आयकर अपीलीय अधिकरण, पुणे न्यायपीठ "ए" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

श्री डी. करुणाकरा राव , लेखा सदस्य
एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

BEFORE SHRI D.KARUNAKARA RAO, AM
AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA Nos.1646 to 1648/PUN/2016
निर्धारण वर्ष / Assessment Years : 2009-10 to 2011-12

The Income Tax Officer,
Ward-1, Dhule ....अपीलार्थी/Appellant

Vs.

Smt. Jayshree Suresh Sharma,
Prop. Shri Balaji Steel & Cement
Traders, H. No. 2432,
Madhavpura, Dhule-424001
PAN : ANXPS2500F ....प्रत्यर्थी / Respondent

CO. Nos. 19 to 21/PUN/2017
Assessment Years: 2009-10 to 2011-12
(Arising out of ITA Nos.1646 to 1648/PUN/2016)

Smt. Jayshree Suresh Sharma,
Prop. Shri Balaji Steel & Cement
Traders, H. No. 2432,
Madhavpura, Dhule-424001
PAN : ANXPS2500F ..... / Cross objector

V/s.

The Income Tax Officer,
Ward-1, Dhule ...../Appellant in
the appeal

Assessee by : Shri Sanket Joshi
Revenue by : Ms. Sabana Parveen

सुनवाई की तारीख / **Date of Hearing : 18.09.2018**		घोषणा की तारीख / **Date of Pronouncement: 28.09.2018**

आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

There are 3 sets of Cross appeals. Revenue filed the main appeals vide the ITA Nos. 1646 to 1648/PUN/2016 and the Assessee filed the CO Nos. 19 to 21/PUN/2017 involving A.Yrs.2009-10 to 2011-12. They

are filed against three separate orders of CIT(A)-1, Nashik commonly dated 19-05-2016.

2. The common issue involved in these appeals relate to bogus purchases and the extent of Gross Profit addition that is required to be confirmed. Therefore, all these appeals are heard together and being adjudicated in this composite order in the succeeding paragraphs.

3. Revenue raised identical grounds in these appeals. Therefore, we proceed to take up the appeal of the Revenue for A.Y. 2009-10 as a standard one. Grounds raised by the Revenue for A.Y. 2009-10 as well as Cross Objections raised by the assessee for A.Y. 2009-10 are extracted here as under :

Grounds by Revenue :

"i). Whether on the facts and in the circumstances of the case, the Ld.CIT(A)-I, Nashik was not justified in deleting the addition of Rs.2,05,85,668/- on account of alleged bogus purchases from Hawala dealers/ parties?

ii). Whether on the facts and in the circumstances of the case the Ld.CIT(A)-1, Nashik was justified in deleting the purchases treated as bogus when the appellant had not been able to produce the certain parties from whom purchases where made?

iii). Whether the Ld.CIT(A) erred in assuming that the purchases were only inflated when it was clear from the results of the assessee, the parties found missing and results of the investigation of another Govt. Department (Sales Tax), that the purchases could not be proved as genuine and therefore the disallowance by the A.O. was justified?

iv). Whether the Ld.CIT (A) erred in presuming that simply because no addition was made in case of Sales, it was accepted as genuine and further assuming that thereby purchases should be genuine?

v) The appellant prays that the order of the Ld.CIT(A)-1, Nashik may please be cancelled and the order of Assessing office may please be restored.

vi) The appellant prays to adduce such further evidence to substantiate his case.

vii) The appellant prays leave to add, alter, clarify, amend and or withdraw any grounds of appeal as and when the occasion demands."

Cross Objections by the Assessee :

"1.*The learned CIT(A) erred in partly confirming the addition made by the A.O. towards purchases made from alleged hawala parties on the basis of information received from Sales Tax Dept. without appreciating that no addition was warranted on facts of the case.*

2. The learned CIT(A) erred in holding that the profit on purchases made from alleged hawala parties should be estimated @ 3% of such purchases for the reason that the probability that the impugned purchases could have been made from another party could not be denied and thus, the invoices issued by alleged hawala parties could be over-priced/inflated.

