



आयकर अपीलीय अधिकरण "एक-सदस्य मामला" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

माननीय श्री महावीर सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.4977/Mum/2018
(निर्धारण वर्ष / Assessment Year:2009-10)

Income tax Officer-27(1)(4) Tower 6, 4 th Floor Room No.409, Vashi Railway Station Complex, Vashi, Navi Mumbai.	बनाम/ Vs.	Dushyant U. Bhatia B-14, Shivsagar CHS, 180 Garodia Nagar Ghatkopar (E), Mumbai-400 077.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AJAPB-6078-L		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Revenue by	:	Shri Ashutosh Rajhans-Ld.DR
Assessee by	:	Ms. Mallika Devendra-Ld. AR

सुनवाई की तारीख/ Date of Hearing	:	09/09/2019
घोषणा की तारीख / Date of Pronouncement	:	09/09/2019

आदेश / ORDER

Per Bench: -

1. Aforesaid appeal by revenue for Assessment Year [AY] 2009-10 contest the order of Ld. Commissioner of Income-Tax (Appeals)-24



ITA No.4977/Mum/2018
A.Y.2009-10
Dushyant U Bhatia

Mumbai, [in short referred to as 'CIT(A)'], *Appeal No. CIT(A)-24/IT-20/526/ITO-27(1)(4)/2018-19* dated 24/05/2018 *qua* deletion of certain additions on account of *alleged bogus purchases*. The grounds raised by revenue read as under: -

1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.8,41,303/- made by the Assessing Officer on account of bogus purchases, without appreciating the fact that the assessee had failed to produce bills, vouchers and other documentary evidences in support of his claim and without considering the latest Apex Court decision in the case of N K Protein Ltd. wherein it is held that once it is proved that the purchases are bogus then addition should be made on entire purchases and not on profit element embedded in such purchases.
2. On the facts and circumstances of the case, the Ld. CIT(A) erred in estimating the profit from Hawala Purchases by disallowing only Rs.5,13,594/- being 12.5% of the bogus purchases as even the basic onus of producing transport bills, delivery challans etc. were not fulfilled by the assessee.

2.1 Facts on record would reveal that the assessee being resident individual stated to be engaged as dealer in Hardware items under proprietorship concern namely M/s Krishna Enterprises was assessed for impugned AY u/s. 143(3) r.w.s. 147 on 27/03/2015 wherein the income of the assessee was determined at Rs.16.05 Lacs after sole addition of *alleged bogus purchases* for Rs.13.54 Lacs as against returned income of Rs.2.50 Lacs filed by the assessee on 23/09/2009 which was processed u/s.143(1).

2.2 Pursuant to receipt of certain information from investigation wing / Sales tax Department, Govt. of Maharashtra, it transpired that the assessee stood beneficiary of alleged bogus purchases to the tune of Rs.41.08 Lacs from 10 parties, the details of which has already been extracted at para-6.1



of the quantum assessment order. Accordingly, as per due process of law, re-assessment proceedings were initiated against the assessee u/s 147 by issuance of notice u/s 148 on 31/03/2014. In response, the assessee offered original return and raised objections against reassessment proceedings, which were duly disposed-off vide order dated 12/03/2014. The statutory notices u/s 142(1) and 143(2) were issued in due course of assessment proceedings wherein the assessee was directed to substantiate the purchase transactions.

2.3 To confirm the purchases transactions, notices u/s 133(6) were issued to all parties, however the same were returned back unserved by postal authorities with the remarks "left". The field inquiries revealed, did not throw any light on the whereabouts of the suppliers. These facts were confronted to the assessee. The assessee submitted that the purchases were genuine and corresponding sales were made and the payment to suppliers were through banking channels. The sales turnover reflected by the assessee has not been disturbed / disputed by Ld. AO. However, the assessee failed to produce any of the suppliers. Resultantly, Ld. AO worked out peak of the purchases at Rs.13.54 Lacs and added the same to the income of the assessee. The learned first appellate authority, relying upon the decision of Hon'ble Gujarat High Court rendered in **CIT V/s Simit P. Sheth [356 ITR 451]** restricted the addition to 12.5% of disputed purchases which came to Rs.5.13 Lacs and deleted the balance additions. Aggrieved, the revenue is in further appeal before us. It appears that the assessee is not in further appeal.



3. The respective representatives have advanced arguments, which we have duly considered.

4. We are of the considered opinion there could be no sale without actual purchase of material keeping in view the assessee's nature of business. The assessee was in possession of primary purchase documents and the payments to suppliers were through banking channels. The sales turnover has not been disputed / disturbed by the revenue. However, at the same time, notice issued u/s 133(6) to all the entities remained unserved and field inquires did not throw any light on the whereabouts of the suppliers. The assessee failed to produce even a single party to confirm the transaction and the primary onus casted upon assessee, to substantiate the purchase transactions, remained un-discharged. Under such circumstances, the additions which could be sustained, was to account for profit element embedded in these purchase transactions to factorize for profit earned by assessee against possible purchase of material in the grey market and undue benefit of VAT against such bogus purchases, which Ld. first appellate authority has rightly done. Therefore, concurring with the approach of learned first appellate authority in restricting the additions to 12.5%, we dismiss the appeal. So far as the decision of Hon'ble Gujarat High Court rendered in **N.K. Industries Ltd. Vs DCIT [72 Taxmann.com 289]** is concerned, we find that the facts of that case has already been distinguished by Hon'ble Bombay High Court in **Pr.CIT Vs. M/s Mohommad Haji Adam & Co. [ITA No.1004 & others of 2016, dated**



ITA No.4977/Mum/2018
A.Y.2009-10
Dushyant U Bhatia

11/02/2019] wherein Hon'ble Court has approved the estimation, on similar factual matrix, based on Gross Profit Rate.

5. In result, the appeal stands dismissed.

Order pronounced in the open court on 09th September, 2019.

Sd/-

(Mahavir Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 09/09/2019
Sr.PS:-Jaisy Varghese

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

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