

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

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

**ITA No.211/M/2017
Assessment Year: 2012-13**

M/s. Kainya & Associates Pvt. Ltd., Business Park, Near Bajaj Hall, S.V. Road, Malad (West), Mumbai-400 064 PAN: AAACK1478R	Vs.	Dy. Comm. of Income Tax, CC-3(3), Mumbai
(Appellant)		(Respondent)

**ITA No.1085/M/2017
Assessment Year: 2012-13**

Dy. Commissioner of Income Tax, Central Circle-3(3), Room No.1923, Air India Building, 19 th Floor, Nariman Point, Mumbai-400 021	Vs.	M/s. Kainya & Associates P. Ltd., Business Park, Near Bajaj Hall, S.V. Road, Malad (West), Mumbai-400 064 PAN: AAACK1478R
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Neelam C. Jadhav, A.R.
Revenue by : Shri Saurabhkumar Kumar Raj, D.R.

Date of Hearing : 13.09.2017
Date of Pronouncement : 31.10.2017

ORDER

Per D.T. GARASIA, Judicial Member:

The above titled appeals one by the assessee and the other by the Revenue have been preferred against the order dated 24.11.2016 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2012-13.

ITA No.211/M/2017 (Assessee's appeal)

2. The brief facts of the case are that the assessee is engaged in business of trading in hardware and sanitary material. 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.	Ratan Sales Corporation	37,34,806/-
2.	Shree Omkar Enterprises	32,88,375/-
	Total	70,23,181/-

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.70,23,181/-.

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

"11. During the course of appellate proceedings, the Ld AO also brought my attention to -the appeal order passed by my Ld Predecessor in assessee's own case which had been upheld by Hon'ble ITAT, Mumbai. In this regard, I would like to respectfully state that the bogus hawala purchases involved in the present year is different and the assessee has completely failed to prove that the purchases to the extent of Rs 37,34,806/- was made from this party alone. Though quantitative details are maintained by the assessee and payments have been made by cheque but that alone doesn't establish the genuineness of the transactions. Gujarat High Court has. addressed the identical situations in the judgement in the case of Simit P Sheth (supra), I follow the said judgement in deciding this appeal. Therefore, respectfully following the decision of Gujarat High Court in the case of Simit P Sheth and Bholanath Polyfab P Ltd (supra), the profit rate of 12.5% is applied to the suspected bogus purchase of Rs 37,34,806/- made by the assessee from M/s Ratan Sales Corporation which works out to Rs 4,66,850/- is added back to the income of the assessee.

11. Ground no 3 is regarding the initiation of penalty proceedings u/s 271(l)(c) of the Act. Since the penalty proceedings are only initiated and no penalty has been

levied, this ground appears to be premature. The assessee is however, free to approach the competent authority as and when any penalty is levied against him. Consequently, this ground is rejected being premature.

12. In the result, this 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 find no infirmity in the order of the Ld. CIT(A). Hence, we have no alternative except to endorse the order of the Ld. CIT(A). Accordingly, we dismiss the appeal of the assessee.

6. In the result, assessee's appeal is dismissed.

ITA No.1085/M/2017 (Revenue's appeal)

7. Since the assessee's appeal has already been dismissed, the Revenue's appeal has become infructuous. Hence, the appeal of the Revenue is dismissed.

8. In the result, assessee's appeal as well as Revenue's appeal is dismissed.

Order pronounced in the open court on 31.10.2017.

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

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

Mumbai, Dated: 31.10.2017.

* 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.