

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

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

**ITA Nos.6237 & 6238/Mum/2018  
(Assessment Years: 2010-11 & 2011-12)**

Income-tax Officer, Ward-3(1),  
Kalyan, 2<sup>nd</sup> Floor, Rani Mansion,  
Kalyan-Murbad Road, S.B.I.,  
Kalyan (W)- 421301

M/s Apurva Ashok Dani, HUF  
Prop. M/s Surya Ceramics,  
Shop No. 1,2 & 3, Abean Apartment,  
Vs. Murbad Road,  
Kalyan- 421301

PAN –AADHD8125J

**(Appellant)**

**(Respondent)**

Appellant by: Shri Ashim Kumar Modi, D.R  
Respondent by: Shri Sashank Dundu, A.R

Date of Hearing: 09.09.2019  
Date of Pronouncement: 13.09.2019

**ORDER**

**PER RAVISH SOOD, JM**

The present appeals filed by the revenue are directed against the consolidated order passed by the CIT(A)-1, Thane, for A.Y. 2010-11 and A.Y. 2011-12, dated 20.08.2018, which in turn arises from the respective assessment orders passed under Sec.143(3) r.w.s 147 of the Income Tax Act, 1961 (for short 'Act'), dated 22.02.2015. 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.

2. Briefly stated, the assessee who is a wholesaler in ceramics, tiles and building material items had filed its returns of income for A.Y. 2010-11 and A.Y. 2011-12, declaring its total income at Rs.10,88,120/- and Rs.9,03,620/-, respectively. The returns of income filed by the assessee for both of the aforementioned years were 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 appeared in the list of the beneficiaries, who as per the investigation carried out by the Sales Tax Department, Mumbai, had obtained the accommodation purchase bills from certain hawala operators, the cases of the assessee for both of the aforementioned years viz. A.Y. 2010-11 and A.Y 2011-12 were 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 from the following parties:

Sr. No.	Name of the party	Purchases affected in A.Y 2010-11	Purchases affected in A.Y. 2011-12
1.	Kameshwar Trading Pvt . Ltd.	48,673/-	--
2.	Swastik Enterprises	1,50,798/-	--
3.	Shree Enterprises	34,157/-	--
4.	Trichipuram Trading Pvt. Ltd.	79,144/-	--
5.	Rumggt Enterprises	--	13,001/-
6.	Vardhman Enterprises	--	45,559/-
7.	Hitech Impex	--	21,668/-
8.	Subh Enterprises	--	29,633/-
	Total	3,12,772/-	1,09,861/-

The A.O in order to verify the genuineness of the purchase transactions issued notices under Sec. 133(6) to the aforementioned parties. However, the notices were returned unserved by the postal authorities with the remarks "left places" or "not known". In the backdrop of the aforesaid facts, the A.O directed the assessee to produce the aforementioned parties for necessary examination, along with supporting documentary evidencing the genuineness of the purchase transactions viz. purchase bills, delivery challans, lorry receipts, stock register etc. In reply, the assessee expressed its inability to produce the aforementioned parties. Also, the assessee failed to place on record the requisite documentary evidence viz. the transport receipts, delivery challans, etc., for the reason that the goods were transported in baggages. The assessee in order to impress upon the A.O that it had made genuine purchases from the aforementioned parties, therein placed on record the copies of the purchase bills and the copies of the VAT returns of the aforementioned parties. The A.O was not inspired by the documentary evidence which were produced by the assessee to substantiate the genuineness of the purchase transactions under consideration. It was observed by the A.O that the assessee had also failed to produce the octroi receipts, lorry receipts and escort receipts. Further, it was noticed by the A.O that a perusal of the 'audit report' of the assessee revealed that it had not maintained any 'stock register'. As the assessee had failed to substantiate the genuineness of the purchase

transactions, therefore, the A.O disallowed the aggregate value of the purchases of Rs.3,12,772/- and Rs. 1,09,861/- for the aforementioned respective years..

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). On the basis of the facts available on record, the CIT(A) was in agreement with the view taken by the A.O that the assessee had failed to substantiate the genuineness of the purchases claimed to have been made from the aforementioned parties. The CIT(A) in all fairness afforded an opportunity to the assessee to substantiate the authenticity of the purchase transactions by placing on record information/supporting documentary evidence i.e current working address of the aforementioned parties, confirmations of the parties, bank statements of the parties, proof for delivery of goods i.e delivery challans, transport receipt, octroi receipts, loading/unloading receipts, stock register etc. Also, the CIT(A) directed the assessee to produce the aforementioned parties for necessary examination before him. The assessee was also directed to furnish the qualitative/quantitative details of the opening stock, purchases, sales, closing stock, item-wise/party-wise purchases/sales on month to month basis. Also, the assessee was directed to furnish the comparative turnover, gross profit, G.P rate, net profit and N.P rate for the year under consideration and also the two preceding and succeeding years. In compliance, the assessee filed the copies of the returns of income, copies of ledger accounts, stock reconciliation statement, sales and purchase summary, and the copies of bank statements. However, the assessee failed to furnish the requisite details as were called for by the CIT(A) in a prescribed format. On the basis of the aforesaid facts, the CIT(A) was of the view that in the absence of the requisite details, the fact that the assessee had purchased the goods from the aforementioned parties and also as to whether the corresponding sales had been recorded were not open for verification. Also, it was observed by him that even in the course of the appellate proceedings the assessee had failed to furnish the copies of the confirmed ledger accounts, current mailing addresses of the parties. Further, the assessee also could not produce the aforementioned parties for examination in person before him. In the backdrop of the aforesaid facts, the CIT(A) rejected the 'books of accounts' of the assessee by invoking the provisions of Sec.145(3) of the Act. It was observed by the CIT(A), that the fact the payments were made by the assessee to the aforementioned parties by cheques would not conclusively prove the genuineness of the purchase transactions under consideration on a standalone basis.

