

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

**BEFORE SHRI G.S. PANNU, HON'BLE ACCOUNTANT MEMBER &
SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER**

**ITA.No. 691 & 692/MUM/2015
(A.Ys: 2009-10 & 2010-11)**

Shri Sameer Patel Deal Clothing, Ghanshyam Ind. Estate, Near Yashraj Studio, Veera Desai Road, Andheri West, Mumbai – 400 053	v.	ACIT Circle – 19(1) [Now ACIT – 22(3)] Piramal Chambers, Mumbai
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PAN NO: AHGPP 0885 K

(Appellant)

(Respondent)

Assessee by	:	Shri Vijay Mehta
Revenue by	:	Shri V. Justin

Date of Hearing	:	07.12.2017
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Date of Pronouncement	:	06.03.2018
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ORDER

PER C.N. PRASAD (JM)

1. These two appeals are filed by the assessee against the orders of the Ld.CIT(A)-34, Mumbai dated 31.12.2014 for the Assessment Years 2009-10 & 2010-11. The only issue in the appeals of the assessee is in respect of addition made towards bogus purchases.

2. At the time of hearing Learned Counsel for the assessee submitted before us that on identical facts and circumstances the appeal for the

Assessment Year 2011-12 has been heard on 06.12.2017 by the "D" Bench of Mumbai and since the facts and circumstances being identical, parties are same the outcome of the appeal for the Assessment Year 2011-12 may be followed for the Assessment Years 2009-10 & 2010-11 which came up hearing before us in "E" Bench on this day i.e. 07.12.2017.

3. Ld.DR has no serious objection in following the order of the Coordinate Bench for the Assessment Year 2011-12 in deciding the appeals for the Assessment Years 2009-10 & 2010-11.

4. We find that the Coordinate Bench by order dated 20.12.2017 in ITA.No. 1943/Mum/2015 considered the disallowance of bogus purchases and keeping in view the Gross Profit rate already shown by the assessee and recording the fact that there could not be any sales without purchases/consumption of materials, and since the assessee was engaged in Manufacturing & Trading activity and the turnover has not been disputed by the Assessing Officer, the Profit element embedded in the purchase transactions possibly made in the gray market to get undue benefit of VAT, the Coordinate Bench estimated the profit element to be brought to tax in such bogus purchases at 8%.

5. Nature of business is that assessee is engaged in garment manufacturing and trading on wholesale basis. In assessment year

2009-10 and 2010-11 assessee carried on business as a proprietary concern. However, in A.Y, 2011-12, the said business was carried on in the partnership firm name and style "Deal Clothing". In A.Y. 2009-10 and 2010-11, the Assessing Officer has made the addition based on the information received from DGIT (Inv.), Mumbai who in turn had received the information from Sales-tax Department that the assessee had made purchases from the parties/suppliers who provided accommodation bills. Similarly, in A.Y. 2011-12 the Assessing Officer has relied upon the similar information received from Sales-tax authority.

6. All the four parties namely Deep Enterprises, Liberty Trading Corp., Arco Enterprises and Global Trade Impex, for which addition has been made in A.Y. 2011-12 are figuring in as bogus parties, inter alia, in the list reproduced by the Assessing Officer in A.Y. 2010-11. The parties appearing in A.Y. 2009-10 are different than the parties appearing in other years. In A.Y. 2009-10 and 2010-11, the Assessing Officer has made the addition in respect of the entire alleged bogus purchase which has been confirmed by the CIT (A). In A.Y. 2011-12, the Assessing Officer had made addition @ 25% of alleged bogus purchases. However, the same was enhanced by the CIT (A) following his order for the preceding assessment year.

7. There is a detailed reference to the statements of assessee recorded during the course of survey proceedings and retraction thereof in the assessment order and appellate order for A.Y. 2009-10 and 2010-11. In A.Y. 2011-12 there is no reference to the survey proceedings in the assessment order. However, the CIT (A) has referred to his own order for the preceding assessment years. The CIT (A) who passed the order for A.Y. 2009-10 and 2010-11 on 31.12.2014 was same CIT (A) for A.Y. 2011-12 who passed the order on 13.03.2015. Further, the assessment order for A.Y. 2011-12 was passed on 13.03.2014 which was much after the date of survey being 15.01.2013.

