

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "J" MUMBAI**

**BEFORE SHRI JOGINDER SINGH (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 924/MUM/2017
Assessment Year: 2010-11**

The Dy. Commissioner
of Income Tax, Circle-2,
Kalyan, 2nd floor, Mohan
Plaza, Khadakpada,
Wayale Nagar,
Kalyan (W),- 421301

Appellant

Revenue by
Assessee by

Date of Hearing
Date of pronouncement

Vs. Shri Jayprakash N
Lakhani, F-212, Udyog
Vihar, Near Vithal Wadi,
Ulhasnagar-421003

**PAN No. AAKPL5145M
Respondent**

: Ms. Arju Garodia, DR
: None

: 21/03/2018
: 18/04/2018

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the Revenue. The relevant assessment year is 2010-11. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-3, Thane [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the Revenue read as under:
 1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A)-3, Thane, erred in deleting the addition of Rs.1,41,13,995/- made on account of bogus purchase, despite holding that the purchases were not genuine and the assessee failed to prove the genuineness of the transactions.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the above addition despite the fact that the assessee failed to discharge his onus of proving the purchases.

3. Briefly stated, the facts of the case are that the assessee filed his return of income for the assessment year (AY) 2010-11 on 15.10.2010 declaring total income of Rs.4,50,48,487/-. The Assessing Officer (AO) received information from the sales tax authorities that in the AY 2009-10, the assessee was a beneficiary of bills provided by bogus bill providers. The AO, to verify the genuineness of purchases, sent notices u/s 133(6) to those parties who figured in the list of bogus bill providers as reflected in the information received from the Sales Tax Department. The AO observed that out of 13 parties to whom letters u/s 133(6) were issued, 11 were returned unserved. Out of the remaining two that were served, Shree Yamuna Impex submitted that its business was closed since 2006 and no transactions were carried on with the assessee. Only Yash Enterprises confirmed the transactions with the assessee. Thus in respect of 12 suppliers, either the notices issued were unserved with remark "not known" "unclaimed" "always closed" "left" "no reply". The total purchases from the said 12 parties amounted to Rs.1,94,49,357/-. Therefore, the AO made addition on the reasons that there was no response to notices issued u/s 133(6) of the Act and the assessee failed to produce the suppliers for cross-verification. Thus the assessee failed to discharge the onus to prove the genuineness of the purchases. The AO recorded the statement u/s 131 of the assessee on 12.03.2013 regarding the transactions with the aforesaid 12 unverifiable suppliers. The assessee was unable to produce the copies of lorry

receipts, purchases & stock registers, delivery challans, purchase bills but only submitted the ledger accounts and bank statement. In reply to Q No. 8 & 9 the assessee stated that purchase and stock registers were not maintained. The AO observed from the ledger accounts that, out of the total purchases of Rs.1,94,49,357/- from 12 suppliers, an amount of Rs.89,28,633/- remained outstanding as on 31.03.2010. At page 11 of the assessment order, the AO has highlighted the gist of the contents of the affidavits of the aforesaid suppliers that they were only issuing bills without delivery of goods. The AO placed reliance on the decision in *DCIT v. Phoolwati Devi* (2000) 314 ITR AT 1(Delhi), *Sumati Dayal v. CIT* (1995) 214 ITR 801 (SC) & *CIT v. La Medica* (2001) 117 Taxman 628 (Delhi) and made an addition of Rs.1,94,49,357/- towards bogus purchases.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) vide order dated 22.11.2016 held at page 18-19:

“From the above discussion, it can be concluded that, it is case where the goods were received from the parties other than the persons who had issued the bills of such goods. Though the purchases were shown to have been made by making payment to hawala dealers but goods must have come from grey market, therefore, under such circumstances, the chances of purchase cost being inflated could not be ruled out. Out of 13 suppliers, the AO has accepted the submission of Yash Enterprises for being confirmed that sales were made to the appellant, whereas Shree Yamuna Impex has replied that business was closed since 2006 and in remaining 11 cases notices return unserved except Jindal Steel Corporation, no acknowledge of service nor returned unserved.

Considering the totality of the facts of the case, I am of the considered opinion to disallow 25% of unverifiable purchases made from

unverifiable/Hawala parties. However, in the case of Shree Yamuna Impex, the entire amount of Rs,6,30,697/- is added to the total income of the appellant because they have responded that no business activity is carried out since 2006 and the appellant is also silent on this reply and 25% disallowance in the remaining 10 unverifiable suppliers. Accordingly, the book result of the appellant is rejected u/s.145(3) of the Act. The case laws relied upon by the appellant are not similar to the facts of the case of the appellant.

The disallowance @ 25% out of unverifiable purchases from unverifiable/Hawala dealer had been upheld in the aforesaid case:

- (1) Sanjay Oil Cake Industries vs. CIT (2003) 316 ITR 274 (Guj)
- (2) Vijay Proteins Ltd. vs ACIT 58 ITD 428 (Abd)
- (3) M/s Nand Kishore Meghraj Jewellers, Jaipur CO. No. 105/JP/09 arising out of ITA No. 433/JP/2009 by ITAT Jaipur
- (4) M/s. Trident Jewellers ITAT Jaipur ITA No, 552/JP/2013.

In view of the above stated facts, the disallowance @ 25% of Rs.1,88,18,660/- works out to Rs.47,04,665/- plus Rs,6,30,697/- = Rs.53,35,362/- is sustained and the same is added to the total income of the assessee. The appellant get relief of Rs.(1,88,18,660 -47,04,665) = Rs.1,41,13,995/-."

5. Before us, the Ld. DR relies on the decision in *N.K. Proteins Ltd. v. DCIT* [2017-TIOL-23-SC-IT] and submits that the order passed by the AO be confirmed.

We find that neither the assessee nor his authorized representative appeared before the Tribunal, though the case was fixed for hearing on 11.01.2018 and 21.03.2018. Hence, we proceed to decide the case on merit.

6. We have heard the Ld. DR and perused the relevant materials on record. In the case of *N.K. Proteins Ltd.* (supra), relied on by the Ld. DR,

during the course of search proceedings at the office premises of the assessee, blank signed cheque books and vouchers of number of concerns were found. Accordingly, the purchases made from these concerns were treated as bogus purchases by the AO and the entire deposits in bank accounts of these parties were treated as assessee's income on protective basis. On appeal, the ITAT restricted the addition on account of alleged bogus purchases at 25% i.e. Rs.73,23,322/- of the total purchases amounting to Rs.2,92,93,288/-. On further appeal, the Hon'ble High Court modified the order of the Tribunal and directed for addition of entire bogus purchases. On SLP filed by the assessee, the Hon'ble Supreme Court dismissed the same and confirmed the decision of the High Court for addition of entire income on account of bogus purchases.

In the instant case, we find that one party namely Yash Enterprises has confirmed the transactions with the assessee. It is not a case where during the course of search proceedings at the office premises of the assessee, blank signed cheque books and vouchers of number of concerns were found. In view of the above facts, the case of the assessee is distinguishable from N.K. Proteins Ltd. (supra) relied on by the Ld. DR. In CIT v. Simit P. Sheth (2013) 38 taxmann.com 385 (Guj.), the Hon'ble Gujarat High Court following the decision in CIT v. Vijay M. Mistry Construction Ltd. [2013] 355 ITR 498 (Guj) & CIT v. Bholanath Poly Fab (P.) Ltd. [2013] 355 ITR 290 (Guj), held that where purchases were not bogus but were made from parties other than those mentioned in books of account, not entire purchase price but only profit element embedded in such purchases can be added to income of assessee.

In facts of the case, the Ld. CIT(A) has rightly restricted the disallowance to Rs.53,35,362/-. As the Ld. CIT(A) has taken into account the estimated profit element embedded in the said bogus purchases on proper reasoning, we confirm the same.

7. In the result, the appeal is dismissed.

Order pronounced in the open Court on 18/04/2018.

Sd/-
(JOGINDER SINGH)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 18/04/2018

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai