

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

**BEFORE SHRI D.T. GARASIA, JUDICIAL MEMBER AND  
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

**ITA No.1156/M/2017  
Assessment Year: 2010-11**

Office of the ACIT 25(2), R. No.508, C-10, 5 <sup>th</sup> Floor, Pratyaksha Kar Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051	Vs.	M/s. Amar Construction Corporation, 6, Chunawala Building, Dixit Road, Vile Parle (E), Mumbai-400 057 <b>PAN: AAEFA 1093P</b>
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Shashi S. Varma, A.R.  
Revenue by : Shri Saurabh Deshpande, D.R.

Date of Hearing : 23.08.2017  
Date of Pronouncement : 17.10.2017

**ORDER**

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

The present appeal has been preferred by the Revenue against the order dated 22.12.2016 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 business of civil construction work. During the year the Assessing Officer (hereinafter referred to as the AO) found that assessee had made bogus purchases from following party:

Sr. No.	Name of the party	Amount of Purchase (Rs)
1.	Deepali Enterprises	Rs.48,40,571/-

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.48,40,571/-.

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

“5.9 Considering the totality of the facts before me, as well as the judicial opinion available, I am inclined to agree with the appellant’s stand that the addition is excessive. The A.O. has disallowed the amount of Rs.48,40,571/- on account of bogus purchases. The total purchase debited to the trading account from these parties are Rs.48,40,571/-. I am of the view that estimation of profit at 12.5% would meet the ends of justice. Therefore, I direct the AO to estimate profit of 12.5% on the total purchases in question which works out to Rs.6,05,071/- (12.56 of Rs.48,40,571/-). The appellant therefore gets relief of Rs.42,35,500/- (Rs.48,40,571/- minus Rs.6,05,071/-) . The grounds raised are partly allowed.

6. In the result, appeal is partly allowed.”

5. We 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, we are 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), we dismiss the departmental appeal.

6. In the result, departmental appeal is dismissed.

**Order pronounced in the open court on 17.10.2017.**

**Sd/-**  
**(Manoj Kumar Aggarwal)**  
**ACCOUNTANT MEMBER**

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

Mumbai, Dated: 17.10.2017.

\* 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.