

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH, PUNE**

**BEFORE SHRI R.S.SYAL, VP AND  
SHRI PARTHA SARATHI CHAUDHURY, JM**

Sl. No.	ITA No./Co.No.	Name of Appellant	Name of Respondent	Asst. Year
1	975/PUN/2018	Dinesh Rathi, (Prop. M/s. Elcon Instruments & Engineers), Office No.805, Pinnacle Brookside, 52/1A, Bavdhan Kh, Opp Sahgal Maruti Showroom, Mumbai Pune Highway, Pune – 411021 PAN: AAPPR5736F	DCIT, Circle 3, Pune	2009-10
2	12/PUN/2018	Adroit Enterprises, S.No.6/2/1, Yogiraj Park Colony, Asmita Bunglow, Karve Nagar, Pune-411052 PAN: AALFA1231E	DCIT, Circle 1(2), Pune	2011-12
3	563/PUN/2019	Thuse Electronics Pvt. Ltd., Plot No.33A, Sector-7, PCNDTA, Bhosari, Pune – 411003 PAN:AAACT6285F	DCIT, Circle-7, Pune	2010-11
4-5	1688/PUN/2017 & 1689/PUN/2017	ACIT, Circle-2, Solapur	M/s. Beekay Enterprises, Laxmi Bhavan, 3A, Murarji Peth, Solapur – 413001 PAN: AABFB4783A	2011-12 2012-13
6-7	CO No.26/PUN/2019 & 27/PUN/2019	M/s. Beekay Enterprises, Laxmi Bhavan, 3A, Murarji Peth, Solapur – 413001 PAN: AABFB4783A	ACIT, Circle-2, Solapur	2011-12 2012-13
8	2946/PUN/2017	G.V. Puntambekar & Sons Pvt. Ltd., 555, Narayan Peth, Pune – 411030 PAN: AAACG6706A	DCIT, Circle 1(2), Pune	2011-12
9	1507/PUN/2018	DCIT, Circle-1, Nashik	Chandrashekhar Ashok Joshi, Krishnakunj, Makhmalabad Naka, Rajdal Colony,	2010-11

			Panchavati, Nashik-422003 PAN: AAXPJ0797N	
10	2319/PUN/2017	Vinay Badera, Prop. M/S. Shubham Developers, Mahavir Complex, Pune Nasik Highway, Narayangaon, Pune-411033 PAN: ABJPB1324J	DCIT, Circle-10, Pune	2010-11
11-13	304/PUN/2018 To 306/PUN/2018	Dadasaheb Vitthalrao Urhe, Plot No.5, Panchwati Colony, Talegaon Dabhade, Maval, Pune – 411506 PAN: AAAPU9881D	DCIT, Circle 8, Pune	2009-10 2010-11 2011-12
14	451/PUN/2018	DCIT, Panvel Circle, New Panvel, Raigad	M/s. Nyka Steel Pvt. Ltd., C-17/6, MIDC, Taloja, Panvel, Dist. Raigad – 410208 PAN: AAACN1660Q	2011-12
15	354/PUN/2018	Mr. Ashok Tanna, 515, Kasarwadi, Pune – 411037 PAN: AAGPT7820F	DCIT, Circle 8, Pune	2010-11
16-17	1403/PUN/2017 & 1404/PUN/2017	SS Techno Limited, 502, Mayfair Towers-1, Wakdewadi, Shivajinagar, Pune – 411005 PAN: AAFCS5339A	DCIT, Circle-6, Pune	2009-10 2010-11
18-19	1519/PUN/2018 & 1520/PUN/2018	Shri Balraj Singh Mander, Prop. M/s. Nuimec Engineering Corporation, L-93, MIDC, Taloja, Tal – Panvel, Raigad–410208 PAN: AIVPM4818P	DCIT, Panvel Circle	2010-11 2011-12
20	1914/PUN/2017	M/s. Aniket Trading Company, 8 & 9, Tip Top Plaza, XLO Point, Ambad Link Road, Nashik – 422010 PAN: AAGFA0380D	DCIT, Circle-1, Nashik	2011-12
21	1977/PUN/2017	KBK Chemical Engineering Pvt. Ltd., Plot No.33+34, Above SBI, NDA Pashan Road, Bavdhan, Pune-411021 PAN: AAACK6827G	DCIT, Circle 11(1), Pune	2009-10

22	2065/PUN/2017	DCIT, Panvel Circle, New Panvel, Raigad	Shri Balraj Singh Mander, Prop. M/s. Nuimec Engineering Corporation, L-93, MIDC, Taloja, Panvel, Raigad.  PAN: AIVPM4818P	2010-11
23	2192/PUN/2017	Hemant Subhash Oswal, C-603, Kumar Puram, Near Nirali Baug, Mukundnagar, Pune – 411042 PAN: AAPO6795L	ITO, Ward 5(5), Pune	2009-10
24	1365/PUN/2017	Shri Sukhlal Sajan Patil, Sr. No.15/6, Vaibhav, Warje Jakat Naka, Karve Nagar, Pune-411052 PAN: AAUPP2758A	DCIT, Circle-3, Pune	2009-10
25	916/PUN/2017	DCIT, Circle 9, Pune	M/s. Madhuban Trade Steel Pvt. Ltd. Gat No.90, S.No.T/1/1120, Jyotiba Nagar, Nigdi, Talwade Road, Pune-412114 PAN: AABCM8512H	2010-11
26	963/PUN/2017	M/s. Madhuban Trade Steel Pvt. Ltd. Gat No.90, S.No.T/1/1120, Jyotiba Nagar, Nigdi, Talwade Road, Pune-412114 PAN: AABCM8512H	DCIT, Circle 9, Pune	2010-11
27	2373/PUN/2017	Hamadule Engineering Pvt. Ltd., M/s. Shah Khandelwal Jain & Associates, Chartered Accountants, Level 3, Business Bay, Plot No.84, Wellesley Road, Near RTO, Pune – 411001 PAN: AABCH9540A	DCIT, Central Circle 10, Pune	2009-10
28	1736/PUN/2017	Shri Mukeshkumar Pukhraj Mehta, Prop. of Arihant Tubes Fittings, Gala No.10-B/11-B, Goyal Industrial Co. Society, J-5-14 MIDC, Bhosari, Pune – 411026 PAN: AFQPM9918J	ITO, Ward 8 (3), Pune	2010-11

