



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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA no.909/Mum./2018  
(Assessment Year : 2012-13)

Pankaj Enterprises  
46-A, Ganjawala Apartment No.2  
S.V. Road, Borivali (West) ..... Appellant  
Mumbai 400 092 PAN – AAAFP2176J

v/s

Income Tax Officer  
Ward-32(2)(5), Mumbai ..... Respondent

ITA no.910/Mum./2018  
(Assessment Year : 2010-11)

Pankaj Enterprises  
46-A, Ganjawala Apartment No.2  
S.V. Road, Borivali (West) ..... Appellant  
Mumbai 400 092 PAN – AAAFP2176J

v/s

Income Tax Officer  
Ward-32(2)(5), Mumbai ..... Respondent

Assessee by : None  
Revenue by : Shri S.K. Bepari

Date of Hearing – 10.09.2018

Date of Order – 12.09.2018

**ORDER**

Aforesaid appeals have been filed by the assessee challenging two separate orders, both dated 16<sup>th</sup> January 2018, passed by the

learned Commissioner (Appeals)-44, Mumbai, for the assessment years 2010-11 and 2012-13.

2. When the appeals were called for hearing, no one was present on behalf of the assessee in spite of service of hearing notice issued through registered post, which is evident from the postal acknowledgment kept on record. Even, the assessee has not filed any application seeking adjournment of the appeals. In view of the aforesaid, I proceed to dispose of the appeals ex-parte qua the assessee after hearing the learned Departmental Representative.

**ITA no.910/Mum./2018**  
**Assessment year - 2010-11**

3. The only dispute in the present appeal relates to disallowance sustained @ 12.5% of bogus purchases of ₹ 21,41,058.

4. Brief facts are, the assessee a partnership firm is engaged in the business of supply of building materials. For the assessment year under dispute, the assessee filed its return of income on 30<sup>th</sup> September 2010, declaring total income of ₹ 3,56,050. Subsequently, on the basis of information received from the DGIT (Inv), Mumbai, as well as the Sales Tax Department, Government of Maharashtra, that certain purchases shown by the assessee from some parties are not genuine, since, the concerned parties have been identified as hawala

operators providing accommodation bills without actual delivery of goods, the Assessing Officer re-opened the assessment under section 147 of the Act. During the assessment proceedings, the Assessing Officer having found that purchases made from five parties amounting to ₹ 1,68,67,058, are not genuine as per the information of the Sales Tax Department, called upon the assessee to prove the genuineness of such purchases. Though, the assessee filed his submissions stating that the purchases made are genuine, however, the Assessing Officer rejecting the submissions of the assessee held that purchases effected from the five parties identified as hawala operators by the Sales Tax Department are not genuine. Further, he noticed that while completing assessment in assessee's own case for the impugned assessment year under section 143(3) of the Act, already an amount of ₹ 1,58,40,515, was added. However, while making such assessment, some amount of purchases made from four of the parties aggregating to ₹ 21,41,058 was omitted. Accordingly, he added back the amount to the income of the assessee while completing the assessment.

5. Being aggrieved of such addition, the assessee preferred appeal before the first appellate authority, however, the learned Commissioner (Appeals) directed the Assessing Officer to restrict the addition to 12.5% of ₹ 21,41,058, which worked out to ₹ 2,67,632.

6. I have heard the learned Departmental Representative and perused materials on record. As could be seen, on the basis of specific information received from the DGIT (Inv.), Mumbai and the Sales Tax Department, Maharashtra Government, the Assessing Officer found that certain purchases shown to have been made by the assessee were not genuine. Therefore, he proceeded to re-open the assessment under section 147 of the Act. Thus, it is a fact on record that the Assessing Officer had tangible material in his possession to entertain a prima-facie belief that income has escaped assessment. That being the case, re-opening of assessment year under section 147 of the Act is valid.

7. As regards the merits of the additions sustained by the learned Commissioner (Appeals), notably, neither before the Assessing Officer nor before the learned Commissioner (Appeals), the assessee could conclusively prove the genuineness of the purchases made through proper documentary evidences including delivery challans to indicate physical delivery of goods to the assessee. Even no confirmation from the concerned parties was filed. In these circumstances, it cannot be said that the assessee has been able to establish the genuineness of the purchases. Therefore, in my considered opinion, estimation of profit @ 12.5% of the bogus purchases as has been done by the

learned Commissioner (Appeals) is fair and reasonable, hence, does not call for any interference. Grounds raised are dismissed.

