

IN THE INCOME-TAX APPELLATE TRIBUNAL “F” BENCH MUMBAI  
BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER  
AND SHRI PAWAN SINGH, JUDICIAL MEMBER

TA No.3632 to 3634/Mum/2016 (Assessment Years 2009-10 to 2011-12)

Lokesh H. Jain Prop. M/s Sagar Cables, Room No. 29, 2 <sup>nd</sup> Floor, Amrut Nivas, 165 Lohar Chawl, next to T Building, Mumbai-400002. <b>PAN: ABYPJ4504D</b>	Vs.	ITO-14(3)(2) Earnest House, Nariman Point Mumbai-20.
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Appellant

Respondent

Appellant by : Shri Prakash Jotwani- Advocate  
Respondent by : Miss Pooja Swaroop (Sr. DR)  
Date of Hearing : 11.06.2018  
Date of Pronouncement : 11.06.2018

**Order Under Section 254(1) of Income –tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER;**

1. The aforesaid three appeals by assessee are directed against the separate order of Id. Commissioner of Income–tax (Appeals)-29, Mumbai dated 09.03.2016 for Assessment Year 2009-10, 2010-11 & 2011-12. In all appeals, the assessee has raised the identical grounds of appeal, therefore, all appeal were clubbed, heard and are decided by common order for the sake of brevity. With the consent of parties, the appeal for Assessment Year 2009-10 was treated as lead case. In Assessment Year 2009-10, the assessee has raised the following grounds of appeal:

1. The learned commissioner of income tax (appeals) has erred in confirming reopening of the Assessment u/s 147 of the Income Tax Act. The Appellant submits that reopening of Assessment is bad in law and notice issued ought to be quashed.

2. The learned commissioner of income tax (appeals) has erred in confirming an addition of Rs. 25,32,234/- as estimated profit on unexplained purchases. The Appellant submits that the Addition confirmed by the Commissioner of income tax (appeals) is not as per law and ought to be deleted.

2. Brief facts of the case are that the assessee is a proprietor of M/s Sagar Cables, engaged in trading of Electrical wires and Cables, filed its return of income for Assessment Year 2009-10 on 18.09.2009 declaring total income of Rs. 3,15,649/-. The return of income was processed and accepted under section 143(1). The assessment was subsequently re-opened under section 147 on the basis of information received from Sales Tax Department, Government of Maharashtra that assessee, proprietor of M/s Sagar Cables, made purchases from Ankit Industries, Alok Trading Company and Ujjwal Enterprises. The said entities are providing accommodation entry. On the basis of such specific information, the assessment was re-opened. The assessment was completed under section 147 r.w.s. 143(3) on 28.11.2013. The Assessing Officer while framing the assessment order made the addition of Rs. 86,22,253/- on account of unexplained expenditure. The Assessing Officer made the addition on the basis of peak of credit in the ledger account of all three alleged bogus parties. On appeal before the Id. Commissioner (Appeals), the action of Assessing Officer in re-opening of the assessment was confirmed. However, the addition on account of unexplained expenditure was restricted to 12.5% of the alleged bogus purchases. The addition was sustained on the principle of profit element embedded in the alleged bogus

purchases. Therefore, further aggrieved by the order of Id. Commissioner (Appeals), the assessee has filed the present appeal before the Tribunal.

3. We have heard the Id. Authorized Representative (AR) of the assessee and Id. Departmental Representative (DR) for the Revenue and perused the material and the documents placed before us. At the outset of hearing, the Id. AR of the assessee submits that he is not pressing Ground No. 1 relates to re-opening of assessment under section 147 of the Act. Considering the submission of Id. AR of the assessee, Ground No.1 of the appeal is dismissed as not pressed.
4. Ground No.2 relates to confirming the addition of Rs. 25,32,234/- on account of estimated profit on unexplained purchases. The Id. AR of the assessee submits that the addition is solely based on the information received from the Sale tax Department is not sustainable. The suspicion of highest degree cannot take place of evidence. The assessee made the genuine purchases from all the parties. All the purchases were made through account payee cheques, which are duly reflected in the statement of account of the assessee. The mere fact that the supplier's name appeared in the list of hawala dealers of Sale tax Department and that the assessee is unable to produce them does not mean that purchases are bogus, when the payment are made through banking channels. The assessing officer has not made any independent inquiry. The sale of the assessee was not disputed. The books of account of assessee were not

rejected. The books of account of the assessee dully Audited. The addition sustained by Id. Commissioner (Appeals) is highly exorbitant. The Id. AR for the assessee furnished the following details of Gross Profit (GP), consistently shown, vis-à-vis total turnover from AY 2007-08 to 2013-14.

	<b>GROSS PROFIT</b>	<b>GROSS TURNOVER</b>	<b>%</b>
AY. 2007-08	470,819	16,201,373	2.90%
AY. 2008-09	514,729	23,997,891	2.14%
AY. 2009-10	700,996	29,037,779	2.41%
AY. 2010-11	1,115,801	41,115,631	2.71%
AY. 2011-12	1,322,443	48,395,100	2.73%
AY. 2012-13	1,137,308	29,778,775	3.82%
AY. 2013-14	808,028	20,542,280	3.93%

5. The Id. AR further submits that the total capital of the assessee is only Rs.13,17,110/-. The assessee during the financial year made total purchases of Rs. 2,83,12,219/- and total sales of the assessee is of Rs.2,90,37,779/-. The assessee has already shown GP at the rate of 2.41%. The assessee has no reason to inflate the expenses by showing bogus purchases; moreover the GP of assessee has increased in subsequent assessment years. In alternative submission the learned AR of the assessee submits that in any case additions should not exceed the GP shown by assessee. On our specific quarry related with applicability of rate of Value

Added Tax (VAT), the Id AR for the assessee submits that rate applicable on the items purchased by assessee was only 4%.

