

**IN THE INCOME TAX APPELLATE TRIBUNAL "E"
BENCH, MUMBAI**

**BEFORE SHRI R. C. SHARMA, AM &
SH. SANDEEP GOSAIN, JM**

आयकरअपीलसं./ I.T.A. No. 616, 617& 618/Mum/2016
(निर्धारणवर्ष / Assessment Year: 2010-11, 2009-10
& 2008-09)

DCIT 4(1)(2) 6 th Floor, R. No. 640, AayakarBhavan, Mumbai-400020	बनाम/ Vs.	Blockwell Pvt. Ltd. 356, Jagannath Shankar Seth Rd, Murlidhar Compound, K. Next to Thakurdwar Post Office, Girgaon, Mumbai-400002
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAACB5050G		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri V. Justin, DR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri R. K. Shah, AR

सुनवाईकीतारीख/ Date of Hearing	:	08.06.18
घोषणाकीतारीख / Date of Pronouncement	:	03/08/2018

आदेश / ORDER

Per Sandeep Gosain, Judicial Member:

The present three Appeals have been filed by the
revenue against the order of Commissioner of Income Tax

(Appeals)-9, Mumbai, dated 04.11.15 for A.Y. 2010-11, 2009-10 & 2008-09 respectively.

2. Since the issues raised in these three appeals are identical, therefore, for the sake of convenience, these three appeals are clubbed, heard and disposed of by this consolidated order.

I.T.A. No. 616/Mum/2016 (AY 2010-11)

3. First of all we take up revenue's appeal in I.T.A. No. 616/Mum/2016 (AY 2010-11) on the grounds mentioned herein below:-

1- "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing to AO to estimate the GP in comparison with the previous years without appreciating the fact that bogus bills were recorded in the books to accommodate cash purchases made from grey market."

2- "On the facts and in the circumstances of the case and in law, the Ld, CIT(A) erred in directing to AO to estimate the GP in comparison with the previous years without appreciating the fact that the assessee failed to produce a single party for verification."

3- *"On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in directing to AO to estimate the GP in comparison with the previous years without appreciating the fact that the Sales Tax Department had themselves put on their official website the names of bogus parties traded by the assessee, after recording of the statements of the bogus parties."*

4- *"On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in treating the purchases as genuine on the basis of the bank account opened by bogus parties by complying with KYC norms, without appreciating the fact that bank is a medium for transaction and does not prove the genuineness of the transaction."*

5- *"On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in disallowing the commission paid to accommodation entry provider, without appreciating the fact that the assessee had obtained accommodation entries to accommodate his purchases made from grey market."*

6- *"The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."*

4. The brief facts of the case are that assessee is engaged in the business of trading activity of aluminum ingots, bills, etc. During the year, the assessee company shown business income only in its return of income. On receiving information from DGIT(Invst.), the case of the assessee was reopened after serving statutory notices and seeking reply of assessee, the AO passed assessment order u/s 143(3) r.w.s. 147 of the I.T. Act thereby making additions of Rs. 8,56,73,765/- on account of bogus purchase.

Aggrieved by the order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the case of both the parties partly allowed the appeal of the assessee by restricting the additions of Rs. 8,91,205/-.

Now before us, the revenue has preferred the present appeal by raising the above grounds.

Ground No. 1 to 5.

5. These ground raised by the revenue are inter connected and inter related and relates to challenging the order of Ld. CIT(A) in directing the AO to estimate the GP in comparison

with the previous years without appreciating the fact that bogus bills were recorded in the books to accommodate cash purchases made from 'grey market', therefore we thought it fit to dispose of the same by this common order.

6. At the very outset, Ld. DR submitted before us that the present case relates to 'bogus purchase' made by assessee and relied upon the orders passed by AO. Ld. DR further submitted that Ld. CIT(A) erred in directing the AO to issue the GP in comparison with previous years without appreciating the fact that assessee had failed to prove a single party for verification and the bogus bills were recorded in the books to accommodate cash purchases made from grey market. It was also submitted by Ld. DR that as per DDIT report, the assessee has purchased goods from grey market and obtained accommodating bills for such purchases to match the quantity of sales shown and therefore, purchases recorded in the books of account are bogus. It was further submitted by Ld. DR that purchase was paid in cash to undisclosed suppliers and that source of cash remains unexplained within the meaning of section 69C of the I.T. Act.