3. The learned CIT(A) failed to appreciate that the assessee had furnished supporting evidences to prove the genuineness of the purchases and there was no evidence with the dept. that the payments were not made from the above parties and hence, merely on the basis of uncorroborated statements of the dishonest suppliers who had evaded VAT liability, there was no reason to make any addition in the hands of the assessee.

4. The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal."

4. Briefly stated relevant facts of the assessee include that assessee is an individual and is engaged in the business of steel and cement trading under the name and style "Shree Balaji Steel and Cement Traders". Assessee filed the return of income for the A.Y. 2009-10 declaring total income of Rs.2,62,512/- after claiming deduction of Rs.3,674/-. On the basis of information received from Sales Tax Department, Govt. of Maharashtra, that the assessee made purchases from the suppliers whose names are listed in the suspected ones as halawa parties, AO reopened the case of the assessee by issuing u/s.148 of the Act. AO called for the details of the purchases made from the couple of suppliers namely (1) Grifton India Riddhi Enterprise – Rs.1,04,92,260/- and (2) Rumggt Enterprises – Rs.1,00,93,408/-. Mr. Suresh Dugra Prasad Sharma, husband of the assessee attended the enquiry before the AO. The AO proceeded to make addition of entire purchases, i.e. 100% of such purchases giving the reasons that the assessee failed to produce the parties. Otherwise, the assessee demonstrated the payments involving banking channels, copies of

invoices and the entries in the books of accounts etc. Eventually, the AO made addition of Rs.2,05,85,668/- for this assessment year treating the same as unexplained income.

Further, the AO also made similar addition of Rs.1,64,09,250/- for the A.Y. 2010-11 and Rs.2,28,93,595/- for the A.Y. 2011-12.

5. In the First appellate proceedings, assessee made a prayer that the purchases are genuine and therefore, the addition should be deleted entirely. As per the statement of facts before the CIT(A), assessee made elaborate submissions and the relevant paragraphs of the said statement of facts are extracted here as under :

> *"The AO has received information from Sales tax Department about alleged hawala purchases made by the appellant from the above mentioned parties.*
>
> *The appellant lady and her husband were not conversant with the provisions of the Income-tax Act and Income-tax proceedings and has allotted the taxation work to a Chartered Accountant. During assessment proceedings the C.A. has not filed any submission and therefore the appellant lady and her husband attended before the A.O. on the dates of hearing, as appearing in the assessment order i.e. in the last week of March, 2015 (inadvertently typed as 2014 in the assessment order) and filed a letter in Marathi and requested the A.O. to grant justice. It was explained to the A.O. that the books of accounts are audited and stock record has been maintained and hence no addition can be made.*
>
> *In fact the A.O. has made addition on the basis of information received from Sales-tax Department only and has not provided statements of the parties relied on by the Sales-tax Department and A.O. himself, to the appellant. The said parties have not paid VAT which has been collected from the assessee and various other purchasers, though the parties have supplied the goods and hence the appellant as well as various other assessees have to pay V AT twice without getting any credit for VAT paid to the above mentioned suppliers. The A.O. has relied on the statements of above mentioned dishonest suppliers, who are not reliable without giving opportunity to cross examine the said parties.*
>
> *In view of the facts mentioned above, that the said suppliers have collected VAT in respect of sales effected by it from the purchasers, however, has not paid the same to Sales -tax department and therefore the purchasers have to pay the said V AT again to the Sales-tax department and hence in view of the above facts the suppliers have left the places of business and has not communicated the new address, if any, to the appellant. In view of the above facts, it is impossible for the assessee to produce the said suppliers. In fact the A.O. has all the machinery to locate the said suppliers with the help of Sales-tax department and Police department and could have verified the said*

suppliers and could have also given opportunity of cross examination to the appellant, if required.

The appellant has in fact proved the genuineness of the purchases as the invoices issued by the supplies having Sales tax TIN/VAT Number.

Considering the said submissions of the assessee, the CIT(A) partly allowed the appeal of the assessee restricting the addition to merely 3% of the said suspected purchases. Before coming to the said conclusion, the CIT(A) has elaborately discussed this issue and applicability of the decision of Pune Bench of the Tribunal in the case of Kolte Patil Developers Ltd. in ITA Nos. 1478 to 1483/PN/2013 for the A.Yrs. 2004-05 to 2009-10 decided on 20-02-2015 on the issue of cross examination. CIT(A) also considered judgment of Hon'ble Bombay High Court in the case of Nikunj Eximp Enterprises Vs. CIT reported in 372 ITR 0619, judgment of Hon'ble Delhi High Court in the case of CIT Vs. La Medica reported in 250 ITR 575 as well as other judgments of various courts.

Similar approach has been adopted by the CIT(A) in the appeals for A.Y. 2010-11 and 2011-12 too.

The operational paras of the order of CIT(A) are extracted here for the sake of completeness :

"4.87.4 Thus, in my opinion the facts on record demonstrate that this not a case of bogus purchase but a case of inflated purchases and at best from bogus parties.

4.87.5 In the instant case as observed from P&L accounts that the total sales is Rs.2,45,74,157/- and total purchase is Rs.2,44,49,236/-. The total purchases added by the AO from hawals parties is Rs.2,05,85,668/-. This analysis has not been done by the AO. If the purchases are bogus then there is no clarification that how the sales are made. If we exclude the purchases made from hawala parties the G.P. becomes 91% which is observed. The parties are not produced so the extract purchases cannot be verified. Therefore, ***there is all probability of inflation of purchases*** *as in turnover of Rs.2,45,74,157/- the returned income of Rs.2,66,186/- is too low. Now, the issue is quantum*

of inflation of purchases. Considering the facts and circumstances of the case to cover the gap in the income by virtue of inflated purchases the AO is directed to restrict the addition to 3% of hawala parties."

6. Aggrieved with the substantial relief granted by the CIT(A), the Revenue is in appeal before the Tribunal. Further, assessee filed the Cross Objections contesting the 3% addition adopted by the CIT(A) with the grounds extracted above.

7. Before us, Ld. Counsel for the assessee narrating the above facts of the case submitted that this is a case where the AO made the addition of entire suspected bogus purchases to the returned income filed by the assessee and the CIT(A) restricted the said addition to 3% of the same and partly allowed the appeal of the assessee. Ld. Counsel for the assessee vehemently argued stating that the purchases made by the assessee are genuine.

Further, Ld. Counsel for the assessee relied on the decision of the Tribunal in the case of M/s. Chhabi Electricals Pvt. Ltd. and others Vs. DCIT in ITA No.795/PUN/2014, relating to assessment year 2010-11, decided on 28-04-2017 and submitted that the present case of the assessee falls in group of cases where no addition is called for at all in view of the authenticity of evidences in support of the genuineness of the assessee's claim. Merely because the names of the suppliers are appearing in the list of tainted suppliers, the assessee should not be penalised for the same. On the failure of the assessee to produce the parties, Ld. Counsel for the assessee submitted that it is not possible to produce the parties and highlighted the assessee's request before the Revenue to enforce the attendance of the suppliers. Further, relying on the fact that the payments are made through banking channels, goods are received and sales are evidenced establishing the trail of goods, Ld.

Counsel submitted that the purchases made by the assessee are genuine ones and prayed for deleting the entire addition.

Further, on the GP rates, Ld. Counsel filed a chart showing the GP rates over the years and submitted, without prejudice, that it should be restricted to internal GP rates of the assessee. He prayed that 10% envisaged by the Tribunal in the case of M/s. Chhabi Electricals Pvt. Ltd. and others (supra) need not be invoked in the present case considering the internal GP rates of the assessee and the nature of business, the facts of the case etc.

8. On the other hand, Ld. DR for the Revenue relied on the order of the AO and submitted that failure to produce the parties before the AO should be seen in different perspective and against the assessee. This is a case of inflation of purchases and therefore, the entire addition should have been confirmed by the CIT(A).

9. Before us, Ld. Counsel for the assessee submitted the written submissions and the same are extracted here as under :

> *"7. At the outset, the assessee submits that the instant issue is squarely covered in the favour of the assessee by the recent decision of Hon'ble Supreme Court in the case of PCIT Vs. Tejua Rhoit Kumar Kapadia [SLP (Civil) No.12670/2018 dated 04.05.2018 upholding the decision of Hon'ble Gujarat High Court dated 18.09.2017 [Tax Appeal No.691/2017]. The copy of the said decision is enclosed herewith. In that case, one of the suppliers, M/s. Raj Impex from whom the assessee had made purchases, had deposed before the I.T. Authorities that he was engaged in the business of providing accommodation bills to various parties including the assessee. On the basis of the said deposition, the A.O. disallowed the entire purchases made by the assessee from the said supplier. This disallowance was deleted by the CIT(A) and Hon' ble ITAT deleted the disallowance. On further appeal by the Dept., Hon 'ble Gujarat High Court noted that the payments towards the impugned purchases were through banking channel and there was no evidence that the said payments were returned back to the assessee. Hon'ble High Court further noted that when the sales made out of such purchases was accepted by the A.O., then no disallowance on account of bogus purchases was warranted on such facts. The said decision has been upheld by Hon'ble Supreme Court vide its order dated 04.05.2018.*

8. The assessee submits that even in the instant case, it is proved beyond that the sales are not possible in the absence of impugned purchases and further, there is no evidence that the payments made to the suppliers have been returned back to the assessee. Both these facts have been noted by the learned CIT(A). Accordingly, the assessee submits that the ratio laid down by Hon 'ble Supreme Court in the above cited recent judgment is squarely applicable to the instant case and hence, it is prayed that the disallowance sustained by the CIT(A) @ 3% is also not justified and the same may be deleted.

9. Here, it may not be out of place to mention that the decision of Hon'ble ITAT Pune in the case of Chhabi Electricals Pvt. Ltd. & Ors. [ITA No.795/PN/2014] is dated 28.04.2017 and since the decision of Hon'ble Supreme Court in the case of TejuaKapadia dated 04.05.2018 is a subsequent decision, the said Apex court decision was not considered in the case of Chhabi Electricals. However, it is submitted that since the above recent decision of Honble Supreme Court squarely covers the issue in favour of the assessee, the disallowance sustained by the learned CIT(A) may please be deleted.

Without prejudice to the above contentions, it is submitted as under-

10. The assessee humbly prays that the issue may not be set aside to the file of the A.O/CIT(A) since all the relevant facts are on record and the issue is squarely covered by the ratio laid down by Hon'ble Apex Court in its recent ruling. In this respect, it is to be noted that the business of the assessee is closed due to lack of profits and the assessee lady is around 60 years of age. It is submitted that the assessee lady does not have the financial resources to continue litigation at this age with the Income Tax Dept.

11. Hence, without prejudice to the above contentions and with the intention to avoid prolonged litigation, the assessee submits that if the Dept. Appeals are dismissed, then the assessee has no objection if the Cross Objections filed by the assessee are dismissed as well and the order of the CIT(A) is confirmed.

12. In this regard, the assessee submits that the order of the learned CIT(A) is reasonable vis-a-vis the Dept. and the same cannot be faulted with by the Dept. even if the recent decision of Hon 'ble S.C. is not taken into consideration. In this respect, it is a fact on record that the sales made by the assessee could not have been possible in the absence of the impugned purchases. This fact is demonstrated beyond doubt in view of the fact that the A.O. has disallowed around 70% - 90% of the total purchases made by the assessee as bogus for the above years and thus, the A.O. has implied that the assessee has earned huge G.P. @ 65% - 90% which is impossible in the business of the assessee. Thus, it is proved beyond doubt that the purchases of impugned goods have been made by the assessee. Now, firstly, there is no evidence whatsoever, to prove that the said purchases have been inflated by way of making purchases from grey market and hence, the learned CIT(A) is not justified in sustaining disallowance @ 3% on the suspicion or the suspected 'probability' that the said purchases could have been made from grey market. Even so, even if it is presumed that the purchases are inflated and if any addition is to be sustained on G.P.basis, then the addition sustained by the learned CIT(A) is very reasonable on facts of the case. In this regard, the details of G.P. and N.P. declared by the assessee for various years are submitted as under-

Asst. Year	*Turnover (Rs.)*	*Gross Profit*	*Net Profit*
2007-08	*4,97,77,883*	*0.81%*	*0.45%*
2008-09	*3,16,68,980*	*1.75%*	*0.85%*
2009-10	*2,45,74,157*	*2.30%*	*1.08%*
2010-11	*2,60,71,959*	*2.41%*	*1.09%*
2011-12	*2,93,26,927*	*2.39%*	*0.97%*
2012-13	*2,96,96,255*	*3.63%*	*1.06%*
2013-14	*2,68,64,859*	*0.96%*	*Loss – 4.81%*

Avg. G.P. for the above 7 years works out to ***2.04%***

Avg. N.P. for the above 8 eight years ***(sic)*** *works out to* ***0.10%***

13. The assessee submits that considering the G.P. declared by the assessee on regular purchases @ around 2.40%, the CIT(A) is reasonable in estimating the G.P. on purchases made from alleged hawala parties at twice the G.P. earned on regular purchases i.e. 3% over and above the G.P. @ 2.40% declared by the assessee. In view of the above facts, the assessee submits that the order of the learned CIT(A) is quite reasonable vis-a-vis the Dept. and the same cannot be faulted with by the Dept.

14. Here, it may not be not be out of place to state that such a scenario was not present before Hon'ble ITAT in the consolidated order passed in case of Chhabi Electricals Pvt. Ltd. &Ors. It is submitted that in none of the cases, it was a situation that more than 50% of the purchases debited by the assessee were disallowed by the A.O. and thereby, the sales declared by the assessee could not be possible in the absence of the purchases disallowed by A.O. Hence, Hon'ble ITAT in that case, had no occasion to consider such a scenario. But even the ratio laid down by Hon'bIe ITAT in the said case, is that if the assessee is able to prove that he had actually made purchases of the goods by demonstrating from the quantitative stock record, trail of goods etc., then only a reasonable G.P. addition is to be made and the entire purchases cannot be disallowed. It is submitted that the quantum of G.P. addition would depend on fact to fact of each case and applying a blanket rate of G.P. addition in all businesses would not be justified in law. Accordingly, the assessee submits that if at all, any addition is to be sustained on G.P. basis, then the decision of the learned CIT(A) in estimating the G.P. addition @ 3% is reasonable considering the G.P. of around 2.40% declared by the assessee and N.P. of around 1.10% declared by the assessee on regular purchases."

9.1 Ld. Counsel also filed tax audit report along with financial statements for the A.Yrs. 2009-10 to 2011-12 and filed the copy of judgment of Hon'ble Gujarat High Court in the case of Pr.CIT Vs. Tejua Rohitkumar Kapadia – Tax Appeal No.691 of 2017 and read out the operational Para No.3.

10. We heard both the parties and perused the orders of the Revenue and the decisions relied on by both the sides. To start with, we proceed

to cull out relevant findings of certain decisions relied upon by the assessee.

A. We Perused the judgment of Hon'ble Gujarat High Court in the case of Pr.CIT Vs. Tejua Rohitkumar Kapadia and find it relevant to extract the findings given by the Hon'ble High Court here as under :

> *"3. It can thus be seen that the appellate authority as well as the Tribunal came to concurrent conclusion that the purchases already made by the assessee from Raj Impex were duly supported by bills and payments were made by Account Payee Cheque. Raj Impacts also confirmed the transactions. There was no evidence to show that the amount was recycled back to the assessee. Particularly, when it was found that the assessee the trader had also shown sales out of purchases made from Raj Impex which were also accepted by the Revenue, no question of law arises."*

B. Further, we find the Pune Bench of the Tribunal also had an occasion to deal with identical issue in the case of ACIT Vs. Shri Nitin Ramchandra Gite in ITA No.1732/PUN/2015 and CO No.46/PUN/2017 for the A.Y. 2011-12 decided on 13-10-2017. The Tribunal confirmed the order of CIT(A) restriction the addition to 5% of the bogus purchases. We proceed to extract the finding given by the Tribunal here as under :

