

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

**BEFORE SHRI P.K. BANSAL, VICE PRESIDENT AND
SHRI D.T. GARASIA, JUDICIAL MEMBER**

**ITA No.1731/M/2016
Assessment Year: 2011-12**

M/s. Niko Associates, 6, Mohan Building, Pipe Line Road, Thane (W)-400 604 PAN: AAFFN7758K	Vs.	ITO-3(1), IT Park, Wagle Estate, Thane
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Momder Vaidya, A.R.
Revenue by : Shri Purushottam Kumar, D.R.

Date of Hearing : 06.07.2017
Date of Pronouncement : 05.10.2017

ORDER

Per D.T. GARASIA, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 29.01.2016 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2011-12.

2. The brief facts of the case are that the assessee is a works contractor and interior designer. The works contracts include material and labour and service charges. During the year under consideration, assessee had executed works contract for civil paintings and electrical fittings etc. During the year the Assessing

Officer (hereinafter referred to as the AO) found that assessee had made purchases from following parties:

Sr. No.	Name of the party	Amount of Purchase (Rs)
1.	Shruti Sales Corporation	10,10,520
2.	Karan Enterprises	14,27,713
3.	Darshan Sales Corp.	1,33,875
	Total	25,72,108

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.25,72,108/-.

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

“4.18. From the above details it is seen that the GP rate, in the year under appeal, has gone down substantially low i.e. 42.93% from 51.77% in AYr 2010-11, i.e. immediate preceding year. This shows that the appellant is capable of harvesting GP @ 51.77%, from 4 same set of business. In compliance, the Ld. AR, could not substantiate the fall in GP with supporting documents. From the above chart, it is crystal clear that the appellant has suppressed gross profit by 8.84% (51.77% - 42.93%). The suppressed Gross profit is worked out at Rs.28,65,731/- (Rs. 3,24,17,778/- x 8.84/100), which is more than **the** bogus purchase of Rs.25,72,108/-, therefore, the disallowance of entire **bogus purchases, made by the A.O., is hereby**, sustained. In this regard, the reliance is placed on the decision of the Hon'ble Supreme Court in the case of *M/s Kanchwala Gems Vs JCIT. 288 ITR 10 (SC)*, wherein, on account of similar set of circumstances, the estimation of GP was held, as justified.

In the result, the appeal is dismissed.”

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 direct the AO to take GP @ 12.5%.

7. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 05.10.2017.

**Sd/-
(P.K. Bansal)
VICE PRESIDENT**

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

Mumbai, Dated: 05.10.2017.

* 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.