

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "D", MUMBAI**

**BEFORE SHRI R.C. SHARMA (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 4029/MUM/2017  
Assessment Year: 2011-2012**

Deepak Ramchand Teckwani, M/s Rajesh Hardware Store, Prop. Deepak R. Teckwani, Shop No. 622, Near Ashok Talkies, Ulhasnagar- 421003  PAN: AAJPT4381Q	<b>Vs.</b>	The Income Tax Officer, Ward 2(1), 2 <sup>nd</sup> Floor, Mohan Plaza, Wayale Nagar, Khandakpada, Kalyan (West) - 421301
<b>(Appellant)</b>		<b>(Respondent)</b>

&

**ITA No. 4151/MUM/2017  
Assessment Year: 2011-2012**

The Income Tax Officer, Ward 2(1), 2 <sup>nd</sup> Floor, Mohan Plaza, Wayale Nagar, Khandakpada, Kalyan (West) - 421301	<b>Vs.</b>	Deepak Ramchandra Tekwani, Prop of M/s Sai Tools, Plot No. W/98, MIDC (Additional), Ambarnath - 421501  PAN: AAJPT4381Q
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Neha Paranjpe (AR)

Revenue by : Shri Chaitanya Anjaria (DR)

Date of Hearing: 11/09/2018  
Date of Pronouncement: 19/09/2018

**ORDER**

**PER RAM LAL NEGI, JM**

These are the cross appeals filed by the assessee and the revenue against the order dated 02.03.2017 passed by the Commissioner of Income Tax (Appeals) (for short 'the CIT (A)')-3, Thane, for the assessment year 2011-12 respectively, whereby the Ld. CIT (A) has partly allowed the appeal filed by the

assessee against order passed u/s 143 (3) r.w.s. 147 of the Income Tax Act, 1961 (for short 'the Act').

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2. Brief facts of the case are that the assessee a retailer in Paints and Hardware, filed its return of income for the assessment year under consideration declaring the total income of Rs. 11,27,582/-. The return was processed u/s 143 (1) of the Act. Subsequently, the assessment was re-opened on the basis of information received from Sales Tax Department, Maharashtra to the effect that the assessee had obtained bogus purchase bills from four bogus parties amounting to Rs. 1,76,21,255/- in order to inflate its purchases. In reply to notice u/s 148 of the Act, the assessee requested the AO to treat the original return filed as return filed in response to notice u/s 148 of the Act. The authorized representative (AR) also submitted the details and also discussed the case.

3. Since the assessee had shown purchases from M/s Shrilabh Impex, Shardha Trading Company, Wardhman Traders and N R Traders amounting to Rs. 1,76,21,255/- , the AO asked the assessee to prove the genuineness of transaction with the said parties and also directed to furnish the details of purchase, opening and closing stock to verify the transaction in question. However, the assessee did not furnish any document to prove the genuineness of the said purchases. Since, the assessee failed to establish the genuineness of transaction, the AO treated the entire amount of Rs. 1,76,21,255/- as unexplained expenditure within the meaning of provision of section 69C of the Act and added the said amount to the income of the assessee.

4. Aggrieved by the assessment order, the assessee challenged the same before the Ld. CIT (A). The Ld.CIT (A) after hearing the assessee restricted the addition to 25% of the total amount of bogus purchases. Still aggrieved, the assessee is in appeal before this Tribunal.

5. The assessee has raised the following effective grounds of appeal against the impugned order passed by the Ld. CIT (A):-

1. *"The Ld. Commissioner of Income Tax (Appeals)-III, Thane [here in after referred as to "Ld. CIT (A)"] erred in passing the order dated 2-03-17 disallowance @ 25% of Rs. 17621255/- works out @ Rs. 4405314/- are retained & relief is partly given @ Rs. 13215941/- in place of full Rs. 17621255/-. The Appellant prays that additions of Rs. 17621255/- made u/s 69 of I.T. Act by I.T.O. Ward 2(1) at Kalyan on a/c of so called hawala purchases be deleted.*
2. *An appeal fee payable @ Rs. 10000 is paid challan is submitted herewith.*
3. *Additions made by I.T.O. @ Rs. 17621255/- & Ld. C.I.T. (A)-III at Thane retained addition @ 25% @ Rs. 4405314/- are unjustified, may kindly be deleted."*

6. Before us, the Ld. counsel for the assessee submitted that since the assessee has filed the purchase bills showing challan Nos., transport receipts and copy of bank statements showing debit and credit entries etc. to establish the genuineness of transaction, the Ld. CIT (A) has wrongly sustained the addition of 25% of the total amount of purchases in question. Moreover, there is no evidence to show that the payments made to the aforesaid parties were received back by the assessee. The Ld. counsel further contended that under these circumstances the addition sustained is liable to be deleted. The Ld. counsel further submitted that the gross profit during the assessment year 2010-2011 was 9.11% and in the assessment year under consideration, it was 8.34%. Under these circumstances, the addition sustained by the Ld. CIT (A) is not reasonable.

7. On the other hand, the Ld. Departmental Representative (DR) relying on the assessment order passed by the AO submitted that since the assessee has failed to establish the genuineness of transaction by adducing cogent evidence, the AO has rightly made addition of the amount in question to the income of

the assessee. Therefore, in the light of the facts of the case and the evidence on record, the Ld. CIT (A) ought to have confirmed the addition made by the AO. The Ld. counsel further pointed out that the department has filed cross appeal against the impugned order passed by the Ld. CIT (A).

8. We have heard the rival submissions and also gone through the orders passed by the authorities below in the light of the rival submissions. We are of the considered view that the assessee has failed to discharge the onus of proving the genuineness of purchases as the evidence on record is not sufficient to rebut the findings of the authorities below. On the other hand, since the AO has not rejected the sale shown by the assessee it cannot be concluded that assessee has not purchased the goods as there cannot be sale without any purchase. So, the evidence on record suggest that the assessee had not purchased the goods in question from the parties mentioned in its books of account but purchased in grey market in order to evade VAT and other taxes applicable during the relevant period. Now the question arises as to whether the addition of 25% of the total amount of bogus purchases sustained by the Ld. CIT (A) is reasonable or the same is on the higher side as contended by the Ld. counsel?

9. The Hon'ble Gujrat High Court in *CIT vs. Simit P. Seth 356 ITR 451(Guj)* has upheld the decision of the Tribunal and sustained the addition 12.5% of the total bogus purchases holding that only profit element embedded in such purchases can be added to income of the assessee. In the light of the law laid down by the Hon'ble Gujarat High Court, we find substance in the contention of the Ld. counsel that 25% of addition of the total amount of bogus purchases is on higher side. Hence, following the principles of law laid down by the Hon'ble High Court of Gujarat, discussed above, we partly allow the appeal of the assessee and restrict the addition 12.5% of the total amount of bogus purchases determined by the AO. We accordingly direct the AO to make addition @ 12.5% of the total amount of bogus purchases.

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The revenue has challenged the impugned order by raising the following effective grounds:-

1. *“On the facts and in the circumstances of the case and in the law, the Ld. CIT (A)-3, Thane, erred in deleting the addition of Rs. 1,32,15,941/- made on account of bogus purchases, despite finding by AO that the purchases were not genuine and the assessee failed to prove the genuineness of the transactions.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT (A)-3, Thane erred in deleting the above addition despite the fact that the assessee failed to discharge his onus of proving the purchases.”*

Since, we have partly allowed the assessee’s appeal and restricted the addition to 12.5% of the total amount of bogus purchases, we dismiss the appeal filed by the revenue.

In the result, the appeals filed by the assessee is partly allowed and the cross appeal filed by the revenue is dismissed.

Order pronounced in the open court on 19<sup>th</sup> September 2018.

*Sd/-*  
(R.C. SHARMA)

ACCOUNTANT MEMBER  
मुंबई Mumbai; दिनांक Dated: 19/09/2018

*Sd/-*  
(RAM LAL NEGI)  
JUDICIAL MEMBER

*Alindra PS*

**आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.

3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**