

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

**BEFORE SHRI D.T. GARASIA, JUDICIAL MEMBER**

**ITA No.3598/M/2017  
Assessment Year: 2010-11**

M/s. Sun N Star Advertising Pvt. Ltd., D-303, Anant Laxmi Chamber, Gokhale Road, Naupada, Thane – 406 602 <b>PAN: AAICS8518C</b>	Vs.	ACIT- Circle-3, Ashar IT Park, 6 <sup>th</sup> Floor, Wagle Estate, Road No.16-Z, Thane (W)-400 604
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Jayant K. Bhatt, A.R.  
Revenue by : Smt. N. Hemalatha, D.R.

Date of Hearing : 08.08.2017  
Date of Pronouncement : 02.11.2017

**ORDER**

**Per D.T. Garasia, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 27.02.2017 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2010-11.

2. The brief facts of the case are that the assessee is engaged in the business of outdoor advertising through display, hoardings and electronic media. During the year the Assessing Officer (hereinafter referred to as the AO) found that assessee had made bogus purchases from following parties:

Sr. No.	Name of the party	Amount of Purchase (Rs)
1.	M/s. Asian Steel	17,79,751/-
2.	M/s. Siddhivinayak Steel	13,35,656/-
	Total	31,15,407/-

3. The assessee was asked to produce the above parties for verification. There was no compliance of notice under section 133(6). Therefore, the AO has made the addition on account of bogus purchases of Rs.31,15,407/-.

4. Matter carried to the Ld. CIT(A) and the Ld. CIT(A) has dismissed the claim by observing as under:

**“7. .... It is not in dispute that the appellant company has not submitted stock register and consumption records before the undersigned. It is the case of the appellant company that alleged raw material i.e. steel frames/banner stands were consumed in various displays/hoardings however this statement has remained unsubstantiated. During the appellate proceedings, the counsel of the appellant i.e. Shri Sanjeev Brahme. CA was directed to furnish quantitative details namely number of stands/steel frames purchased and details of their sales/location of hoarding/displays. The case was adjourned to 19.01.2007. However there was non-compliance on the said date by the counsel of the appellant. In the interests of justice, another notice U/s 250 dated 31.01.2017 fixing the hearing on 20.02.2017 was issued and duly served on the appellant company on 03.02.2017 however there was again non-compliance by the appellant and the requisite details were not furnished. Even as per the tax audit report (Form No.3CD) the quantitative details have not been maintained as per para 28 (A). The façade of sale of these steel frames/banner stands thus stands exposed. The appellant is the end user of material so purchased and not a trader. Moreover in absence of quantitative details, there is valid ground to hold that the appellant must have inflated its purchases to reduce the taxable profits. In view of these facts, this is a case where the entire cash has been siphoned off by debiting the bogus purchases. Therefore, following the principles laid down in the decision of Hon'ble Allahabad High Court, in the case of Sri Ganesh Rice Mills (294 ITR 316), the addition of Rs.31,15,407/- made by the AO is sustained. The AO has not applied the provisions of section 69C of the Income Tax Act in the present case as alleged by the appellant company. This ground of appeal is accordingly dismissed.”**

5. I have heard the rival contentions of both the parties. Ld. D.R. relied upon the decision of the Tribunal, Ahmedabad Bench in the cases of Shwetambar Steels vs. ITO Ahmedabad and Ganesh Rice Mills vs. CIT (294 ITR 316). The facts in the present case show that assessee could not produce the parties from whom goods are stated to have been purchased. The suppliers were found to be engaged in providing bogus bill without actual dealing of goods. In this regard, the assessee has stated that they had submitted quantitative details of stock with respect of the sales with purchases from the parties during the assessment proceedings. The assessee has submitted the detail of corresponding sales in respect of the purchase from the said parties. As mentioned above the AO has never disputed or examined the aspect of sales receipts. Since the sales made by the assessee was not doubted or disputed by the AO and he has accepted the sales receipts of the assessee as it is, therefore, the AO cannot deny that purchases were not made by the assessee and the material was not used for its sales. What is under dispute is the purchases from the parties from whom bills have been taken and cheques have been issued to them. Purchases are not in dispute but the parties from whom purchase are shown to have been made are disputed and suspicious. The AO had made the addition as some of the suppliers were declared hawala dealers by the VAT Department. This may be a good reason for making further investigation but the AO did not make any further investigation and merely completed the assessment on suspicion. Once the assessee has brought on record the details of payments by account payee cheque, it was incumbent on the AO to have verified

the payment details from the bank of the assessee and also from the bank of the suppliers to verify whether there was any immediate cash withdrawal from their account. No such exercise has been done or findings recorded. There was no detailed investigation made by the AO himself. It is also found that the payments have been made by account payee cheque which are duly reflected in the bank statement of the assessee. There is no evidence to show that the assessee has received cash back from the suppliers. Merely because the suppliers did not appear before the AO or some confirmation letters were not furnished, one cannot conclude that the purchases were not made by the assessee. This view is supported by the decision of *Nikunj Eximp Enterprises vs. CIT 216 Taxman 171 (Bom)*. To this extent, I am of the view that if the assessee has fulfilled its onus of making the payment by cheque and has supplied the addresses of the sellers then it cannot be presumed that supplier were bogus simply because the sellers were not found at the given address. There is a considerable time gap between the period of purchase transaction and period of scrutiny proceedings. The AO has not brought any material on record to show that there is suppression of sales. It is basic rule of accountancy as well as of taxation laws that profit from business cannot be ascertained without deducting cost of purchase from sales. Estimation of profit ranging from 12.5% to 15% has been upheld by the Hon'ble Gujarat High Court in the case of *CIT vs Simit P Sheth 356 ITR 451 (Guj.)*. Respectfully following the decision of Hon'ble Gujarat High Court in the case of *CIT vs. Simit P. Sheth 38 taxman*

385 (Guj) and keeping in view of the GP already declared @5%, I direct the AO to take the GP @ 7.5% which comes to Rs.2,33,655/-.

6. In the result, assessee's appeal is partly allowed.

**Order pronounced in the open court on 02.11.2017.**

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

Mumbai, Dated: 02.11.2017.

\* 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.