> *"6. On hearing both the parties and after going through the elaborate discussion given by the CIT(A) (para Nos. 5.3.1 to 9.2) relying on catena of decisions of Supreme Court, High Courts, and also various Tribunals, we find the CIT(A) has rightly considered the following facts before coming to conclusion of adopting 5% on the Gross Profit rate on the bogus purchases :*
>
> *(i) If purchases are held bogus the corresponding sales must also held to be bogus. Otherwise, there cannot be any genuine sale of material without corresponding purchases.*
> *(ii) The assessee has filed tax invoice-cum-challan from the suppliers confirming the sales.*
> *(iii) AO has not disputed the sales.*
> *(iv) There is marginal increase in the GP ratio from 3.63% to 3.69%.*
> *(v) Trading of purchases & sale is not very high.*
> *(vi) It can be inferred as a case of inflation which should be minimum to 5%.*

7. Undisputedly, the sales account stands undisturbed by the AO. The binding judgment of Hon'ble High Court in the case of Nikunj Eximp Enterprises Pvt. Ltd. (supra) is relevant. Further, we find this issue is covered in favour of the assessee by virtue of the judgment of the Hon'ble Gujarat High Court judgment in the case of CIT Vs. Simit P. Seth 356 ITR 451. Considering the lengthy reasoning given by the CIT(A) and the factual matrix of the present case, ***we concur with the finding given by the CIT(A) restricting the disallowance to the Gross Profit rate of 5% of bogus purchases.*** *Therefore, the grounds raised by the Revenue are dismissed."*

C. We find the Mumbai Bench of the Tribunal, on identical facts, in the case of Shri Sanjay H. Shah Vs. ITO in ITA Nos. 5062/Mum/2017 for the A.Y. 2009-10 and others decided on 16-02-2018 has observed as under :

"5. We have considered the rival submissions of the parties and have gone through the orders of authorities below. During the re-assessment proceeding, the AO noted that the assessee has shown the purchases from the following11 parties:

.....
.....

6. The assessee was asked to substantiate the genuineness of the purchases. The assessee submitted that the purchases were made through brokers and not directly with the parties. The assessee furnished the copy of bills of corresponding purchases, ledger account of the parties and proof of payment through banking channel. The assessee also furnished the corresponding sale and details of vendors. The submission of assessee was not accepted by AO holding that no lorry receipt, transportation details, weight receipt, excise and gate pass was produced by the assessee. The AO further observed that the assessee ***failed to produce the supplier.*** *The AO concluded that there was no actual delivery of goods and that assessee obtained accommodation bill. The purchases were made by cash payment. Thus, the AO rejected the books of account of the assessee. The AO disallowed the 25% of the total purchases from 11 parties. The AO worked out the disallowance of Rs. 88,28,305/-. The AO further disallowed 1% on account of brokerage and commission payment and worked out the commission and brokerage of Rs. 3,53,132/-. No inquiry was made from the persons who have made purchases from assessee. The assessing officer has not identified, which were hawala dealers, from whom the assessee has purchased the material. The assessee has not produced the parties and transport challan. We have noted that during the assessment proceeding, the AO* ***has relied upon the information received from Sales Tax Department about the various entry providers.*** *The AO has not made any independent enquiry. The AO has not brought any incriminating evidence against the assessee except relying upon the report/information of Sale Tax Department and Survey action conducted by Income-Tax Department on the alleged hawala dealers. The AO has not specified as to which of the hawala dealers disclosed the name of assessee as beneficiary of accommodation bill. The AO disallowed the 25% of total cost of purchases in absence of proof of delivery. The ld. CIT(A) confirmed the action of AO on his observation that onus to prove was upon the*

assessee and that assessee failed to discharge his onus. Before ld. CIT(A), the assessee specifically contended that the TMT Bars were purchased and provided to the third parties (purchasers). No investigation against such statement was conducted by ld CIT(A). The submission of assessee was discarded by ld CIT(A) holding as astonishing and highly unique. The lower authorities have not examined the trade practice. The lower authority has not disputed the corresponding sale against the purchases. No evidence was brought on record about the observation of AO about the cash purchases.

7. The ld. AR of the Assessee in his submission claimed that VAT rate is only 4%. The rate of VAT is not disputed by Revenue. In our view considering the nature of trade of assessee and the facts of the present case, the disallowance made by AO and sustained by ld. CIT(A) is excessive and unreasonable. In our view the assessee has given sufficient evidences to substantiate its purchases, on which no finding was given by the lower authorities. Moreover, no incriminating material is brought on record except assumption and presumption of AO that assessee has availed accommodation bills. The addition of alleged bogus purchased are based on third party information. We are of the considered opinion that under Income Tax Act only real income can be taxed by the Revenue. We may further note that even in cases where the whole transaction is not verifiable due to various reasons, the only taxable is the taxable income component and not the substantial part of the transaction. Thus, keeping in view the assessee has paid the VAT at the applicable rate on all the purchases. Further, in our view no yardstick formula can be applied while assessing the amount of revenue leakage. Moreover, the revenue has not disputed the consumption of steel. Hence, keeping in view of any possibility of the revenue leakage in the present case, the ***disallowance of purchases of steel at 5% of the purchases would meet the end of justice.*** *Similar view was taken by Hon'ble Gujarat High Court in CIT Vs Simith P Seth [2013(356 ITR 451)] and by Hon'ble Bombay High Court in Hariram Bhambani ITA No 313 of 2013.*

8. ***Thus, respectfully following the decision of Hon'ble Gujarat High Court in CIT Vs Simit P Seth supra and by Hon'ble Bombay High Court in Hariram Bhambani (supra), the disallowance of cost of purchases of steel is restricted to 5% of the purchases.*** *The assessing officer is directed accordingly. In the result the ground No.1 of the appeal is partly allowed.*

10.1 Therefore, the GP rate of the assessee is around 2.4%. With the addition of entire purchases, the same goes up to an abnormal figure. The same is never in this line of business of the assessee. As such, Revenue never had any direct/incriminating material in their possession to support the addition. Therefore, the CIT(A) restricted to the GP rate of 3% of the said purchases. Revenue is aggrieved with the same. In our view, Revenue has no case for such a grievance as they merely rely on the date furnished by the Sales Tax Department. As such, Revenue never could fulfill the needs of the principles of natural

justice so far as the providing the cross examination of the suppliers of the assessee. Therefore, Revenue failed to fulfill the mandatory requirement of making a full-fledged case against the assessee. In such circumstances, the approach of CIT(A) stands justified but for the GP rates adopted by him.

10.2 Regarding the GP rates, we find there are spectrum of variation in figures. The decisions discussed above supports the same. Ld. Counsel for the assessee on record submitted against remanding the appeals to the file of AO. Further, he also submitted for enhancing the GP from 3% to 5% of the said suspected purchases.

11. Considering the above and the specific facts of this case, we are of the opinion that restricting the addition to 5% of the bogus purchases would meet the ends of justice. Thus, we amend the order of CIT(A) restricting the addition to 3% of the suspected purchases. Accordingly, the grounds raised by the Revenue are partly allowed. Since we have partly allowed the appeal of Revenue, the adjudication of COs becomes an academic exercise. Thus the COs filed by the assessee are dismissed.

12. In the result, appeal of the Revenue is partly allowed and the Cross objection of the assessee is dismissed.

13. Since the facts, issues, decisions of AO/CIT(A) are same for the remaining A.Yrs. 2010-11 and 2011-12, our decision of restricting the addition to 5% of the bogus purchases in the A.Y. 2009-10 will apply to these assessment years too.

14. To sum up, all the appeals of the Revenue are partly allowed and all the Cross Objections of the assessee are dismissed.

Order pronounced on 28th September, 2018.

Sd/-	**Sd/-**
(VIKAS AWASTHY)	**(D. KARUNAKARA RAO)**
न्यायिक सदस्य /JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

पुणे Pune; दिनांक Dated : 28th September , 2018
सतीश

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. The CIT (Appeals-1, Nashik
4. The Pr.CIT-1, Nashik
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A Bench" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune