

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

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

**ITA No.5917/M/2016
Assessment Year: 2010-11**

Deputy Commissioner of Income Tax, Circle-3, Room No.02, 6 th Floor, Ashar IT Park, B-Wing, Wagle Indl. Estate, Thane (W)-400 604	Vs.	Shri Shivram Narayan Kelkar, Prop. of M/s. Omega Lab Chemical, 1 st Floor, Sanyog, Ghantali Temple, Thane (W) – 400 602 PAN: ABCPK 1719R
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri Suman Kumar, D.R.

Date of Hearing :16.08.2017
Date of Pronouncement :13.10.2017

ORDER

Per D.T. GARASIA, Judicial Member:

The present appeal has been preferred by the Revenue against the order dated 14.07.2016 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 a proprietor of M/s. Omega Lab Chemical and engaged in business of manufacturing of chemicals. 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 bill (A.Y. 2009-10)	Amount of bill (A.Y. 2010-11)
1.	M/s. Raj Tool Corporation	-	Rs.7,57,161
2.	M/s. D.M. Enterprise	-	Rs.13,15,460
3.	M/s. Mahi Enterprises	-	Rs.6,33,455
4.	M/s. Tisa Enterprise	Rs.9,13,010/-	Rs.7,00,253
5.	M/s. Rakesh Enterprises	Rs.7,25,301/-	Rs.10,12,478
6.	M/s. Surat Tube Corporation	Rs.3,12,562/-	-
7.	M/s. Avinash Trading Company	-	Rs.7,10,788
8.	M/s. Shreeji Enterprise	Rs.6,56,307/-	Rs.11,63,596/-
9.	M/s. Mital Enterprise	-	Rs.12,22,000
10.	M/s. Madhav Trading Co.	-	Rs.11,10,720
11.	M/s. D.N. Enterprises	-	Rs.15,37,160
12.	M/s. Malik Trading Co.	-	Rs.10,89,184
Total		Rs.26,07,180	Rs.1,12,52,235

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.26,07,180/- and Rs.1,12,52,235/- for A.Y. 2009-10 and for A.Y. 2010-11 respectively.

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

“6.13 From the above chart, it is noticed that the gross profit/NP rate, in A.Y.10-11, is not an issue, however, the appellant could not substantiate the alleged bogus purchases of Rs.1,12,52,235/-, made from the hawala parties, as per the requirement of the provisions of Sec.37 of the Act, with credible documents. Considering the facts/defects in entirety and relying on the decisions of the various courts, as quoted above, in my considered opinion, the disallowance @25% out of hawala purchases, will be reasonable, in the case of the appellant's business, being manufacturer of laboratory chemicals. In this regard the reliance is placed on the ratio, laid down in the case of Vijay Proteins Ltd Vs ACIT 58 ITD 428 (Abad), Sanjay Oil

Cake Industries Vs CIT (2008) 316 ITR 274 (Guj) etc. as above. Accordingly, the disallowance of Rs.28,13,059/- (25% of Rs.1,12,52,235/-), out of hawala purchases of Rs.1,12,52,235/-, is sustained and balance amount of Rs.84,39,176/-, is hereby deleted. All the grounds of appeal are disposed off accordingly.”

5. No one has appeared on behalf of the assessee. 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 13.10.2017.

Sd/-
(Manoj Kumar Aggarwal)
ACCOUNTANT MEMBER

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

Mumbai, Dated: 13.10.2017.

* 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.