29-32	1000/PUN/2018 To 1003/PUN/2018	M/s. Agarwal Petrochem Pvt. Ltd., 201/202, Eastern Court, Sion Trombay Road, Chembur, Mumbai – 400071 PAN: AAECA9473C	ACIT, Panvel Circle, Panvel.	2008-09 2009-10 2010-11 2011-12
33-35	1092/PUN/2018 To 1094/PUN/2018	DCIT, Panvel Circle, New Panvel, Raigad	M/s. Agarwal Petrochem Pvt. Ltd., Plot No.37, MIDC Industrial Area, Taloja, Dist. Raigad PAN: AAECA9473C	2009-10 2010-11 2011-12
36	1881/PUN/2017	ACIT, Circle-2, Nashik	Smt. Archana Prashant Sangai, 2, Swastik Chambers, Pathardi Phata, Nashik – 422009 PAN: ACRPS4103K	2009-10
37	CO No.31/PUN/2019	Smt. Archana Prashant Sangai, 2, Swastik Chambers, Pathardi Phata, Nashik – 422009 PAN: ACRPS4103K	ITO, Ward 2(3), Nashik	2009-10
38-39	1659/PUN/2018 & 1660/PUN/2018	Renuka Auto Components India Pvt. Ltd., Plot No.20/1, D-1 Block, MIDC, Pimpri Chinchwad Ind Area, Pune – 411019 PAN: AADCR5691J	ACIT, Circle-10, Pune	2009-10 2010-11
40	863/PUN/2018	M/s. PNG Jewellery & Gems 693, Narayan Peth, Kunte Chowk, Laxmi Road, Pune – 411030 PAN: AADFP5196K	DCIT, Central Circle 1(2), Pune	2011-12
41	2932/PUN/2017	Mr. Rajesh Umraosingh Pardesh CTS No.3250, S.No.584/2/1/2, Near Ekopa Society, Salisbury Park, Pune-411037 PAN: ABQPP0645R	DCIT, Circle-5, Pune	2009-10
42	2835/PUN/2017	DACS Electrosystems Pvt. Ltd., Gat No.1/3/4, At & Post Marunji, Near Hinjewadi, Dist. Pune-411057 PAN: AAACD7375A	DCIT, Circle 1(2), Pune	2010-11

43	1951/PUN/2017	M/s Prima Pvt. Ltd. T-73, MIDC, Bhosari, Pune – 411026 PAN: AABCP1938J	ACIT, Circle 10, Pune	2011-12
44	1716/PUN/2017	M/s. Sarswati Extrusion Pvt. Ltd. H-20, MIDC Waluj, Aurangabad PAN: AAJCS6024J	ITO, Ward 2(4), Aurangabad	2011-12
45	2991/PUN/2016	ACIT, Circle-1, Nashik	Chandrashekhar Ashok Joshi, Krishnakunj, Makhmalabad Naka, Rajdal Colony, Panchavati, Nashik-422003 PAN: AAXPJ0797N	2009-10
46	53/PUN/2017	Chandrashekhar Ashok Joshi, Krishnakunj, Makhmalabad Naka, Rajdal Colony, Panchavati, Nashik-422003 PAN: AAXPJ0797N	DCIT, Circle 1, Nashik	2009-10
47-48	2307/PUN/2017 & 2308/PUN/2017	M/s. Viraj Steels Office No.39, Vastushree Complex, S.No.587, Market Yard, Pune – 411037 PAN: AAGFV0774Q	DCIT, Circle – 5, Pune	2009-10 2010-11
49-50	2989/PUN/2017 & 2591/PUN/2017	ITO, Ward 5(1), Pune	M/s. Viraj Steels Office No.39, Vastushree Complex, S.No.587, Market Yard, Pune – 411037 PAN: AAGFV0774Q	2009-10 2010-11

Assessee(s) by : Shri Krishna Gujrathi – Sr. No.1, 41  
Shri M.K. Kulkarni – Sr. No.2, 8, 24 & 28  
Shri C.H. Naniwadekar – Sr. No.3  
Ms. M.N. Kulkarni – Sr. No.4-7  
Smt. Deepa Khare – Sr. No.9, 45 & 46  
Shri B.V. Mane – Sr. 11 – 13  
Shri S.D. Pathak – Sr. No.14  
Shri Mahavir Jain – Sr. No.23  
Shri Anil Lodha – Sr. No.29 – 35  
Shri Neelesh Khandelwal – Sr. No.25-27  
Shri Pramod Shingte – Sr. 36, 37 & 44  
Shri D.R. Barbe – Sr. No.38 & 39  
Shri M.R. Bhagwat – Sr. No.40  
Shri Sunil Ganoo – Sr. No.42  
Shri Sharad Shah – Sr. No.43  
Shri V.L. Jain – Sr. No.47 - 50  
None – Sr. No.10, 15-19, 21, 22  
Written submissions – Sr. No.20

Revenue by : Shri S.P. Walimbe – Sr. No.1 – 19, 24-35 38-42, 44 -50  
Shri Pushkaraj B. Patil – Sr. No.20-23, 36, 37 & 43

Date of Hearing : 23.09.2019

Date of Pronouncement : 26.09.2019

## **ORDER**

### **PER BENCH :**

This batch of 50 appeals consisting of 37 appeals by the assessees and 13 appeals by the Revenue relate to captioned assessment years.

2. In some of the appeals, there is a delay of certain days. The respective assessees have filed affidavits giving reasons leading to the delayed filing of the appeals. We are satisfied with such reasons. The delay in such cases is, therefore, condoned and the appeals are admitted for disposal on merits.

