

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

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

**ITA No.6239/Mum/2018  
(Assessment Year: 2009-10)**

Income Tax Officer -27(1),  
Tower No. 6, 4<sup>th</sup> Floor,  
Room No. 406, Vashi Railway  
Station Complex, Vashi,  
Navi Mumbai.

Vs.

Smt. Alpa Chetan Desai  
Kahan corporation, 202,  
Serena Building Shanti Park,  
Vallabh Baug Lane Marg,  
Ghatkopar (E),  
Mumbai – 400 077,

PAN – AAIPD6330L

**(Appellant)**

**(Respondent)**

Appellant by: Shri Ashim Kumar Modi, D.R  
Respondent by: None  
Date of Hearing: 09.09.2019  
Date of Pronouncement: 13.09.2019

**ORDER**

**PER RAVISH SOOD, JM**

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-25, Mumbai, dated 10.08.2018, which in turn arises from the order passed by the A.O under Sec. 143(3) r.w.s 147 of the Income Tax Act, 1961 (for short 'Act') for A.Y. 2009-10 on 07.01.2015. The revenue has assailed the impugned order on the following grounds of appeal before us:

- “1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 5,69,765/- 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 and in law, the Ld.CIT(A) erred in estimating the profit from Hawala purchases by disallowing only Rs.1,56,685/- 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.
3. The appellant prays that the order of the CIT(A) on the above grounds be reversed and that of the Assessing officer be restored.
4. The appellant craves leave to amend, modify and alter any grounds of appeal during the course of hearing of this case.”

2. Briefly stated, the assessee who is engaged in the business of trading in chemicals and iron and steel had filed her return of income for A.Y. 2009-10 on 21.09.2009 declaring total income of Rs.5,90,421/-. Subsequently, on the basis of information received by the A.O from the DGIT(Inv.),Mumbai, that the name of the assessee figured in the list of the beneficiaries who had obtained accommodation purchase bills from certain hawala parties, the case of the assessee 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 from the following tainted parties:

Sr. No.	Particulars	Amount (Rs.)
1.	C.R. Enterprises	3,51,156/-
2.	Paras Enterprises	1,00,000/-
3.	Chetan Chemical Cor.	8,01,330/-
	Total	12,53,480/-

The A.O in order to verify the authenticity of the purchase transactions issued notices under Sec. 133(6) to the aforementioned parties, which however were not returned unserved by the postal authorities. In the backdrop of the aforesaid facts, the A.O deputed his inspector to make necessary verifications by visiting the parties at the addresses which were provided by the assessee. However, the inspector in his reply reported that the aforementioned parties were not existing at the addresses provided by the assessee. Accordingly, the A.O brought the fact as regards the non-availability of the parties to the notice of the assessee and directed her to furnish their correct/new addresses. However, as the assessee failed to comply with the directions, therefore, the A.O directed the assessee to produce the parties along with the copy of the ledger account of the assessee in their books of accounts, nature of goods sold, sample copies of bills issued, copies of delivery challans for goods dispatched, transport bills and the copy of their bank statements. Also, the assessee was directed to furnish the details as regards the discharge of the balance outstanding amount towards the aforesaid parties after the end of

