

**IN THE INCOME TAX APPELLATE TRIBUNAL "A"**  
**BENCH, MUMBAI**  
**BEFORE SHRI G. S. PANNU, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No.4695/Mum/2015  
(निर्धारण वर्ष / Assessment Year: 2011-12)

ITO 18(2)(1) 304, 3 <sup>rd</sup> Floor, Earnest House, NCPA Marg, Mumbai Pin:400021	<b><u>बनाम/</u></b> Vs.	Shri Kiritkumar Shatilal Mehta Prop. M/s. Vipinkumar & Brothers, 42-44, Vithalwadi, Near Tel. Galli, Kalbadevi Road, Mumbai. Pin:400002
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CO. No.64/Mum/2017  
(ITA. No. 4695/Mum/2015)  
(निर्धारण वर्ष / Assessment Year: 2011-12)

Shri Kiritkumar Shatilal Mehta Prop. M/s. Vipinkumar & Brothers, 42-44, Vithalwadi, Near Tel. Galli, Kalbadevi Road, Mumbai. Pin:400002	<b><u>बनाम/</u></b> Vs.	ITO 18(2)(1) 304, 3 <sup>rd</sup> Floor, Earnest House, NCPA Marg, Mumbai Pin:400021
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACPM2137J		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )

Revenue by:	Shri Saurabh Deshpande (DR)
Assessee by:	Shri Vijay Mehta & Anuj Kisnadwala (AR)

सुनवाई की तारीख / Date of Hearing: 16.02.2018  
घोषणा की तारीख /Date of Pronouncement: 28.03.2018

**आदेश / ORDER**

**PER AMARJIT SINGH, JM:**

The Revenue as well as assessee have filed the above mentioned appeals against the order dated 10.06.2015 passed by the Commissioner of Income Tax (Appeals)-29, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2011-12.

2. The Revenue has raised the following grounds:-

- “1. *On the facts and in circumstances of the case and in the law the Ld. CIT(A) has erred in law as well as fact by not sustaining addition u/s 69C of the I.T. Act, 1961 amounting to Rs.1,33,05,834/- on account of unapproved purchases from M/s. Shreeji Enterprises.*
2. *The Ld. CIT(A) has grossly erred in limiting the addition to the extent of 30% of the total addition i.e. Rs.39,91,750/- out of the total addition of Rs.1,33,05,834/- account of alleged purchases from M/s. Shreeji Enterprises, when Shri Dipak Parikh, Proprietor of the said concern has denied having any transaction with the assessee in his statement on oath recorded u/s 131 of the I.T. Act, 1961.*
3. *On the facts and in circumstances of the case and in the law the Ld. CIT(A) has failed to appreciate statement on oath recorded u/s 131 of the I.T. Act, 1961 before AO during the course of assessment proceeding of Shri Deepak Parikh, Prop, M/s. Shreeji Enterprises has denied having any transaction with the assessee and that AO found the signature of Shri Dipak M. Parekh in the documents submitted by the assessee as forged.*
4. *On the facts and in circumstances of the case, and in the law, the Ld. CIT(A) has failed to appreciate that during the course of assessment proceedings the assessee has filed different addresses of the supplier by the name of M/s. Shreeji Enterprises which were all found to be fictitious by AO on enquiry.*

5. *On the facts and circumstances of the case and in the law, the Ld. CIT(A) has erred in placing reliance on the decision the Gujarat High Court in the case of CIT vs. Simit P. Sheth O/TAXAP/552/2012 tax appeal no. 533 of 2012 dated 16/01/2013 (356 ITR 4516) and ITAT, Ahmedabad in the case of M/s. Vijay Proteins Ltd. 58 ITD 428, which were not relevant to the facts of the case as in the present case, addition was made on account of investigations made by the AO u/s 133(6) and on the basis of statement recorded by him during the course of assessment proceedings u/s 131 of Shri Dipak Parikh, who has stated on oath that he has not sold any goods to the assessee. This case is more akin to ACIT(OSD) ward 5(3) Nadian v/s. Pawanraj B. Bokadia (220 taxman 77) approved by Hon'ble High Court and quoted in the case of Simit Sheth(supra).*
6. *On the circumstances of the case and in the law, the Ld. CIT(A) has erred by not sustaining the disallowance of commission of Rs.1,71,312/- and restriction the addition to 30% as this disallowance is consequential disallowance to unapproved purchase from M/s. Shreeji Enterprises.”*

3. The brief facts of the case are that the Assessee filed his return of income on 30.09.2011 declaring total income to the tune of Rs.9,10,380/-. The return was processed u/s 143(1) of the I. T. Act, 1961. Thereafter, the case was selected for scrutiny under CASS. Notice u/s 143(2) of the I.T. Act dated 02.08.2012 was issued and served upon the assessee. Thereafter, the notice u/s 142(1) dated 25.07.2013 along with questionnaire was also issued and served upon the assessee. The assessee is an individual firm and engaged in the business of trading in suiting and shirting under the proprietorship concern namely M/s. Vipinkumar & Brothers. The assessee also filed copy of Audit report in form no. 3CB and 3CD along with audited