Ld. DR also drawn our attention to the statement given by the director of the assessee company, wherein it was clearly mentioned that the assessee could not identified undisclosed supplies and had not proved by any evidence that the purchases are on credit. It was further submitted by Ld. DR that the statement of the director of the company was also recorded on oath, which find mentioned in the order of assessment. It was also submitted that the total amount involved in 'hawala dealer' transaction in this case was Rs. 22,79,12,761 for three financial years and the beneficiary i.e. the assessee had shown purchase worth Rs. 7,98,82,557 for AY 2010-11 and those purchases were only entries provided to the assessee by the 'hawala dealers' whose name and details are in para no. 6 of the order of assessment and hence no actual transaction had taken place.

Ld. DR further submitted that assessee had not furnished the requisite complete details and failed to produce the broker or agent through whom the alleged purchases were purported to had made and moreover the assessee had not made available the 'details of transportation' of the alleged material purchases from the said 'hawala dealer'. It was further submitted that

transportation receipts, delivery challans, have not been shown or produced by the assessee. It was also submitted by Ld. DR that the assessee had not furnished any details as to how the items purchased from the said hawala dealers, were utilized or consumed in the process of its business.

Ld. DR challenged the order of Ld. CIT(A) on several grounds raised in the grounds of appeal and submitted that since the purchases were made from bogus parties, therefore in such circumstances 100% of the purchase price accounted for in the books of account through such fictitious invoices in the name of four parties ought to have been disallowed.

7. On the other hand, Ld. AR relied upon the orders passed by Ld. CIT(A). It was submitted that assessee had already submitted all the required documents in order to prove that the purchases were genuine. However, the AO made no efforts to carry out necessary verification. It was further submitted that all the payments made to the purchasers had been made by 'account payee cheques' and AO could not prove the tract of money paid, whether it was received back by the assessee or not. Ld. AR

further submitted that the additions were made by the AO on the basis of statement recorded by the Sales Tax Department. However, no such statements or material collected by the Sales Tax Department were made available to the assessee. It was further submitted that the purchase of Rs. 7,98,82,557/- were held to be bogus by the AO on the basis of assumption and presumption, whereas the assessee had already furnished the bank statement, ledger and cash book print outs, copy of stock register, vouchers, etc.

Ld. AR drawn our attention to the orders passed by Ld. CIT(A) more particularly at page no. 40 to 45 which contains calculation of gross profit GP ratio of assessee company. It was submitted that Ld. CIT(A) had rightly decided these grounds in favour of assessee by taking into consideration the GP ratio for the year under consideration and comparison with the previous years.

8. We have heard counsels for both the parties at length and we have also perused the material placed on record as well as the orders passed by revenue authorities. We find that Ld. CIT(A)

without controverting the findings recorded by AO with regard to bogus purchases shown by assessee in its books of accounts jumped to the conclusion that addition should be upheld only to the extent of difference in GP rate of previous year. Whereas on the contrary, as per the record, the additions were sustained on the basis of statement of Shri Akshya Padliya, the director of the assessee company, administered on oath as well as on the ground that assessee had not made available the details of transportation of the material purported to have purchased from the hawala dealers. From the record, we found that an open enquiry u/s.131 of the I.T.Act, 1961 was carried out on 7/12/2012 in the case of M/s. Blockwell P. Ltd., at 356, J.S.S.Road, Murlidhar Compound, Next to Thakurdwar Post Office, Mumbai 400 002. It was revealed that the assessee has obtained bogus I suspicious purchases to the tune of Rs.22,79,12,7611- from various vendors in different financial years i.e. F.Ys.2008-09, 2009-10 & 2010-11. During the course of open enquiry in the case various incriminating papers I documents / statements / material / computer data backup were found and impounded u/s.131 of the I.T.Act, 1961.