8. In the result, assessee's appeal is dismissed.

**ITA no.909/Mum./2018**  
**Assessment year – 2012-13**

9. Ground no.1, relates to addition of ₹ 12,85,735, under section 41(1) of the Act.

10. Brief facts are, for the impugned assessment year the assessee filed its return of income on 28<sup>th</sup> September 2012, declaring total income of ₹ 3,17,280. In course of the assessment proceedings, on the basis of information received from the Sales Tax Department that some parties are providing accommodation bills and some of the sundry creditors appearing in the books of account of the assessee are appearing in the list of hawala dealers identified by the Sales Tax Department, the Assessing Officer called upon the assessee to prove the genuineness of three sundry creditors, namely, Bhawani Tradelink, Darshan Sales Corporation and Deep Enterprises, aggregating to ₹ 12,85,735. Further, the Assessing Officer found that before the Sales Tax Authorities, the above mentioned parties have categorically accepted that they have not done any business activity nor there was actual delivery of goods to the purchasing parties. On the basis of the

aforesaid information, the Assessing Officer called upon the assessee to furnish confirmations from the concerned parties. In response, it was submitted by the assessee that he was unaware of the address or whereabouts of the concerned parties and, hence, will not be able to produce them. Thus, as a result of failure of the assessee to either furnish confirmations from sundry creditors or produce them, the Assessing Officer treated the amount of ₹ 12,85,735 as cessation of liability under section 41(1) of the Act and added back to the income of the assessee. Being aggrieved of such addition, the assessee preferred appeal before the learned Commissioner (Appeals). However, the learned Commissioner (Appeals) sustained the addition made by the Assessing Officer.

11. I have heard the learned Departmental Representative and perused the material on record. It is evident, the amount of ₹ 12,85,735 added by the Assessing Officer represents credit amount appearing in the books of account of the assessee relating to three parties mentioned herein before. When the Assessing Officer called upon the assessee to prove the genuineness of transaction entered with them either by producing them or furnishing confirmations, the assessee was unable to do so. However, before the learned Commissioner (Appeals), the assessee has produced some evidence indicating payment made to concerned parties which was rejected by

the learned Commissioner (Appeals). In my view, assessee's claim that the liability relating to sundry creditors were subsequently discharged needs to be examined properly and assessee deserves an opportunity to prove such fact through proper and authentic documentary evidence. If the assessee is able to establish the existence of liability in the impugned assessment year through proper evidence, no addition under section 41(1) of the Act can be made. Therefore, I restore the issue to the file of the Assessing Officer for fresh adjudication after due opportunity of being heard to the assessee. This ground is allowed for statistical purposes.

12. In ground no.2, the assessee has challenged addition of ₹ 4,21,517.

13. Brief facts are, during the assessment proceedings, the Assessing Officer noticing that out of the total purchases shown in the books of account, purchases worth ₹ 42,15,178, was from unregistered dealers through cash payment and not supported by proper bills or invoices, disallowed 10% of the said purchases and made addition of ₹ 4,21,517. The aforesaid addition made by the Assessing Officer was also sustained by the learned Commissioner (Appeals).

14. I have heard the learned Departmental Representative and perused the material on record. It is evident from the facts on record,

neither before the Assessing Officer nor before the learned Commissioner (Appeals) the assessee could produce proper documentary evidence to prove the genuineness of purchases made from unregistered dealers through cash payment, except, self made vouchers. No proper bills or invoices could be produced by the assessee. In the aforesaid circumstances, disallowance of 10% out of the purchases made from the unregistered dealers is fair and reasonable, hence, requires to be sustained. Ground raised is dismissed.

15. In the result, assessee's appeal is partly allowed for statistical purposes.

16. To sum up, assessee's appeal in ITA no.910/Mum./2018 is dismissed and ITA no.909/Mum./2018 is partly allowed for statistical purposes.

Order pronounced in the open Court on 12.09.2018

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 12.09.2018**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

(Sr. Private Secretary)  
ITAT, Mumbai