Profit and Loss Account and Balance-Sheet. Assessee also submitted the ledger account of parties from whom he purchased the goods. The assessee failed to furnish the ledger account of one parties namely M/s. Shreeji Enterprises. The noticed was given to M/s. Shreeji Enterprises who send the letter dated 13.02.2014 by informing that M/s. Shreeji Enterprises have entered transaction with M/s. Krishna Trading Co. 40/42, Vithalwadi, Near L.K. Market, Kalbadevi Road, Mumbai for an amount of Rs.3,61,285/- and not with M/s. Vipinkumar & Bros, Prop. Kiritkumar S. Mehta. Accordingly, notice was given to the assessee and the assessee furnished another address of M/s. Shreeji Enterprises i.e., Vile Parle, Mumbai-56, therefore, notice u/s 133(6) of the Act was issued and notice to UCO Bank was also issued. The transaction was not found satisfactory. Therefore, the purchase shown by the assessee from M/s. Shreeji Enterprises during the year for the A.Y. 2011-12 to the tune of Rs.1,33,05,834/- was treated as unexplained expenditure in view of the provision u/s 69C of the Act, 1961 and was added to the income of the assessee. Accordingly, the commission expenses proportionately to the tune of Rs.1,71,312/- was disallowed. The expenses of personal in nature to the tune of Rs.15,271/- was also disallowed and the total income of the assessee was assessed to the tune of Rs.1,44,02,800/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who took into consideration the profit element embedded in the bogus purchase and upheld the addition to the extent of 30% of the bogus purchase.

The assessee filed an appeal before us for the reducing of the percentage of profit embedded in the bogus purchase specifically in accordance with the gross profit shown in the preceding years and the revenue filed an appeal for addition of the whole purchases into the income of the purchase.

4. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. The Ld. Representative of the assessee has argued that the assessee has proved the transaction by adducing the sufficient evidence on record and the transaction was through the banking channel, therefore, purchases to the tune of Rs.1,33,05,834/- is not liable to be disallowed in view of the provision u/s 69C of the Act. It is also argued that the gross profit ratio of the preceding year are liable to be considered for the addition in view of the law settled in **M/s. Vijay Proteins Ltd. 58 ITD 428 and Simit P. Sheth 356 ITR 451**. Therefore, the finding of the CIT(A) is wrong against law and facts and is liable to be set aside. However, on the other hand, the Ld. Representative of the Department has refuted the said contentions and argued that the present case is not a case of information received from the DGIT Inv. wherein certain parties were found involved in the bogus sale and purchases but it is a case in which bogus purchase has been detected and established, therefore, whole addition is liable to be made and accordingly the claim of the assessee was liable to be declined in view of the law

settled in (2015) 55 taxmann.com 378 (Allahabad) ACIT Vs. Shanti Swarup Jain. After giving the carefully thoughts to the argument advanced by the Ld. Representative of the parties and perused the record carefully, we noticed that Assessing Officer conducted the necessary investigation and arrived at this conclusion that the purchase to the tune of Rs.1.33 crores from M/s. Shreeji Enterprises is unexplained u/s 69C of the Act. No new evidence has been produced before us. The Assessing Officer added the whole purchase to the tune of Rs.1.33 crores u/s 69C of the Act into the income of the assessee. The CIT(A) has confined the addition to the extent of 30% of the bogus purchase on estimation basis considering the profit embedded in the bogus purchase. The assessee has submitted the gross profit chart in the last preceding year which is hereby reproduced below.:-

Sr. No.	Year ended	Sales Amount Rs.	Gross Profit Amount Rs.	G.P. Ratio	Net Profit Amount Rs.	N.P. Ratio
1	31.03.08	88,83,908/-	6,94,690/-	7.82%	2,63,764/-	2.97%
2	31.03.09	77,39,481/-	8,22,223/-	10.62%	2,80,527/-	3.62%
3	31.03.10	7,73,60,999/-	27,99,258/-	3.62%	8,63,885/-	1.12%
4	31.03.11	7,54,70,752/-	29,30,056/-	3.88%	9,10,782/-	1.21%
5	31.03.12	7,25,28,962/-	29,02,482/-	4.00%	4,56,430/-	0.63%

6	31.03.13	7,74,96,140/-	32,92,438/-	4.25%	6,91,010/-	0.89%
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Whole addition on account of non-proving the bogus purchase u/s 69C of the Act doesn't seem justifiable because sale is not disputed and books of account has not been rejected. In the instant case, the Assessing Officer conducted the proper verification of the bogus purchase. Notices were given to the parties and the assessee was given an opportunity of being heard before passing the order but the transaction has not been properly proved. Since no new material has come before us, therefore, we are of the view that the bogus purchase to the tune of Rs.1.33. crores is not doubtful. It is not required to be seen whether the whole addition is required on the part of the assessee or not u/s 69C of the Act. This controversy has been adjudicated by the Hon'ble ITAT Ahmedabad in the case of **M/s. Vijay Proteins Ltd. 58 ITD 428** and by the Hon'ble Gujrat High Court in the case of **Simit P. Sheth 356 ITR 451**. Hon'ble Gujarat High Court was of the view that the profit embedded to the bogus purchase is liable to be taken into consideration on the basis of gross profit of earlier years or subsequent years. The assessee provided the data of gross profit ratio and net profit of different years which has been mentioned above. Taking into account of all the facts and circumstances of the case and the law relied by the Ld. Representative of the parties, we are of the view that the end of justice would be met if, the 12.5% of the gross profit ratio of the bogus purchase is liable to

be taken into consideration. We ordered accordingly and we set aside the finding of the CIT(A) on this issue and restricted the addition of bogus purchase to the extent of 12.5% . The appeal of the assessee is hereby allowed accordingly and the appeal of the revenue is hereby ordered to be dismissed.

**5. In the result, the appeal filed by the assessee is hereby ordered to be partly allowed and the appeal of the revenue is hereby dismissed.**

Order pronounced in the open court on 28.03.2018.

Sd/-  
(G.S. PANNU)  
लेखा सदस्य / ACCOUNTANT MEMBER  
मुंबई Mumbai दिनांक Dated : 28.03..2018  
Vijay Pal Singh

Sd/-  
(AMARJIT SINGH)  
न्यायिक सदस्य/JUDICIAL MEMBER

**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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

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