6. On the other hand, the Id. DR for the Revenue supported the orders of authorities below. The Id. DR for the Revenue argued that the Investigation Wing of the Income-tax Department made full-fledged enquiry. The parties from whom the assessee has shown the purchases are bogus Hawala dealers. The hawala dealers are indulged in issuing bogus bills without delivery of any material or goods. During the assessment proceedings the assessing officer issued notice under section 133(6), which were returned back with the remark “not claimed” or no information was received from the parties in respect of the transactions. The assessee obtained accommodation bills only in order to inflate the expenses and to bring down the profitability in order to avoid the tax. The Id. DR for the Revenue prayed for dismissal of the appeal.
7. We have considered the rival submission of the parties and have gone through the orders of authorities below. The assessee has shown the total purchases of Rs. 2,02,57,433/- from all three impugned/ alleged bogus parties. We have noted that during the assessment proceeding the assessing officer issued notice under section 133(6) as per the details furnished by assessee. The notices sent to the parties were returned back with the remark ‘not claimed’. The enquiry was also conducted through inspector. The assessing officer asked the assessee to produce the parties.

The assessee could not produce the parties. The assessee made his submission dated 8<sup>th</sup> November 2013 and contended that the purchases of assessee are not bogus. The all purchases made by assessee are entered in the books of assessee in regular course of business. There is no dispute about the sale of the assessee. The contention of assessee was not accepted by the assessing officer. The assessing officer concluded that the assessee could not produce the lorry receipt to prove that these goods have been received by from the suppliers. The assessing officer also concluded that the assessee has recorded some sale in the books of account which might have been purchased from the grey market without bills and to regularize such purchases in the grey market, the assessee might have taken accommodation bills from the said parties for the purchase of a specific material. The assessing officer also concluded that the goods available on the grey market with bill and by cash at comparatively on lesser prices. On the basis of his observation the assessing officer made the addition on the basis of peak of credits in the ledger accounts of all three parties. The assessing officer worked out the peak credit in respect of all 3 parties at Rs. 86,22,252/-. Before the Id. Commissioner (Appeals) the assessee urged similar contention. The Id. Commissioner( Appeals) on the basis of decision of Hon'ble Gujarat High Court in case of CIT versus Simit P. Sheth (356 ITR 0451) held that once sales is accepted by assessing officer, the very basis of purchases cannot be questioned. The Id. Commissioner

(Appeals) further concluded that the entire purchases price could not be disallowed but only the profit element embedded in such purchases could be added to the income of the assessee. On the basis of his observation the learned Commissioner restricted the addition at the date of 12.5% of the alleged bogus purchases.

8. We have noticed that the AO not rejected the sales of the assessee, nor statement of accounts maintained by assessee was rejected. We are of the considered opinion that under Income Tax Act only real income can be taxed by the Revenue. We may further note that even in cases where the whole transaction is not verifiable due to various reasons, the only taxable is the taxable income component and not the entire transaction. The Hon'ble Bombay High Court in the case of "CIT vs. Hariram Bhambani" in ITA No.313 of 2013 decided on 04.02.15 held that the Revenue is not entitled to bring the entire sales consideration to tax, but only the profit attributable on the total unrecorded sale consideration alone can be subject to income tax. We have further noticed that neither the AO nor the Ld. CIT(A) examined the gross profit ratio or net profit ratio of assessee for previous year and in subsequent years. After considering the facts and rival contentions of the parties, we are of the opinion that in order to fulfill the gap of revenue leakage the disallowance of reasonable percentage of impugned purchase would meet the end of justice. During the hearing of the case the ld. DR for the revenue has not disputed the applicable rate of

VAT @ 4% on the purchases of assessee. Thus, considering the peculiarity of the case, we are of the opinion that disallowance made on account of bogus purchases in the present case, if restricted to 5% of the impugned/ disputed purchases would be sufficient to meet out the possibility of revenue leakage. Therefore, we direct the assessing officer to restrict the disallowance to 5 % (five percentages) of the impugned/bogus purchases. Hence, this ground of appeal is partly allowed.

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

10. The assessee has raised identical grounds of appeal in appeal for assessment year 2010-11 & 2011-12 in ITA No.3633/M/2016 and in ITA 3834/M/2016 respectively. The facts for the appeals for assessment year 2010-11 and 2011-12 are similar, therefore, considering our decision for assessment year 2009-10, both the appeals are allowed with similar directions.

11. In the result all appeals of the assessee are partly allowed.

Order pronounced in the open court on 11.06.2018.

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

**Sd/-**  
**PAWAN SINGH**  
**JUDICIAL MEMBER**

Mumbai, Date: 11.06.2018

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**Copy of the Order forwarded to :**

**1. Assessee**

**3. The concerned CIT(A)**

**2. Respondent**

**4. The concerned CIT**

5. DR "F" Bench, ITAT, Mumbai
6. Guard File

**BY ORDER,  
Dy./Asst. Registrar  
ITAT, Mumbai**