

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH MUMBAI**  
**BEFORE SHRI R.C.SHARMA, AM**  
**ITA No.3157/Mum/2017**  
**(Assessment Year :2006-07)**

ITO 32(2)(4) R.No. 306, 3 <sup>rd</sup> Floor Pratyakshkar Bhavan BKC, Bandra(E) Mumbai – 400 051	Vs.	Shri Navin Shantilal Mehta D/102, Shiv Kripa Nagar Vidya Mandir Road Dahisar East Mumbai – 400 068
<b>PAN/GIR No.</b>		<b>AAOPM2720P</b>
<b>Appellant)</b>	..	<b>Respondent)</b>

**ITA No.4181/Mum/2017**  
**(Assessment Year :2006-07)**

Shri Navin Shantilal Mehta D/102, Shiv Kripa Nagar Vidya Mandir Road Dahisar East Mumbai – 400 068	Vs.	ITO 32(2)(4) C-11, 3 <sup>rd</sup> Floor Pratyakshkar Bhavan BKC, Bandra(E) Mumbai – 400 051
<b>PAN/GIR No. AAOPM2720P</b>		
<b>Appellant)</b>	..	<b>Respondent)</b>

Assessee by	None
Revenue by	Ms. N. Hemalatha
<b>Date of Hearing</b>	<b>25/10/2017</b>
<b>Date of Pronouncement</b>	<b>22/01/2018</b>

**आदेश / O R D E R**

**PER R.C.SHARMA (A.M):**

These are the cross appeals filed by the assessee and revenue against the order of CIT(A)-44, Mumbai dated 16/02/2017 for A.Y.2006-07 in the matter of order passed u/s.143(3) r.w.s. 147 of the IT Act.

2.The following grounds have been taken by the revenue:-

1. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting addition to Rs. 5,19,723/- (@12.5% or Rs. 41,57,786/-) u/s. 69C of the I.T. Act on account of bogus purchases as against addition of Rs. 41,57,786/- made by the AO without appreciating that the assessee has not produced any cogent evidence to substantiate the fact that he had taken actual delivery of goods purchased from the parties and that the notices u/s. 133(6) issued to the parties from whom alleged bills were received were returned undelivered by the postal authorities with the remark 'not available at this address' and the assessee has also failed to produce the purchase parties before the AO."

2. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in relying upon judgement in the case of CIT vs Nikunj Enterprises 373 ITR 619 and Saraswathi Oil Tnders vs CIT 254 ITR 259 (SC) without appreciating that the facts involved in the appellants case are different from the facts of the above case laws."

3. "The appellant prays that the order of the Ld. CIT(A) on the above grounds be set aside and that of the AO be restored."

4. "The appellant craves leave to amend or alter any ground or add a new ground."

3. The grounds taken by assessee are as under:-

1. ASSESSMENT OF INCOME AT RS. 44,16,6107-

(a) The Learned Assessing Officer erred in law and on facts in assessing the income at Rs. 44,16,610/- . The Appellant has filed the return for AY 2006-07 by declaring Net Taxable Income as Rs.2,58,819/-.

(b) Your appellant submits that the income was correctly computed by the appellant as per the provision of Income Tax Act, 1961 and the additions made u/s 69C under the pretext of unexplained expenditure of Rs.41,57,786/- be deleted in total.

2. VIOLATION OF NATURAL JUSTICE:

(a) The Learned Assessing Officer erred in law in seriously violating the provisions of Natural Justice in ignoring the Return of Income and documents attached thereon and passing an order without affording adequate opportunity of being heard.

*(b) Your appellant submits that they had furnished the requisite details and had requested for an opportunity of being heard for furnishing the details, which was not granted to the appellant and the appellant requests to accept the return of income and the documents attached therewith.*

*(c) Your appellant prays that the order passed in violation of Natural Justice be quashed.*

*3. Your appellants pray for leave to add, attend, alter, delete or modify any of the above grounds.*

4. Nobody appeared on behalf of assessee inspite of giving opportunity.

The Bench, therefore, decided to dispose the appeal after hearing the learned DR and considering the material placed on record.

5. I have carefully gone through the orders of the authorities below and found that the assessee is an individual engaged in the business of wholesale trading of iron and steel items. The AO has received information from the Sales Tax department that the assessee has shown purchases from 5 bogus concerns. The name of the concerns is mentioned in para 7.1 of the assessment order. The A.O. extracted information from the Sales Tax Department website. The assessee was asked to show cause as to why the entire amount of Rs, 41,57,786/- should not be treated as unexplained expenditure u/s.69C of the Act, 1961. In reply to the show cause issued the assessee submitted that the purchase transactions are genuine and he had received actual delivery of goods. The A.O. however did not accept the contention of the appellant and added Rs 41,57,786/- u/s.69C of the Act.