the year under consideration. In reply, the assessee merely harped on the fact that she had made genuine purchases from the aforementioned parties. However, the assessee neither placed on record any supporting documentary evidence which would have irrefutably substantiated the genuineness of the purchase transactions, nor produced the parties for necessary examination before the A.O. On the basis of the aforesaid facts, it was observed by the A.O that the assessee had failed to discharge the 'onus' as regards proving the fact that she had purchased the goods from the aforementioned parties. Apart there from, the A.O held a conviction that the support drawn by the assessee from the fact that the payments to the aforementioned parties were made by account payee cheques, did not conclusively prove the genuineness of the purchase transactions. In fact, it was observed by the A.O that as the purchases made by the assessee from the aforementioned hawala parties were proved to be bogus, therefore, the payments made by cheques against such bogus purchase bills would have thereafter been received back from them in cash. At the same time, the A.O was of the view that since the corresponding sales were found to be genuine, therefore, the entire amount of purchase consideration of Rs. 12,53,480/- could not be added to the income of the assessee. Accordingly, the A.O being of the view that the cash received back by the assessee from the aforementioned hawala operators would thereafter be available with her for financing the subsequent purchases from undisclosed parties in cash, therefore, made an addition of the peak of the credit of Rs. 7,26,450/- standing in the names of the bogus parties as an unexplained expenditure incurred by the assessee under Sec. 69C of the Act.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) after necessary deliberations was however not persuaded to subscribe to the addition of the peak of the credit of the purchases of Rs.7,26,450/- made by the A.O under Sec.69C of the Act. The CIT(A) was of the view that though the assessee could not establish one to one nexus/link between the purchases and sales, however, the fact that the materials purchased had thereafter been sold by the assessee could not be doubted. At the same time, it was observed by the CIT(A) that the genuineness of the purchase transactions could not be verified, as the fact that purchases had been made from the aforementioned parties could not be proved by the assessee. Accordingly, the CIT(A) was of the view that the purchase price shown on the invoices produced by the assessee could not be accepted as reflecting the correct value for

which the goods were procured by her. On the basis of his aforesaid observations, the CIT(A) was of the view that the possibility of over invoicing of the materials purchased by the assessee with an intent to reduce the profit, or procuring of the same from the open/grey market without proper billing or documentation could not be ruled out. Accordingly, the CIT(A) was of the view that in all fairness the addition in the hands of the assessee could only be restricted to the extent of the additional benefit or profit which she would have earned in respect of the said unverified purchase transactions. On the basis of his aforesaid observations the CIT(A) restricted the addition to an amount of Rs.1,56,685/- i.e 12.5% of the aggregate value of purchase of Rs. 12,53,480/-.

5. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. We find that the assessee respondent despite having been put to notice about the hearing of the appeal has however not put up an appearance. Accordingly, we proceed with the matter after hearing the appellant revenue and perusing the orders of the lower authorities. It is submitted by the Id. Departmental Representative (for short 'D.R') that the CIT(A) had erred in restricting the addition made by the A.O in respect of the bogus purchases only to the extent of 12.5% of the aggregate value of such purchases. It was submitted by the Id. D.R, that as the assessee had booked bogus purchases, therefore, the A.O had rightly disallowed the entire amount of such purchases. In support of his aforesaid contention the Id. D.R relied on the judgement of the Hon'ble Supreme Court in the case of N.K. Proteins Ltd vs. Dy. CIT (2016) 292 CTR 354 (Guj).

6. We have heard the Id. Departmental representative, perused the orders of the lower authorities and the material available on record, and also the judicial pronouncements relied upon by them. Admittedly, the assessee in the case before us had failed to substantiate the authenticity of the purchases claimed to have been made from the aforementioned parties. At the same time, we are unable to persuade ourselves to subscribe to the addition of the peak amount of credit of purchases made by the A.O under Sec.69C of the Act. In our considered view, as the aforementioned purchases had been made by the assessee from her regular books of accounts, therefore, in the absence of any evidence proving the contrary, the source of making the aforementioned purchases could not be characterised as being in the nature of an unexplained expenditure. Apart there from, we find that the revenue has not been able to

conclusively prove that the amounts paid by the assessee to the aforementioned parties were thereafter received back in cash from them. Be that as it may, we are unable to persuade ourselves to subscribe to the addition made by the A.O under Sec. 69C of the Act. We find that the CIT(A) after necessary deliberations on the issue under consideration had adopted the correct approach. We are in concurrence with the view taken by the CIT(A) that now when the corresponding sales of the aforementioned purchases is not doubted, therefore, the addition in the hands of the assessee could only be restricted to the extent of the profit which the assessee would have made from carrying out such purchases from the open/grey market. We find that the CIT(A) in all fairness had restricted the addition in the hands of the assessee at Rs. 1,56,685/- i.e to the extent of the estimated profit of 12.5% of the aggregate value of the purchases of Rs. 12,53,480/- under consideration. Accordingly, finding no infirmity for the order of the CIT(A), we uphold the same.

7. The appeal filed by the revenue is dismissed.

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

