

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI MAHAVIR SINGH (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 826/MUM/2019  
Assessment Year: 2011-12**

M/s Authentique Eye  
Wear P. Ltd. Row House  
No. 1, Opp. Paras Yamaha  
Centre, Ambadi Cross  
Road, Vasai Road, Thane-  
401202.

**PAN No. AAICA1157H**  
**Appellant**

The Income Tax Officer,  
Ward 4(1), Thane.

Vs.

**Respondent**

Assessee by : Mr. Vinay N. Bhoir, AR  
Revenue by : Mr. Satishchandra Rajore, DR

Date of Hearing : 08/05/2019  
Date of pronouncement: 13/05/2019

**ORDER**

**PER N.K. PRADHAN, AM**

This is an appeal filed by the assessee. The relevant assessment year is 2011-12. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-3, Thane [in short 'CIT(A)'] and arises out of the assessment completed u/s 144 r.w.s. 147 of the Income Tax Act 1961, (the 'Act').

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

1. The Assessing Officer (Ward 4(1), Thane) reopened the case of appellant for AY 2011-12 u/s 147 of the Income Tax Act, 1961 having reason to believe

that appellant had made bogus purchases during the said year on the basis of information received from the Sales Tax Department.

2. The Assessing Officer has passed ex parte order due to non-attendance of the assessee and assessed the income of the appellant at Rs.40,27,381/- with addition of Rs37,17,321/- on account of bogus purchase.
  3. Due to ex parte order the case could not be properly represented before Assessing Officer to explain and justify such purchase. Further Assessing Officer has not considered various judgments of tribunal and high court with regard to disallowance on account of bogus purchases.
  4. The appeal was filed against Order of Assessing Officer before the Commissioner of income Tax (Appeals). The CIT (Appeals) has dismissed such appeal on the grounds of non-attendance by appellant and passed order in conformity of the Assessing Officer.
  5. During the pendency of assessment and appeal, the appellant has shifted its registered office to new address. All the notices for assessment and appeal proceedings were being sent to old administrative office which was not received by the appellant. Hence the appellant could not attend the assessment and appeal proceedings. Such non-attendance was not intentional or it was not to dishonor the Income Tax Department.
3. Briefly stated, the facts are that the assessee filed its return of income for the assessment year (AY) 2011-12 on 21.09.2011 declaring income of Rs.3,10,060/-. On receipt of information that the assessee is a beneficiary, who obtained bogus purchase bills from entry providers, the Assessing Officer (AO) issued notice u/s 148 and reopened the assessment.

Though the case was fixed for hearing on 19.12.2013, 31.01.2014, 25.11.2014, 11.12.2014 and 22.01.2015, neither the assessee nor its

authorized representative attended the proceedings before the AO nor filed any detail called for.

On the basis of the information received from the Sales Tax Department, Government of Maharashtra, the AO observed that the assessee has made bogus purchases from the following two parties during the year under consideration:

S. No.	Name	MVAT No.	Amount
1.	Urvin General Trading Pvt. Ltd.	27110537510V	Rs.20,76,990/-
2.	Rydham Mercantile Pvt. Ltd.	27900670693V	Rs.16,40,331/-
		<b>Total</b>	<b>Rs.37,17,321/-</b>

As mentioned earlier, there was no compliance by the appellant in response to the notices issued during the assessment proceedings. Therefore, keeping in mind the findings of the Sales Tax Department, Government of Maharashtra that the assessee was a beneficiary of bogus purchase bills given by the entry providers, the AO made an addition of the above amount of Rs.37,17,321/-.

4. In appeal, though the case was fixed for hearing on 21.06.2015, 12.07.2016, 15.09.2016, 07.11.2016, 09.12.2016 and 22.02.2017, neither the appellant nor its authorized representative appeared before the Ld. CIT(A) on the above dates. Neither any adjournment petition was filed nor any details were submitted.

The Ld. CIT(A), relying on the decision in *Lachminarayan Madan Lal v. CIT* 86 ITR 439 (SC) and *CIT v. Chandra Vilas Hotel* (1987) 164 ITR 102 (Guj), confirmed the said addition of Rs.37,17,321/- made by the AO.

5. Before us, the Ld. counsel of the assessee submits that since at both stage (AO and CIT) *ex-parte* order has been passed, authenticity and genuineness of purchases could not be examined. It is stated by him that goods had been purchased from the abovementioned two parties and payments have been made to the vendor against such purchase of goods by cheques and pay orders. Also it is stated by him that at the time of dealing with such parties, the appellant was completely unaware about such parties being involved in hawala transactions. It is mentioned that the Sales Tax Authority also considers a dealer to be hawala if sales tax is not deposited to government treasury by such a dealer. However, in such cases, it cannot be said that sales by such dealer is bogus or suspicious. It is stated that where sales are not disputed or doubted by the revenue, 100% disallowance of suspicious purchases is not sustainable and disallowance should be restricted at certain percentage (profit margin) of suspicious/bogus purchases. Finally, it is stated that the company has already closed down its business activities during the year 2016 because of heavy losses over the years.

6. On the other hand, the Ld. DR submits that the order passed by the Ld. CIT(A) be confirmed as there was repeated non-compliance by the assessee before the AO as well as the CIT(A). Facts being in the arena of

bogus purchases, the Ld. DR submits that the order passed by the Ld. CIT(A) confirming the addition of Rs.37,17,321/- made by the AO be confirmed.

7. We have heard the rival submissions and perused the relevant materials on record. As mentioned earlier there is repeated non-compliance by the assessee before the AO as well as the CIT(A). Because of non-compliance, the AO has made the total addition of Rs.37,17,321/-. 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 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).

Thus considering the facts and circumstances of the case, we direct the AO to estimate the profit @ 12.5% on such bogus purchases of Rs.37,17,321/- and bring to tax Rs.4,64,665/- only.

8. In the result, the appeal filed by the assessee is partly allowed.

**Order pronounced in the open Court on 13/05/2019.**

Sd/-  
(MAHAVIR SINGH)  
JUDICIAL MEMBER

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai;

Dated: 13/05/2019

*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.

//True Copy//

BY ORDER,

(Sr. Private Secretary)  
**ITAT, Mumbai**