In fact, it was observed by him, that as the said parties had in their statements/affidavits before the Sales Tax Department had admitted that they had after deducting their due commission i.e approximately 1%, had refunded back the balance cash to the buyers, thus, the fact that payments were made to the abovementioned parties vide account payee cheque would thus not be of much relevance. On the basis of his aforesaid deliberations, the CIT(A) was of the view that the assessee had failed to discharge the 'onus' was cast upon it for proving the genuineness of the purchase transactions under consideration. Accordingly, the CIT(A) after considering the comparative details of G.P/N.P and their respective rates for the year under consideration as against those for the immediately two preceding and immediately succeeding year. It was observed by the CIT(A) that the assessee had declared G.P of 9.01% and 8.85% in A.Y. 2010-11 & A.Y. 2011-12, respectively. Also, it was noticed by him, that the assessee had in A.Y. 2008-09 shown a G.P of 9.11%. After rejecting the 'books of accounts' of the assessee for both of the aforementioned years under consideration, the CIT(A) applied the G.P rate of 9.11% to the turnover of the assessee and worked out the suppressed G.P of Rs.67,056/-. On the other hand, the CIT(A) in the case of the assessee for A.Y. 2010-11 confined the addition to the extent of 25% of the aggregate value of the purchases of Rs.3,12,772/- under consideration and made an addition of Rs.78,193/-.

5. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. Admittedly, as is discernible from the orders of the lower authorities, the assessee despite having been afforded sufficient opportunity had failed to substantiate the purchase transactions which were claimed to have been entered into with the aforementioned parties in both the years under consideration i. e A.Y. 2010-11 and A.Y. 2011-12. We have given a thoughtful consideration to the issue before us and are unable to persuade ourselves to subscribe to disallowance of the aggregate value of purchases by the A.O. As a matter of fact, we find that the revenue had not been able to conclusively prove that the corresponding sales for the purchases under consideration were not accounted for by the assessee in its books of account. We are of the considered view that though the documentary evidence filed by the assessee in its attempt to substantiate the authenticity of the purchase transactions was not up to the satisfaction of the A.O, however, a perusal of the same at least reveals that the goods/material therein stated had been purchased by the assessee. In fact, the payments

claimed by the assessee to have been made to the aforementioned parties, which we find had not been shown by the revenue to have found its way back to the pocket of the assessee, in itself substantiate the fact that the assessee had made purchases of the material under consideration. Apart there from, we find that a perusal of the G.P rate of the assessee for the aforementioned years viz. A.Y. 2010-11 (9.01%) and A.Y. 2011-12 (8.85%) was found well in conformity with those for the preceding years i.e A.Y. 2007-08, A.Y. 2008-09 and A.Y. 2009-10. As a matter of fact, the G.P rates for both of the aforementioned years was progressive as in comparison to that for the immediately preceding succeeding year viz. A.Y. 2012-13. In our considered view, the aforesaid trading results of the assessee in itself substantiate that the purchases claimed by the assessee to have been made from the aforementioned parties were duly accounted for in its sales for the year under consideration. On the basis of the aforesaid facts, we are of the considered view that the addition of the entire value of the purchases was not justified in the hands of the assessee. We have perused the order of the CIT(A) and concur with his view that the addition in the hands of the assessee was liable to be confined only to the extent of the profit element therein involved. We find that the CIT(A) had meticulously estimated the profit which the assessee by making the purchases from unknown sources could have possibly generated. As is discernible from his order, the CIT(A) had estimated the profit element by adopting a two fold method viz. (i) working out the disallowance of 25% of the aggregate value of the purchases under consideration; and(ii) working out the suppressed gross profit by adopting the G.P rate of 9.11% shown by the assessee in A.Y. 2008-09. After working out the additions on the basis of both of the aforementioned methods, we find that the CIT(A) in order to avoid any leakage of revenue, had in all fairness made an addition of the higher amount of addition as was worked out on the basis of the aforesaid two methods. We have given a thoughtful consideration to the view taken by the CIT(A) and finding no infirmity in the same, uphold his order.

6. Finding no merit in the appeals filed by the revenue, the same are dismissed.

Order pronounced in the open court on 13.09.2019

Sd/-  
(Rajesh Kumar)  
ACCOUNTANT MEMBER

Sd/-  
(Ravish Sood)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 13.09.2019

PS. Rohit

**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