

IN THE INCOME-TAX APPELLATE TRIBUNAL "H" BENCH MUMBAI  
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND SHRI PAWAN SINGH JUDICIAL MEMBER  
ITA No. 5877/Mum/2017 (Assessment Year 2009-10)

ACIT - 19(1) Room No. 203, 2 <sup>nd</sup> Floor, Matru Mandir, Tardeo Road, Mumbai-400007.	Vs.	M/s Hi Tech Engineers 477-479, Goldeval, Ladi Bazaar, Maulana Azad Road, Mumbai-400004. <b>PAN: AAAFH0253L</b>
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Appellant

Respondent

Appellant by : Shri Manoj Kumar Singh (Sr. DR)

Respondent by : None

Date of Hearing : 31.07.2019

Date of Pronouncement : 31.07.2019

**ORDER UNDER SECTION 254(1) OF INCOME TAX ACT**

**PER PAWAN SINGH, JUDICIAL MEMBER;**

1. This appeal by revenue is directed against the order of Id. CIT(A)-30, Mumbai dated 13.06.2017 for Assessment Year 2009-10. The revenue has raised the following grounds of appeal:

1. Whether in the facts and in the circumstances of the case and in law, the Ld. 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 13.06.2017 ?"

2. Whether in the facts and in the circumstances of the case and In law. the Ld. CIT(A) erred directing the 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 the purchases made from the eleven parties where genuine and did not produce any stock register, consumption register, construction register etc and also could not prove the

nexus between purchases and sales 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 Ld. CIT(A) erred in admitting additional evidence under 46A of the I T Rule 1962 ?"

4. Whether in 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. CIT(A) on the above grounds be set aside and that of the AO be restored.

- 2.** Brief facts of the case are that the assessee is a partnership-firm engaged in the business of civil contractor, filed its return of income for Assessment Year on 26.09.2009 declaring total income of Rs. 86,00,000/- (Approx.). The assessment was completed under section 143(1) on 28.11.2011. The assessment was re-opened under section 147 on the basis of information received from Sale Tax Department, Government of Maharashtra that certain hawala operators are indulging in providing accommodation bills without actual delivery of goods. The Sale Tax Department, Government of Maharashtra referred the list of such hawala dealers to the DGIT (Investigation), Mumbai. In the information it was alleged that the assessee is also one of the beneficiary who had made the purchases of Rs. 72,66,255/- from such hawala dealers. On the basis of information, the Assessing Officer made his belief that the income of the assessee escaped the assessment and re-

opened the assessment under section 147. Accordingly notice under section 148 was issued on 22.03.2014. The assessee in response to the notice under section 148 filed reply dated 29.05.2013 and stated that original return filed by assessee be treated as return in response to the said notice. The Assessing Officer after serving notice under section 143(2) dated 26.11.2014 proceeded for re-assessment. During the assessment, the Assessing Officer noted that the assessee has shown purchases from nine the parties, which has been declared as hawala dealers by the Sale Tax Department, Government of Maharashtra. The assessing officer summarised the details of purchases from such nine parties in the following manner;

<b>S.No.</b>	<b>Name of the assessee</b>	<b>Amount Rs.</b>
1	Jain Corporation	980936
2	Krishna Enterprises	1396026
3	Om Enterprises	1377890
4	Yash Impex	739710
5	Sam Enterprises	608657
6	Neelam Enterprises	538520
7	Jain Trading Corporation	683684
8	VSK Enterprises	561105
9	Kesar Enterprises	379727
	<b>Total</b>	<b>7266255</b>

3. During the reassessment proceedings the assessing officer asked the assessee to substantiate the purchases. The assessee was also asked to produce the seller, PAN, billing voucher with date, description of good purchased, quality, rate, goods dispatched along with the date, mode of

transportation and the relevant evidence thereon. The assessee was also asked to produce the stock register details of construction and to show that the material purchase was consumed. The assessing officer noted that assessee failed to produce the parties and the relevant record required by him. The assessing officer further noted that the assessee do not maintain the consumption register to show the consumption of alleged goods/ material at site. The assessing officer concluded that the correctness of completeness of the books of account is not established so far as the specific purchases from the alleged hawala parties are concerned. The assessing officer rejected the books of account of the assessee under section 145(3) of the Act. The Assessing Officer disallowed the entire aggregate purchases shown from all the parties. On appeal before the Id. CIT(A), the disallowance was restricted to 15%. The Id CIT(A) restricted the disallowance to the extent of the profit element embedded in such purchases. Aggrieved by the order of Id. CIT(A), the revenue has filed the present appeal before us.

4. None appeared on behalf of assessee despite the service of notice. We have left no option except to hear the submission of Id. departmental representative (DR) for the revenue and to decide the case on the basis of material available on record. The Id. DR submits that Investigation Wing of Income-tax Department has made full-fledged investigation in respect of hawala traders. The hawala traders were/are engaged in

providing bogus bill without actual delivery of goods. The assessee has shown bogus purchases to inflate the profit. The Id. DR for the revenue submits that the Id CIT(A) failed to consider that the assessee has not substantiated the purchases and the entire purchases were liable disallowed. The Id. DR submit that Id. CIT(A) has wrongly restricted the addition to the extent of 15%.

5. We have considered the submissions of Id. DR for the revenue and perused the record. We have noted that during the re-assessment, the Assessing Officer noted that assessee has shown purchases of Rs. 72,66,255/- from nine parties, whose names were listed in the names of hawala dealers. The assessee was asked to substantiate the purchases by showing sufficient evidence. Before us none appeared on behalf of the assessee nor are any written submissions filed. We have seen the assessment was reopened on the basis of credible information received by assessing officer. During the reassessment the assessing officer made the addition of entire aggregate purchases shown from the said hawala dealer as non-genuine purchases. Before Id. Commissioner (Appeals) the assessee also furnished written submission, the submissions of the assessee were forwarded to the assessing officer for his remand report with the directions to conduct enquiries with regard to the genuineness of the payments. The remand report of the assessing officer was received by Id. Commissioner (Appeals) on 11.04.2017. In the remand

report the assessing officer retreated his earlier stand and also stated that the consumption sheet cannot be considered as basis of consumption as the same is not maintained on the basis of date wise consumption. The Id. Commissioner (Appeals) after considering the remand report and the other material considered the estimated profit on such bogus purchases and came to the conclusion that profit embedded in such non-genuine purchases are 15%. The learned Commissioner (Appeals) after considering the submission of assessee and various case laws including the decision of Hon'ble Gujarat High Court in Bholanath Poly Fab Private Limited 255 ITR 290 (Gujarat) and Sanjay Oil Cake Ltd 316 ITR 274(Gujarat) concluded that it is appropriate to made the addition to the extent of profit element on the alleged bogus purchases instead of adding the total amount of purchase. The learned Commissioner (Appeals) also concluded that the assessee executed works and received payment from Municipal Corporation of Greater Mumbai (MCGM) for completing the contract work. The execution of work cannot be made without making purchases and accordingly restricted the disallowance to that extent by following the decision of Gujarat High Court as noted above. Before us, though the learned DR for the revenue submitted that his department has made full-fledged investigation about the said hawala dealers which were engaged in providing bogus bill without actual delivery of goods. However, the learned DR for the revenue

failed to convince us as to why the conclusion drawn by learned Commissioner (Appeals) in by taking into consideration the fact that only profit element embedded in such bogus purchases must be disallowed and not the entire purchases as held in various case laws referred by Id Commissioner (Appeals). Hence, we are in agreement with the conclusion arrived by Id. Commissioner (Appeals), which we affirm. No contrary fact or law is brought to notice to take other view. Therefore, we do not find any merit in the grounds of appeal raised by the venue. In the result appeal of the revenue is dismissed.

6. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 31/07/2019.

**Sd/-  
SHAMIM YAHYA  
ACCOUNTANT MEMBER**

**Sd/-  
PAWAN SINGH  
JUDICIAL MEMBER**

Mumbai, Date: 31 .07.2019

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**Copy of the Order forwarded to :**

1. Assessee
3. The concerned CIT(A)
5. DR "SMC" Bench, ITAT, Mumbai
6. Guard File

2. Respondent
4. The concerned CIT

**BY ORDER,  
Dy./Asst. Registrar  
ITAT, Mumbai**