9. We also found from the report of the DDIT that the assessee has purchased the goods from grey market and obtained accommodating bills to account for such purchases to match the quantity of sales shown. Thus, the purchases recorded in the books of account are bogus and it can be presumed that purchase consideration was paid in cash to undisclosed suppliers and that source of cash remains unexplained within the meaning of the provisions of Section 69C of the Act. As per Statement given by the Director of the assessee company it is clear that assessee has not identified the undisclosed supplies and has not proved by any evidence that the purchases are on credit, it has to be presumed that the payments against purchases are made to such undisclosed supplier in cash at the time of purchase itself. The peak credit in the name of bogus suppliers representing utilization of cash paid to the undisclosed suppliers requires to be worked out as if payments are made on the dates of the respective purchases.

10. We also found that during the course of investigation proceedings, Statement of Shri Akshay Padliya, the Director of the assessee company has Blockwel Pvt. Ltd., was duly recorded.

To derive strength for the current proceedings, the same is reproduced here which is as under: --

Statement of Shri Akshay Padliya, s/o.Late Shri Rajendra Padliya, residing at 94, Matru Mandir, 278, Tardeo Road, Opp: Bhatia Hospital, Mumbai-7, recorded u/s. 131 of the Income tax Act, 1961 in the presence of Mr.Vaibhav Padliya, in the case of M/s.Blockwell Private Limited, at 356, JSS Road, Next to Thakurdas Post Office, Mumbai-2 on 07.12.2012.

OATH ADMINISTERED

"I swear in the name of God that I shall speak truth and only truth nothing but the truth".

(Before Me)

*Sd/-
(Santosh Karnani)
DDIT(Inv.)Unit-II(I), Mumbai*

*Sd/-
(Akshay Padliya)
Deponent*

Ql. Please identify yourself and confirm that oath has been administered to you and also that you have been made aware of consequences of giving false statement or concealing material facts.

Ans. I am Shri Akhay Padliaya, s/o.Late Shri Rajendra Padliya, residing at 94, Matru Mandir, 278, Tardeo Road, Opp: Bhatia Hospital, Mumbai-7, aged 32 years. I confirm that oath has been administered to me

and I have been made aware of consequences of giving false statement on oath.

Q2. Are you assessed to income tax, if yes, please state your PAN.

Ans. Yes, I am assessed to Income tax in Mumbai charge. My PAN is AGIPP8838R.

Q-3 What is your educational qualification and business background?

Ans. I completed by MBA from ICFAI, Hyderabad. Thereafter I joined the family business established by my father jointly with his brothers in the name of M/s.Blockwell Private Limited.

Q.4 Please state the nature of business of Blockwell Private Limited and also state your position in M/s.Blockwell Private Limited and your involvement in the affairs of the company?

Ans: The Blockwell Private Limited is engaged in the business of trading activity of aluminium sections. The company was established in the year 1959 and till December 2008, my uncle Late Mr.Jainendra Padliya looked after the business activities. After his death, I have joined the company as Director of M/s.Blockwell Private Limited. After death of Mohanlal K.Jain (April 2010), my grandfather and erstwhile director of company, I am looking after all the day to day

administration and am responsible for the overall management of the company.

Q.5 Please state the names of other directors of the company and their role in the business activities of Blockwell Private Limited?

Ans. The other directors are Mr Anil Padliya, Mr.Vipul Padliya and Mr.Vaibhav Padliya.

Mr.Vipul Padliya is residing at Pune and looking after the affairs of one sister concern located at Pune, namely M/s.Panache Alluminium Extrusions Private Limited.

Mr.Vaibhav Padliya, who is present now, is also looking after the sales activities of Blockwell Private Limited.

Mr.Anil Padliya, is my uncle and recently he has undergone angioplasty operation and presently he is not actively involved in affairs of company and he has gone to Indore for personal reasons.

Q6. Please state where the books of accounts, bills, and vouchers of M/s. Blockwell Private Limited are maintained?

Ans. The books of accounts, bills, and vouchers of the company are maintained at this office itself.

Q7 Since you are handling the overall management of the company, please state the modus operandi of purchase of materials by Blockwell Private Limited.

Also give the details regarding the types of supporting documents that are maintained / prepared for making purchases or procuring materials?

