

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "SMC", MUMBAI**

**BEFORE SHRI G.S. PANNU (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 7246/MUM/2017  
Assessment Year: 2009-10**

Priyal Trading Company, Ground Floor, Datar Niwas, 87, Perin Nariman Street, Fort, Mumbai - 400001  PAN: AAHFP8240Q <b>(Appellant)</b>	<b>Vs.</b>	The Income Tax Officer 17(2)5, Aaykar Bhavan, Maharshi Karve Road, Mumbai - 400020  <b>(Respondent)</b>
--	------------	--

Assessee by : Ms. Neha Paranjpe

Revenue by : Ms. N. Hemalatha (Sr. DR)

Date of Hearing: 10/04/2018

Date of Pronouncement: 25/04/2018

**ORDER**

**PER RAM LAL NEGI, JM**

This appeal has been filed by the assessee against the order dated 22.09.2017 passed by the Commissioner of Income Tax (Appeals)-28, Mumbai, pertaining to the assessment year 2009-10, whereby the Ld. CIT (A) has dismissed the appeal filed by the assessee against assessment order passed u/s 143 (3) read with section 147 of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that the assessee firm engaged in the business of wholesale in all types of paper and board and also having income from business and profession, filed its return of income for the assessment year under consideration declaring the total income of Rs. 2,45,520/-. The return was processed u/s 143 (1) of the Act. Since, the case was selected for scrutiny notice u/s 143 (2) and 142 (1) were issued. In response thereof the authorized representative of the assessee appeared before the AO and filed the details called for by the AO. The assessee had shown purchases of Rs. 14,10,00,264/-

from nine parties mentioned in the assessment order. The AO received information from the office of Director General of Income Tax (DGIT) (Inv.), Mumbai and from the Sales Tax Department that the aforesaid entities from whom the assessee had shown purchases are bogus entities and they issued accommodation bills to various tax payers including the present assessee during the financial year relevant to the assessment year under consideration. Accordingly, AO issued notice u/s 142 (1) and asked the assessee to furnish all relevant evidence to establish that the goods were actually supplied by the said entities. The assessee furnished the copies of ledger account of the parties, purchase bills, payment details and corresponding sale of material and submitted that the purchases are genuine as there can be no sale without any purchase. The AO issued notices u/s 133(6) of the Act to all the nine parties, however, the notices were returned un-served by the postal department. The assessee also failed to produce the parties. Accordingly, AO rejected the contention of the assessee and relying upon the decision of ITAT Bench Mumbai in the case of Shri Madhukant B Gandhi Vs. ITO 1950(Mum) 2009 dated 23.02.2010, judgment of the Hon'ble Gujarat High Court rendered in CIT vs. Bholanath Polyfab P. Ltd. 355 ITR 290 made disallowance of 12.5% of the total amount of bogus purchases determined during the course of assessment proceedings and added the same the said amount to the income of the assessee.

3. The assessee had claimed the commission of Rs. 2,08,567/- paid by it in connection with its business. Accordingly, the assessee was asked to produce the documentary proof along with the details of the persons to whom commission was paid. However, the assessee did not furnish any detail. The AO rejected the claim of the assessee and added the said amount to the income of the assessee. The AO *inter alia* making the said additions determined the total income of the assessee at Rs. 23,73,840/-.

Aggrieved by the assessment order passed by the AO, the assessee challenged the same before the Ld. CIT (A). The Ld. CIT (A) after hearing the assessee *inter alia* confirmed the aforesaid additions and dismissed the appeal filed by the assessee.

4. The assessee has preferred the present appeal against the impugned order by raising the following effective grounds:-

1. *“The Learned Commissioner of Income Tax (Appeals) erred in confirming addition of Rs. 19,17,234.00 made on account of purchases made from “Suspicious Dealers” being 12.5% of total purchases effected from such parties.*
2. *The Assessing Officer failed to provide inspection of records and Higher Authorities permission he sought while issuing notice u/s 147 of Income Tax Act, 1961.*
3. *The Learned Commissioner of Income Tax (A) erred in confirming addition of Rs. 2,08,567/-.”*

5. Before us, the Ld. counsel for the assessee submitted that since the assessee has furnished the details called for by the AO including copies of ledger account of the parties, purchase bills, payment details and corresponding sale of material, the assessee has discharged the onus of proving the genuineness of the purchases in question. The Ld. counsel further submitted that as per the law laid down by the Hon'ble Bombay High Court in the case of CIT vs. Nikunj Eximp Enterprises Pvt. Ltd., 372 ITR 619 (Bom), addition cannot be made merely on the ground that the parties had not appeared before the AO. The Ld. counsel further submitted that all the payments were made through banking channels. AO has not initiated independent enquiry to verify the allegation against the assessee. The AO has not rejected the sale made during the previous year therefore the purchases cannot be treated as bogus. In the light of

the aforesaid facts the Ld. counsel submitted that the Ld. CIT(A) has wrongly confirmed the addition in question, therefore, the impugned order is liable to be set aside.

6. On the other hand, the Ld. Departmental Representative (DR) relying on the order passed by the Ld. CIT (A) submitted that since the assessee has failed to produce transporters detail before the authorities below in spite of several opportunities granted to it, the assessee has failed to discharge the primary onus of establishing the genuineness of the transaction. As per the settled law, transaction through banking channel itself is not sufficient to prove the genuineness of the transaction. The Ld. CIT (A) has rightly confirmed the addition of 12.5% of the total amount of bogus purchases in accordance with the law laid down by the various High Courts and the Benches of the ITAT. Hence, there is no reason to interfere with the findings of the Ld. CIT (A).

7. We have heard the rival submissions and also perused the material on record. We notice that there is sufficient evidence on record to hold that the parties from whom the purchases were alleged to have been made by the assessee, were bogus and they used to issue accommodation bills to the tax payers. The assessee's dealing with the aforesaid parties. On the other hand the assessee has failed to produce evidence to prove that the goods were actually delivered to the assessee. Hence, we agree with the Ld. CIT (A) that the assessee has failed to establish the genuineness of the purchases shown made from the aforesaid nine parties. The Hon'ble Gujarat High Court in the case of CIT vs. Simit P. Sheth 356 ITR 451 (Guj) has held that in the case of bogus purchases it is necessary to ascertain the fact as to whether purchases were not made at all or purchases were made but from grey market. Once it is established that the purchases were actually made, although not from the parties mentioned in the books of account of the assessee, then only profit

embedded in the same could be added in the income of the assessee. The Hon'ble High Court accordingly upheld the decision of the Tribunal and sustained the addition 12.5% of the total bogus purchases. In the present case since, the AO has made addition of 12.5% of the total amount of bogus purchases made by the assessee during the previous year, the Ld. CIT (A) has rightly upheld the findings of the AO and sustained the addition. Since, the Ld. CIT (A) has passed the impugned order in accordance with the ratio laid down by the Hon'ble Gujrat High Court in CIT vs. Simit P. Seth (supra) we uphold the same and dismiss this ground of appeal of the assessee.

8. Ground No. 2 is argumentative in nature, hence, not adjudicated.

9. Vide ground no. 3 the assessee has challenged the addition confirmed by the Ld. CIT (A) made on account of commission paid to different persons during the previous year. The Ld. counsel for the assessee submitted that the Ld. CIT (A) has wrongly confirmed the addition made by the AO. The Ld. counsel further submitted that commission of Rs. 2,08,567/- was paid to four persons and TDS was deducted and deposited on the due date. The assessee has also filed TDS return. The assessee has furnished party-wise details before the Ld. CIT (A) during the appellate proceedings but, the Ld. CIT (A) has wrongly rejected the documents submitted by the assessee holding that the documents are additional evidence and the assessee has not filed any application under rule 46A of the ITAT Rules.

10 On the other hand, the Ld. DR relying on the order passed by the Ld. CIT (A) submitted that since the assessee had not made any application for admitting additional evidence. The Ld. CIT (A) has rightly confirmed the addition made by the AO.

11. In the light of the rival submissions, we have gone through the findings of the authorities below. We notice that the assessee, produced certain documents to substantiate its contention that commission aforesaid was paid in connection with its business, including the copy of TDS paid challan and TDS return file acknowledgement before the Ld. CIT(A). However, the Ld. CIT (A) rejected the same holding that the assessee has not filed any application for additional evidence under the rules. In our considered opinion, since, the assessee has certain material to substantiate its claim, which could not be produced before the AO during the assessment proceedings, the assessee should get an opportunity to establish its claim in the interest of justice. We therefore set aside the findings of the Ld. CIT (A) on this point and sent this issue back to the file of AO for deciding this issue afresh after taking into consideration, the documents produced before the Ld. CIT (A) and hearing the assessee on this point. We accordingly allow this ground of appeal of the assessee for the statistical purposes.

In the result, appeal filed by the assessee for assessment year 2009-2010 is partly allowed for statistical purposes.

Order pronounced in the open court on 25<sup>th</sup> April, 2018.

*Sd/-*

(G.S. PANNU)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 25/04/2018

*Sd/-*

(RAM LAL NEGI)

JUDICIAL MEMBER

Alindra, PS

**आदेश 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**