

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "C" MUMBAI**

**BEFORE SHRI MAHAVIR SINGH (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 3909/MUM/2016  
Assessment Year: 2011-12**

M/s Bhakti Developers 2 <sup>nd</sup> floor, Nandi Commercial Complex, Near DNS Bank, Station Road, Ambernath- 421501.	Vs.	Deputy Commissioner of Income Tax Circle-2, Kalyan.
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**PAN No. AAIFB0301R**  
**Appellant**

**Respondent**

Assessee by	:	None
Revenue by	:	Mr. Somnath M. Wajale, DR

Date of Hearing	:	13/08/2018
Date of pronouncement	:	21/08/2018

**ORDER**

**PER N.K. PRADHAN, AM**

This is an appeal filed by the assessee. The relevant assessment year is 2011-12. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-3 [in short 'CIT(A)'], Thane and arises out of the assessment order u/s 143(3) of the Income Tax Act 1961, (the 'Act').

Though the case was fixed for hearing on 26.10.2017, 02.11.2017, 07.12.2017, 18.01.2018, 17.04.2018, 29.05.2018 and 13.08.2018, neither the assessee nor its authorized representative appeared on the above dates. Hence, we proceed to decide the case on merits.

2. The grounds of appeal filed by the assessee read as under:

1. On the facts and in the circumstances of the case and in law the learned Commissioner of Income-tax (Appeals) erred in confirming the addition of Rs.1,38,01,084/- by treating the purchases as bogus / non genuine purchases without appreciating the fact that
  - a. The said purchases are genuine and are supported by the bill / invoice
  - b. The payments were made to the creditors against said purchases by issuing account payee cheques through normal banking channels
  - c. The appellant has discharged its obligation by providing the detail address of the said creditors

The appellant hereby prays that addition may please be deleted.

2. Without prejudice to first ground of appeal, the appellant is preferring the following ground of appeal

On the facts and in the circumstances of the case and in law the learned Commissioner of Income-tax (Appeals) erred in not allowing the claim of deduction u/s 80IB(10) of the I.T. Act on addition of Rs.1,38,01,084/- made by treating the purchases as bogus / non genuine purchases without appreciating the fact that such addition of purchases will increase the profits of the housing project eligible for the claim of deduction u/s 80IB(10). The appellant hereby prays that the deduction may please be granted.

3. In a nutshell, the facts of the case are that during the course of assessment proceedings, the Assessing Officer (AO) noticed that the assessee has made purchases amounting to Rs.1,38,01,084/- from hawala dealers who are involved in issuing bogus bills. In support of its claim of aforesaid purchases, the assessee furnished before the AO sample bill, name and address of the said hawala dealers. In order to

verify the genuineness of transactions, the AO issued notice u/s 133(6) to the said parties. However, notices issued in case of 8 parties were returned back by the postal authorities with the remarks 'not known/unclaimed/refused'. Then the AO deputed Inspector of Income Tax to serve the notices on the said parties. The Inspector reported that no business was being conducted by the aforesaid parties from the given address. Further, in reply to notice u/s 133(6), the proprietor of M/s Ami Traders, Shri Rajendra Ravji Joil, *vide* letter dated 03.01.2014 stated that he is a taxi driver and has not supplied any material to the assessee. Moreover, the aforesaid parties are identified by the Sales Tax Department, Government of Maharashtra as hawala parties. In the statements/affidavits filed by the aforesaid parties before the Sales Tax Department, they have deposed that they have not done any sale of goods to any of the parties. In response to a query raised by the AO to explain why addition on account of disallowance of claim of bogus purchases should not be made, the assessee filed a reply which has been extracted by the AO at page 10-13 of his assessment order dated 21.03.2014. However, the AO was not convinced with the said reply for the reason that though the assessee was given ample opportunities to furnish supporting documentary evidence like confirmation of the concerned parties, copy of transport receipts, copy of stock register, it failed to produce them before the AO. Also one of the above parties i.e. M/s Ami Traders have categorically denied any sale/purchase transaction with the assessee. Further, as per the information received from the Sales Tax Department, Government of Maharashtra, the present assessee is one of such beneficiaries of hawala operators. The

said hawala operators have categorically stated before the Sales Tax Authorities that the purchase transactions are not genuine and no materials were actually supplied. In view of the above facts, the AO made an addition of Rs.1,38,01,084/-.

4. Aggrieved by the order of the AO the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) observed that the addition made by the AO of unaccounted stock introduced in the guise of purchases from outside parties is based on the evidence in the form of affidavits of hawala dealers. Also the assessee failed to produce before the AO the primary/basic information regarding genuineness of purchases from the said parties. In view of the above facts, the Ld. CIT(A) confirmed the addition of Rs.1,38,01,084/- made by the AO.

5. Before us, the Ld. DR supports the order passed by the Ld. CIT(A) and submits that in view of the failure on the part of the assessee to file the primary/basic information required to establish the genuineness of transactions and also in view of the affidavits filed by the hawala dealers before the Sales Tax Authorities, Government of Maharashtra, the total addition of Rs.1,38,01,084/- be confirmed.

6. We have heard the Ld. DR and perused the relevant materials on record. In the instant case, the AO has not found faults with the sales made by the assessee. In the case of *CIT vs. Simit P. Sheth* (2013) 38 taxmann.com (Guj), the Hon'ble Gujarat High Court has held that where purchases were not bogus but were made from parties other than those mentioned in the books of account, not entire purchase price but only profit element embedded in such purchases can be added to income of

the assessee. The Hon'ble High Court referred to a similar view taken in the case of *CIT vs. Vijay M. Mistry Construction Ltd.* [2013] 355 ITR 498 (Guj) and *CIT vs. Bholanath Poly Fab (P) Ltd.* [2013] 355 ITR 290 (Guj). That being the position, not the entire purchase price but only the profit element embedded in such purchases can be added to the income of the assessee.

Following the ratio laid down in the above decisions, we set aside the order of the Ld. CIT(A) and direct the AO to restrict the disallowance to 12.5% of the bogus purchases of Rs.1,38,01,084/-. Thus the 1<sup>st</sup> ground of appeal is partly allowed. As it is a case of bogus purchases, the question of allowability of deduction u/s 80IB(10) does not arise and accordingly, the 2<sup>nd</sup> ground of appeal is dismissed.

7. In the result, the appeal is partly allowed

**Order pronounced in the open court on 21/08/2018.**

Sd/-  
( MAHAVIR SINGH )  
JUDICIAL MEMBER

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai;

Dated: 21/08/2018

*Rahul Sharma, Sr. P.S.*

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Sr. Private Secretary)  
**ITAT, Mumbai**