Ans. We purchase aluminium sections like tubes, angels, channels, flats etc. We are a trading concern and do not have any other business premise other than this. Depending on our requirement, we place purchase orders with various vendors, either directly or through brokers. We place purchase order only after satisfying ourself that we are getting better rate. The purchase is intimated verbally to the vendor or the broker, as the case be. The goods purchased from the local vendors / traders are mostly delivered by handcart. However, purchases from outstation parties are delivered by truck.

We maintain original bills of purchase and delivery chalans for local vendors. For outstation vendors, LR copies accompanies the bill. The goods so received are entered into stock register which is maintained on computer system.

Q8 Please state as how you ascertain that the goods purchase have been correctly delivered?

Ans. The goods supplied by vendors are accompanied by bills & delivery challan. We check the quantity and quality of the goods delivered and return a signed copy back to the cartwala / truckwala. Our being a small

concern, the verification is done physically by either of the directors.

Q9. Please state the normal payment structure and credit period for the goods purchased?

Ans We buy aluminium sections on a credit period of 3 to 4 months. However, this credit period is not sacrosanct in few cases, when we get a good bargain, we even make payments in 15 days to a month. Sometimes, we also get a credit period of 5 to 6 months, but on higher price. The term of payment is generally linked to the price of our purchases. However, most of our purchases carry a credit period of 3 to 4 months.

Q10. Kindly state the modus operandi of sale of materials by Blockwell Private Limited. Also give the details regarding the types of supporting documents that are maintained / prepared for making such sales?

Ans. We obtain orders on phone or through brokers. Once the order is received, the delivery challan is prepared at office and is accompanied with the goods which are delivered to the customers. The delivery challan contains the description of the goods and its quantity. The customer signs the delivery chakin and returns to the cartwata tempowala. We then send the bill to such customer.

Q11. What are the documents / records that you maintain for movement of goods since the time of receipt of goods till the time they are delivered at the site?

Ans Outward movement of goods are accompanied by delivery challan. We make corresponding entry in the stock register. The signed delivery challan is delivered back to us by the transporter (cartwala tempowala).

Q12 Please state the normal payment structure and credit period for the goods sold?

Ans Our sales are usually of small denominations, from Rs.10,000 to Rs.2,00,000. We sell aluminium sections on a credit period of 2 months to 4 months. However, this credit period is not sacrosanct. For new parties and off the counter sales, we take payment immediately. But, for a few of our old and trusted clients, the payment can extend even upto 6 months. However, for such clients we charge a higher margin as compared to cash sales.

Q13 I am showing you page No.7&8 of Annexure A2. Kindly explain the nature of document and significance of the same?

Ans: These are the documents relating to purchase of aluminium ingots from M/s. Virial Metal Limited. Page No.7 is delivery challan wherein description of grade make, dispatch timing, pieces and weight of aluminium

ingots are 'mentioned. Page 8 is the bill / tax invoice which contains the details of vehicle number, transporter, LR Number, date and time of removal, the details of quality, quantity and price of aluminium ingots.

Q14 I am showing you Page No.5&6 of Annexure A2. Kindly explain the nature of document and significance of the same?

Ans: These are the documents relating to purchase of aluminium ingots from Mis. Guru lajendra Metals Private Limited. Page No.5 is delivery challan wherein description of grade, make dispatch advice, pieces & weight of aluminium ingots are mentioned. Page 6 is the bill / tax invoice which contains the details of vehicle number, transporter, Ll number, date and time of removal, the details of quality, quantity and price of aluminium ingots.

Q15 I am showing you Page No.1&2 of Annexure A1. Kindly explain the nature of document and significance of the same?

Ans These are the documents relating to purchase of aluminium sections from M/s.Shah Industries. Page No.1 is delivery challan wherein description of goods and quantity are mentioned. Page No.2 is bill / tax invoice which contains the details of quantity and price of aluminium sections.

Q16. I am showing you Page No.31&32 of Annexure Al. Kindly explain the nature of document and significance of the same?

Ans: These are the documents relating to purchase of aluminium sections from M/s.Symphony Metalam Pvt. Ltd., Page No.31 is delivery challan wherein description of goods and quantity are mentioned. Page No.32 is bill / tax invoice which contains the details of quantity and price of aluminium sections.