6. By the impugned order , CIT(A) restricted the addition to the extent of 12.5% of the alleged bogus purchase after having the following observation:-

5.3 I have carefully gone through the assessment order as well as the statement of facts & grounds of appeal filed by the appellant. Some 5-6 years ago, the Sales Tax Department of the Government of Maharashtra had conducted extensive enquiries against such dealers who used to provide bills facilitating bogus purchases/sales. As a result of this inquiry, information about many assesseees were forwarded to the Income Tax Department. The A.O. has stated in the assessment order that the appellant is one such person who has inflated his purchases by showing bogus purchases from such persons who appear in the list of bogus entries providers as prepared by the Sales Tax Department. During the course of assessment proceedings, the A.O. also found that the assessee had not been able to establish the genuineness of purchases in dispute. The main arguments of the AO on the basis of which he had formed his opinion were-

1. The assessee was not able to submit any lorry receipts or any details regarding transportation of goods.
2. The suppliers from whom the disputed purchases have been made are included in the list of hawala operators prepared by the Sales Tax Department.
3. The suppliers from whom the disputed purchases have been made, were not produced before the AO.
4. The suppliers from whom the disputed purchases have been made, did not comply to notice u/s 133(6).

5.4 The appellant is a trader. The AO in his order has dealt exclusively with the purchases of the appellant. However, in the case of a trader, if there are no purchases of materials there cannot be any sales also. The AO had disallowed part of purchases without at the same time questioning the receipt figure of the assessee. The AO has not brought any material on record to show that there is suppression of sales also by the appellants^ Further, the AO has not rebutted the arguments of the appellant that the payments have been made through banking channels. The fact remains that the appellant has taken care to make his purchases through banking channel and since the banks are required to follow KYC norms the identity of the supplier cannot be doubted, As far as the issue of producing the supplier before the AO is concerned, the assessee cannot be reasonably expected to force the supplier to reply to the AO or to appear before the AO.

5.5 In a judgment given by the Allahabad High Court in the case of **CIT Vs Jagdish Prasad Tewari 220 Taxmann 0141 (2014)**, it has been held that if the payments have been made by cheques and are reflected in the books of account of the assessee, no adverse inference can be drawn.

5.6 It has been held in the case of **M/s. Nikunj Enterprises 372 ITR 619 (Bom)** by the Hon'ble Bombay High Court that merely because the suppliers have not appeared before the Assessing Officer or the CIT(A), one cannot conclude that the purchases were not made by the respondent-assessee. Further it has been held in the case of **Saraswathi**

*Oil Traders vs. CIT 254 ITR 259 (Supreme Court)* that when the sales have not been doubted then there was no question to doubt the purchases and the addition should have been made only to the extent of gross profit. To this extent, I am in agreement with the appellant that if the appellant has fulfilled his onus of making the payments by banking channels and has supplied the address of the sellers, then it cannot be presumed that the sellers were bogus simply because the sellers were not found at the given addresses. However, at the same time it cannot be said that the information provided by the sales tax department should not be taken cognizance of by the A.O. Therefore, after considering the totality of facts and after following the ratio of *Saraswathi Oil Traders vs. CIT(SC)* cited supra, I am of an opinion that it is the profit element on the total component in dispute which needs to be added to the income of the appellant. During the year, the total sales of the appellant was Rs.5.25 crores while the total purchases was Rs 4.94 crores. The appellant has however shown a GP rate of 5.9% which seems to be low considering the nature and scale of appellant's business. The additional profit which should have arisen to the appellant on the disputed purchases is therefore taken as 12.5% of the disputed purchases. The total amount which is being treated as bogus by the AO is Rs 41,57,786/-. Thus 12.5% of Rs. 41,57,786/- which is Rs. 5,19,723/- is taken as profit of the appellant on purchases that are not fully and properly explained. Addition of Rs. 5,19,723/- is accordingly confirmed out of an addition of Rs. 41,57,786/- and the balance is deleted. Grounds of appeal No.1 is therefore partly allowed.

6. In the grounds of appeal no.2 the appellant has raised the issue of violation of natural justice. It is stated that the assessment order was passed without providing adequate opportunity of being heard. However, it is seen from the assessment order that during the course of assessment proceedings, the AR of the appellant appeared before the AO on several occasions and filed various details called for. Thus, there is no merit in the argument that adequate opportunity of being heard was not given by the AO. Grounds of appeal no. 2 is dismissed.

7. The grounds of appeal no. 3 is general in nature and therefore does not require any comments.

8. In the result, the appeal is **partly allowed**.

7. I have considered the contention of learned DR and found that full opportunity was given to the assessee both by AO and CIT(A) for substantiating its claim that there is no bogus purchases. The AO has also made independent enquiry by issuing notice u/s.133(6). The CIT(A) after considering the various judicial pronouncements as well

as GP rate offered by the assessee during the year under consideration restricted the addition to the extent of 12.5% of the bogus purchases. I do not find any reason to interfere in the reasoned order of CIT(A) contained at 5.3 to 5.8 of its appellate order.

**8. In the result, both the appeals of the assessee and revenue are dismissed.**

Order pronounced in the open court on this 22/01/2018

**Sd/-  
(R.C.SHARMA)  
ACCOUNTANT MEMBER**

Mumbai; Dated 22/01/2018

Karuna Sr.PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)  
ITAT, Mumbai