

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"D" BENCH, MUMBAI**  
**BEFORE SHRI B.R.Baskaran, ACCOUNTANT MEMBER AND**  
**SHRI SANDEEP GOSAIN, JUDICIAL MEMBER**

ITA no.7002/Mum/2017  
(Assessment Year :2009-10)

Ramniklal Brothers,  
Pehlaj Kunj Lohar Ali,  
Thane, Maharashtra-400601  
**PAN-AAFFR8718P**

..... Appellant

v/s

ITO,  
WARD-3(2),  
Ashar IT Park Road No.16Z,  
Wagle Indl. Estate,  
Thane-400604

..... Respondent

Assessee by : Shri Subodh L. Ratnaparthy  
Revenue by : Shri N. Hemalatha-DR

Date of Hearing-05.04.2018

Date of Order -02.05.2018

**ORDER**

**PER: SANDEEP GOSAIN, JUDICIAL MEMBER.**

The present appeal has been filed by the assessee against the order of the Ld. CIT(A)-2, Pune, dated 21/08/2017 for AY 2009-10.

The grounds of appeal read as under:-

1. *On the facts and in the circumstances of the case and in the law the Assessing Officer erred in making addition of ` 2,45,259/- on account of disallowance of purchases.*
2. *The Ld. Assessing Officer failed to take cognizance of the documentary evidences placed before him.*

2. Brief facts of the case are that the assessee has filed e-return of income on 21/09/2009 for the year under consideration declaring total income at Nil. Later on, the case was reopened on the basis of information received from Sales Tax Department, Govt. Of Maharashtra, wherein, the Sales Tax Department has informed that certain parties have only issued bogus bills and no actual transaction took place. The assessee was found to be one of the beneficiaries of such bogus bills. Therefore, after recording the reasons of reopening and serving the statutory notices upon the assessee and seeking reply, the assessment was reopened and after carrying necessary verification, order of assessment u/s 143(3) r.w.s u/s 147 of the Income Tax Act, 1961 (hereinafter 'the Act') was passed on 11.03.2014, thereby making additions on account of bogus purchases.

3. Aggrieved by the order of assessment, the assessee preferred appeal before the Ld. CIT(A). Considering the facts of both parties, the Ld. CIT(A) dismissed the appeal of the assessee and upheld the addition @ 100% on bogus purchases made by the Assessing Officer.

4. Aggrieved by the order of the Ld. CIT(A), the assessee has preferred appeal before us on the grounds mentioned hereinabove.

5. At the very outset, Ld. AR appearing on behalf of the assessee, submitted that the identical matter has already been decided by the Co-ordinate Bench of Mumbai Bench of the Tribunal in assessee's own case in ITA NO.3155/Mum/2017, AY 2011-12, order dated 06/02/2018.

6. After hearing the parties, perused the records and orders orders passed by the revenue authorities, we find that the Co-ordinate Bench of Hon'ble ITAT in assessee's own case has decided the similar issue. The operative portion of order of ITA No.3155/Mum/2017, dated 06/02/2018 contained in para no. 7 to 14, which is reproduced below:-

*"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."*

7. We find that identical question involved in the present case has already been decided by the coordinate benches of Hon'ble ITAT Mumbai in assessee's own case, therefore keeping in view the peculiar facts of the present case and respectfully following the decision of the Coordinate Bench and in order to maintain judicial consistency, we are inclined to modify the orders passed by Ld. CIT(A) and direct the AO to restrict the additions to the extent of 12.5% of bogus purchases. We direct accordingly.

In the result, appeal filed by the assessee is **partly allowed**.

Order pronounced in the Open Court on 02.05.2018

**Sd/-**  
**B.R. BASKARAN**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP GOSAIN**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 02.05.2018**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Shekhar*  
*Private Secretary*

By Order

(Dy./Asstt.Registrar)  
ITAT, Mumbai