

**आयकर अपीलीय अधिकरण “एक-सदस्य मामला” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI**

श्री शमीम याहया, लेखा सदस्य के समक्ष ।  
**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 3155/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2011-12)

Ramnislal Brothers Pehlaj Kunj, Lohar Ali, Thane-400 601	<b>बनाम/</b> Vs.	Income Tax Officer, Ward 3(2), Ashar IT Park, Road No. 16Z, Wagle Industrial Estate-400 604
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAFFR 8718 P		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri Vijay Mehta
प्रत्यर्थी की ओर से/Respondent by	:	Smt. N. Hemlatha
सुनवाई की तारीख / Date of Hearing	:	27.11.2017
घोषणा की तारीख / Date of Pronouncement	:	06.02.2018

**आदेश / ORDER**

Per Shamim Yahya, A. M.:

This appeal by the assessee is directed against order of Id. Commissioner of Income Tax (Appeals) dated 02.01.2017 and pertains to assessment year 2011-12.

2. The issue raised is that Id. Commissioner of Income Tax (Appeals) erred in sustaining disallowance of 12.5% of bogus purchase amounting to Rs.25,16,287/-.

3. In this case the Assessing Officer had noted that the assessee firm had made purchases of Rs.2,01,30,295/- from M/s. Jyot Corporation, M/s. Hari Om Traders, M/s. Aadeshwar Trading Co., M/s. Mayur Enterprises and M/s. Tej Corporation, which were in the nature of hawala transactions or accommodation entries. The Sales Tax Department had conducted enquiries in respect of the various entry providers and it came to light that impugned purchases of Rs.2,01,30,295/- made by the assessee from M/s. Jyot Corporation, M/s. Hari Om Traders, M/s. Aadeshwar Trading Co., M/s. Mayur Enterprises and M/s. Tej Corporation, were found to be in the nature of accommodation bills/Hawala transactions. The said suppliers had also filed affidavits wherein they also admitted that no real business was conducted by them and no physical delivery of goods was ever given. After receipts of cheques, equivalent cash was given back after deducting commission. The Assessing Officer then directed the assessee to substantiate these purchases but in vain. The Assessing Officer also directed the assessee to substantiate the alleged purchases with documentary evidences such as the confirmatory letter, lorry receipts, octroi receipts, toll tax receipts, delivery challans etc. but the assessee failed to produce these details/documents. The Assessing Officer accordingly held that the purchases of Rs.2,01,30,295/- from the alleged five suppliers were not verifiable. Meanwhile the ld. Counsel of the assessee namely Smt. Naval Karnik agreed for an addition of Rs.25,16,287/- on account of estimation of profits@12.5% on such purchases as discussed by the Assessing Officer in para 9.5 of the assessment order. Considering

the offer made by the Id. Counsel of the assessee and the fact that sales against such hawala purchases were not disputed, the Assessing Officer accordingly made an agreed addition of Rs.25,16,287/- to the income of the assessee firm.

4. Against the above order assessee appealed before the Id. Commissioner of Income Tax (Appeals). The Id. Commissioner of Income Tax (Appeals) confirmed the action of the assessing officer in making addition of 12.5% of the bogus purchase.

5. Against the above order of Id. Commissioner of Income Tax (Appeals), the assessee is in appeal before the ITAT.

6. I have heard both the counsel and perused the records.

7. I find that credible and cogent information was received in this case by the assessing officer that certain accommodation entry provider/bogus suppliers were being used by certain parties to obtained bogus bills. The assessee was found to have taken accommodation entry/bogus purchase bills during the concerned assessment year from different parties. Based upon this information assessment was reopened. The credibility of information relating to reopening remains un-assailed. In such factual scenario, the assessing officer has made the necessary enquiry. The issue of notice to all the parties have returned unserved. Assessee has not been able to provide any confirmation from any of the party. Assessee has also not been able to produce

any of the parties. Necessary evidence relating to transportation of the goods was also not on record. In this factual scenario, it is amply clear that the assessee has obtained bogus purchase bills. Mere preparation of documents for purchases cannot controvert overwhelming evidence that the provider of these bills is bogus and non-existent.

8. The Sales Tax Department in its enquiry has found the parties to be providing bogus accommodation entries. The assessing officer also issued notices to these parties at the addresses provided by the assessee. All these notices have returned unserved. Assessee has not been able to produce any of the parties. Neither the assessee has been able to produce any confirmation from these parties. In such circumstances, there is no doubt that these parties are non-existent. I find it further strange that assessee wants the Revenue to produce assessee's own vendors, whom the assessee could not produce. The purchase bills from these non-existent/bogus parties cannot be taken as cogent evidence of purchases. In light of the overwhelming evidence, the Revenue authorities cannot put upon blinkers and accept these purchases as genuine. This proposition is duly supported by Hon'ble Apex Court decision in the case of *Sumati Dayal vs. CIT* [1995] 214 ITR 801 (SC) and *CIT vs. Durga Prasad More* [1971] 82 ITR 540 (SC). In the present case, the assessee wants that the unassailable fact that the suppliers are non-existent and, thus, bogus should be ignored and only the documents being produced should be considered. This proposition is totally unsustainable in light of Hon'ble Apex Court decisions.

9. I further find that Hon'ble jurisdictional High Court in the case of *Nikunj Eximp Enterprises* (in Writ petition no 2860, order dt. 18.6.2014) has upheld 100% allowance for the purchases said to be bogus when the sales have not been doubted. However, the facts of that case were different. Furthermore, the sales in that case were basically to government departments. Hence, the ratio from this decision is not fully applicable on the facts of the case.

10. In these circumstances, the learned Departmental Representative has referred to Hon'ble Gujarat High Court decision in the case of Tax Appeal No. 240 of 2003 in the case of *N K Industries vs. Dy. CIT* vide order dated 20.06.2016, wherein 100% of the bogus purchases was held to be added in the hands of the assessee and tribunals restriction of the addition to 25% of the bogus purchases was set aside. It was expounded that when purchase bills have been found to be bogus, 100% disallowance was required. The special leave petition against this order along with others has been dismissed by the Hon'ble Apex Court vide order dated 16.1.2017.

11. I further note that Hon'ble Rajasthan high court has similarly taken note of decisions of the apex court on the issue of bogus purchases in the case of CIT Jaipur vs Shruti Gems in ITA No. 658 of 2009. The Hon'ble High Court has referred to the decision of CIT Jaipur vs. Aditya Gems, D. B. in ITA No. 234 of 2008 dated 02.11.2016, wherein the Hon'ble Court had *inter alia* held as under:

"Considering the law declared by the Supreme Court in the case of Vijay Proteins Ltd. Vs. Commissioner of Income Tax, Special Leave to Appeal (C) No.8956/2015 decided on 06.04.2015 whereby the Supreme Court has dismissed the SLP confirmed the order dated 09.12.2014 passed by the Gujarat High Court and other decisions of the High Court of Gujarat in the case of Sanjay Oilcake Industries Vs. Commissioner of Income Tax (2009) 316 ITR 274 (Guj) and N.K. Industries Ltd. Vs. Dy. C.I.T., Tax Appeal No.240/2003 decided on 20.06.2016, the parties are bound by the principle of law pronounced in the aforesaid three judgments.

12. However, I note that this is not an appeal by the Revenue. Hence, it will not be appropriate to consider and take away the relief already granted by the Assessing Officer and Id. Commissioner of Income Tax (Appeals) to the assessee. As held by the Hon'ble jurisdictional High Court when sales are not doubted 100% disallowance for bogus purchase is not disallowable. Hence, I confirm the order of Id. CIT(A).

13. Since the above order has been passed following the Hon'ble Apex Court and Hon'ble High Court decision, the decisions of tribunal referred by the Ld. Counsel of the assessee are not relevant.

14. In the result, this appeal filed by the assessee stands dismissed.

*Order pronounced in the open court on 06.02.2018*

Sd/-

(Shamim Yahya)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 06.02.2018

व.नि.स./Roshani, Sr. PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**