

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**AHMEDABAD “SMC” BENCH**

**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER  
& SHRI WASEEM AHMED, ACCOUNTANT MEMBER)**

**ITA. Nos: 1379 & 1380/AHD/2016  
(Assessment Years: 2010-11 & 2011-12)**

<b>Shri Pravin Shivilal Shah 404, Ratanpuri Complex, Baranpura Naka, Baranpura, Vadodara 390001</b>	<b>V/S</b>	<b>Income Tax Officer, Ward- 5 (3), Baroda</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**PAN: AJFPS4748F**

**Appellant by : Shri M.J. Shah, AR  
Respondent by : Shri B.L. Meena, Sr. D.R.**

**(आदेश)/ORDER**

Date of hearing : 18 -09-2018

Date of Pronouncement : 25 -09-2018

**PER MAHAVIR PRASAD, JUDICIAL MEMBER**

1. These two appeals by the Assessee are directed against the order of the Ld. CIT(A)-1, Vadodara dated 25.02.2016 pertaining to A.Ys. 2010-11 & 2011-12 and following grounds have been taken:

1.0 On the facts and in the circumstances of appellant's case and in law, the Id. CIT (Appeals) has erred in not considering the submissions of the appellant regarding reopening the assessment and for disposing of the objections raised by the appellant, (though dealt at para 4.3 - on Page 30 of the appellate order for A.Y.2011-12) and thereby erred in not holding that the impugned order of the Id. A.O. is bad in law and to be quashed.

Appellant submits that from the contents of the order/ reply of the Id. A.O. stated at para 3 of the impugned assessment order dtd.24-3-2014 cannot be called a "reasoned order disposing of the objections" raised by the appellant. Appellant's submissions before the Id. CIT(Appeals) are not dealt with by the Id. CIT (Appeals) in the impugned appellate order dtd. 25-2-2106. The Id. A.O. is bound to dispose of the objections by passing a speaking order. The reply of the Ld AO is not at all a reasoned order against the objections by appellant. Hence, your appellant submits that the impugned assessment order is bad in law, since the objections raised by the appellant are not properly replied/ dealt with by the Id. A.O.. Your appellant therefore, prays your Honour to hold so now and quash the impugned assessment order.

Appellant further submits that substratum for the formation of belief, as indicated in the impugned assessment order is the information available from Maharashtra Sales-tax Department, Mumbai which has got no relation with the reasons recorded and reopening was therefore not sustainable and hence the impugned assessment order is bad in law. Your appellant therefore, prays Your Honour to hold so now and quash the impugned assessment order.

Your appellant submits that the ground raised before the Id. CIT (Appeals) also included erring by the Ld AO in law point also which has not be considered by the Ld CIT (A). Your appellant, otherwise also request Your Honour to adjudicate this ground since it goes to the root of the matter.

Without prejudice to the above, on the facts and in the circumstances of appellant's case and in law, the Id. CIT (Appeals) has erred in confirming addition at 10% of the purchases aggregating to Rs. 30,93, 637/-made from 3 suppliers alleged as not genuine, on the ground that the said amount has escaped assessment since the appellant has failed to prove the Renuineness of the transactions with the said parties, though the fact of receipt of material is not disputed.

Appellant submits that even if they are treated as purchases from non genuine sellers, since the quantity purchased is genuine and sold also and moreover appellant's business is like a intermediary business earning a meager % of net profit hardly about 1% to 2% like nominal commission earned by a commission agent, assuming 10% of the purchases from the alleged non-genuine suppliers as undisclosed business income (as against undisclosed income u/s 69 as per the impugned assessment

order) by the Id. CIT(Appeals) is highly unjustifiable, unreasonable and disproportionate to the profits earned as per assessment records. Your appellant therefore prays your Honour to hold so now and kindly direct the Id. AO to delete the impugned addition.

3.0 On the facts and in the circumstances of appellant's case and in law, the Id. CIT (Appeals) has erred in not deleting the addition made u/s 69 of the Act by the Id. A.O., even though held that the provision of section 69 of the Act are not applicable and thereby further erred in confirming impugned addition as undisclosed business income at 10% of the purchases aggregating to Rs. 30,93,697/- from 3 suppliers alleged as not genuine.