8. The Coordinate Bench for the Assessment Year 2011-12 restricted the addition to 8% of the alleged bogus purchases observing as under: -

“2.2 Pursuant to receipt of certain information from Sales Tax Authorities regarding dealers indulging in providing accommodation bills, it was noted that the assessee stood beneficiary of such bogus purchase bills from four such parties aggregating to Rs.1,26,14,945/. The assessee, in support, produced purchase bills and corresponding sales details but expressed inability to produce any of such party which led the Ld. AO to treat such purchases as bogus purchases. Finally, relying upon certain judicial pronouncements, Ld. AO estimated the additions against these purchases @25% which came to Rs.31,53,736/-. The assessee suffered another adhoc addition to the extent of 20% against Vehicle Expenses, Office Expenses & Telephone Expenses which came to Rs.1,07,013/-. Both these additions are the subject matter of this appeal.

3. Aggrieved, the assessee contested the same without any success before Ld.CIT(A) vide impugned order dated 13/03/2015 where Ld. CIT(A) relying upon the order of preceding year in the case of erstwhile assessee firm enhanced the addition against bogus purchases to 100% as against 25% estimated by Ld. AO. The adhoc disallowance was also confirmed to account for personal element

embedded in the expenses claimed by the assessee. Aggrieved, the assessee is in further appeal before us.

4. *The Ld. Representative for Assessee [AR] drew our attention to the fact that the assessee already reflected high Gross Profit Rate of 18.71% and similar rate has been accepted by the revenue in immediately succeeding AY in an assessment u/s 143(3) and therefore, the additions were not justified. Our attention was also drawn to the fact that the assessee was mainly into trading activities and complete quantitative details were available on record.*

5. *Per Contra, Ld. Departmental Representative [DR] drew attention to the fact that the assessee could not produce even a single party to substantiate the purchases transactions and therefore, additions were justified.*

6. *We have carefully heard the rival contentions and perused relevant material on record. So far as the adhoc addition of 20% against various expenses is concerned, we do not find any reason to interfere with the same since the possibility of personal element, keeping in view the nature of these expenses, could not be ruled out. Hence, the addition to that extent stands confirmed.*

7. *So far as the addition against bogus purchases is concerned, we find that the assessee is in possession of primary purchase documents and already reflected high Gross Profit Rate of 18.71%. The similar rate has been accepted by the revenue in immediately succeeding year. We are of the considered opinion that there could be no sale without purchase /consumption of material since the assessee was engaged in manufacturing and trading activity. The sales turnover achieved by the assessee has not been disputed by the revenue. The assessee has, to some extent, shown correlation between sales and purchases. The purchases were backed by invoices. At the same time, the assessee could not produce any confirmation from any of the impugned supplier and could not produce any party for confirmation, which cast a serious doubt on assessee's claim. Therefore, in such a situation, the addition, which could be made, was to account for profit element embedded in these purchase transactions to factorize for profit element earned by assessee against possible purchase of material in the grey market and undue benefit of Value Added Tax [VAT] against such bogus purchases. Hence, Ld. CIT(A), in our opinion, erred in enhancing the same to 100%. Therefore, on factual matrix and keeping in view the applicable VAT rate on goods being traded by the assessee, we estimate the same @8% of alleged bogus purchases of Rs.1,26,14,945/- which comes to Rs.10,09,196/-."*

9. *Following the said order, we direct the Assessing Officer to restrict the addition to 8% of the alleged bogus purchases.*

10. Coming to the second ground of appeal for the Assessment Year 2010-11 in respect of adhoc disallowance of 20% against various expenses is concerned, we find that similar disallowance was made in the Assessment Year 2011-12 and the Coordinate Bench sustained the said disallowance observing that there is a possibility of personal element could not be ruled out in incurring these expenses. Following the same we uphold the disallowance for these Assessment Years also.

11. In the result, appeals of the assessee are partly allowed.

Order pronounced in the open court on the 06th March, 2018.

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai / Dated 06/03/2018
Giridhar, SPS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

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.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai