

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI  
BEFORE SHRI G. MANJUNATHA, AM AND SHRI RAVISH SOOD, JM**

ITA No. 4031/Mum/2017

(निर्धारण वर्ष / Assessment Year:2009-10)

M/s Pushpak Auxichem Pvt. Ltd. 241/B-2, Kasturi Plaza, 2 <sup>nd</sup> Floor, Manpada Road, Dombivali (East), Thane-421 201	<b>बनाम/ Vs.</b>	Income Tax Officer Ward-1 (3) Mohan Plaza, 1 <sup>st</sup> Floor Wayle Nagar Khadak Pada, Kalyan- 421301
स्थायी लेखा सं./जीआइआर सं./PAN No.		AABCP0099E
<b>(अपीलार्थी /Appellant)</b>	<b>:</b>	<b>(प्रत्यर्थी / Respondent)</b>
अपीलार्थी की ओर से / <b>Appellant by</b>	<b>:</b>	Shri J.P. Purohit, A.R
प्रत्यर्थी की ओर से/ <b>Respondent by</b>	<b>:</b>	Shri Rajat Mittal, D.R
सुनवाई की तारीख / <b>Date of Hearing</b>	<b>:</b>	09.07.2018
घोषणा की तारीख / <b>Date of Pronouncement</b>	<b>:</b>	13.07.2018

**आदेश / O R D E R**

**PER RAVISH SOOD, JUDICIAL MEMBER:**

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-2, Thane, dated 28.02.2017, which in itself arises from the order passed by the A.O under Sec. 143(3) r.w.s 147 of the Income Tax Act, 1961 (for short 'Act'), dated 14.03.2014.

2. Briefly stated, the facts of the case are that the assessee company had e-filed its return of income for A.Y 2009-10 on 30.09.2009, declaring income of Rs.14,36,301/-. On the basis of the information received by the A.O from the Sales tax department, Maharashtra that the assessee had obtained bogus purchase bills of Rs.1,43,68,765/- from the following parties:-

Sr. No.	Name of the entry provider	Maharashtra VAT No.	A.Y.	Amount in the bills taken by the assessee
1.	Heta Sales Pvt Ltd.	27460651923V	2009-10	Rs. 21,93,329/-
2.	Sandesh Sales Pvt. Ltd.	27540605125V	2009-10	Rs. 64,97,992/-
3.	Umiya Sales Agency Pvt. Ltd.	27660268622V	2009-10	Rs. 15,29,424/-
4.	Mani Bhadra Sales Pvt. Ltd.	27680605436V	2009-10	Rs. 41,48,020/-
			Total	Rs. 1,43,68,765/-

, the case of the assessee was reopened under Sec.147 of the Act.

3. During the course of the assessment proceedings it was observed by the A.O that the assessee had debited total purchases of Rs.15,98,21,544/- (including the aforesaid purchases of Rs.1,43,68,765/-). That as the assessee failed to place on record documentary evidence to substantiate the genuineness and veracity of the purchase transactions which were claimed to have been made from the aforementioned four parties, viz. (i) M/s Heta sale Pvt. Ltd; (ii) M/s Sandesh Sales Pvt. Ltd.; (iii) M/s Umiya Sales Agency Pvt. Ltd; and (iv) M/s Mani Bhadra Sales Pvt. Ltd., therefore, the A.O disallowed the said purchases and made a consequential addition of Rs.1,43,68,765/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) was persuaded to subscribe to the view of the A.O that the assessee had merely obtained accommodation entries from the aforementioned parties and had not made any genuine purchases from them. However, the CIT(A) observing that the assessee had declared/recorded the corresponding sales in respect of the purchases claimed to have been made from the aforementioned hawala parties, therefore, the addition of the entire value of purchases claimed by the assessee to have been made from the aforesaid parties could not have been made. The CIT(A) was of the view that the assessee had made purchases of the goods under consideration, though not from the aforementioned hawala parties, but from the open/grey market, therefore, the addition in its hands as regards booking of such bogus purchases was liable to be restricted to the extent of the profit which would have been earned from procuring such goods at a

lower rate. The CIT(A) for working out the profit that the assessee would have made from carrying out purchases from the open/grey market, observed that the assessee had shown a G.P rate of 7.51% in the immediately succeeding year, viz. A.Y 2010-11, as in comparison to the GP rate of 6.49% for the year under consideration. The CIT(A) being of the view that the assessee was capable of harvesting a G.P rate of 7.51%, thus applied the same to the sales of the assessee for the year under consideration and worked out the suppressed gross profit of Rs.17,00,159/- in its hands. However, the CIT(A) on a request by the assessee that the disallowance as regards the hawala purchases may be restricted to the extent of 25% of the aggregate value of the bogus purchases of Rs. 1,43,68,765/-, as against the disallowance of the entire amount of such purchases, restricted the addition to the extent of Rs.35,92,191/- (i.e 25% of Rs. 1,43,68,765/-).

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. It was submitted by the Id. Authorized Representative (for short 'A.R') for the assessee that the Tribunal in its own case for A.Y 2010-11, viz. M/s Pushpak Auxichem Pvt. Ltd. Vs. ITO Ward-1(3), Kalyan (W), [ITA No. 3344/Mum/2017, dated 04.10.2017] had restricted the addition to the extent of 10% of the value of the bogus purchases. In the backdrop of the aforesaid facts, it was submitted by the Id. A.R that the addition for the year under consideration may also be restricted to 10%. Per contra, the Id. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities.

6. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. We may herein observe that from a perusal of the orders of the lower authorities it can safely be concluded that the assessee had only obtained accommodation entries from the aforementioned four parties, viz. (i) M/s Heta sale Pvt. Ltd; (ii) M/s Sandesh Sales Pvt. Ltd.; (iii) M/s Umiya Sales Agency Pvt. Ltd; and (iv) M/s Mani Bhadra Sales Pvt. Ltd., and had not

made any genuine purchases from them. We are persuaded to subscribe to the view taken by the CIT(A) that as the assessee had duly accounted for the sales as against the purchases under consideration, therefore, the addition was liable to be restricted only to the extent of the profit that would have been earned by the assessee from making the purchases from the open/grey market. We find that our indulgence in the present appeal has been sought for quantification of the profit element that would be involved in making of the purchases by the assessee from the open/grey market. We are of the considered view that as every year is an independent year, therefore, the claim of the Id. A.R that as the addition in its case for A.Y. 2010-11 was restricted to the extent of 10% of the value of the bogus purchases, therefore, the addition in the year under consideration may also be restricted to the said extent, cannot be accepted. We find that the Id. A.R had failed to submit before us any material which could persuade us to conclude that the facts for the year under consideration were found to be in parity with those involved in A.Y 2010-11. We are of the considered view that the assessee by procuring the goods from the open/grey market would have made savings on VAT etc, as against the value for which the said goods would have been available in the regular market. Thus, in the backdrop of our aforesaid observations, it can safely be concluded that the assessee by booking the purchases on the basis of bogus purchase bills had inflated its purchases. We find that the Hon'ble High Court of Gujarat in the case of CIT Vs. Simit P. Sheth (2013) 356 ITR 451 (Guj) after deliberating at length on the issue as regards the profit that would be involved in making of purchases by an assessee from the Open/grey market, had concluded that the same can safely be taken at 12.5% of the aggregate value of such bogus purchases. We thus, being of the considered view that the disallowance sustained by the CIT(A) to the extent of 25% of the aggregate value of the purchases of Rs. 1,43,68,765/- which were claimed by the assessee to have been made from the aforementioned bogus parties is on the higher side, thus, following the aforesaid judgment of the High Court of Gujarat in the case of Simit P. Sheth (supra), restrict the same to the extent of 12.5% of the

aggregate value of bogus purchase of Rs.1,43,68,765/-. We thus uphold the addition to the extent of Rs. 17,96,096 in the hands of the assessee. The order of the CIT(A) is modified in terms of our aforesaid observations

7. The appeal of the assessee is partly allowed in terms of our aforesaid observations.

Order pronounced in the open court on 13.07.2018

Sd/-

Sd/-

(G. MANJUNATHA)  
ACCOUNTANT MEMBER

(RAVISH SOOD)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 13.07.2018

Ps. Rohit

**आदेश की 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.

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**आदेशानुसार/ BY ORDER,**  
**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण, मुंबई / ITAT,**  
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