



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"D" BENCH, MUMBAI**  
**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND**  
**SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA no.1764/Mum./2017  
(Assessment Year : 2010-11)

Asstt. Commissioner of Income Tax  
Circle-2, Thane

..... Appellant

v/s

Kishore B. Shah (HUF)  
Prop. Balaji Construction  
403, Riddhi Siddhi Tower  
60, Ft. Road, Bhayander (W)  
Thane - 401 101  
PAN - AAGHK9718C

..... Respondent

Assessee by : Shri Vipul Joshi  
Revenue by : Shri Purshottam Kumar

Date of Hearing - 24.08.2017

Date of Order - 06.09.2017

**ORDER**

**PER SAKTIJIT DEY, J.M.**

Aforesaid appeal by the Revenue is directed against the order dated 28<sup>th</sup> December 2016, passed by the learned Commissioner (Appeals)-2, Nashik, pertaining to assessment year 2010-11.

2. Revenue has filed the present appeal being aggrieved with the decision of the learned Commissioner (Appeals) in restricting the addition to 10% of the bogus purchases.

3. Brief facts are, the assessee a HUF is carrying on business of civil contractor through its proprietorship concern Balaji Construction. For the assessment year under dispute, the assessee filed its return of income declaring total income of ₹ 60,16,180. During the assessment proceedings, the Assessing Officer on verifying the purchases made by the assessee found that purchases amounting to ₹ 57,32,017, from five parties are not genuine as those parties are only providing accommodation bills. Therefore, the Assessing Officer called upon the assessee to explain why the purchases claimed to have been made from the concerned parties should not be disallowed and added back as income. As observed by the Assessing Officer, the assessee without furnishing any supporting evidence to prove the genuineness of the purchases simply stated that the goods were purchased and used in the construction work. The Assessing Officer rejecting the submissions of the assessee added back the amount of ₹ 57,34,017. Being aggrieved of the addition, assessee preferred appeal before the learned Commissioner (Appeals).

4. The learned Commissioner (Appeals) after considering the submissions of the assessee, though, was of the view that the assessee was unable to prove the genuineness of the purchases fully, however, he held that the entire purchases cannot be treated as income of the assessee considering the fact that the corresponding

sales made by the assessee has not been disputed. Accordingly, he restricted the disallowance to 10% of the alleged bogus purchases.

5. We have heard rival contentions and perused the material available on record. It is evident, merely on the basis of information available on record that certain purchases made by the assessee are not genuine, the Assessing Officer has added the amount of ₹ 57,34,017. However, as could be seen from the order of the learned Commissioner (Appeals), the assessee has furnished quantitative tally of purchase and sales which has not been disputed by the Assessing Officer. In the aforesaid circumstances, we are in agreement with the learned Commissioner (Appeals) that entire purchases cannot be disallowed and treated as income of the assessee, but, only the profit element embedded therein can be considered for addition. In the peculiar facts of the present case, we are of the view that 10% of disallowance out of bogus purchases made by the learned Commissioner (Appeals) is reasonable, hence, deserves to be upheld. Grounds raised by the Revenue are dismissed.

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

Order pronounced in the open Court on 06.09.2017

**Sd/-**  
**SHAMIM YAHYA**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 06.09.2017**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

(Dy./Asstt. Registrar)  
ITAT, Mumbai