Q17. I am showing you Page No.54&55 of Annexure Al. Kindly explain the nature of document and significance of the same?

Ans: These are the documents relating to purchase of aluminium sections from M/s.Jainam Trade Corporation. Page No54 is delivery challan wherein description of goods and quantity are mentioned. Page No.55 is bill / tax invoice which contains the details of quantity and price of aluminium sections.

Q18 I am showing you bills / challans of following parties:

Hans Trading Co

*Jainam Trade Corporation Mac Chamunda Sales Pvt,
Ltd. NB Enterprises*

Om Corporation

Parasnath Enterprises

Poonam Aluminium

ajawat Metal

Saileela Trading P. Ltd.

Shah Industries

*Sthapna Trade Impex Pvt. Ltd. Symphony Metalliam
Pvt. Ltd.*

Kindly explain the details mentioned in the said bills?

*Ans: These documents are the bills / delivery chat lans
of purchases made from the referred parties. They
contain the details of quantity and price of aluminium
sections.*

*Q19. Peruse the documents mentioned in Q.No.13 to
18 and state the differences?*

*Ans: Documents mentioned in Question No.13&14
above, contain the details of the truck number, name of
transporter, LR Number, Vehicle Number, Description
of grade, make, dispatch timing, pieces & weight of
aluminium ingots.*

*However, the documents mentioned in Question No.15
to 18 contain only the detail of quantity and price of
aluminium section.*

*Q20 Kindly refer to your answer in response to
Question No.19 where you have admitted that there is
substantial difference between the documents
mentioned in Q.No.13&14 and documents mentioned
in Q.No.15 to 18. Please explain the same?*

Ans. I agree that there are substantial differences between the bills /vouchers mentioned in Q. No. 13 & 14 and those mentioned in Q. No. 15 to 18. However, I will not be able to explain the same as the bills/documents in question were handled by my uncle /grandfather. I am actively involved in the business of the company only after the death of my grandfather in 2010.

Q21. I am showing you the page no.1 to 57 in Annexure A1. Kindly feel the texture of the papers and state if the papers are folded / torned or soiled?

Ans: I have perused and felt the texture of the papers mentioned in this question. Most of the bills and vouchers are in good condition and do not have any folding mark on them. The purchase bills and challans are neither torned nor soiled.

Q22 I am showing you Page No.5 to Page No.9 of Annexure A2. Kindly feel the texture of the papers and state if the papers are folded / torned or soiled?

Ans I have perused and felt the texture of the papers mentioned in this question. The bills are folded multiple times.

Q23 In answer to Question 7&8, you have told that the goods are delivered through cartwalas / truckwalas. In such a situation, it is likely that the purchase bills / delivery challans will be folded and somewhat soiled.

However, it is observed that the bills / delivery challans of the parties mentioned in Q.No.18, are crisp, fresh and unfolded. Kindly explain?

Ans: I agree that most of the bills / delivery challans of parties mentioned in question No.18 are fresh and unfolded. However, I will not be able to explain the same as the purchase bills / delivery challans in question were handled by my uncle / grandfather. I am actively involved in the business of the company only after the death of my grandfather in 2010.

Q24 Kindly refer to the list of Hawala operating concerns available on official website of Maharashtra Sales tax and please identify whether any such concerns reflected in your purchases.

Ans. I have gone through the list of Hawala operating concerns available on official website of Maharashtra Sales Tax and I agree that the name of some of my purchase parties are also reflected in the above mentioned in the list. The details of such purchases, are as under:

<i>Party name</i>	<i>2005-06</i>	<i>2006-07</i>	<i>2007-08</i>	<i>2008-09</i>	<i>2009-10</i>	<i>2010-11</i>	<i>2011-12</i>	<i>2012-13</i>	<i>Grand Total</i>
<i>Hans Trading Co.</i>	0	0	0	52,24,813	1,55,22,556	1,95,41,748	5956133		4,62,45,250
<i>Jainam Trade Corpora</i>	0	0	0	16948,512	22749,936	0	0	0	3,96,98,448

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Blockwell Pvt. Ltd.

