

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

**BEFORE SHRI R.C. SHARMA (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 1910/MUM/2018  
Assessment Year: 2009-10**

Shri Hitesh P. Jain, Krishvi Heights, 10 <sup>th</sup> Floor, Flat No. 1001, V.P. Road, Near Prarthna Samaj, Mumbai-400004  PAN: AEIPJ6186Q	<b>Vs.</b>	The ITO-19(1)(5), Matru Mandir, Room No. 215, Tardeo Road, Mumbai - 400007
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : None

Revenue by : Ms. N. Hemalatha (DR)

Date of Hearing: 14/06/2018  
Date of Pronouncement: 15/06/2018

**ORDER**

**PER RAM LAL NEGI, JM**

This appeal has been filed by the assessee against order dated 29.12.2017 passed by the Commissioner of Income Tax (Appeals) (for short 'the CIT (A)')-54, Mumbai, for the assessment year 2009-10, whereby the Ld. CIT (A) has partly allowed 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 filed its return of income for the assessment year under consideration declaring the total income of Rs. 2,90,653/-. The return was processed u/s 143 (1) of the Act. Subsequently, the assessment was re-opened on the basis of information received from DGIT (Inv.), Mumbai that the assessee during the year relevant to the assessment year under consideration obtained bogus bills showing purchases from the hawala dealers namely Liberty Traders, Jain Marketing Agencies, Gaurav Steel

India, Priya Steel Corporation and Metalex Tube Industries amounting to Rs.. 53,45,510/- In response to the notices u/s 143 (2) and 142 (1) of the Act, the authorized representative of the assessee attended the proceedings and filed the details called for by the AO including the details of purchases, stock, vouchers, sale invoice and bank statements etc. to establish the genuineness of the purchases, however the AO holding that the aforesaid documents do not establish the genuineness of the transaction asked the assessee to produce the parties. But the assessee failed to produce the parties before the AO. Accordingly, the AO made addition of 12.5% of the total amount of bogus purchases to the income of the assessee. The assessee aggrieved by the assessment order challenged the same before the CIT (A). The Ld. CIT (A) after hearing the assessee confirmed the addition of 12.5% made by the AO. Against the said order the assessee in appeal before the Tribunal.

3. The assessee has preferred this appeal before the Tribunal on the following effective ground:-

*“The Ld. Commissioner of Income Tax (Appeals) [hereinafter referred to as “Ld. CIT (A)” has erred in partly upholding the order of the Ld. Assessing Officer and in restricting the allowance to the extent of gross profit already declared by the appellant on purchases amounting to Rs. 53,45,510/- termed as non genuine purchases, as against addition made on estimate by Ld. Assessing Officer @ 12.5% on non purchase termed as non genuine purchases.*

4. This case was fixed for hearing on 14.06.2018. On the said date, when the case was called out for hearing, none appeared on behalf of the assessee. Even no application for adjournment was received. We notice that the assessee had not appeared on the last date of hearing and accordingly the case was adjourned and posted for 14.06 2018 and the parties were accordingly informed. Since, the assessee has failed to appear before the Tribunal despite

service of notice, We decided to dispose of the appeal on the basis of material available on record after hearing the departmental representative (DR).

5. Before us, the Ld. Departmental Representative (DR) submitted that since the assessee has failed to discharge the onus of proving genuineness of transaction before the authorities below, the Ld. CIT (A) has rightly confirmed the addition of 12.5% of the total amount of bogus purchases in question. The Ld. DR further submitted that since the Ld. CIT(A) has confirmed the addition of 12.5% by relying on the judgment of the Hon'ble Gujarat High Court, there is no merit in the appeal of the assessee.

6. We have perused the material on record. The only grievance of the assessee is that the Ld. CIT(A) has wrongly confirmed the addition made by the AO. We notice that the AO has made addition in question because the assessee has failed to discharge the onus of establishing the genuineness of the transaction. No evidence was pointed out by the assessee even during the appellate proceedings. We further notice that the assessee has failed to prove actual delivery of goods by producing delivery challans, transport receipts and goods inward register to prove the genuineness of the purchases. As pointed out by the Ld. CIT (A), the notices issued u/s 133(6) of the Act to the parties were received back un-served. Hence, in our considered view, the documents produced by the assessee do not establish the genuineness of transaction. Therefore, the authorities below have rightly held that the purchases in question are bogus and no material was in fact, delivered by the aforesaid bogus parties.

7. So far as the addition is concerned, since the AO has not rejected the sales, 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 Hon'ble Gujarat High Court in *CIT vs. Simit P. Sheth 356 ITR 451 (Guj)*, The Ld.

CIT(A) has confirmed the addition on the ground that the AO has made the addition taking in to consideration the VAT evaded and profit earned by the assessee by purchasing the material in grey market and obtaining bogus entries from the aforesaid 'hawala dealers' to justify the purchases so made. Hence, we do not find any reason to interfere with the findings of the Ld. CIT(A). We therefore, uphold the findings of the Ld. CIT(A) and dismiss the sole ground of appeal of the assessee.

In the result, appeal filed by the assessee for assessment year 2009-2010 is dismissed.

Order pronounced in the open court on 15<sup>th</sup> June, 2018.

Sd/-

(R.C. SHARMA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 15/06/2018

Alindra, PS

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

**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**