3. A common issue has been raised in all the appeals in respect of confirmation/reduction of addition on account of bogus purchases. Material facts for all the appeals on merits are *mutatis mutandis* common. In some of the appeals, there are grounds challenging the initiation of reassessment proceedings. Out of the above, the ld. AR did not press such grounds at the time of hearing in some of the appeals. We have recorded such non-pressing in the respective appeal file after obtaining signature of the concerned ld. AR. Such grounds are therefore, dismissed as not pressed. In so far as the cases in which such a ground

has been pressed, those can be further sub-divided into two parts, viz., one where the challenge to the reassessment has been laid generally and two where there is specific challenge to the reassessment depending upon the peculiar facts of the case. In so far as the general challenge to the initiation of reassessment proceedings is concerned, we will deal with the same in a common manner immediately hereinafter. For the specific challenge to the initiation of reassessment proceedings, we will deal with them separately.

4. The factual matrix is common to all the appeals. The Assessing Officers (AO) got information from Sales Tax Department that the concerned assessee received fake purchase bills from hawala dealers, which details have been given in the respective assessment orders. For the cases in which assessments had already been completed or the time to take up assessments u/s 143(3) had expired, the AO issued notices u/s.148 of the Income-tax Act, 1961 (hereinafter also called 'the Act'). After entertaining and disposing of the objections from the concerned assessee, wherever raised, the respective AOs made additions @ 100% of bogus purchases in most of the cases. The Id. CsIT(A) in some cases confirmed the addition at 100%, whilst in others it was reduced to 5%, 7.15%, 12.50%, 15%, 20%, 23% and 25% of the amount of bogus

purchases respectively. Aggrieved thereby, the assesseees as well as the Revenue have come up in appeals before the Tribunal.

5. We have heard both the sides and gone through the relevant material on record. First we deal with the disposal of objection to the initiation of reassessment proceedings of the first category, namely, where the objection has been raised generally.

6. It is clear that the AO got specific information from the Sales tax Department about the concerned assesseees being beneficiaries of fake accommodation entries from hawala dealers. The contention of the assesseees in such general cases that reassessment on the given basis is wrong, in our considered opinion, is completely unfounded.

7. The Hon'ble Supreme Court in *Raymond Woolen Mills vs. ITO (1999) 236 ITR 34 (SC)* has held that there should be reason to believe about the escapement of income at the stage of initiation of reassessment proceedings. Sufficiency or correctness of such material cannot be considered at that stage. The Hon'ble Apex Court has held in *ACIT vs. Rajesh Jhaveri Stock Broker (P) Ltd. (2007) 291 ITR 500 (SC)* that :  
`The word "reason" in the phrase "reason to believe" would mean cause or justification. If the AO has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot

be read to mean that the AO should have finally ascertained the fact by legal evidence or conclusion'. Explaining the position further, it laid down that: 'at the initiation stage, what is required is "reason to believe", but not the established fact of escapement of income. *At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage.* This is so because the formation of belief by the AO is within the realm of subjective satisfaction.'

8. At this stage, it is relevant to take note of the judgment of the Hon'ble Supreme Court in *Phoolchand Bajrang Lal and Anr vs. ITO and Anr (1993) 203 ITR 456 (SC)*, in which the AO's jurisdiction to initiate reassessment was challenged. Repelling the assessee's arguments, the Hon'ble Supreme Court held that an ITO acquires jurisdiction to reopen assessment under s. 147(a) r/w s. 148 only if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons which he must record, to believe that by reason of omission of failure on the part of the assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profit or gains chargeable to income-tax has escaped

assessment. He may start reassessment proceedings either because some fresh facts come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tend to expose the untruthfulness of those facts. In that case, the ITO was held to have rightly initiated the reassessment proceedings on the basis of subsequent information, which was specific, relevant and reliable.

9. In *Bright Star Syntex Pvt. Ltd. VS. ITO (2016) 387 ITR 231 (Bom)*, the AO initiated the reassessment on the basis of some information indicating the assessee as a beneficiary to accommodation entry. The assessee challenged the initiation of reassessment by way of a writ. Dismissing the petition, the Hon'ble jurisdictional High Court held that at the stage of initiation of reassessment, the AO is not required to have conclusive evidence that income chargeable to tax has escaped assessment. As the reasons recorded for reopening established a link between the material available and the conclusion reached by the AO for reopening the assessment, the Hon'ble High Court refused to interfere by observing that the expression 'reason to believe' cannot be read to mean that the AO should have finally established beyond doubt that income chargeable to tax has escaped assessment. Similar view has been taken by the Hon'ble Gujarat High Court in *Pr. CIT VS. Laxmiraj*

*Distributors Pvt. Ltd. (2019) 410 ITR 495 (Guj)* and the SLP filed by the assessee against such judgment has since been dismissed in *(2018) 405 ITR (St) 27*.

10. Reverting to the facts of the instant cases, it is seen that the concerned AOs received information from the Sales Tax Department about the details of accommodation entry providers and the assesses had also recorded purchases from such hawala entry providers. There was a close nexus between the report of the Sales tax Department and the formation of belief by the Assessing Officer about the escapement of income of the assessee for the year(s) under consideration. Such information was specific, not general or vague. Thus, it is abundantly clear that receipt of such an information was sufficient enough for the Assessing Officer to initiate the reassessment. In our considered opinion, no exception can be taken to the view canvassed by the Assessing Officer(s) in initiating the reassessment on this score. The ground(s) taken by the assessee(s) in challenging the initiation of reassessment proceedings in general way are thus dismissed.

11. Now we turn to the merits of the cases. The assail is to the making of addition(s) on the basis of bogus purchase bills received by the assessee(s) as accommodation entries from hawala dealers. It is seen that the issue of bogus purchases has recently come up for consideration

before the Hon'ble Bombay High Court in *Pr.CIT Vs. Mohommad Haji Adam & Co.* Vide its judgment dated 11-02-2019 in ITA No.1004 of 2016 and others, the Hon'ble jurisdictional High Court has held that no *ad hoc* addition for bogus purchases should be made. It laid down that the addition should be made to the extent of difference between the gross profit rate on genuine purchases and gross profit rate on hawala purchases. Such case specific details are not readily available with the respective Id. ARs or the Id. DRs for facilitating the calculation of gross profit rates of genuine and hawala purchases. Under these circumstances, we set-aside the impugned orders and remit the matter to the file of the respective AOs for applying the *ratio* laid down by the Hon'ble jurisdictional High Court in the above noted case and recompute the amount of additions, if any, after allowing a reasonable opportunity of hearing to the assessee.

12. In the result, all the appeals, except separately disposed off *infra*, are fully/partly allowed for statistical purposes.

13. Now we espouse such appeals separately in which either the challenge to the initiation of reassessment is a case specific and peculiar to its own facts in contrast to the general challenge as discussed above or the appeals in which the *ratio* of the Hon'ble jurisdictional High Court in the case of *Pr.CIT Vs. Mohommad Haji Adam & Co (supra)* is not

applicable in view of the fact that the goods purchased through hawala entries have been consumed in manufacturing and not sold as such. Both the sides have admitted, and rightly so, that in such cases, the judgment in *Mohammad Haji Adam & Co (supra)* cannot be applied.

**Ms.Archana P. Sangai - ITA No.1881/PUN/2017 & CO No.31/PUN/2019**

14. In this case, the Id. CIT(A) quashed the initiation of reassessment and accordingly deleted the addition in question on account of bogus purchases. The Revenue has challenged the quashing of the reassessment and the assessee in her Cross Objection has also challenged the initiation of re-assessment proceedings by the AO on the ground that the assessee was not supplied reasons to believe u/s.148 of the Act despite specific request.

15. The facts of this case are that notice u/s.148 was issued on 26-06-2014. The assessee filed return in response to notice u/s.148 on 13-11-2014 and requested the AO to furnish the reasons recorded for issuing notice u/s.148. The assessment was taken up by means of notice u/s.142(1) dated 23-09-2015. The assessment order was passed on 04-03-2016. The assessee challenged the initiation of reassessment proceedings before the Id. CIT(A) contending that despite the specific request made by the assessee for supply of reasons, the AO failed to furnish the same. Relevant discussion has been made on pages 3

onwards of the impugned order. The ld. CIT(A) called for a report from the AO on the written submissions filed by the assessee assailing non-supply of reasons to believe. The AO vide his report dated 29-03-2017, as discussed on page 5 of the impugned order, relied on some mentioning in his notice about the contents of the reasons. The crux of the matter is that the reasons were not supplied to the assessee. Based on this factual position, the ld. CIT(A) held the initiation of assessment order to be bad in law.

16. Having heard the rival submissions and perused the relevant material on record, it is found as an admitted position that the assessee was not supplied the reasons which led to the issuance of notice u/s.148 of the Act. The Hon'ble Bombay High Court in *Bayer Material Science Pvt. Ltd. Vs. DCIT (2016) 382 ITR 333 (Bom.)* has quashed the initiation of reassessment in the absence of the AO supplying the reasons to the assessee despite specific request. Recently, the Hon'ble jurisdictional High Court in *Formento Resorts & Hotels Pvt. Ltd. Vs. ACIT* vide judgment dated 30-08-2019 in ITA No.63/2007 has also quashed the reassessment on the ground that the reasons were not supplied to the assessee despite the request.

17. Turning to the facts of the instant case, we find that the same mistake was committed by the AO in the instant case as well. The assessee specifically requested the AO to supply the reasons which led to the issuing of notice u/s.148. The AO, without supplying the reasons, proceeded to make the reassessment. Respectfully following the precedents of the Hon'ble jurisdictional High Court, we uphold the setting aside and quashing of the initiation of reassessment proceedings and the resultant assessment order.

18. In the result, the Departmental appeal is dismissed and the C.O. of the assessee is also dismissed as having become infructuous.

**M/s. Prima Pvt. Ltd. - ITA No.1951/PUN/2017**

19. The issue in the appeal is only on merits of the addition sustained on account of bogus purchases. Here also, the AO made addition at 100% of the amount of bogus purchase bills, which was sustained by the ld. CIT(A) at the same level.

20. Heard both the sides and perused the relevant material on record. In view of the judgment of Hon'ble jurisdictional High Court in the case of *Pr.CIT Vs. Mohommad Haji Adam & Co. (supra)*, the matter requires reconsideration. However, the factual position in the instant case is a little different. The Hon'ble jurisdictional High Court in the above matter has dealt with a situation in which the purchases made through

bogus bills were sold as such and the Hon'ble High Court directed to compute the normal profit as well as profit arising from hawala transactions and then directed to make addition towards bogus purchases on account of difference between such two profits rates. However, in the facts of the extant case, the purchases made through hawala entries have not been sold as such. Such purchases, being, of raw material, have been consumed and gone into the manufacturing of products by the assessee thereby losing identity of separate purchase price and the corresponding sale price. Both the sides have fairly admitted that the *ratio* of the Hon'ble jurisdictional High Court in the case of *Pr.CIT Vs. Mohommad Haji Adam & Co. (supra)* cannot be applied to the facts of the instant case.

21. In this regard, it is relevant to note that the Pune Benches of the Tribunal has disposed off a group of cases on such an issue before the afore referred verdict of the Hon'ble High Court. Vide the lead order in the case of *M/s. Chhabi Electricals Pvt. Ltd. and others Vs. DCIT dated 28-04-2017 in ITA No.795/PUN/2014 and others*, the Tribunal has made certain categories. Findings in respect of category No. IV of the said order, which is germane to the instant appeal, are as under:

*“IV. The next instance is the case of goods which have been admittedly sold by the hawala dealer and has been received by the assessee, who in turn had maintained quantitative details and also evidence of its movement i.e. transportation details and quality control details of consumption of the said material or exact details of sale of the same*

*consignment through same transporter directly to the party, then the total purchases cannot be added in the hands of assessee. However, since the purchases are made from the grey market, some estimation needs to be made in the hands of assessee. The Tribunal in M/s. Chetan Enterprises Vs. ACIT (supra) has already held that the addition be made by estimating the same @ 10% of the alleged hawala purchases, over and above the GP shown by the respective assessee.”*

22. Going by the *ratio* laid down in the case of M/s. Chhabi Electricals Pvt. Ltd. and others (supra), which both the sides agree to be applied for the instant case, we hold that the addition should be sustained on the amount of hawala purchases @10% plus the normal GP rate shown by the assessee for the year under consideration. We, therefore, set aside the impugned order and remit the matter to the file of AO for re-computing the amount of addition accordingly.

23. In the result, the appeal is allowed for statistical purposes.

**Chandrasekhar A. Joshi -ITA No. 53/PUN/2017&2991/PUN/2016:**

24. The factual matrix of these appeals is similar inasmuch as the AO initiated the reassessment and made the addition at the rate of 100% of bogus purchases. The Id. CIT(A) restricted the addition to 12.5%. Both the sides are in appeal.

25. Insofar as the initiation of reassessment and merits of the addition are concerned, the position is similar to the cases discussed above in general manner.

26. However, the Id. Counsel for the assessee raised an additional issue by contending that the assessment order requires to be quashed because the AO did not confront the assessee with the adverse material used for making the addition. This was strongly controverted by the Id. DR, who stated that the assessee chose to remain absent during the course of assessment proceedings which led to the passing of the assessment order u/s.144 r.w.s. 147 of the Income-tax Act, 1961.

27. The argument on behalf of the assessee before the Tribunal is that the AO failed to provide opportunity of cross examination and confront the assessee with the adverse statements of the alleged hawala dealers. The Id. AR put forth that in the absence of the AO following the principles of natural justice, the addition was liable to be deleted. In support of such a contention, she relied on the judgment dated 02-09-2015 of the Hon'ble Supreme Court in the case of *Andaman Timber Industries Vs. Commissioner of Central Excise, Kolkata-II (2015) 62 taxmann.com 3 (SC)* and certain other decisions.

28. We have gone through this judgment. The factual position of the case rendered in the content of Central Excise is that some of the products manufactured were sold to dealers against which the assessee filed declaration showing the particulars of the goods at which those were sold ex-factory. The Revenue found that there was price difference

between the goods sold at ex-factory and delivery basis in comparison to the goods which were sold to the buyers from their depots. Investigation was carried out. Statements of two buyers were recorded. The assessee was called upon to explain as to why the price at which the goods were sold to the customers from the depots may not be the basis for determining the value for the purpose of Excise duty. It was submitted that on the same ground proceedings were taken earlier which resulted in favour of the assessee by the decision of the Tribunal. The assessee also questioned the correctness of the two witnesses and demanded right to cross-examine them. The adjudicating authority passed the order confirming the demand in the show cause notice. The Tribunal rejected the assessee's ground of not allowing cross-examination. When the matter finally came up before the Hon'ble Supreme Court, it observed that not allowing cross-examination of the witnesses, whose statements were the basis of the order, was a serious flaw, which made the order nullity. In reaching this conclusion, the Hon'ble Court observed that on an earlier occasion also when the matter came before this Court, the matter was sent back to the Tribunal. From the above factual panorama of *Andaman Timber Industries (supra)*, it is clear that it was a second round of proceedings in which the assessee was repeatedly denied opportunity of cross-examination. Further, the assessee specifically requested the adjudicating authority to allow cross-examination, which

was denied. It was under such circumstances that the Hon'ble Supreme Court held that the order passed by the Central Excise Adjudicating authority was null and void.

29. When we consider the facts of the instant case, it is found that, firstly, we are in the first round of the proceedings and not the second round. Secondly, the assessee in the instant case never requested the AO to confront it with the witnesses or allow cross examination of the witnesses who had deposed against the assessee. What to talk of seeking cross examination, the assessee chose to adopt a non-cooperative attitude and did not appear at all, which led to the passing of the assessment order u/s 144 of the Act. Under such circumstances, it is clear that the *ratio decidendi* in the case of *Andaman Timber Industries (supra)* is not applicable to the facts of the instant case.

30. The Hon'ble Supreme Court in *ITO Vs. M. Pirai Choodi (2011) 334 ITR 262 (SC)* through the judgment rendered by three Hon'ble Judges and that too in the context of Income-tax, as against the judgment rendered in the case of *Andaman Timber Industries (supra)* delivered by two Hon'ble Judges in the context of Central Excise, was confronted with a situation in which the Hon'ble High Court set-aside the order of assessment on the ground that no opportunity of cross-examination was granted. Overturning the view of the Hon'ble High Court, the Hon'ble

Supreme Court held that: “*At the highest the High Court should have directed the AO to grant an opportunity to the assessee to cross-examine the concerned witness*”. As a consequence of that, the Hon’ble Supreme Court set-aside the judgment of the Hon’ble High Court by holding that : *‘In the circumstances, we are of the view that the High Court should not have quashed the assessment proceedings vide impugned order’* and accordingly remitted the matter to lower authorities for disposal on merits.

31. The Hon’ble Delhi High Court in *CIT Vs. P. C. Chemicals (2013) 359 ITR 129 (Delhi)*, following *M. Pirai Choodi (supra)*, has restored the matter in the absence of the AO granting opportunity to cross-examine the witnesses, which formed the basis for addition.

32. The Hon’ble Madras High Court in *CIT Vs. S.V. Sreenivasan (2018) 404 ITR 433 (Madras)* considered both the judgments of Hon’ble Supreme Court, namely, *Andaman Timber Industries (supra)* and *M. Pirai Choodi (supra)* and decided similar issue raised through question no.2 in favour of the Revenue by holding that the Tribunal was not right in deleting additions made in the block assessment on the ground that no opportunity to cross-examine was granted, when no such opportunity was ever sought at any time.