<i>tion</i>									
<i>Maa Chamunda Sales P. Ltd</i>	0	0	0	2512,059	1,84,74,732	3,68.88,654	8220672	0	6,60,96,117
<i>NB Enterprises</i>	0	0	0	28,71,952	0	0	0	0	28,71,952
<i>Om Corporation</i>	0	0	0	23,29,363	0	0	0	0	23,29,363
<i>Parasnath Enterprises</i>	0	0	0	1,56,84,958	231,35,333	9,56101	0	0	3,9776392
<i>Poonam Aluminium</i>	10,25,482	0	1,92,75,8370	0	0	0	0	0	2,03,01,319
<i>Rajowat Metal</i>	0	0	0	0	0	2,97,56,8160	0	0	2,97,56,816
<i>Saileela Trading Pvt. Ltd.</i>	0	0	0	18,30,717	0	0	0	0	18,30,717
<i>Shah Industries</i>	0	0	0	22,14,268	0	0	0	0	22,14,268
<i>Sthapna Trade Impex P. Ltd</i>	16,22,472	0	1,39,66,714	10,15,017	0	0	0	0	1,66,04,203
<i>Symphony Metallam Pvt.Ltd</i>	0	0	0	1,00,34,7460	0	0	0	0	1,00,34,746
<i>Grand Total</i>	26,47,954	0	3,32,42,551	6,06,66,405	7,98,82,557	8,71,43,319	1,41,76,805	0	27,77,59,591

Q25 All of the parties mentioned in Question No.18, to this statement are found to be suspicious as per the verification carried out by the department. In some of the cases mentioned above even the telephone numbers provided on the bills are incorrect. Moreover in most

of the above cases the bills / delivery challans are unfolded / unsoiled and do not contain the basic details regarding the quality, make, transporter, medium of dispatch etc. All the parties mentioned in Question No.18 to this statement are found to be accommodation entry providers in the list of bogus parties declared by Maharashtra Sales Tax Department and also alleged to give accommodation entries without any actual delivery of material. However, in case of parties mentioned in Question No.13&14, you have admitted that the basic details like quality, make, transporter, medium of dispatch etc, are mentioned,

In view of the above facts, please explain with supporting evidence, the genuineness of purchases purported to have been made from the parties mentioned in question No.18 above.

Ans; I admit that the parties mentioned in question No.18, do not have the basic details like quality, make, transporter, medium of dispatch etc. I also agree that all these parties are mentioned in the list of hawala operators uploaded on the website of ' Maharashtra Sales Tax department.

Sir we are not aware that the above referred parties are hawala parties which engaged in providing accommodation entries, till we were raided by Sales

Tax Department in 2011. We are contesting the demand raised by the Sales Tax department.

Earlier all the purchase and its related activities are looked after by my uncle Late Shri Joiriendra Padilyc and thereafter by my grandfather Late Shri Mohanlal Jam. I have been actively involved in the business only after death of my grandfather in 2010 and I am in no position to comment on the genuineness of the purchase transactions entered into by my company during their tenure.

Q26 In your answers to Q.No.14 to Q.25, you have admitted that:

i)There are substantial discrepancies between the details mentioned in bills / delivery challans of parties mentioned in Q.18 and between the delivery challans / billk of other parties.

ii)The bills / delivery challans of parties in Q.18 are unfolded unsoiled.

iii)The bills / delivery challans of parties in Q.18 are mentioned as hawala operators and listed in website of Sales Tax Department of Maharashtra.

In view of the above, please explain as to why the purchases made from these parties be not treated as bogus in nature and taxed accordingly.

Ans: Sir, with utmost respect, I want to state that whatever I stated above is truth and nothing but the

truth. Sir, we are not aware that the above referred parties are hawala parties which engaged in providing accommodation entries. I agree that there are certain discrepancies between the manner in which the bills / delivery challans mentioned in Q.No.18 vis-à-vis in other bills / delivery challans. Earlier all the purchase and its related activities are looked after by my uncle - Late Shri Jainendra Podliya and thereafter by my grandfather Late Shri Mohanlal Jam. I have been actively involved in the business only after death of my grandfather in 2010 and I am in no position to comment on the genuineness of the purchase transactions entered into by my company during their tenure. However, to my knowledge all the purchases were genuine.

