

**IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI  
BEFORE SRI MAHAVIR SINGH, JM AND SRI RAJESH KUMAR, AM**

**ITA No. 3685/Mum/2017**

(A.Y. 2009-10)

The Income Tax Officer, Ward 12(3)(4), Room No. 147A, 1 <sup>st</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	Vs.	Mehta Infocom (P) Ltd. A/301, Atul Apartments, Malad (E), Mumbai-400 097
<b>Appellant</b>	..	<b>Respondent</b>
<b>PAN No. AAFCM2000E</b>		

**ITA No. 3429/Mum/2017**

(A.Y. 2009-10)

Mehta Infocom (P) Ltd. A/301, Atul Apartments, Malad (E), Mumbai-400 097	Vs.	The Income Tax Officer, Ward 12(3)(4), Room No. 147A, 1 <sup>st</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020
<b>Appellant</b>	..	<b>Respondent</b>

**Revenue by** : V Justin, DR

**Assessee by** : Rajesh Chamaria, AR

**Date of hearing:** 04-04-2018 **Date of pronouncement :** 11-04-2018

**ORDER**

**PER MAHAVIR SINGH, JM:**

These cross appeals are arising out of the order of Commissioner of Income Tax (Appeals)-20, Mumbai [in short CIT(A)], in appeal No. CIT(A)-20/ITO-12(3)(4)/IT-312/2014-15 dated 20-02-2014. The Assessment was framed by the Income Tax Officer, Ward-9(2)(3), Mumbai (in short 'ITO')



for the A.Y. 2009-10 vide order dated 31.12.2013 under section 143(3) read with section 147 of the Income Tax Act, 1961(hereinafter 'the Act').

2. The first common issue in these cross appeals is as regards to the order of CIT(A) restricting addition to the extent of 30% of the bogus purchases.

For this assessee has raised the following ground: -

*"1. On the facts and in law, the Ld. CIT (A) erred in confirming additions made solely on the basis of list of "suspicious dealers" uploaded on website of Sales Tax Dept., without appreciating the fact that there are documentary evidences available to substantiate purchases i.e. payments were made by account payee cheques, quantitative records are maintained and for every purchase there was corresponding sales.*

*2. On the facts and in law and without prejudice to ground no. 1 above the Ld. CIT (A) erred in sustaining addition to the extent of 30% of the purchases, without appreciating the fact that appellant had already earned GP at the rate of 20.45% from the sale of alleged bogus purchases."*

Revenue has raised following two grounds:-

*"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition of Rs. 47,61,958/- made on account of bogus purchases to the extent of 30% of the Gross Profit.*



2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition to 30% without appreciating the fact that the Hon'ble Supreme Court in the case of N. K. Protein Vs. CIT held that the entire undisclosed income generated out of bogus transaction deserves to be added to the total income."*

3. Brief facts are that during the year under consideration assessee purchased goods from the following five parties whose names were appearing in the list of suspicious parties appearing on the website of the sales tax department, Govt. of Maharashtra :

Name of the party	Amount
Shakti Trading Co.	18720
Om Corporation	6,94,920
Raj Traders	13,22,543
Aryen Sales Corporation	18,720
Aayushi Enterprises	27,07,055
Total	47,61,958

Since the above parties were involved in issuing bogus bills, the AO required the assessee to prove the genuineness of purchases from the said parties. In response to the same assessee furnished the documents before the AO i.e. Statement showing quantitative details of purchases from the above five alleged parties and further sales to other parties, Copy of Ledger account of all the five parties, Copies of purchase bills issued by the parties, Copies of Ledger account of parties who have further purchased these goods from assessee, Copies of sales bills evidencing the sales made by the assessee to its customers, etc. But the AO was not convinced as the assessee could not produce evidences of transport for movement of goods, octroi bill etc. Accordingly, the AO added the entire bogus purchases under section 69C of the Act amounting to Rs 47,61,958/-. Aggrieved assessee preferred the appeal



before CIT(A). The CIT(A) restricting the addition by applying the profit rate at the rate of 30% by observing in Para 5.3 to 5.5 as under:-

*“5.3 I have gone through the assessment order and submissions made in this regard. It is noted the AO had addition out of purchase made by the assessee to the tune of ₹ 47,61,958/- on the basis of the information received from the VAT authorities. The A/R of the assessee has vehemently opposed the additions and submitted that the purchases were genuine. It was also submitted that payment was all made through banking channel and the delivery of materials was supported by delivery challans. It is stated that the A.O. had made addition on the basis of Information received from VAT authorities without affording opportunity of cross examination to the assessee. It is noted that the entire matter pertains to hawala purchases from so called suspicious dealers as per the Information of VAT authorities. The A.O. has disallowed these purchases as the assessee could not produce these parties for verification. It is noted that primary onus to establish that the purchases were genuine was on the assessee. The assessee is only partly able to discharge the complete onus. It is also noted that A.O. has simply made addition on the basis of statement without much enquiry into the facts of the case. On the other hand assessee has filed copies of bills, bank statement etc. to establish that purchases were genuine. On the face of these evidences the entire purchases cannot be held to be bogus merely on the basis of a statement of seller who was never cross examined by the assessee. It*



*is also noted that the items purchased were used as input into assessee's product for sales which have been accepted by the department.*

*5.4 It is noted that only profit element is liable to tax in such cases as was held in the case of*

- 1. CIT vs. Bholanath Poly Fab Ltd. (2013) (Guj) (HC).*
- 2. CIT vs Simit P. Sheth (2013)(356 ITR 451 (Guj)(HC)*
- 3. CIT vs. Sanjay Oil Cake Industries (2009) 316 ITR 274 (Guj) (HC)*
- 4. ITO vs. Permanand (2007) 107 TTJ 395 (Jd)(Trib)*
- 5. Shri Madhukant B. Gandhi Vs. ITO ITA No. 1950/M/2009 Bench 'B' dt. 23-02-2010 (AY 2005-06) (Mum.) (Trib.).*
- 6. Sanjeev Woeln Mills Vs. CIT (2005) 279 ITR 434 (SC).*

*5.5 In view of the above discussion it is seen that the addition made by the A.O. on account of alleged bogus purchase cannot be sustained fully in appeal. Having regards to facts of the case it would be fair and reasonable if the addition made is restricted to G.P. addition of 30 % on the alleged bogus purchases of ₹ 47,61,958/- which comes to ₹ 14,28,587/-. Accordingly, these grounds of appeal are partly allowed.”*



4. We have heard the rival contentions and gone through the facts and circumstances of the case. We have considered the issue and gone through the facts and circumstances of the case. We find from the facts of the case and argument of both the sides, that the CIT(A) has applied the profit rate at the rate of 30%, which according to me is on higher side going by the nature of business of the assessee i.e. Trading in cables and internet related products. We are in full agreement with the argument of the learned Counsel for the assessee and according to me a profit rate of 12.5% will meet the end of justice in view of the decision of Hon'ble Gujarat High Court in the case of CIT vs. Smith P. Seth (2013) 356 ITR 451 (Guj). Hence, we direct the AO to recompute the income after applying profit rate at the rate of 12.5% and compute the income accordingly. The appeal of the assessee is partly allowed.

5. The next issue in assessee's appeal is as regards to the order of CIT(A) confirming the action of the AO in disallowing vehicle higher charges for non-deduction of TDS under section 194C of the Act by invoking the provisions of section 40a(ia) of the Act. For this assessee has raised the following ground No. 3: -

*3. On the facts and in law, the Ld. CIT(A) erred in upholding disallowance of Vehicle Hire Charges of Rs. 114,000/- u/s 40(a)(ia) of the Act for non-deduction of TDS u/s 194C of the Act without appreciating the fact that the said payments were covered under the provisions of section 194I of the Act and there was no liability to deduct tax under the said section.*

6. We have heard the rival contentions and gone through the facts and circumstances of the case. We find that the AO has disallowed the vehicle higher charges of Rs. 1,14,000/- for non-deduction of TDS by invoking the provisions of section 40a(ia) of the Act. Admittedly, the



assessee has not deducted the TDS, as admitted by the learned Counsel for the assessee before us. Only plea made before us by the assessee was that the assessee is liable to TDS under section 194I of the Act i.e. renting of plant and machinery and TDS liability arises on assessee only if payments exceeds Rs. 1.20 lakhs in the year under consideration. Here, in this case, the payment is below Rs. 1.20 lakhs and the payment is actual amounting to Rs. 1.14 lakhs and hence, the provisions of section 194i of the Act will not come into play. We find force in the plea of the assessee and hence, the disallowance made by AO on vehicle higher charges is deleted.

7. The next issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in making addition of cessation of liabilities in regard to outstanding credits amounting to Rs. 1,22,680/- under section 41(1) of the Act. For this assessee has raised the following ground No. 4:-

*“4. On the facts and in law, the Ld. CIT (A) erred in upholding addition of Rs. 1,22,680/- u/s 41(1)(a) of the Act as cessation of liability without appreciating the fact that the appellant has either paid or offered the same as income in financial year 2013-14 and 2014-15.”*

8. We have heard the rival contentions and gone through the facts and circumstances of the case. We find from the facts of the case that the AO has disallowed ₹ 1,22,680 u/s 41(1) being cessation of liability in respect of amounts due to creditors M/s Cable Prep Industries ₹ 1,02,080 and MEL Systems and Services Limited ₹ 20,600. We find from the facts of the case that the assessee purchased goods from the above parties during the year under consideration. Since the goods received were of substandard quality, the payment was on hold and goods were lying in



stock. The goods purchases were claimed as expenses but were lying in closing stock so practically there was no claim of expenditure during the year. Payment was not made on account of substandard quality and assessee was waiting for the creditors to take back the defective goods. However, this does not mean that this is a case of cessation of liability. After going through the facts, we are of the view that the AO without verifying the fact whether the creditor has written off the amount as Bad Debt in his books, has come to the conclusion about cessation of liability. Moreover, the debt is also not old so that he could come to the conclusion of cessation of liability. The AO without any verification has come to the conclusion that the creditor is not claiming the amount. In view of the above the AO cannot treat the liability as non-payable and cannot treat the same as cessation of liability. Even the CIT(A) has confirmed the action of the AO on the same reasoning. Once the liabilities are outstanding in the books of accounts of the assessee, there is no question of cessation of liability under section 41(1) of the Act. Accordingly, we delete the disallowance and allow this issue of assessee's appeal.

**9. In the result, the appeal assessee is partly allowed and that of the Revenue is dismissed.**

Order pronounced in the open court on 11-04-2018.

Sd/-  
(RAJESH KUMAR)  
ACCOUNTANT MEMBER

Sd/-  
(MAHAVIR SINGH)  
JUDICIAL MEMBER

Mumbai, Dated: 11-04-2018

*Sudip Sarkar /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



**ITA No. 3685 & 3429/Mum/2017**

6. Guard file.  
//True Copy//

BY ORDER,

Assistant Registrar  
**ITAT, MUMBAI**