33. In the case of *G. Mahesh Babu*, the Tribunal deleted the addition for not allowing cross-examination. The Hon'ble Supreme Court in *G. Mahesh Babu Vs. Pr. CIT (2018) 407 ITR 14 (St.)* dismissed the assessee's SLP against the judgment dated 6.1.2017 of the Hon'ble Telangana and Andhra Pradesh High Court in I.T.T.A. Nos. 226 and 208 of 2016 whereby the Hon'ble High Court held that an order of assessment passed on the basis of material gathered behind the assessee's back and not supplied to the assessee with an opportunity to rebut, would not be void *ab initio*, and could be rectified through an order of remand.

34. In *Udit Kalra Vs. ITO, Delhi* (ITA No.220/2019 and C.M.No.10774/2019, the assessee specifically raised before the Hon'ble Delhi High Court the issue of denial of opportunity of cross examination. The Hon'ble Delhi High Court vide judgment dated 08-03-2019 held that the addition was valid.

35. In *Virbhadra Singh (HUF) Vs. Pr. CIT (2017) 298 CTR 393 (HP)*, the assessee relying on *Andaman Timber Industries (supra)*, pleaded for quashing of the order for non granting of opportunity of cross-examination. The Hon'ble Himachal Pradesh High Court did not accept such a plea of the assessee and affirmed the order of the Tribunal upholding the order passed u/s 263 of the Act.

36. The Hon'ble jurisdictional Bombay High Court in *M/s. R.W. Promotions P. Ltd. Vs. ACIT* in ITA No.1489 of 2013, vide its judgment dated 13-07-2015 considered a situation in which addition was made without granting opportunity to the assessee to cross-examine the deponents who had deposed against the assessee. The Tribunal held that no cross-examination was called for in the facts as were obtaining in the case. The Hon'ble High Court, noting that there was a breach of principles of natural justice, held that : *'In view of the above, we set aside the order of the Tribunal and restore the issue to the Assessing Officer for fresh disposal after following the principles of natural justice.'*

37. Adverting to the facts of the instant case, it is found that the AO relied on certain material, for which cross-examination was not afforded to the assessee for its own fault. It is not a case that the AO lacked jurisdiction to proceed with the assessment. It is further not a case that the AO made the addition on his whims and fancies and without there being any material to substantiate the same. Per contra, it is a case of making the addition on the basis of relevant evidence but simply using the same without granting opportunity to cross examine. Thus it is an irregularity coming in the otherwise valid and lawful proceedings. Such an irregularity in not allowing an opportunity to cross examine the

witnesses, who deposed against the assessee, can be regularized if the assessment proceedings are brought back to the stage at which the irregularity stepped in. Similar view has been taken by the Pune Benches of the tribunal in the case of *Thermax Ltd. vs. DCIT* (ITA No. 512/PN/2014) vide its order dated 13.09.2019. We, therefore, set aside the impugned order to this extent and remit the matter to the file of the AO with a direction to first confront the assessee with the adverse material and allow an opportunity to cross examine, if desired, before deciding the issue on merits.

38. In the result, the appeal is allowed for statistical purposes.

**M/s. Viraj Steels - ITA Nos. 2307 & 2308/PUN/2017 - A.Y. 2009-10 : ITA Nos. 2989 & 2591/PUN/2017 – A.Y. 2010-11**

**A.Y. 2009-10 :**

39. The facts and circumstances on merits are similar to those discussed above. The AO got information from the Sales tax Department that certain parties were engaged in issuing hawala bills. The assessee was also found to have recorded bills from such parties. The AO initiated reassessment and made addition at 100% of the bill amounts. The ld. CIT(A) reduced the addition to 12.5%.

40. The assessee has challenged the initiation of reassessment proceedings. The facts, material for determination of the reassessment

issue, are that original assessment in this case was completed u/s.143(3) on 30-12-2011. In finalizing the assessment, the AO made enquiries from 10 suppliers by means of notices u/s.133(6). Some of the enquiries were made through Inspector as well. The notices sent u/s.133(6) came back unserved/not replied. Such suppliers were not found existing at the addresses given by the assessee. In view of these facts, the AO held that the books of accounts were not properly maintained. Rejecting such books of accounts, he applied 9% profit rate as against 2.99% declared by the assessee which resulted into certain addition.

41. Thereafter, the AO received specific information divulging that the assessee obtained hawala bills and recorded accommodation entries to the tune of Rs.22,25,73,556/-. Such information was received from Sales Tax Department unearthing the racket of hawala dealers who had issued fake bills to the traders. The assessee had also recorded purchases from such list of hawala operators. Based on such information, the AO initiated assessment proceedings and finalized the assessment.

42. The ld. AR contended that the AO having completed the original assessment and examined genuineness of purchases, could not have initiated reassessment proceedings on the same issue.

43. In our considered opinion, the contention of the assessee is not correct. During the course of original assessment proceedings, the AO simply examined certain purchases recorded by the assessee. Notices u/s. 133(6) were issued to 10 suppliers which were returned unserved. It is in that backdrop of the facts that the AO proceeded to complete the assessment by estimating income at 9%. However, it was after the completion of the assessment u/s.143(3) that the AO got specific information about the assessee having received accommodation bills from hawala entry operators to the tune of Rs.22.25 crores. It is on the basis of such tangible information coming to the AO after the completion of the original assessment that he initiated reassessment proceedings. In our considered opinion, the factual panomora as obtaining during the course of original assessment proceedings and the information coming into existence after the completion of assessment proceedings leading to initiation of reassessment proceedings, is quite different. In the course of the original assessment proceedings, the AO examined the genuineness of all expenses and purchases recorded in the books of account in a general manner. It was only pursuant to the specific information received from the Sales Tax Department unearthing the racket of hawala dealers, who had issued fake purchase bills to various traders including the assessee, that the reassessment was taken up. In our considered opinion, the assessee cannot claim quashing of

reassessment by contending that it was a case of 'change of opinion' from the one formed at the stage of completion of original assessment proceedings. We, therefore, reject the contention on this ground.

