

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” Bench, Mumbai**

**Before Shri Rajesh Kumar, Accountant Member  
and Shri Ravish Sood, Judicial Member**

**ITA Nos.6242 & 6243/Mum/2018  
(Assessment Years: 2010-11 & 2011-12)**

Mangesh J. Shah HUF  
Goregoan West ,  
Flat No.3, Tripathi Bhuvan No.5,  
Aarey Road,Goregaon West,  
Mumbai, Maharashtra – 400062

Ajay Kumar Rajak-31(2)(3)  
Bandra Kurla Complex,  
Bandra East, Mumbai  
Maharashtra- 400051

Vs.

PAN –AAAHM0607F

**(Appellant)**

**(Respondent)**

Appellant by: Shri M. Subramanian, A.R  
Respondent by: Shri Ashim Kumar Modi, D.R

Date of Hearing: 09.09.2019  
Date of Pronouncement: 13.09.2019

**ORDER**

**PER RAVISH SOOD, JM**

The present appeals filed by the assessee are directed against the consolidated order passed by the CIT(A)-42, Mumbai for A.Y. 2010-11 and A.Y. 2011-12, dated 26.06.2018, which in turn arises from the respective assessment orders passed by the A.O under Sec.143(3) r.w.s 147 of the Income Tax Act, 1961 (for short 'Act'), dated 16.02.2016. As common issues are involved in the aforementioned appeals, therefore, the same are being taken up and disposed off together by way of a common order. We shall first advert to the appeal of the assessee for A.Y. 2010-11.

2. Briefly stated, the assessee which is engaged in the business of manufacturing and trading in steel utensils had filed its return of income for A.Y. 2010-11 on 29.09.2010, declaring its total income at Rs.3,00,220/-. The return of income filed by the assessee was processed as such under Sec.143(1) of the Act. Subsequently, on the basis of information received from the DGIT (Inv.), Mumbai, that the name of the assessee had appeared in the list of the

beneficiaries who had obtained the accommodation purchase bills from certain hawala operators, its case was reopened under Sec. 147 of the Act.

3. During the course of the assessment proceedings it was observed by the A.O that the assessee had claimed to have made purchases aggregating to Rs.43,58,546/- from the following parties:

Sr. No.	Name of parties	Amount (Rs.)
1.	SHAKTI TRADING CO.	9,99,310/-
2.	BOHRA METAL INDUSTRIES	14,25,330/-
3.	SIDDHIVINAYAK CORPORATION	6,09,820/-
4.	SHAH INDUSTRIES	13,24,086/-
	Total	43,58,546/-

In order to verify the authenticity of the aforesaid purchase transactions, the assessee was directed by the A.O to produce the documentary evidence in support thereof viz. bank statement, purchase bills, stock register quantitative details, re-conciliation of purchase alongwith corresponding sales effected, delivery challans, weighbridge, octroi and lorry receipts, mode of transportation/ delivery etc. Also, the A.O issued notices under Sec. 133(6) to the aforementioned parties. However, the notices issue under Sec. 133(6) were returned back unserved with the remarks "not known" or "not residing". In the backdrop of the aforesaid facts, the A.O directed the assessee to provide the latest address/whereabouts of the aforementioned parties and also produce them for necessary verification before him. In reply, the assessee in order to impress upon the A.O that it had made genuine purchases from the aforementioned parties, therein placed on record certain documentary evidence viz. copies of invoices, bills, ledger extracts and its bank statements. It was emphasized by the assessee, that the fact that the payments to the aforementioned parties were made through cheques in itself proved the genuineness of the purchase transactions under consideration. However, the assessee failed to furnish the latest addresses/whereabouts of the aforementioned parties. Also, the assessee did not produce either of the aforementioned parties for necessary examination before the A.O. On the basis of the aforesaid facts, the A.O was of the view that the assessee had failed to discharge the 'onus' as regards the proving the genuineness of the purchases which were claimed to have been made from the aforementioned parties. In order to substantiate the genuineness of the purchases the assessee furnished the quantitative details of the goods purchased along with the correlation of purchases with the corresponding sales that were

accounted for in its 'books of accounts' for the year under consideration. However, the A.O being of the view that the 'books of accounts' of the assessee were not reliable, therein rejected the same under Sec. 145(3) of the Act. In the backdrop of the aforesaid facts, the A.O was of the view that as the sales corresponding to the aforesaid purchases were duly accounted for in the 'books of accounts' of the assessee, therefore, the aggregate value of the purchases could not be disallowed. Accordingly, the A.O being of the view that there was every possibility that the assessee would had purchased the goods not from the aforementioned parties but from the open /grey market, thus by saving on account of sales tax and other taxes would had procured the goods at a discounted value. On the basis of his aforesaid observations, the A.O estimated the addition in the hands of the assessee at Rs.5,44,818/- i.e. @ 12.5% of the aggregate value of purchases of Rs.43,58,546/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). However, the CIT(A) not being persuaded to subscribe to the contentions advanced by the assessee, therein upheld the estimation of profit @ 12.5% of the aggregate purchase value by the A.O.

5. The assessee being aggrieved, with the order of the CIT(A) has carried the matter in appeal before us. The Id. Authorized Representative (for short 'A.R') for the assessee at the very outset of the hearing of the appeal submitted that as the assessee had placed on record sufficient documentary evidence which proved the genuineness of the purchase transactions under consideration, therefore, the lower authorities had erred in characterising the same as bogus purchases. It was vehemently submitted by the Id. A.R that no addition was called for in the hands of the assessee. Alternatively, it was submitted by the Id. A.R, that even otherwise the addition in respect of the impugned purchases was liable to be restricted only to the extent of the profit element which the assessee would had generated from its normal trading operations. In support of his aforesaid contention the Id. A.R relied on the judgment of the Hon'ble High Court of Bombay in the case of Principal Commissioner of Income Tax-17 Vs. M/s Mohommad Haji Adam & Company [ITA No. 1004 of 2016, dated 11.02.2019](copy placed on record). Also, support was drawn by the Id. A.R from the order of the ITAT, "SMC" Bench, Mumbai, in the case of Shri Ramesh Kumar Daulatraj Mehta Vs. ITO, Ward-19(3)(1), Mumbai, (ITA No.4192/Mum/2018, dated 07.05.2019). It was submitted by the Id. A.R, that in the aforementioned case the Tribunal had followed the judgment of the Hon'ble High Court of

Bombay in the case of Mohommad Hazi Adam & Co. & Ors. (supra) and had directed the A.O to restrict the addition in respect of the bogus/unverified purchases only to the extent of differential percentage as was declined by the assessee on its bogus purchases as against that on the regular purchases.

6. Per contra, the Id. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities. It was submitted by the Id. D.R that both the lower authorities had already taken a reasonable view and in all fairness had restricted the addition only to the extent of 12.5% of the aggregate value of the purchases under consideration.

7. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. As is discernible from the orders of the lower authorities, it can safely be gathered that the assessee despite having been afforded sufficient opportunity to substantiate the authenticity of the purchase transactions under consideration, had however, despite specific directions by the A.O failed to place on record the requisite supporting documentary evidence. Apart there from, we find that the assessee had also failed to produce the parties despite having been directed to do so by the A.O. We are unable to persuade ourselves to subscribe to the claim of the Id. A.R that the assessee had substantiated the authenticity of the purchase transactions before the lower authorities. In fact, we find that the assessee had even failed to do the bare minimum by not even furnishing the confirmations of the aforementioned parties. Insofar, the copies of invoices issued by the aforementioned parties are concerned, we find that the fact that now when the said parties had themselves admitted that they had merely provided accommodation purchase bills, therefore, the reliance placed by the assessee on the said invoices would not inspire any confidence. Apart there from, we find that the assessee despite specific directions by the A.O had even failed to furnish with him the latest addresses/whereabouts of the aforementioned parties. In our considered view, as the notices issued by the A.O under Sec.133(6) were returned back by the postal authorities with the endorsement "not known" and their latest address/whereabouts were also not provided by the assessee, therefore, the A.O had no occasion to verify the genuineness of the purchase transactions under consideration. As observed by us hereinabove, the assessee had also failed to place on record corroborative documentary evidence which would have substantiated the

genuineness of the purchase transactions and dispelled the doubts as had emanated in respect of the same on the basis of the information received from the sales tax department. In fact, the reliance placed by the assessee on the fact that the payments were made to the aforementioned parties vide account payee cheques, in our considered view would in no way prove the genuineness of the purchase transactions under consideration. Accordingly, we are of the considered view that in the backdrop of the aforesaid facts, the lower authorities had rightly concluded that the assessee had failed to discharge the 'onus' as regards proving the genuineness of the purchase transactions under consideration. We find that keeping in view the fact that the assessee had not been able to prove that the correlating sales for the goods purchased were accounted for in its 'books of accounts' for the year under consideration, therefore, the lower authorities had in all fairness restricted the addition only to the extent of the profit which the assessee would have made by procuring the goods at a discounted value from the open/grey market. In our considered view, the lower authorities had rightly observed that as the assessee had failed to substantiate the genuineness of the purchases claimed to have been made from the aforementioned parties, therefore, it could safely be concluded that the goods were purchased by the assessee from unknown sources operating in the open/grey market. Insofar the quantification of such profit element is concerned, we find that the **Hon'ble High Court of Bombay** in its recent judgement in the case of **Pr. Commissioner of Income Tax-17 Vs. M/s Mohhomad Haji Adam & Company (ITA No. 1004 of 2016, dated 11.02.2019)** while upholding the order of the Tribunal, had observed, that the addition in the hands of the assessee as regards the bogus/unproved purchases was to be made to the extent of bringing the G.P rate of such purchases at the same rate of other genuine purchases. The Hon'ble High Court while concluding as hereinabove, had observed as under:

"8. In the present case, as noted above, the assessee was a trader of fabrics. The AO found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sale declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trade. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases. The decision of the Gujarat High Court in the case of N.K. Industries Ltd.(supra) cannot be applied without reference to the facts. In fact in paragraph 8 of the same Judgment the Court held and observed as under-

“So far as the question regarding addition of Rs.3,70,78,125/- as gross profit on sales of Rs.37.08 Crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular books during Financial Year 1997-98 is concerned, we are of the view that the assessee cannot be punished since sale price is accepted by the revenue. Therefore, even if 6 % gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as a result of which profit comes to 5.66%. Therefore, considering 5.66 % of Rs.3,70,78,125/- which comes to Rs.20,98,621.88 we think it fit to direct the revenue to add Rs.20,98,621.88 as gross profit and make necessary deductions accordingly. Accordingly, the said question is answered partially in favour of the assessee and partially in favour of the revenue.”

9. In these circumstances, no question of law, therefore, arises. All Income Tax Appeals are dismissed, accordingly. No order at costs.”

As such, the Hon'ble jurisdictional High Court had observed that the addition in respect of purchases which were found to be bogus in the case of the assessee before them, who was a trader, was to be worked out by bringing the G.P. rate of such bogus purchases at the same rate as that of other genuine purchases. We thus respectfully following the aforesaid judgment of the Hon'ble High Court direct the A.O to restrict the addition insofar the bogus/unproved purchases aggregating to Rs.43,58,546/- in the case before us are concerned, by bringing the G.P. rate on the amount of such bogus purchases at the same rate as that of the other genuine purchases. Needless to say, the assessee in the course of the set aside proceedings shall furnish the requisite details before the A.O, who shall after making necessary verifications restrict the addition in terms of our aforesaid observations. The order passed by the CIT(A) is 'set aside' and the matter is restored to the file of the A.O to give effect to our aforesaid directions.

8. The appeal of the assessee is allowed for statistical purposes.

**ITA No. 6243/Mum/2018**  
**AY. 2011-12**

9. Briefly stated, the assessee had filed its return of income for A.Y.2011-12 on 30.09.2011, declaring its total income at Rs.4,95,290/-. The return of income was processed as such under Sec. 143(1) of the Act. Subsequently, on the basis of information received from the DGIT(Inv.), Mumbai, that the name of the assessee had appeared in the list of the beneficiaries which had obtained accommodation purchase bills from certain hawala operators, the case of the assessee was reopened under Sec.147 of the Act.

10. The A.O while framing the assessment observed that the assessee had claimed to have made purchases of Rs.14,97,295/- from M/s Kshatrapal Impex. The assessee failed to discharge the 'onus' as regards proving the authenticity of the aforesaid purchase transactions. However, it was observed by the A.O that the sales corresponding to the purchases claimed to have been made from the aforementioned parties were duly accounted for by the assessee in its 'books of accounts' for the year under consideration. Accordingly, the A.O restricted the addition in the hands of the assessee to the extent of Rs.1,87,162/- i.e 12.5% of the aggregate value of purchases of Rs.14,97,295/-.

11. Aggrieved, the assessee carried the matter in appeal before the CIT(A). However, the CIT(A) not finding favour with the contentions advanced by the assessee dismissed the appeal.

12. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. We find that as the facts and the issue involved in the present appeal remains the same as were there before us in the case of the assessee for A.Y. 2010-11 in ITA No. 6242/Mum/2018, therefore, our order therein passed while disposing off the appeal of the revenue shall apply *mutatis mutandis* for disposal of the present appeal. Accordingly, in the same terms the matter is restored to the file of the A.O for restricting the addition insofar the bogus/unproved purchases aggregating to Rs.14,97,297/- are concerned by bringing the G.P rate on the amount of such bogus purchases at the same rate as that of the other genuine purchases.

13. The appeal of the assessee is allowed for statistical purposes.

14. The appeals of the assessee for A.Y. 2010-11 and A.Y 2011-12 i.e ITA No. 6242/Mum/2018 and 6243/Mum/2018, respectively, are allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in the open court on 13.09.2019

Sd/-  
(Rajesh Kumar)  
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 13.09.2019  
PS. Rohit

Sd/-  
(Ravish Sood)  
JUDICIAL MEMBER

**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.

सत्यापितप्रति //True Copy//

**आदेशानुसार/ BY ORDER,**

**उप/सहायकपंजीकार (Dy./Asstt. Registrar)**

**आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai**