IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI

BEFORE SHRI C.N. PRASAD (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)

ITA No. 1283/MUM/2018
Assessment Year: 2009-10

Shri Jignesh V. Parekh A-6, Munisuvrat Darshan, Navroj Lanee, Ghatkopar (West), Mumbai-400086.	Vs.	ITO, Ward 27(1)(5), Mumbai, Vashi Railway Station Complex, Tower No. 6, 4th floor, Vashi, Navi Mumbai-400703.
PAN No. AACPP3869L		
Appellant		**Respondent**

Assessee by	:	None
Revenue by	:	Mr. Rajeev Gubegotra, DR

Date of Hearing	:	23/10/2018
Date of pronouncement	:	26/10/2018

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the assessee. The relevant assessment year is 2009-10. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-25 [in short 'CIT(A)'], Mumbai and arises out of the assessment completed u/s 143(3) r.w.s. 147 of the Income Tax Act 1961, (the 'Act').

2. Though the case was fixed for hearing on 23.10.2018, it is seen that neither the assessee nor his authorized representative appeared on the above date to present the case. Therefore, we proceed to dispose of

this appeal by hearing the Ld. DR and examining the relevant materials on record.

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

1. On the facts and circumstances of the case and in law, the learned CIT (A) has erred in confirming ad-hoc 12.5% disallowance of Rs.7,58,440/- [@12.5% of Rs.60,67,516/-] in respect of purchases from three parties by treating them as bogus merely on the basis of information from Sales Tax Department, Maharashtra that the said parties are engaged in providing accommodation bills without appreciating that (a) AO has failed to bring on records any independent and reliable evidences in support of the same and (b) the AO has not brought on records any evidence to suggest that the amounts paid by account payee cheques to those parties have flown back to the Appellant in cash.
2. On the facts and circumstances of the case and in law, the learned CIT (A) has erred in confirming ad-hoc disallowance of Rs.7,58,440/- u/s 69C since (a) the AO has not rejected the books of accounts and has only doubted the genuineness of the suppliers but not the genuineness of the purchases and if the payments are made by account payee cheques then Section 69C is not attracted and (b) Section 69C cannot be applied where all purchase and sales transactions are part of regular books of accounts since the basic precondition for invoking Sec.69C is that the expenditure incurred by the assessee should be out of books of accounts.
3. On the facts and circumstances of the case and in law, the learned CIT (Appeals) has erred in confirming ad-hoc disallowance of Rs.7,58,440/- on the ground that it is not possible for the Appellant to establish one to one nexus/link between purchases and sales by conveniently ignoring the fad that the Appellant has filed during assessment

proceedings a detailed chart showing one to one link between the alleged purchases and their corresponding sales and this fact was also brought to the notice of learned CIT (Appeals) during appellate proceedings.

4. On the facts and circumstances of the case and in law, the learned CIT (A) has erred in confirming ad-hoc addition of 12.5% of impugned purchases without considering the fact that the G P. Ratio of 12.36% for the current year is higher than GP Ratio of 11.60% for the immediately preceding year and hence no disallowance was called for on the ground of suppression of profits during the year under appeal.
5. Without prejudice to the above grounds, the appellant humbly submits that the learned CIT(A) has erred in not accepting the prayer of the Appellant for restricting the addition to 4% of the alleged purchases considering the fact that the ad-hoc addition of 12.5% over and above G.P. of Ratio of 12.36% for the current year already offered by the Appellant is unjustified specifically keeping in view the very low margin of profit prevalent in the trade of the Appellant.

4. Briefly stated, the facts of the case are that during the course of assessment proceedings, the Assessing Officer (AO) issued notices u/s 133(6) to the parties from whom purchases were made by the assessee during the impugned assessment year. However, these notices were returned unserved by the postal authorities. The AO also noticed that these parties appear in the list published by the Sales Tax Department, Government of Maharashtra, of hawala entry operators who were involved in providing accommodation bills to various entities. The details of the said entry operators are as under:

S. N.	Name of the party	Amount of purchase (Rs.)	VAT TIN No.
1.	Mehta Enterprises	5,20,000	27230293295V
2.	Om Traders	15,36,824	27380389873V
3.	Laxmi Steel	40,10,692	27080366467V

The notices issued by the AO u/s 133(6) were either returned unserved or there was no confirmation from the said parties. The AO, then informed the assessee the above facts and asked him *vide* show cause notice dated 22.01.2015 to produce the parties along with evidence in order to verify the identities of the parties and the genuineness of the transaction. In response to it, the assessee furnished the ledger extracts of the parties, thereby stating that the payments to them have been made through account payee cheques only. The assessee also filed copies of the bills etc. before the AO.

However, the AO was not convinced with the above explanation of the assessee on the ground that the notices u/s 133(6) issued to the parties were returned back by the postal authorities and therefore, the identities of the parties are not established. Further, the assessee failed to produce the said parties in spite of specific opportunity given to him. Also the assessee could not file evidence of purchase like delivery challans, transport bills etc. The AO observed that just making payment by account payee cheques was not enough evidence to prove the existence of the party and also the genuineness of the transactions. With the above reasons the AO worked out the peak of the combined credit

standing in the name of the bogus parties and made an addition of the peak amount of Rs.42,80,691/- u/s 69C of the Act.

5. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). After going through the submission of the assessee and the order of the AO, the Ld. CIT(A) held as under:

> "In view of the above discussed factual matrix and precedents, I am of the view that estimation of 12.5% as profit embedded in impugned purchases shown from the alleged hawala parties and adding the same to the total income returned, would meet the ends of justice. Therefore, I direct the AO to estimate profit @ 12.5% of the alleged bogus purchases, which works out to Rs.7,78,440/- (@ 12.5% of Rs.60,67,516/-) and restrict the addition to Rs.7,58,440/-. The appellant gets a relief for the balance amount of Rs.35,22,251/-."

6. Before us, the Ld. DR submits that the notices issued by the AO u/s 133(6) to the three parties were returned back by the postal authorities with the remark as unserved. Further, the assessee failed to produce the parties before the AO for examination, although specifically asked for. The assessee also failed to submit evidence of purchase like delivery challans, transport bills etc. Therefore, the Ld. DR submits that the addition of Rs.42,80,691/- made by the AO by working out the peak of hawala purchase should be sustained.

7. We have heard the Ld. DR and perused the relevant materials on record. In the instant case the assessee had furnished ledger accounts of the parties thereby stating that payments to them have been made through account payee cheques only. As recorded by the AO, the

assessee also filed copies of bills etc. In the case of *CIT vs. Simit P. Sheth* (2013) 38 taxmann.com (Guj), the Hon'ble Gujarat High Court has held that where purchases were not bogus but were made from parties other than those mentioned in the books of account, not entire purchase price but only profit element embedded in such purchases can be added to income of the assessee. That being the position, not the entire purchase price but only the profit element embedded in such purchases can be added to the income of the assessee. The Hon'ble High Court has referred to a similar view taken in the case of *CIT vs. Vijay M. Mistry Construction Ltd.* [2013] 355 ITR 498 (Guj) and *CIT vs. Bholanath Poly Fab (P) Ltd.* [2013] 355 ITR 290 (Guj).

In the instant case, the Ld. CIT(A) has adopted the correct approach to arrive at the profit by estimating it @ 12.5% of the impugned amount of Rs.60,67,516/- shown from the alleged hawala parties. Thus we uphold the order of the Ld. CIT(A) restricting the addition to Rs.7,58,440/-.

8. In the result, the appeal is dismissed.

Order pronounced in the open Court on 26/10/2018.

Sd/-	Sd/-
(C.N. PRASAD)	(N.K. PRADHAN)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai;
Dated: 26/10/2018
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

BY ORDER,

//True Copy//

(Sr. Private Secretary)
ITAT, Mumbai