Q27 Do you want to say anything else?

Ans No

Whatever stated above is true to the best of my knowledge. The statements have been recorded as per my say. I have read the statement and understand the contents therein. The statement has been made in sound state of mind and health. No coercion, threat, inducement or undue influence was brought to bear on me for making these statements. I shall abide by the statements made by me. Also sufficient rest was offered to me prior to recording the statement.

The statement is recorded in the presence of Mr. Vaibhav Padliya, another Director of M/s. Blockwell Private Limited.

*Sd/-
(Santosh Karnani
DDIT(Inv.) Unit-II(I), Mumbai*

*Sd/-
Akshay Pandliya
Deponent*

In view of above discussion, the AO concluded as under:-

15.6 Since the assessee has not furnished the requisite complete details and failed to produce the brokers I agents, the assessee was asked to show cause as to why the expenditure claimed in respect of purchases shown to have made from the aforesaid hawala dealers should not be disallowed.

i.) The assessee has not made available the details of transportation of the material purported to have purchased from the aforesaid hawala dealers, such as transportation receipts, delivery challans. The items shown to have purchased from these parties are of such a nature that they require separate transportation.

ii) The assessee has not furnished any ledger account confirmation from the aforesaid dealer.

(iii) The assessee has also not furnished any details as to how the items purchased from the

aforesaid hawala dealers were utilized/ consumed in the process of its business.

iv) The deduction of VAT in the Bill also does not bolster the case of the assessee. It is because of the fact that such deduction does not prove genuineness of a particular transaction in terms of supply of material. Such deduction is basically linked with the payment aspect only and cannot establish the purpose for which payment is made.

(v) The production of invoice is of no help to the assessee, since in the activity of accommodation entry, such documents are meticulously maintained both by the entry provider and entry seeker. It is also not important whether the amount is small or big and whether the assessee is having loss or profit. There may be number of reasons for seeking the accommodation entry as it leads to generation of the cash in the hands of assessee.

(vi) The onus was upon the assessee to prove the genuineness of the expenditure claimed as it was the assessee, which has made the claim.

(vii) The Sales Tax Department certified that the aforesaid party is Hawala Operator after conducting independent enquiries.

(viii) The contention that the payment are made by account payee cheque is not a fool proof method of

substantiating the assessee's claim, as it was already accepted by the persons, whose statement, deposition or affidavit that cash is returned after deducting commission & brokerage once cheque is realized.

(ix) The Sales Tax Department made a finding and uploaded in its website the name of entities which are involved in giving bogus bills only after it carried out detailed enquiry & investigation.

(x) If all the evidences point to the fact that no actual goods were supplied by the above party, then the argument of the assessee that it purchased goods in good faith is not tenable.

After considering the facts and circumstances of the present case, we are of the view that only because the amount has been routed through banking channel would not establish the 'genuineness of the transaction' as held by Hon'ble Jurisdictional High Court in the case of **Naresh K. Pahuja (2015) 54 taxmann.com 258**. Therefore considering the peculiar facts and circumstances of the present case and while relying upon the following judgments:- **1) CIT vs Bholanath Poly Fab Ltd. (2013) 355 ITR 290 (Guj). (HC)**, **2. CIT v Simit D, Sheth (2013) 356 ITR 451 (Guj)-(HC)** and **3. CIT vs. Sanjay Oil**

Cake Industries (2009) 316 ITR 274 (Guj) (HC) and taking into consideration the facts of the present case, and to account for the profit element embedded in these purchase transactions to factorize profit earned by assessee against purchase of material in the *grey market* and undue benefit of VAT against bogus purchases, we are of the considered view that restricting the additions on the basis of comparative analysis of GP of the present year compared to earlier years by Ld. CIT(A) is unreasonable.

The issue of accommodation entries is a reality, to arrest such rampant malpractices, a restraint is always inevitable as we cannot encourage such malpractice of obtaining accommodation entries to avoid the impact of levies and defrauding revenue. In the present case as the AO was in possession of certain valid information in the form of oath statements, therefore in such circumstances, we can find such a restraint advise by the Hon'ble Gujrat High Court in the case of **Smith P. Sheth (supra)** without which avoiding payment of levies and defrauding revenue will continue unabated. Since it is proved during the course of assessment proceedings that assessee was indulged in bogus

purchases, therefore restricting the additions on the basis of comparative analysis of GP of the present year compared to earlier years by Ld. CIT(A) is unreasonable.

Since in the present case, the movement of goods have not been proved by the assessee by submitting any cogent and convincing documentary evidence, therefore revenue authorities had correctly doubted the transaction.

Now as far as the question of not allowing an opportunity of cross examination to the assessee is concerned, we are of the considered view that in the present case, the Income Tax authorities have not recorded any statement of the alleged suppliers or had not received any affidavit of the alleged hawala dealers, but on the contrary, the Sales Tax Department which is one of the organ of the government, had carried out necessary investigations and had received affidavit of the alleged hawala dealers thereby denying the sales of materials to the assessee. The Sales Tax Department had issued required /necessary show cause notice to all the beneficiary including the assessee and in majority of cases VAT had also been collected from the beneficiaries. Therefore, in these circumstances, the assessee

cannot be allowed to raise the point that assessee has not been confronted with these evidences by the Sales Tax Department. In this respect, Hon'ble Punjab & Haryana High Court in the case of **Smt Kusum LataThukral (327 ITR 424)** had an occasion to deal with the similar issue.

In the cited case, the learned authorized representative of the assessee had sought annulment of the order on the ground that the assessee was not allowed to cross examine the donors. The Hon'ble High Court disagreed with this preposition. Whatever material the Assessing Officer had gathered was put to the assessee to comment. Therefore, the statements of the donors who had denied to have made any gift, had not been utilized against the assessee without affording the opportunity of the assessee. The assessee had not discharged the initial onus to produce the necessary evidence to support the genuineness of the transactions. The donors in their statements had denied to have given any gifts to Smt. Kusum LataThukral, the assessee. They had denied even the acquaintance with the assessee. They had also denied to have made the deposit of cash in their accounts and issue of drafts for the purpose of gifts. When the donors had

denied to have given any gifts it had to be logically concluded that it was the assessee's own money, which was routed through the mode of alleged gifts through the accounts of the persons, who were not aware about the deposit of money in their accounts and purchase of bank drafts in favour of the assessee. It was held by the Hon'ble Punjab & Haryana High Court that the question whether denial of opportunity of cross-examination resulted in violation of natural justice depended upon the facts of each case. The object of cross-examination was to test the veracity of the version given in examination-in chief. It was held that even if cross-examination was allowed and the donors who had disowned the making of gifts, were confronted and shown to be factually wrong, the same would have made no difference, as there was no natural love and affection and in its absence, the gifts were not genuine. The appeal of the assessee was accordingly dismissed.

Reverting back to the present case, it would have made no difference even if the assessee company had been allowed an opportunity to cross-examine the alleged suppliers as they had categorically admitted to be involved in giving only

accommodation entries. It is an argument just for the sake of the argument. Mere denial by the assessee is not sufficient to rebut the direct as well as circumstantial evidence which is in the possession of the department.

The ends of justice would be met in case the additions @ 5 % of the bogus purchases are upheld in the years under consideration.

Hence we direct the AO to make additions as per our above direction. Accordingly these grounds raised by the revenue are **partly allowed**.

ITA No. 617 & 618/Mum/2016 (AY 2009-10 & 2008-09)

11. Now we take up revenue's appeals in ITA No. 617 & 618/Mum/2016 (AY 2009-10 & 2008-09). Since we have already decided the similar grounds of appeal in ITA No. 616/Mum/2016 for AY 2010-11 on merits. Therefore, following our own decision in ITA No. 616/Mum/16, we apply the same findings in the present appeal in order to maintain judicial consistency which is applicable *mutatis mutandis* in both the present case.

12. In the net result, all the appeals filed by the revenue stands **partly allowed** with no order as to cost.

Order pronounced in the open court on 3rd August 2018

Sd/-

(R. C. Sharma)

लेखासदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated :

Sr.PS. Dhananjay

Sd/-

(Sandeep Gosain)

न्यायिकसदस्य / Judicial Member

03.08.2018

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार

(Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai