012
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Navin B. Gandhi, A.R.
Revenue by : Smt. N. Hemalatha, D.R.

Date of Hearing : 07.08.2017
Date of Pronouncement : 31.08.2017

ORDER

Per D.T. Garasia, Judicial Member:

The above titled appeals have been preferred by the assessee against the common order dated 24.01.2017 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment years 2008-09, 2010-11 & 2011-12.

2. In assessment year 2008-09, the assessment was completed. During the course of assessment proceedings for A.Y. 2009-10, it was found from the ledger verification of purchase parties that assessee has obtained bogus bills from few of the parties listed in Sales Tax Website and declared as hawala dealer during the period under consideration i.e. in F.Y. 2007-08 related to

A.Y. 2008-09 thereby inflating its expenses and suppressing the profits for A.Y. 2008-09 was as under:

Nirush Trading Co. Rs.3,74,020/-

3. In order to verify the genuineness of the purchases, notice under section 133(b) was issued to above party. In response to the above party, assessee furnished detailed invoices and bank statement. Assessee also submitted audit report along with profit and loss account, balance sheet, party-wise details of purchases and sales, copy of VAT returns, copy of ledger, purchase bills in respect of hawala party. The assessee has also submitted the detail of lorry receipts, books of account, bank statement of parties reflecting the payment receipt of goods sold to the assessee highlighted but Assessing Officer (hereinafter referred to as the AO) did not consider the same as genuine purchase. Therefore, he made the addition of 25% of the total amount of Rs.3,74,020/- which comes to Rs.93,505/- as non genuine purchase and added to the income of the assessee. In A.Y. 2010-11, the AO made addition of 25% of the total amount of purchases amounting to Rs.8,23,689/- which comes to Rs.2,05,920/-. In A.Y. 2011-12 also the AO made the disallowance of Rs.2,56,150/- on account of bogus purchases.

4. Matter carried to the Ld. CIT(A) and the Ld. CIT(A) has reduced to 15%.

5. We have heard the rival contentions of both the parties. Looking to the facts and circumstances of the case, we find that in all these cases, the Ld. CIT(A) has restricted the addition on account of bogus purchases at 15% of the total purchases. We find that assessee has purchased from Nirush Trading Co.. The notices under section 133(6) were served and assessee has responded and submitted all the details. The supplier Nirush Trading Co. has submitted the ledger account of Mr. Devendra Gandhi, sales invoices of Nirush Trading Co., bank statement for A.Y. 2008-09 and A.Y. 2010-11 and corresponding

payment receipts for the goods supplied to Devendra Gandhi for 2008-09 and 2010-11. The assessee also submitted the detail of purchase invoices, delivery challans and transport transactions of Nirush Trading Co. along with delivery challans and lorry receipts. The assessee has also submitted the account payee cheque in confirmation of the account. The assessee was able to show that Nirush Trading Co. has failed to pay the MVAT liability, hence the same was appearing in website of MAHA VAT. Subsequently, sales tax was paid by the assessee because the set off claimed by the assessee on the purchases from Nirush Trading Co. were disallowed. Therefore, we are of the view that assessee has actually purchased the goods and the same are not bogus. We find that the assessee has made purchases from the parties which are not bogus but they failed to pay the VAT. Therefore, in the interest of justice and fairplay, we restrict the disallowance at 5% of the total purchases in all the years (i.e. Rs.3,74,020/- + Rs.10,24,598 + Rs.8,23,679/- = Rs.22,22,297/-) which comes to Rs.1,11,115/-.

6. In the result, all the three appeals of the assessee are partly allowed.

Order pronounced in the open court on 31.08.2017.

**Sd/-
(D.T. Garasia)
JUDICIAL MEMBER**

Mumbai, Dated: 31.08.2017.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.