

आयकर अपीलीय अधिकरण “SMC” न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य

BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 4226/Mum/2017

(निर्धारण वर्ष / Assessment Year 2010-11)

Shri Pramod S. Mehta Room No. 1191, 11 th Floor, Siddhesh Villa CHS Ld., 1 st Parsiwada Lane, V.P. Road, Mumbai-400 004	Vs.	The Income Tax Officer, Ward 19(2)(5). Matru Mandir, Room No. 210, Tadeo Road, Mumbai- 400 007
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AABPM8854B		

अपीलार्थी की ओर से / **Appellant by** : None

प्रत्यर्थी की ओर से / **Respondent by** : Shri Arju Garodia, Sr. DR

सुनवाई की तारीख / Date of hearing:	17-07-2018
घोषणा की तारीख / Date of pronouncement :	17-07-2018

आदेश / ORDER

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-29, Mumbai [in short CIT(A)], in appeal No. CIT(A)-29/IT-419/ITO-19(2)(5)/16-17 dated 20.03.2017. The Assessment was framed by the Income Tax Officer, Ward-19(2)(5), Mumbai (in short 'ITO/ AO') for the A.Y. 2010-11 vide order dated 17.02.2016 under section 143(3) read with section 147 of the Income Tax Act, 1961 (hereinafter 'the Act').



2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in making addition of profit rate at the rate of 12.5% of the bogus purchases. For this assessee has raised the following ground No. 1: -

“1. The Ld. Commissioner of Income Tax (Appeals) [hereinafter referred to as CIT (A)] has erred in partly upholding the order of the Ld. Assessing Officer and in restricting the allowance to the extend of gross profit already declared by the appellant on purchases amounting to Rs. 1,66,70,967/- termed as non-genuine purchases, as against addition made on estimate by AO @ 12.5% on non-genuine purchases.”

3. Briefly stated facts are that the AO received information from the DGIT(Inv.), Mumbai who in turn received information from the sales tax department about some parties who were providing hawala entry/ accommodation entries for purchases. The information in possession of the AO was that the assessee has availed of accommodation entries for purchases from 19 parties totaling to ₹ 1,66,70,967/-. In order to verify the genuineness of the purchases claimed by the assessee from these parties, the AO asked the assessee to furnish supporting documents for corresponding sales affected. Barring the ledger account and cheque payment, no other documents such as delivery challans, lorry receipts, transportation details etc. were produced during the course of assessment proceedings; Moreover, these parties have admitted that they have not made any sale or purchase transaction. The AO held that since the assessee could not prove the genuineness of purchases, these goods must have been purchased from the grey market at a lesser price to inflate the prices of goods. The AO further relying on the Gujarat High Court decisions of CIT vs. Simit P. Sheth (2013) 356 ITR 451 (Guj) and CIT vs. Bholenath Poly Fab P. Ltd. (2013) 355 ITR 290 (Guajarat)



proceeded to make an addition of profit @12.5% of the total purchases of Rs.1,66,70,967/- which comes to ₹ 20,83,870/-.

Aggrieved, assessee preferred the appeal before CIT(A).

4. The CIT(A) also confirmed the action of the AO by observing in Para 3.3. to 3.3.2 as under: -

“3.3 The submissions of the Ld. Counsel for the appellant have been carefully considered. It is the contention of the Ld. Counsel that the AO has not afforded an opportunity of cross examination of the alleged bogus parties. The AO tried to verify the genuineness of the purchases by issue of notice u/s.133(6) which was returned unserved. When his efforts to verify the genuineness were failed, he made the parties from whom the assessee was supposed to have made the purchases as the assessee's witnesses and asked the appellant to produce the parties for verification which he failed to do. The Ld. Counsel argued that the AO has wrongly shifted the onus of producing these parties to the appellant. It is the claim of the assessee that he made purchases from these parties and therefore the onus is on him to prove that these parties existed and that the purchases made from them are genuine which he failed to do. In any case, as the parties were not available in the address given, there is no question of the AO producing them for cross examination. The Ld. Counsel further argued that the purchases are duly recorded in the books of the appellant and copies of both the purchases and sales invoices are present. The payments have been made by account payee cheques and the stock register is maintained which