44. The ld. AR took up another argument for quashing of the reassessment by submitting that the AO did not confront the assessee with the material gathered by the Sales Tax Department on which the addition was based. It was, therefore, submitted that the reassessment be quashed.

45. Having heard both the sides and gone through the relevant material on record, we find that similar issue has been dealt with by us *supra* while disposing of the appeal in the case of *Chandrasekhar A. Joshi* in *ITA Nos.2991/PUN/2016 & 53/PUN/2017*. In that case also, the contention of the assessee was that the addition should be deleted because the adverse material was not confronted to the assessee nor any opportunity of cross examination was allowed. The facts and circumstances of the instant case are *mutatis mutandis* similar except to the effect that whereas in that case the assessee did not appear before the AO but in the instant case the assessee did appear before the AO. However, the fact of the matter remains that non-confronting the adverse material is simply an irregularity which cannot lead to quashing of the

assessment. Adopting the same *raison d'être* as discussed *supra*, we dismiss this contention of the assessee as well.

46. On merits, the factual position is similar in as much as the AO made the addition @100% of bogus purchases. The Id. CIT(A) reduced it to 12.5%. Both the sides are in appeal before the Tribunal. Respectfully following the judgment in the case of *Pr.CIT Vs. Mohommad Haji Adam & Co. (supra)*, we set-aside the impugned order on this issue and remit the matter to the file of AO for deciding accordingly.

47. In the result, the appeal of the assessee is partly allowed for statistical purposes and that of the Revenue is allowed for statistical purposes.

### **A.Y. 2010-11**

48. The assessee has challenged the initiation of reassessment proceedings for this year by contending that the AO did not allow adequate opportunity to file writ petition against his order disposing the objections raised by the assessee.

49. The facts apropos this ground are that the AO recorded the reasons for escapement of income on 22-01-2014 about his receiving information from Sales Tax Department *qua* unearthing the racket of

hawala dealers who had issued fake purchase bills to various traders including the assessee. The assessee wrote a letter dated 28-02-2014 to the AO, whose copy has been placed at page 18 of the paper book, submitting that the original return filed by it may be taken as return filed in response to notice u/s.148. Such a letter was received by the AO on 3.3.2014. It was further requested vide the same letter to provide a copy of reasons for issuing notice u/s.148 so as to enable it to file objections. The AO supplied the reasons on 02-03-2015 as has been recorded in his letter dated 23-03-2015, a copy of which has been placed on page 77 of the paper book. On receipt of such reasons, the assessee filed a letter raising objections against the initiation of reassessment, which was filed with the AO on 09-03-2015. The AO disposed of such objections by means of his order passed on 23-03-2015. Then, the assessment order was passed on 27-03-2015 making addition on account of bogus purchases. The view point of the assessee is that the AO did not afford opportunity to the assessee for filing writ petition against his order disposing of the objections and hurriedly completed the assessment within a period of 4 days from the date of his order disposing the objections.

50. In this regard, it is relevant to note the judgment of Hon'ble jurisdictional High Court in *Asian Paints Ltd. Vs. DCIT (2008) 296 ITR*

90 (*Bom.*) in which it has been held that the AO should not proceed further in the matter for a period of 4 weeks from the date of service of order rejecting the objections of the assessee so that remedy could be sought from the High Court. At the same time, it is equally relevant to note another judgment of the Hon'ble jurisdictional High Court dated 01-02-2019 in *Cenveo Publisher Services India Ltd. Vs. Union of India (2019) 104 CCH 0108 Mum-HC* in which it has been held that : 'The fact that in this case the petitioner raised objections promptly after withdrawing the petition from this Court, would not in any manner dilute the fact that *it was on the ground of the petitioner's conduct that the Assessing Officer was left with little time to dispose of his objections and thereafter complete the assessment before it becomes time barred.*' After noting the case of *Asian Paints Ltd. (supra)*, the Hon'ble Court held that : '*The petitioner by its conduct destroyed this formula provided by the Court in the case of Asian Paints (supra), making it impossible for the assessing officer to wait for four weeks after disposal of objections without running the risk of allowing the assessment to be time barred.*'

51. Turning to the facts of the instant case, we find that it is not the case where the assessee was not cooperating or the delay occurred due to some fault of the assessee. Immediately on receipt of notice, the AO

sought reasons on 03-03-2014. It was the AO only who waited for a period of one year in communicating the reasons on 02-03-2015. The assessee again promptly raised the objections within a period of one week, namely, on 09-03-2015. The AO disposed of the objections of the assessee by means of his order dated 23-03-2015 and completed the assessment within a period of just four days on 27-03-2015. Going by the *ratio* in the case of *Asian Paints Ltd. (supra)*, we hold that the AO failed in giving appropriate time to the assessee to file writ petition before the Hon'ble High Court against his order disposing off the objections. Respectfully following the judgment in the case of *Asian Paints Ltd. (supra)*, which is squarely applicable in the facts and circumstances of the instant case, we quash the resultant reassessment order. Similar view has been taken by the Pune Benches of the Tribunal in *ITO Vs. Gagandeep Amarpal Maan Vs. in ITA No.656/PUN/2017 vide its order dated 23-05-2018*.

52. In the result, the appeal of the assessee is allowed on this legal issue and the Departmental appeal is dismissed.

**Rajesh U. Pardeshi - ITA No.2932/PUN/2017**

53. The ground challenging the initiation of reassessment proceedings was not pressed by the ld. AR, which is hereby dismissed.

54. The only issue raised on merits is against the confirmation of addition on account of bogus purchases.

55. The facts of the instant case are *mutatis mutandis* similar to M/s. Prima Pvt. Ltd. (ITA No.1951/PUN/2017) disposed off *supra*. Here also, the assessee did not directly sell the goods purchased through hawala transactions. These were consumed as raw material in manufacturing. Following our view taken in *M/s. Prima Pvt. Ltd., (supra)*, we set aside the impugned order and remit the matter to the file of AO for re-computing the amount of addition @10% plus the normal gross profit rate shown by the assessee for this year on the bogus purchases.

56. In the result, the appeal is partly allowed for statistical purposes.

**DACS Electrosystems Pvt. Ltd. - ITA No.2835/PUN/2017**

57. The ground challenging the initiation of reassessment proceedings was not pressed by the ld. AR, which is hereby dismissed.

58. The issue raised on merits is against the confirmation of addition on account of bogus purchases.

59. Here again, the facts are *mutatis mutandis* similar to M/s. Prima Pvt. Ltd. (ITA No.1951/PUN/2017) disposed off *supra*. The assessee did not directly sell the goods purchased through hawala transactions. These were consumed as raw material in the manufacturing process.

Following our view taken in *M/s. Prima Pvt. Ltd., (supra)*, we set aside the impugned order and remit the matter to the file of AO for re-computing the amount of addition @10% plus the normal gross profit rate shown by the assessee for this year on the bogus purchases.

60. In the result, the appeal is partly allowed for statistical purposes.

**ITA No.863/PUN/2018 – M/s. PNG Jewellery & Gems**

61. The assessee in this appeal has challenged the initiation of reassessment proceedings apart from the confirmation of addition on merits.

62. The facts of the instant case are that the AO received information from the Sales Tax Department about the assessee having received and recorded accommodation entries in its books of account. He, therefore, initiated the reassessment proceedings and made the addition at the rate of 100% of the amount of hawala entries, which came to be upheld in the first appeal.

63. The Id. AR submitted that the assessment order should be quashed because the assessee was not allowed opportunity of cross examination and the adverse material was not confronted. While disposing of the appeal of *M/s. Viraj Steels* for the A.Y. 2009-10 *supra*, we have dismissed such ground raised by the assessee. Since the facts and

circumstances of the instant case are *mutatis mutandis* similar, we dismiss this ground of appeal.

64. On merits, the issue remains the same. Following the judgment of Hon'ble Bombay High Court in the case of *Pr.CIT Vs. Mohommad Haji Adam & Co. (supra)*, we set-aside the impugned order and remit the matter to the file of the AO for applying the *ratio* laid down by the Hon'ble jurisdictional High Court in the above noted case and recompute the amount of additions, if any, after allowing a reasonable opportunity of hearing to the assessee.

65. In the result, the appeal is partly allowed for statistical purposes.

**Renuka Auto Components India Pvt. Ltd. - ITA Nos.1659 & 1660/PUN/2018**

66. In these appeals, the grounds challenging the initiation of reassessment proceedings were not pressed. The same are, therefore, dismissed as such.

67. On merits, the AO made addition @100% of bogus purchases which was confirmed by the Id. CIT(A) as such. The assessee is aggrieved by the confirmation of addition to this extent.

68. We have heard both the sides and gone through the relevant material on record. The Id. AR submitted that the entries recorded in the books of account which have been treated by the Revenue as

accommodation entries are in the nature of purchase of raw material which have been consumed in the manufacturing process. It was, therefore, submitted that there can be no ascertainment of separate profit in respect of such bogus purchases and genuine purchases.

69. Having heard both the sides, we find that the facts and circumstances of this case are similar to those of appeal in the case of M/s. Prima Pvt. Ltd. (supra). While disposing of that appeal, we have held that the addition should be sustained @10% plus the normal GP rate shown by the assessee for the year on the amount of hawala purchases. Following the same, we set aside the impugned order and remit the matter to the file of AO for re-computing the amount of addition @10% plus the normal gross profit rate shown by the assessee for this year on the bogus purchases.

70. In the result, both the appeals are partly allowed for statistical purposes.

**M/s. Saraswati Extrusion Pvt. Ltd. - ITA No.1716/PUN/2017**

71. No argument was advanced in support of initiation of re-assessment proceedings. Such ground is, therefore, dismissed.

72. Briefly stated, the facts of this case are that the AO, on the basis of information received from Sales Tax Department, noticed that the

assessee had recorded bogus purchases to the tune of Rs.4,05,92,816/- He, therefore, made addition @100% of bogus purchases. The Id. CIT(A) allowed relief @95% of the bogus purchases and restricted the addition to 5%.

73. The Id. AR submitted that the Revenue's appeal has been dismissed by the Tribunal on account of low tax effect. It was, however, pointed out that the tax effect in that case appeared to be more than the stipulated amount of Rs.50.00 lakh.

74. Having gone through the relevant material on record, we find that the issue involved in this appeal is directly covered by the judgment of Hon'ble jurisdictional High Court in the case of *Pr.CIT Vs. Mohommad Haji Adam & Co. (supra)* in which the direction has been given to make addition only at the differential rate of profit between the genuine purchases and bogus purchases. In the given circumstances, we set-aside the impugned order and remit the matter to the file of the AO for deciding this issue in conformity with the discussion made above. However, it is made clear that if subsequently the Revenue's appeal is recalled on filing of miscellaneous application by the Department on account of tax effect being more than the amount of Rs.50.00 lakh, the assessee will be at liberty to take remedial action for recalling of the order in his case as well.

75. In the result, the appeal is partly allowed for statistical purposes.

Order pronounced in the Open Court on 26<sup>th</sup> September, 2019.

Sd/-  
**(PARTHA SARATHI CHAUDHURY)**  
**JUDICIAL MEMBER**

Sd/-  
**(R.S.SYAL)**  
**VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 26<sup>th</sup> September, 2019  
सतीश

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A) concerned
4. The CIT concerned
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण, पुणे "ए" / DR  
'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	25-09-2019	Sr.PS
2.	Draft placed before author	25-09-2019	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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