Appellant submits that the Id. A.O. made the impugned addition u/s 69 of the Act which relates to unexplained investment and hence the action of the Id. CIT(Appeals) in not directing the Id. A.O. to delete the impugned addition made u/s 69 of the Act even after accepting that provisions of Section 69 of the Act are not applicable and instead confirming addition as undisclosed business income is unjustifiable and unwarranted. Your appellant therefore prays your Honour to hold that action of the Id. CIT (Appeals) is bad in law and direct the Id. AO to delete the impugned addition made by him u/s 69 of the Act which is though confirmed by the Id. CIT (Appeals) as undisclosed business income.

4.0 Your appellant craves leave to add, to amend and or alter the grounds herein above raised.

2. So far ground no. 1 is concerned with regard to reopening of the assessment is concerned, Id. A.R. does not want to press this ground, hence, same is dismissed as not pressed. Ground Nos. 2 & 3 are interconnected.

3. The A.O. in his order has stated as follows:

*"In this case, on perusal of information available on record, it is noticed that during the Financial Year 2010-11, assessee has purchased goods through Hawala dealers, namely Apex Metal Corporation, Asian Metal Industries, Krishna Steel Industries, Saradgi Syndicate & Sunrise Enterprises to the tune of Rs.30,58,856/-, Rs. 26,70,467/-, Rs. 51,00,624/-, Rs. 4,45,603 & Rs. 5,83,054 respectively.*

*As per the information available with this office, the above mentioned transactions are bogus purchase according to Maharashtra Sales Tax Deptt, Mumbai. The evidence with respect to bogus nature of transaction reveals that assessee has not disclosed correct financial transaction in his return of income. Further, through bogus purchase entries, assessee has evaded his actual tax liability. Therefore, I have reason to believe that income to the extent of Rs. 1,18,58,604/- escaped assessment in the case of the assessee.*

*In view of the above facts, the AO had reason to -believe that assessee had suppressed primary facts regarding bogus nature of the above transaction to the tune of Rs. 1,18,58,604 - and income of Rs. 1,18,58,604/- has escaped assessment within the meaning of section 147 of the Act, for which the assessment needs to be re-opened by issuing notice u/s. 148 of the Act."*

*2. The assessee, has not filed any return in response to the said notice. Therefore, notice u/s. 142(1) of the I.T.Act dated 12.8.2013 along with a detailed questionnaire has been issued and duly served upon the assessee on 13.8.2013 fixing the hearing on 13.8.2013. In response to the above, the assessee's authorized representative vide letter dated nil received in this office on 17.1.2014 has requested to treat the return filed on 24.12.2011 as the compliance to notice u/s. 148 of the I.T.Act. The assessee has also furnished the details as called for. Further, the assessee vide the above referred letter has requested to issue certified copy of the reason recorded for reopening the assessee. The same was provided to the assessee vide this office letter dated 20.01.2014.*

*3. Thereafter, the assessee's authorized representative vide letter dated 22.01.2014 has objected to the re-opening of the assessment u/s. 147 of the I.T.Act, for the year under consideration. The objection raised by the assessee against the reopening of the assessment u/s. 147 has been disposed off vide this office letter dated 23.1.2014 which is reproduced as under:-*

*"Please refer to your letter dated 22.01.2014 wherein you have objected to the issue of notice issued under 1,48 of the I.T.Act dated 22.3.2013 and stated that*

*there is no income which has escaped assessment is bad in law and not tenable in view of the following :-*

1. *The assessee in his return of income filed on 24.12.2-11 has not revealed primary facts of correct income as purchases shown by assessee in his books of accounts are not genuine.*

2. *The income so computed on the sale and purchase transaction and disclosed in the return of income is not correct as the alleged purchase parties are mere Hawala entry provider and the fact is admitted by these parties i.e. M/s. Apex Metal Corporation, M/s./Asian Metal Industries, M/s. Krishna Steel Industries, M/s. Sarogi Syndicate and M/s. Sunrise Enterprise, Bombay).*

3. *Re-opening of the assessment has been made within 4 years i.e. on 22.3.2013.*

4. *In view of the above facts and circumstances of the case, it is clear that income has escaped assessment for the assessment year under consideration, and therefore, the objection raised by you is hereby rejected and filed. "*

4. *Thereafter, notice u/s. 143(2) of the I.T.Act dated 14.2.2014 along with a detailed questionnaire has been issued and duly served upon the assessee on the same day calling for various details / information in connection with the assessment proceedings for the Asstt. Year 2010-11. In response to the above, Shri Harin Parikh, C.A., attended the proceedings from time to time and furnished the details as callsd for. The case is discussed with him in detail.*

5. *The assessee is a proprietorship concern engaged in the business of Ferrous and A/on -Ferrous metals, S.S.Sheets. S.S. Pata. S.S Pipes. S.S.Coils and other non-ferrous metals trading of these items is mainly done on whole sale basis. During the previous year relevant to the assessment year under consideration,- the assessee has shown gross profit of Rs.5,76,583/- on the total turnover of Rs.,5,96.24,546 - which works out the gross profit rate at 0.97% and net profit of Rs.2,93,838/- which works out the net profit rate at 0.49% as against the gross profit of R.s.5.35,721/- on the total sales of Rs.3,05,26,734/- which works out the*

gross profit rate at 1.75% and net profit of Rs.2,84,822/- which works out to 0.93% shown in the immediately preceding assessment year. Books of-accounts, bills, vouchers etc. produced during the course of assessment proceedings have been verified on test check basis. Further, on verification of the purchase bills, it is seen that none of the purchase bills have no signature of the recipient of materials.

6. Information has been received from Sales-tax authorities, Mumbai, that assessee has made purchases from following suspicious parties during the year previous year relevant to the assessment year under consideration.

(a) M/s. Apex Metal Corporation	Rs. 30,58,856/-
(b) M/s. Asian Metal Industries	Rs, 26,70,467/-
(c) M/s. Krishna Steel Industries	Rs. 51.00.624/-
(d) M/s. Saradgi Syndicate	Rs. 4,45,603/-
(e) M/s. Sun rise Enterprise	<u>Rs. 5,83,054/-</u>
Total	Rs. 1.18,58.604/-

6.1 On verification of the profit and loss account filed along with the return of income, it is seen that during the previous year relevant to the assessment year under consideration, the assessee has shown purchases of Rs.5,93,15,229/-. During the course of assessment proceedings, vide this office questionnaire dated 12.8.2013, the assessee was specifically asked to furnish details of purchases made from various parties during the year under consideration with complete name and postal address, total payment made and mode of payment. In case, the payment is made by cheque, the assessee was asked to furnish cheque no., date, amount and the name of the bank on which cheque is drawn. In response, the assessee's authorized representative vide letter dated nil received in this office on 17.1.2014 has furnished details of purchases made from various parties along with their postal addresses, bank statement evidencing the proof of payment made to the parties and also copies of ledger account of the parties

*from whom the assessee made the purchases during the year under consideration.*

*6.2. Thereafter, vide this office letter dated 14.2.2014, the assessee was specifically asked to furnish the following :-*

*i) Please furnish copy of day-to-day stock register maintained by you in respect of all the items purchased by you from various parties.*

*ii) Please furnish party-wise month-wise purchase and sales. Hi) Please furnish copy of ledger account of the parties to whom sales have been made amounting to Rs.50,000/- and above during the year under consideration.*

*iv) From the details furnished, it is seen that you have made purchases mostly from Bombay parties. In this regard, you are requested to furnish the following information details:-*

*a) How you have transported the goods purchased from Mumbai to Baroda ?*

*b) Whether transportation payments were met by the parties from whom you have made the purchases? In that case, please justify your claim.*

*c) In case, transportation payments were made by you, then please furnish LR in original for verification.*

*6.3. In response to the above, the assessee's authorized representative vide letter dated nil received in this office on 25.2.2014 has submitted day today stock register in respect of all items purchased by assesses and also party-wise and month-wise purchases and sales. However, the assessee has not furnished any submission about the transportation of goods from Bombay to Baroda and has also failed to furnish any Lorry Receipt in original for verification. Since the assessee has not furnished evidences in support of the purchases made and therefore in order to ascertain the genuineness of purchases made by the assessee from the above parties as per the details / address given, letters u/s. 133(6) of the I.T.Act were issued to these parties requesting to furnish copy of ledger account of the assessee for the period under consideration. In this regard, it is relevant to mention here that all these letters were returned back by the*

*postal authorities with a remark "Not Known". In view of the above, the assessee has been given an opportunity vide this office letter dated 28.2.2014 requesting to furnish, certain information with respect to the purchases made by the assessee. The questionnaire issued in this regard is reproduced as under; -*

*"Please refer to this office letter of even number dated 14.2.2014, wherein you were asked to furnish various information / details. In response, vide submission dated nil received in this office on 25.02.2014, you have submitted part of the details. However, you have not furnished the following details :-*

- i) Party-wise month-wise purchase and sales.*
- ii) Copy of ledger account of the parties to whom sales have been made amounting to Rs. 50,00.0/- and above during the year under consideration.*
- iii) From the details furnished, it is seen that you have made purchases mostly from Bombay parties. In this regard, you are requested to furnish the following information /details:-*

- a) How you have transported the goods purchased from Mumbai to Baroda ?*
- b) Whether transportation payments were met by the parties from whom you have made the purchases ? In that case, please justify your claim.*
- c) In case, transportation payments were made by you, then please furnish LR in original for verification.*

*You are, therefore, requested to furnish the above information / details immediately. In addition to the above, you are also requested to furnish the following :-*

*I. During the course of assessment proceedings, letters u/s. 133(6) of the I.T.Act were issued to the following parties from whom you have made purchases at the address given by you. However, all the letters were returned by the postal authorities with a remark " Not Known ".*

- i) M/s. Apex Metal Corporation, Mumbai*
- ii) M/s. Asian Metal Industries, Mumbai*
- iii) M/s. Krishna Steel Industries, Mumbai*

iv) *M/s. Sarogi Syndicate, Mumbai*

v) *M/s. Sunrise Enterprise*

*You are, therefore, requested to furnish the following:-*

a) *Evidence in respect of delivery of goods i.e. delivery of challans, transport receipts / lorry receipts.*

b) *Relevant entries in the stock register*

c) *Proof of payment etc.*

d) *The suppliers are not presently available at the address furnished by you. You are, therefore, requested to furnish confirmation from all the parties with correct postal address.*

e) *Please produce all the above parties from whom you have made purchases for cross examination since letters issued to these parties at the address given by you vide your submission dated nil received in this office on 18.1.2014 were returned back by the postal authorities with a remark "Not Known".*

f) *The onus is now squarely lies on you to prove the genuineness of purchases said to have been made from the parties mentioned above and submitted to this office on 18.1.2014, who have denied any sales to you before Sales-tax Authorities.*

*Please note that, in-case you failed to prove the purchases as genuine from these parties with very strong and clinching evidence, I have left with no other option except to consider the entire purchases made from the above parties amounting to Rs.1,18,58,604/- as bogus purchases and addition will be made accordingly.*

*2. Please furnish G.P. and N.P. chart for the current year and also for the immediately preceding two assessment years.*

*3. Please produce all the books of accounts, cash book, bank book, purchase bills, sales bills etc. for verification at the time of hearing.*

*4. The case is fixed up for hearing on 10.03.2014 at 3.00 PM. Please ensure to furnish all the information / details as called for. No adjournment will be granted.*

*In case of non-compliance / not attendance, the assessment will be finalized on*

*the basis of information details available on record and addition will be made accordingly as discussed above which may please be noted, "*

*6.4. In response to the above, the assessee's authorized representative has made written submission vide letter dated nil received in this office on 6.3.2014, the relevant portion of the submission is reproduced as under :-*

*"While it is true that the assessee has made purchases mostly from Mumbai, it is also a fact that almost entire sales are also in Mumbai only. Hence the movement of materials is in Mumbai itself and hence there is no question of transport goods to Vadodara. The delivery of materials are mostly by hand cart or tempo locally in Mumbai and hence payments are of relatively small amounts only. The assessee had paid for such expenses out its normal cash on hand from time to time and the same has been debited to the profit and loss account.*

*It appears from your above mentioned letter dtd. 28.02.2014 that the notices u/s. 133(6) sent to various parties at the addresses provided during the assessment proceedings have been returned unserved. With reference to the same we would like to inform you that, when the addresses were called for during the assessment proceedings, the assessee submitted the addresses as were appearing on the invoices issued by the above parties during the relevant assessment year without being aware that the parties might have changed their address in the intermittent period. The assessee is now trying to trace the parties in order to be able to submit their present communication addresses. However, we hope you understand that the process will take some time. The matter is more than 3-4 years old and it may not be possible to trace all the parties now. Also it is unfair to ask the assessee to "produce" all parties for verification simply because letters issued have come back. The assessee cannot be expected to have so much control over third parties having their businesses in Mumbai and having dealt with them 3-0 years back to compel such parties to appear before your good self in Vadodara. Fortunately, the assessee had the practice of taking confirmations from various parties every year. Hence, he already possesses*

*confirmations of most of the parties obtained during the relevant assessment year. The same are in the process of being compiled and shall be submitted in next hearing.*

*As such all purchases are genuine and all payments have been made through regular banking channels only. All purchases are being reflected in the stock register. Sales have been made out of the said purchases for which payments have been received. There cannot be sales without purchases. It is highly unfair to propose to treat all purchases as bogus simply on some third party statement which has not yet been given to the assessee specially when there are sales too and the same are not being doubted. We are also in the process of compiling the relevant data and the same shall also be submitted shortly. However, since the matter is old and data to be compiled is relating to the entire purchases of assessee for the relevant year, we will need some more time to compile the same and prepare our defence in the matter. We hope we are given sufficient time for the same in the best interests of principles of natural justice."*

*6.5 Again the assessee's authorized representative Shri Harin Parikh, C.A., attended on 13.3.2014 and has made further written submission which is reproduced as under :-*

*"(1) As explained earlier, the assessee has the practice of taking confirmations from various parties every year. Hence he already possesses confirmations of most of the parties obtained during the relevant assessment year We enclose herewith 13 confirmations covering ALL the suppliers of goods from whom purchases are made during the year relevant to the year under assessment. This includes the three parties where the purchases are doubted by you as bogus and also where letters sent u/s 133(6) of the IT. Act are advised as returned by the postal authorities with a remark 'Not Known'".*

*(2) With respect to the three parties where notices u/s. 133(6) were returned unserved it has already been submitted that when the addresses were called for during the assessment proceedings, the assessee submitted the addresses as*

*were appearing on the invoices issued by the above parties during the relevant assessment year without being aware that the parties might have changed their address in the intermittent period. The matter is more than 3-4 years old and it may not be possible to trace all the parties now. Also it is unfair to ask the assessee to "produce" all parties for verification simply because letters issued have come back. The assessee cannot be expected to have so much control over third parties having their businesses in Mumbai and having dealt with them 3-4 years back to compel such parties to appear before your goodself in Vadodara. Fortunately, the assessee had the practice of taking confirmations from various parties every year. Hence he is able to submit the same herewith.*

*(3) As such all purchases are genuine and all payments have been made through regular banking channels only. We have already submitted the ledger accounts of all parties and the bank statements evidencing the payments, in case of two parties the accounts have been squared up during the year We also further enclosed herewith ledger accounts of the above 3 parties for subsequent years wherein all amounts have been paid off. Copies of bank statements wherein these subsequent payments appear are also being produced herewith.*

*(4) Further, all purchases are being duly reflected in the stock register which has already been produced before you and each individual purchase and sale verified. Sales have been made out of the said purchases for which payments have been received.*

*(5) This is further evident from the copy of the Tax Audit Report u/s 44AB already submitted. It includes Stock Statement giving full particulars as a trading concern of various items of purchases and sales and also their quantity and value forming part of the said Tax audit report as per Annexure 3 thereto. As per the said audited Annexure purchases reconcile with sales in quantity and also in value per item of goods. "*

*6.6 The submissions made by the assessee, as reproduced above, has duly been taken into consideration. However, the same is not found to be fully tenable.*

*Therefore, the assessee has been given one more last and final opportunity to justify his claim vide order sheet entry noting dated 13.3.2014. wherein it has been brought to the notice of the authorized representative that 133(6) letters sent to five parties viz. M/s. Apex Metal Corporation. Asian Metal Industries. M/s. Krishna Steel Industries, M/s. Sarogi Syndicates and Sunrise Enterprise. Mumbai. were returned back by the postal authorities with a remark "'Not Known". The assessee was therefore required to show cause as to why the entire purchases made from the above three parties should not be considered as bogus purchases and why addition of Rs.1,18,58,604/- be made as unexplained expenditure u/s.69 of the I.T.Act, 1961. The assessee was required to submit his reply, if any, by 20.3.2014, otherwise it will be presumed that the assessee has no objection about the proposed addition, as mentioned above. In response to the above, the authorized representative of the assessee attended on 20.03.2014 'and has made written submission which is reproduced as under :-*

*"With reference to the-5 parties viz. Apex Metal Corporation, Asian Metal Industries, Krishna Steel Industries, Sarogi Syndicate and Sunrise Enterprises, the purchases from whom are doubted as bogus, we would like to give following submissions :*

*(1) In respect of the notices u/s. 133(6) sent to the aforesaid 5 parties which have been reported as returned un-served, we have already informed you that, when the addresses were called for during the assessment proceedings, the assessee submitted the addresses as were appearing on the invoices issued by the said parties during the relevant assessment year without being aware that the said parties might have changed their address in the intermittent period.*

*(2) As you know we have already submitted the confirmation of all the 18 suppliers of goods from whom assessee made purchases during the year and same also includes the confirmation of the aforesaid 5 parties from whom the purchases made are doubted as bogus.*

*(3) The matter is more than 3-4 years old and it may not be possible to trace all the parties now. Also it is unfair to ask the assessee to "produce" all parties for verification simply because letters issued have come back. The assessee cannot be expected to have so much control over third parties having their businesses in Mumbai and having dealt with them 3-4 years back to compel such parties to appear before your goodself in Vadodara.*

*(3) As such all purchases are genuine and all payments have been made through regular banking channels only. Sales have been made from the said purchase and payments received through banking channels. We have submitted complete details of purchases / sales and payments / receipts. Even party-wise and month-wise purchases and sales details are also already submitted.*

*(4) With specific regards to purchases, we have already submitted the details of purchases from various parties, the ledger accounts of all parties and the bank statements evidencing the payments. In case of the impugned five parties, the accounts have been squared up - two during the year and one in subsequent year. We have enclosed ledger and bank payment evidences till squaring up of the accounts in all cases.*

*(5) Day to day stock register in respect of all items purchased by assessee is already furnished to you. All purchases are being duly reflected in the stock register and it also includes the quantity purchased from the aforesaid 5 parties. Sales have been made out of the purchases made during the year only. There cannot be sales without purchases. This is also evident from the Annexure-4 to the Tax Audit Report. Each individual purchase and sale has been verified from the said stock register.*

*(6) We have already submitted copy of the Tax Audit Report u/s 44AB, which includes Stock Statement giving full particulars as a trading concern of various items of purchases and sales and also their quantity and value forming part of the said Tax audit report as per Annexure 4 thereto. As per the said audited*

*Annexure purchases reconcile with sales in quantity and also in value per item of goods.*

*(7) You will kindly observe from the aforesaid Annexure to the Tax Audit Report, that there is no stock at the commencement of the year at all. Thus all sales are against goods purchased during the year. When sales are considered genuine, it is highly unfair to propose to treat the purchases made from the aforesaid 5 parties as bogus. There are sales from the goods purchased by the assessee from these parties as well. Again, it is submitted that there cannot be sales without purchases,*

*(8) Thus, all purchases are genuine, duly reflected in the stock register and all payments have been made through regular banking channels only. Sales have been made out of the said purchases for which payments have been received. It is highly unfair to propose to- treat purchases from the impugned five parties as bogus simply on some third party statement which has not yet been given to the assessee specially when there are sales too and the same are not being doubted.*

*(9) If the purchases from the above 5 parties are disallowed by treating them as bogus, it will lead to an absurd situation since sales of products purchased from these parties have already been treated as income Thus the sales related to these purchases will be taxed entirely without any deduction toward cost of purchases. What should be taxed is only net income. In case the purchases are added, what will be taxed will be gross revenue and not the real income of the assessee.*

*(10) When the hardcore facts of purchases, sales, quantities, payments etc. cannot be denied, addition based simply on third party statement is totally unwarranted specially when the statement is,not given to assessee and where assessee has not been given opportunity to cross examine. If department starts making additions on such third party statement grossly unjust additions will happen in any and every case and it will lead to an anarchy like situation.*

*(11) It may also be noted, that during the year under assessment, Sales amounted to Rs.596.24 lacs against purchases of Rs.593.15 lacs. The resultant GP*

*Rs.5 .76 lacs is hardly 1%. Looking at this and the past financial data too, it is apparent that the assessee is engaged only in trading activities and the margin of profit is very limited to hardly about 1 % to 2% just like commission to a commission agent. It is like a intermediary business. There cannot be heavy margin at all specially considering the nature of business and the products involved.*

*If addition of entire purchases from above 5 parties is made as proposed, it will firstly mean an absurd situation of sales being taxed without purchases. It will also mean that assessee would have earned approx. Rs.1 15 lacs in sales of around Rs. 600 lacs i.e. a margin which is impossible in the nature of business of the assessee.*

*(12) We have also checked the judicial precedents in such cases. In most of the cases, if the parties are proved bogus, the purchases are still treated genuine since there are sales. However, it is presumed that they must have been made from some other parties, probably from grey market, and the bills taken of bogus parties. The only benefit that could have been taken by doing this is to inflate the purchase cost and show reduced margin.*

*(13) Considering the jurisdictional court precedents, there is a recent decision of the Hon'ble Gujarat High Court in the case of CIT vs. Sathyanarayan N. Rathi (2013) 351 ITR 150 (Guj.). In this case, in similar circumstances, the Ld AO had originally added the entire purchases from such parties which were found to be bogus. On appeal, the Ld CIT (A), observed that there is complete quantitative tally of the material purchased hence it was clear that such materials were purchased from the open market and bills were procured from various sources. Hence, he ruled that entire purchases cannot be added and restricted the addition to 30% of the alleged purchases to cover for the probable inflation in purchase price in the bogus bills. On further appeal, the Hon. IT AT. allowed further relief and reduced the addition to 12.50%. On further appeal by the Dept,*

*the Hon. Gujarat High Court accepted the addition of 12.5% as reasonable and decline to interfere with the order of the Hon. ITAT.*

*(14) It is thus clear that entire purchases from such impugned parties cannot be added and what can be added is only the extra margin that could have been earned. This depends on facts and circumstances of each case and there cannot be a fixed formula.*

*(15) Looking at the history of such cases which is also evident from the Hon. ITAT decision in the above case, it can be seen that different additions are made in each case depending on the facts and circumstances. For eg. in ITO vs. Sun Steel 92 TTJ (AMD) 1126, Ahmedabad Tribunal, in similar circumstances sustained ad-hoc addition of Rs.50,000/- on account of bogus purchases.*

*(16) In the case of the assessee, it is firstly reiterated that the facts show that all purchase are genuine. The confirmation, ledgers, payment details etc. have all been submitted. Thus, firstly there is no case for making any addition. The addition being proposed is only based on a third party statement which is unjust and unfair.*

*However, if any addition is to be made then it is prayed that the same cannot be of entire purchases from above parties since sales have been effected from the same which are accepted as genuine. Thus, the addition can only be by presuming that purchases are from grey market and the invoices are inflated to reduce taxable margin. However, such addition also has to be based on the facts of each case since each business differs and there cannot be straightjacket formula applicable to all. Similarly, opinion regarding estimation will also differ from person to person also many times differ for the same person in different cases.*

*Here, it is once again submitted that the assessee is engaged only in trading activities and the actual margin of profit is very limited to hardly about 1% to 2% like commission paid to commission agent. Assessee's business is like a intermediary business. There cannot be heavy margin at all. Assessee has already*

*offered such margin for tax. The additional margin, if any presumed cannot be high at all. As submitted, if any high addition is made, it will lead to a situation of the assessee being taxed on absurdly high profits which are impossible in his trade."*

*6.7 The submissions of the assessee made from time to time, as reproduced above, has duly been taken into consideration. However, the same is not found to be acceptable in toto. On perusal of the explanation of the assessee, it is noticed that the assessee has merely furnished ledger account and invoices and has claimed the relevant purchases as genuine only because the payment has been made by cheque. The invoices furnished by the assessee cannot be treated as genuine in view of the fact that the concerned parties have confessed before the Sales-tax Authorities that they are in the business of issuing bills without actually selling any material. The ledger account is only a self made evidence. The assessee has failed to prove the genuineness of the aforesaid purchases, has failed to produce the suppliers, failed to produce the brokers / third party evidence in spite of sufficient opportunities granted. No transport receipts or lorry receipts or octroi receipts have been submitted. Some unusual and abnormal features and characteristics of the transactions made with these bogus parties, inter alia, included, the following features :-*

*(a) Payments against the various purchases were shown against the bogus suppliers through crossed cheques.*

*(b) The-suppliers are not presently available at the addresses furnished by the assessee. Further, they have also admitted before the Sales-tax Authorities that they have only accommodation bills. At this stage, the assessee is unable to produce the suppliers to refute their admission made before sales-tax authorities.*

*6.8 The assessee has time and again highlighted this point saying that the material which is shown to have been purchased from the alleged bogus suppliers have really been received and has been used for business. The fact of receipt of material is not being disputed here. The onus lies on the assessee to*

*establish any claim for deduction for expenditure which is claimed as deduction in computing its taxable income. Therefore, the onus in the present case squarely lies on the assessee to prove the genuineness of purchases, said to have been made from the parties, who have denied any sales to the assessee before Sales-tax Authorities. The assessee did not make any efforts to contact those parties and produce them during the course of assessment proceedings. He just tried to shift the burden on the Revenue. Such submissions have been made in complete disregard of the fact that the burden clearly lies on the assessee to prove the genuineness of the transaction. It was incumbent on the assessee to prove that the suppliers were genuine and they really made payments by cheques to these very parties and none else. Such a burden has to be discharged by the assessee with very strong and clinching evidence in view of a blatant denial by the parties. No serious efforts were made by the assessee to discharge such burden of proving the genuineness of the transactions with the party.*

*7. I am therefore of the considered opinion that the transactions in respect of the materials shown as purchases by the assessee from the above mentioned parties are not genuine transactions. It is reasonably clear and glaringly obvious that the sales invoices claimed to have been issued by them are fictitious ones. Therefore, applying the ratio of the recent decision of the jurisdictional High Court in the case of Commissioner of Income-tax vs. Sathyanarayan P. Rathi, reported in 351 ITR 150 (Guj.), I consider 12.5% of the purchases made during the year from the above mentioned three parties are disallowed and added to the total income of the assessee. The total purchases made by the assessee from the above five parties for the year under consideration is Rs. 1,18,58,604/-. 12.5% of this purchase of Rs. 1,18,58,604/- comes to Rs. 14,82,326/-. Accordingly, an amount of Rs. 14,82,326/- is hereby added to the total income of the assessee by invoking the provisions of section 69 of the I.T. Act, 1961."*

4. Against the addition of 12.5% of the total purchase, assessee preferred first statutory appeal before the Id. CIT(A) who held that the undisclosed income of the appellant should be assessed @ 10% of purchase shown to have been made by him from the parties which have not been established to be accommodation entry provider.
5. We have gone through the relevant record and impugned order. Assessee runs a proprietorship concern which is engaged in the business of wholesale trading in ferrous and non-ferrous metals, SS Sheets, Patta, Pipes, Coils etc. The business is ordinarily of one-to-one purchases and sales on wholesale basis with very low gross margins of about 1 to 1.5% only. On the basis in received from that appellant has purchased goods through 5 hawala dealers viz. Apex Metal Corporation, Asian Metal Industries, Krishna Steel Industries, Sarogi Syndicate and Sunrise Enterprises and it was held that these five parties are bogus in nature. But no opportunity of cross examination was given to the appellant. The quantities in respect of the purchases from the aforesaid five parties are duly reflected in the stock register and the quantities purchased are reconciled with the sales made during the year and same are also part of the Tax Audit Report. The quantities purchased are reconciled with the quantities sold during the year under consideration and assessee engaged only in trading activities. And all purchases are duly reflected in day to day stock register which was submitted to the A.O. All sales are from goods purchased during the year. Payments have been received against the sales. In our considered opinion, when sales are considered genuine made purchase can be bogus. Id. A.O. cited chart of previous year which is as follows:

A.Y.	F.Y.	Turnover (Rs.)	Gross Profit (Rs)	GP Ratio (%)	Net Profit (Rs.)	NP Ratio (%)	Remark
2006-	2005-06	2,25,94,732.00	3,47,931.00	1.54	1,48,619.00	0.66	-

07							
2007-08	2006-07	4,00,44,398.00	3,73,657.00	0.93	1,12,486.00	0.28	Assessed u/s 143(3)
2008-09	2007-08	1,96,84,055.00	4,85,191.00	2.46	2,15,023.00	1.09	-
2009-10	2008-09	2,71,30,988.00	3,54,798.00	1.31	2,12,179.00	0.78	Assessed u/s. 143(3)
2010-11	2009-10	3,05,26,773.00	5,35,721.00	1.75	2,84,822.00	0.93	-

6. In Assessment Year 2009-10, assessment was done u/s. 143(3) wherein G.P. ratio was 1.31%. Under these circumstances to meet the end of justice, it will be fair that the so called undisclosed income of the appellant should be assessed @ 2.5% of the purchase done to have been made by him from the parties which have been so called established to be accommodation entry provider.

7. In the result, both the appeals filed by the Assessee is partly allowed.

Order pronounced in Open Court on	25- 09- 2018
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Sd/-

**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER** True Copy  
Ahmedabad: Dated 25/09/2018

Sd/-

**(MAHAVIR PRASAD)**  
**JUDICIAL MEMBER**

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.