has been audited by the tax auditor. The appellant placed heavy reliance on the judgement of the Bombay High Court in the case of CIT vs. Nikunj Eximp Enterprises ITA No.5604 of 2010 but the facts of Nikunj Eximp are different from the facts of the present case. It was not the case where the parties were not existing or not traceable. It was a case where the suppliers have not appeared before the AO or the CIT(A). Also, it was a case where substantial amount of sales have been made to a government department i.e. Defence Research and Development Laboratory, Hyderabad. In this case, the very existence of the party is in doubt as they were not traceable in the given address. In all the other cases relied upon by the Id. counsel, the AO has treated the purchases as bogus and made 100% addition of the same. But in the appellant's case, AO has not doubted the genuineness of the purchases, he only doubted the transactions of the alleged parties mentioned supra. As the parties were not traceable, the genuineness of the purchases from these parties could not be established beyond doubt. Also, no confirmations have been obtained by the appellant from these parties. Therefore, the AD presumed that the purchases have been made from some other parties in the grey market, probably at a lesser rate. The AO has only estimated the additional profit margin which the assessee would have been made on account of these purchases which was 12.5% of the alleged bogus purchases

3.3.1. The Hon'ble ITAT, Ahmedabad 'C' Bench in the case of Vijay Proteins Ltd. vs. ACT 58 ITD 0428 held that in similar circumstances, 25% of the



purchase price accounted through fictitious invoices has to be disallowed. The Hon'ble High Court of Gujarat in the case of Sanjay Oil cakes v/s CIT 316 ITR 0274 dealt with similar case where some of the alleged suppliers who had issued bills to the assessee were not genuine as they were not traceable. The goods must have been received from other parties. The likelihood of the. Purchase price of these alleged purchases being inflated could not be ruled out and therefore the Hon'ble High Court has upheld the decision of CIT(A) and the ITAT disallowing 25% of the payments made to such parties. The Hon'ble High Court.”

Aggrieved, now assessee is in second appeal before Tribunal.

5. At the outset it is to be mentioned that the notice was served on assessee fixing the appeal today but none appeared. Going through the facts, it is noticed that this is a very small and covered matter. Hence, the matter is being decided after hearing the learned Department representative.

6. I have considered the issue and gone through the facts and circumstances of the case. I find that the CIT(A) has confirmed the addition made by AO by estimating the profit @ 12.5% of the bogus purchases. I also find that the Revenue has not doubted the sales carried out of the bogus purchases by the assessee. The assessee also maintain stock tally, payments are made by cheque. But the assessee could not produce delivery challans, lorry receipts, transportation details etc. during the course of assessment proceedings and even now before us. Moreover, these parties i.e. the seller parties have admitted that they have not made any sale or purchase transaction and in that eventuality only inference can be drawn is that the assessee might have made purchases from grey market and made sales. In this entire process, the



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assessee might have save the VAT payment and made purchases at a lower rate from grey market. Hence, assessee might have earned higher profit. Accordingly, now the only alternative left with the AO is application of profit rate. The AO has estimated the profit rate @ 12.5%, which is confirmed by the CIT(A) relying on the decision of Hon'ble Gujarat High Court in the case of Simit P. Sheth (supra) and Bholenath Poly Fab P. Ltd. (supra). I find from the facts of the case that the lower authorities have rightly estimated the profit rate @ 12.5% & which is quite reasonable. Accordingly, I confirm the order of CIT(A).

7. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 17-07-2018.

आदेश की घोषणा खुले मे दिनांक 17-07-2018 को की गई ।

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

Mumbai, Dated: 17-07-2018

Sudip Sarkar /Sr.PS

Copy of the Order forwarded to:

1. The Appellant
 2. The Respondent.
 3. The CIT (A), Mumbai.
 4. CIT
 5. DR, ITAT, Mumbai
 6. Guard file.
- //True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI