

**IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI**  
**BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM**

**I.T.A. No.5865/M/2017**  
**(Assessment Year: 2009-10)**

ACIT-19(3) Room No. 206, Matru Mandir, Mumbai-400007.	Vs.	M/s. Sky-way Construction Co, 10/11, 1 <sup>st</sup> Floor 25, Harharwala, Mumbai- 400004.
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No. :AAAFS1200N		
<b>(Appellant)</b>	..	<b>(Respondent)</b>
Assessee by:	None	
Department by:	Shri Chaudhary Arun Kumar Singh	

**Date of Hearing:** 10.01.2019  
**Date of Pronouncement:** 30.01.2019

**ORDER**

**PER AMARJIT SINGH, JM:**

The present appeal has been filed by the revenue against the order dated 14.06.2017 passed by the Commissioner of Income Tax (Appeals)-30, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the assessment year 2009-10.

2. The revenue has raised the following grounds: -

"1) Whether in the facts and in the circumstances of the case and in law, the Lo. CIT(A) erred in not perverse in not considering the order of Hon'ble Supreme Court in the case of N K Protein Ltd. dated 16.01.2017, which is on the similar issue of bogus purchases and when the apex court order was already the law of

the land when the Ld. CIT(A) has given his decision vide order dated 14.06.2017?"

2) "Whether in the facts and in the circumstances of the case and in law, the to. CIT(A) has erred in directing AO to restrict the estimation of the profit at 15% instead of 100% of the total non-genuine purchases without accepting that the assessee did not discharge his duty to prove that the purchases made from the eleven patties were genuine and did not produce any delivery challans, transport receipts, stock register etc. and also could not prove the nexus between purchases and safes as there is no matching sales vis-a-vis purchases?"

3,) Whether in the facts and in the circumstances of the case and in law, the Lo. CIT(A) is justified in not taking cognizance of the rejection of books of accounts by the A O u/s. 145(3)of (ITAct 1961?"

4) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in overlooking the fact that addition made by AO based on details of scam unearthed by Sales Tax Department wherein it was established that the assessee had taken bills from bogus parties without actually making purchases from them?"

5) The appellant prays that the order of the Ld. CTT(A) on the above grounds be set aside and that of the AO be restored.

6) The appellant craves leave to amend or alter or add a new ground which may be necessary.

The Appellant prays that the order of the CIT (A) on the above grounds be set aside and that of the Assessing Officer be restored."

**3.** The brief facts of the case are that the assessee filed its return of income on 19.09.2009 declaring total income to the tune of Rs.47,93,427/-. The return was process u/s 143(1) of the Act. Thereafter, an information was received from DGIT(Inv.), Mumbai

wherein it is specifically mentioned that the assessee has taken the bogus entries in connection with the 22 parties total in sum of Rs.2,19,25,244/-. The details are hereby given as under.:-

Sr. No.	Name of the Assessee	Amount
1	Jain Enterprises	131243
2	Kesar Enterprises	1006077
3	Sagar Enterprises	7088
4	Jain Trading Corporation	594740
5	Carbon Enterprises	2171148
6	Sheetal Trading Co.	795017
7	Shyam Corporation	1514810
8	Kavita Sales & Jyoti Enterprises	3829977
9	VSK Enterprises/VSK Steel	466122
10	Neelam Enterprises	496256
11	Shiv Sagar Enterprisesd	1911651
12	Hitansh Trade Links	1034612
13	Dimple Enterprises	1048892
14	PK Trading Co.	565327
15	Sam Enterprises	416245
16	Sunrise Enterprises	1280662
17	Sachi Mercantile Pvt. Ltd.	764332
18	Cosmos Enterprises	811920
19	Shah Trading Corporation	525791
20	Purvi Sales Agency Pvt. Ltd.	595107
21	Polsons Sales Agency Pvt. Ltd.	603589
22	Excel Industrial Corporation	1354638
	Total	2.19.25.244

Thereafter, the notice was given to the assessee and after the reply of the assessee, the AO disallowed the claim of the bogus purchase and added to the income of the assessee. The total income of the assessee was assessed to the tune of Rs.2,69,18,670/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who restricted the claim of the bogus purchase of the assessee @ 15% of the bogus purchase, therefore, the revenue has filed the present appeal before us.

4. We have heard the argument and advanced by the Ld. Representative of the Department has gone through the record carefully. The Ld. Representative of the Department has argued that the CIT(A) has wrongly allowed the claim of the assessee in connection with the bogus purchase, therefore, the finding of the CIT(A) is wrong against law and facts and is not liable to be set aside. The assessee nowhere appeared before us. Before going further, we deemed it necessary to advert the finding of the CIT(A) on record.: -

*“5. Carefully considered the rival submissions, perused the material on record and duly considered the factual matrix of the case as well as the applicable legal position before arriving at the following decision.*

*6. Ground no.1 & 2 are directed against the addition made towards bogus purchases amounting to Rs.2,19,25,244/- on the basis of suspicious dealers reported on the MAHAVAT website. Though all the details were provided AO made the addition on the basis of the list and requested to delete the addition. It is also stated that the addition made by the AO is not true, valid and genuine therefore deserves to be deleted.*

*6.1 The Ld. AO made the addition as he found that the notices sent u/s 133(6) were returned unserved and the payments to these parties are*

*irregular unlike the other parties and no stock register is maintained during the financial year to verify the quantitative details of receipts and consumption. The assessee was not able to establish the genuineness of the purchase. Hence the assessee was given final opportunity to comply with the details such as original bills, delivery challans, transport receipts, copy of documents of MCGM for which expenses were debited etc. vide notice dated 10-03-2015. The assessee could not produce original delivery challans. The assessee could not establish nexus between purchase and sales. Hence, Ld. AO concluded that the appellant did not purchase any goods from the above mentioned parties for the reason that primary onus is on the appellant to establish the genuineness and mere filing of documentary evidences in support of purchase and payment through a/c payee cheque, cannot be conclusive in a case where genuineness of transaction is in doubt. The appellant adopted the modus operandi to reduce its true profits by inflating purchase expenses by taking accommodation entries and as per the ledger accounts the payments for purchases were made irregular. Mere furnishing of purchase bills, delivery challans and stating that payments are made through banking channels do not conclusively prove the genuineness of the purchases in the light of the fact that several parties have categorically admitted to have engaged in issuing bogus purchase bills. He thus, held that the appellant had incurred expenditure for which he was unable to offer explanation and hence AO made an addition of the entire purchase amount from the eleven parties of Rs. 2,19,25,244/-.*

*6.2 During the present proceedings, the appellant in the written submissions stated that no opportunity for cross examination given and in view of the same the addition is required to be deleted on the ground of principles of natural justice. The assessee has provided all the relevant documents like purchase invoice, delivery challans, bank statements etc., and the onus cast upon the appellant is discharged. Alleged bogus purchases have been utilized in carrying its own business*

*and income flowing out of the said transaction is already offered for tax. AO relied on Sales Tax Department list without conducting any independent inquiries and the inquiries of sales tax department are not conclusive and cannot be used against the appellant without any corroborative evidences. All the payments and receipts are by way of account payee cheques and are reflected in the bank accounts and no addition can be made when the payment is made by account payee cheques. Gross profit rate for the year under consideration is comparable to the gross profit rate of the preceding assessment years and the quantum of fluctuation is reasonable. No material evidence*

*provided by the learned AO for rejecting the appellant's explanations, no inquiries made with the banks in order to ascertain the genuineness of the transactions. The payments has been made by account payee cheques and the same got cleared in sellers accounts which is evident from the certificate issued by the banker. No sales could have been effected if there were no purchases. The appellant has received payments from MCGM which is proof of the utilization of material in the projects. No proof was brought on record by the A.O. that money was returned to the appellant. The appellant requested that the purchases amounting to Rs. 2,19,25,244/-, be considered as genuine and be allowed for deduction while computing the business income. In the further submissions the appellant stated that consumption of material is established by the quantity of construction done during the year which is evidenced by the measurement records of the principle, i.e. MCGM for whom the assessee has done the construction as a contractor.*

*6.3 On receipt of the submissions from the appellant, the same were forwarded to the AO along with the details regarding purchase of material and consumption thereof in construction. In view of the additional evidences furnished, the AO was asked to verify the submissions and the details and evidences and conduct all necessary inquiries and find out whether the assessee has consumed the material purchase which is disputed on the basis of the information received from the Sales Tax Department. The AO was also asked to conduct enquiry in relation to genuineness of payments as claimed for disputed purchases made and whether the payees accounts have been credited.*

*6.4 The report from the AO dated 07-04-2017 was received through the KIT on 11-04-2017. The appellant furnished a confirmation made on the letter written by the appellant to the branch manager, Vijaya Bank with regard to the payments made through the bank, in response to the request of the appellant. It is stated that on perusal of the details filed and cross examination from the bank accounts, the assessee's transactions matched with the bank accounts. With regard to the other aspects, AO in the report reiterated the arguments put forth in the assessment, to consider the addition. It is stated that the assessee has not been able to substantiate the existence of the said concerns and the assessee could not produce the delivery challans, transport receipts, payment certificates issued by the MCGM, audit report in Form 704, as per provisions of section 61 of the MVAT Act etc. Hence it is stated by AO that the purchases of material made by the assessee from the said parties and claimed as expenses have not been delivered / not supplied any materials to the assessee and the said bills are bogus. It is also*

*stated that the assessee has not been able to establish the nexus between the purchases and its sales.*

*6.5 A copy of the remand report received from the AO was forwarded to the Appellant for their rejoinder which was filed by the AR on 17-04-2017, which is reproduced as under:*

*In continuation of my earlier submissions, I further beg to submit as under for the remand report received from the learned assessing officer:*

*Sir, we have submitted the consumption register which is linked with MCGM payment register and it shows exact Quantity of material purchased and consumed in various MCGM contracts. The assessee has also received Payments for the work done which is certified by the IACG14 after due verification of work completion.*

*Sir, In the remand report, has been said by the AO that the assessor could not prove the existence of the party and could not produce the deliver, ' challans to prove the supply of the goods.*

*For that I beg to submit that the assessee was not asked to produce the parties and the assessee has provided address of the parties, assessee cannot compel the parties to appear in the income tax department who only thing which has been said repeatedly by the A O in the remand report is that the supply of the goods has not been proved by the assessee. As the bill giver has said that they had not supplied any goods, the assessee needs to prove the supply of the goods.*

*For this, this is to submit that the assessee has furnished (lie consumption register to prove the consumption of the material in the work. Without supply of the goods, work would not have been completed. If the work is completed and tile assessee has received payment from the MCGM, it proves that the work has been completed and the material has been consumed. If the material is consumed, it proves that the assessee has receive the loads. Hence, the only doubt of the AO which is supply of the goods is proved from the consumption register. rho AO has not discussed anything about this consumption register and payment certificate in the remand report which is the main base of the assessee 's case. He has kept on discussing regarding the bogus bills issue and that the bill giver has denied the supply of goods but unfortunately has not said a single word for the consumption details of the material which has been submitted by the assessee to prove the supply of the goods. He has given the final conclusion that the supply remains unproved ignoring the fact that the purpose of giving*

*consumption register was to prove the supply of the goods. He seems to have focused only on the contention of the bogus bill giver party ignoring all the other evidences submitted by the assessee to prove his claim.*

*Hence, we bring to your honours kind attention that the supply of the goods has been proved from various evidences e.g. consumption register, payment certificate of MCGM*

*Hence, we do not agree with the objection of the AO in the remand report, it is very general and no specific objection is there.*

*As seen from the remand report and the rejoinder of the appellant both the parties are mostly repeating the same stands and arguments. In view of the same I would like to proceed to adjudicate the appeal on merits.*

*6.6 From the assessment order and also from the reports submitted by the AO, it appears that the Ld. AO made the addition as he found that the appellant had not discharged the burden of proof cast upon them. In this regard it is pertinent to mention that while dealing with the concept of burden of proof, onus of proving is always on the person who makes the claim and in this case the appellant and not on the Revenue.*

*6.7 Reliance also placed on the judgement of Hon'ble Supreme Court in the case of Sri Meenakshi Mills Ltd 63 ITR 609 where it was held that the I.T. Authorities are entitled to pierce the veil of Corporate Entity and to look into reality of transaction. In the case of McDowell & Co. 154 ITR 148(SC) it was stated that implications of tax avoidance are manifold. First, there is substantial loss of much needed public revenue. Next, there is serious disturbance caused to the economy of the country due to piling of mountains of black money, causing inflation. Thus, there is "the large hidden loss" to the community (as pointed out by Master Sheatcroft in 18 Modern Law Review 209) by some of the members in the country being involved in the perpetual war waged between the tax payer and his expert team of advisors, and accountants on the one side and the tax gatherer and his perhaps not so successful advisors on the other side. Hon'ble Court further held that it was for the Court to take stock to determine the nature of new and sophisticated legal devices to avoid tax and consider whether the situation created by the devices would be related to the existing legislation with the aid of emerging techniques of interpretation as was done in Ramsay, Burmah Oil and Dawson to expose the devices for what they really are and to refuse to give judicial benediction.*

*6.8 The onus to prove that apparent, is not the real one, is on the party who claims it to be so, as held by the Hon'ble Supreme Court in the case of CIT v. Daulat Ram Rawatmull [1973] 87 ITR 349 and CIT v. Durga Prasad More (supra). In the latter case, it has been held by the Apex Court that though an apparent statement must be considered real until it was shown that there were reasons to believe that apparent was not the real, in a case where an authority relied on self serving recitals in documents, it was for the party to establish the proof of those recitals; the taxing authorities were entitled to look into the surrounding circumstances to find out reality of such recitals. It is also a settled legal proposition that if no evidence is given by the party on whom the burden is cast, the issue must be found against him. Therefore, onus is always on a person who asserts a proposition or fact, which is not self evident. The onus, as a determining factor of the whole case can only arise if the Tribunal, which is vested with the authority to determine, finally all questions of fact, finds the evidence pro & con, so evenly balanced that it can come to no conclusion, then, the onus will determine the matter. There cannot be any doubt that onus as a determining factor comes into play where, either there is no evidence on either side, or where it is equally worthless or where it is equally balanced. It is imperative to mention here that where such is not the case and all available evidence is considered, without reference to the onus and without relying on the circumstances that onus lies on a particular party, the issue is determined on facts and the onus cannot be said to have influenced the decisions. However, in the instant case, the appellant has miserably failed to lead evidence and hence, onus is a determining factor.*

*6.9 With regard to the claim of the appellant that the parties are not offered for cross-examination by the appellant, it is to be noted that the right of cross-examination is not automatic, but it would be incumbent only in a situation where the appellant is able to prima facie demonstrate that the onus cast on him to establish his version of affairs is based on primary evidence. In this case, the appellant had failed to lead any primary evidence, viz. GRNs, octroi receipts, delivery challans, etc. which would show that the supplies were indeed made. In such a situation, the AO is justified in drawing the inference that the purchases shown in the name of that twentytwo parties aggregating to Rs. 2,19,25,244/- are not genuine and the same are only accommodation bills recorded with a view to adjust the expenditure in the books of a/c, probably purchased from grey market. As regards the issue of the denial of the cross examination, in the case of GTC Industries Ltd. v. Assistant Commissioner of Income-tax [1998] 65 ITD 380 (BOM). it was held as under*

105. *In our opinion right to cross-examine the witness who made adverse report, is not an invariable attribute of the requirement of the dictum, 'audi alteram partem'. The principles of natural justice do not require formal cross-examination. Formal cross-examination is a part of procedural justice. It is governed by the rules of evidence, and is the creation of Court. It is part of legal and statutory justice, and not a part of natural justice, therefore, it cannot be laid down as a general proposition of law that the revenue cannot rely on any evidence which has not been subjected to cross-examination.*

*resorted to such devices has to thank himself for it"*

6.10 *In the case of T. Devasahaya Nadarv. CIT [1964] 51 ITR 20 (Mad.), it was held:*

*"It cannot be laid down as a general proposition of law that the Income-tax Department cannot rely upon any evidence which has not been subjected to cross-examination.*

*An ITO occupies the position of a quasi-judicial Tribunal and is not bound by the rules of the Evidence Act, but he must act in consonance with natural justice, and one such rule is that he should not use any material against an assessee without giving the assessee an opportunity to meet it He is not bound to divulge the source of his information. There is no denial of natural justice if the ITO refuses to produce an informant for cross-examination though if his witness is examined in the presence of the assessee, the assessee must be allowed to cross-examine him. The range of natural justice is wide and whether or not there has been violation of natural justice would depend on the facts and circumstances of the case."*

6.11 *The Supreme Court had also on an occasion to consider the applicability of the principles of natural justice in R.S. Dass v. Union of India AIR 1967 SC 593.*

*Referring to the same, the Supreme Court in Chairman, Board of Mining Examination v. Ramjee AIR 1977 SC 965, inter alia, held as follows*

*"Natural justice is no unruly horse, no lurking land mine, nor a judicial cure all. If fairness is shown by the decision maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditional by the facts and circumstances of such situation, no breach of natural justice can be complained of Unnatural expansion of natural justice, without reference to the*

*administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor financial but should be flexible yet firm in this jurisdiction....*

*6.12 The Ld. AR has relied on a number of decisions, to suggest that no addition could be made on account of disallowance of purchases. Having gone through the above case laws, it is seen that in none of those cases so much of investigation was done including those by another Government authority, viz., Maharashtra Sales Tax authority before whom affidavits were filed by some of the suppliers stating that only bogus bills were supplied without delivery of goods. Further, no vehicle numbers have been given in so far as delivery of the purchases are concerned and therefore, it is certain that no such purchases were actually made from the parties from whom bills were procured and hence, no delivery could have been made. In view of the same, the case laws relied upon by the appellant will not come to the rescue of the appellant.*

*6.13 Coming to the merits of the addition, as seen from the assessment order and the subsequent remand report submitted, Ld. A.O. has time and again repeated that the transactions are not genuine, as the appellant did not purchase the goods from those parties. However, the AO is silent with regard to the execution of the works and getting the bills cleared from the MCGM on such contracts which is not possible without any purchases being made. As contract receipts of MCGM have not been doubted, the natural corollary would mean that the appellant must have purchased the goods from some unknown entities. The Bank account copy furnished shows that the amounts were paid through the bank to those parties. In the remand report submitted, AO confirmed the amounts are paid from the bank account of the appellant. Though discussed in the assessment order about the modus operandi,*

*there is no proof that the amounts have come back to the appellant in cash. The AO did not prove the fact that the amounts have come back to the appellant after crediting the same to the bank accounts of those parties except repeating time and again that the purchases were not genuine and the parties denied in the sworn statements.*

*6.14 In the facts and circumstances of the case, it is seen that the appellant has not proved the movement or transportation of its purchase by specifying the lorry numbers and other supporting evidences. The notice u/s. 133(6) of the Act also could not be served. Thus, the burden cast on the assessee has not been discharged. Therefore, in view of the factual and legal analysis, I record a finding of*

*fact that the appellant has failed to prove the genuineness of purchase transactions from the said parties as noted by the Ld. AO.*

*6.15 At the same time, having doubted the genuineness of the purchases, the Ld. AO has not disturbed the contract receipts. The appellant in the pleadings highlighted that, being a contractor to MCGM, the works cannot be completed and the amounts cannot be received from them, without purchasing the items. Without disturbing the contract receipts, AO could not have gone ahead and made addition in respect of the total amount of purchases. Thus, the issue would boil down to finding out the element of profit embedded in bogus purchases which the appellant would have made from some unknown entities.*

*6.16 In this regard, it is apt to refer to decision of Gujarat High Court in the case of Bholanath Poly Fab Pvt. Ltd. 355 ITR 290 (Guj) wherein the Northle Court was battling with the finding of Hon'ble ITAT that purchases were made from bogus parties since notice issued by the AO to those parties were allegedly received 'returned/unserved' and the assessee was unable to produce any confirmation from these parties. The Tribunal had held that though purchases were made from bogus parties, nevertheless, the purchases themselves were not bogus as the entire quantity of opening stock, purchases and sales were tallying and hence, only the profit margin embedded in such amount would be subjected to tax. The Hon'ble Gujarat High Court taking cognizance of the fact held that whether purchases themselves were bogus or whether parties from whom such purchases were made were bogus, is essentially a question of fact and the Tribunal having examined the evidence on record and concluded that the assessee did produce cloth and sell finished goods, the entire amount covered under such purchase would not be subjected to tax and only the profit element embedded therein was to be taxed. While coming to the above conclusion, the Hon'ble High Court also relied on the decision in the case of Sanjay Oil Cake Ind. 316 ITR 274 (Guj).*

*6.17 In Sanjay Oilcake Industries v. Commissioner of Income-tax [2009] 316 ITR 274 (Guj), it was held as under:*

*"12. Thus, it is apparent that both the Commissioner (Appeals) and the Tribunal have concurrently accepted the finding of the Assessing Officer that the apparent sellers who had issued sale bills were not traceable. That goods were received from the parties other than the persons who had issued bills for such goods. Though the purchases are shown to have been made by making payment thereof by account payee cheques, the*

*cheques have been deposited in bank accounts ostensibly in the name of the apparent sellers, thereafter the entire amounts have been withdrawn by bearer cheques and there is no trace or identity of the person withdrawing the amount from the bank accounts. In the light of the aforesaid nature of evidence it is not possible to record a different conclusion, different from the one recorded by the Commissioner (Appeals) and the Tribunal concurrently holding that the apparent sellers were not genuine, or were acting as conduit between the assessee-firm and the actual sellers of the raw materials. Both the Commissioner (Appeals) and the Tribunal have, therefore, come to the conclusion that in such circumstances, the likelihood of the purchase price being inflated cannot be ruled out and there is no material to dislodge such finding. The issue is not whether the purchase price reflected in the books of account matches the purchase price stated to have been paid to other persons. The issue is whether the purchase price paid by the assessee is reflected as receipts by the recipients. The assessee has, by set of evidence available on record, made it possible for the recipients not being traceable for the purpose of inquiry as to whether the payments made by the assessee have been actually received by the apparent sellers. Hence, the estimate made by the two appellate authorities does not warrant interference. Even otherwise, whether the estimate should be at a particular sum or at a different sum, can never be an issue of law."*

6.18 *Similarly, in yet another decision of Hon'ble Gujarat High Court in the case of CIT vs. Simit Sheth (2013) 38 Taxmann.com 385 (Guj), Hon'ble Court was seized with a similar issue where the A.O. had found that some of the alleged suppliers of steel to the assessee had not supplied any goods but had only provided sale bills and hence, purchases from the said parties were held to be bogus. The A.O. in that case added the entire amount of purchases to gross profit of the assessee. Ld. CIT (A) having found that the assessee had indeed purchased though not from named parties but other parties from grey market, partially sustained the addition as probable profit of the assessee. The Tribunal however, sustained the addition to the extent of 12.5%. Taking into account the above facts, the Hon'ble Gujarat High Court held that since the purchases were not bogus, but were made from parties other than those mentioned in books of accounts, only the profit element embedded in such purchases could be added to the assessee's income and as such no question of law arose in such estimation. While arriving at the above conclusion, the Hon'ble Court also relied on the decision in the case of Vijay M. Mistry Construction Ltd. 355 ITR 498 (Guj) and*

*further approved the decision of Ahmedabad Bench, ITAT in the case of Vijay Proteins 58 ITD 428.*

*6.19 From the above judicial decisions, it is clear that in the case of bogus purchases, it is apt to consider the addition to the extent of profit element on the said bogus purchases instead of adding the total amount of purchases. In the present case appellant executed the works and received payment from ACGM for completing the work contracts. As stated earlier without making purchases, such execution of contracts is not possible, hence in the present case, if profit percentage is estimated on the said bogus purchases that will meet the ends of justice.*

*The gross profit rate for the year under consideration is comparable to the gross profit rate of the preceding assessment years. The quantum of fluctuation in the turnover, gross profit, and net profit rates is reasonable. The appellant has disclosed a gross profit of 3.30 % during the year under consideration which is reasonable and have been accepted in the past assessment years. Taking in to consideration the facts of the case and judicial decisions on the issue and considering the business of the appellant i.e. contract from MCGM, the A.O. is directed to sustain the addition to the extent of 15% of the total purchase amount of Rs.2,19,25,244/-. Accordingly, grounds of appeal No.1 and 2 are treated as partly allowed.”*

5. On appraisal of the above said finding, we noticed that the CIT(A) has decided the matter of controversy on the basis of the decision in case of **Vijay Proteins 58 ITD 428, Vijay M. Mistry Construction Ltd. 355 ITR 498 (Guj) and CIT Vs. Simit P. Sheth (2013) 38 Taxmann.com 385 (Guj) and some other cases.** The main observations of the CIT(A) is that the profit embedded to the bogus purchase is liable to be added to the income of the assessee. The CIT(A) has took into consideration the profit embedded to the bogus purchase and also considered the gross profit rate of the year under consideration of the assessee. The appellant has disclosed the gross profit @ 3.30% which has taken into consideration by the CIT(A).

Taking into consideration of all the facts and circumstances, we are of the view that the CIT(A) has taken the reasonable view for the addition to the extent of 15% of bogus purchase. We nowhere found any illegality and infirmity in the order passed by the CIT(A) in question who has justifiably allowed the claim of the assessee. Taking into account, all the facts and circumstances, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with at this appellate stage. Accordingly, we decide these issues in favour of the assessee against the revenue.

6. In result, appeal filed by the revenue is hereby ordered to be dismissed.

Order pronounced in the open court on 30.01.2019.

Sd/-

(SHAMIM YAHYA)

लेखासदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 30.01.2019

Sd/-

(AMARJIT SINGH)

न्यायिकसदस्य/JUDICIAL MEMBER

*Vijay*

**आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त (अपील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापितप्रति //True Copy//

उप/सहायकपंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai