

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "G", MUMBAI**

**BEFORE SHRI RAJESH KUMAR (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 178/MUM/2018  
Assessment Year: 2009-2010**

Shri Shankarlal L. Jain, 577/579, Om Shanti Bhavan, Khatavi Building, JSS Rd, Opp. Chandanwadi, Mumbai - 400002 PAN: AABPJ3924F	<b>Vs.</b>	The ITO-18(3)(3), (erstwhile ITO 19(3)(3), Earnest House, Mumbai
<b>(Appellant)</b>		<b>(Respondent)</b>

**ITA No. 427/MUM/2018  
Assessment Year: 2009-2010**

The ITO-19(3)(3), Matru Mandir, 2 <sup>nd</sup> Floor, R. No. 219, Tardeo Road, Mumbai - 400007	<b>Vs.</b>	Shri Shankarlal L. Jain, Bokadia Spinning Mills Pvt. Ltd., 577/579, Om Shanti Bhavan, Khatavi Building, JSS Rd, Opp. Chandanwadi, Mumbai - 400002 PAN: AABPJ3924F
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri Rajesh Sanghvi (CA)

Revenue by : Shri Chaudhary Arun Kumar Singh (DR)

Date of Hearing: 25/04/2019  
Date of Pronouncement: 19/07/2019

**ORDER**

**PER RAM LAL NEGI, JM**

These are the cross appeals filed by the assessee and the revenue against the orders dated 09.10.2017 passed by the Ld. Commissioner of Income Tax (Appeals)-29, Mumbai (for short 'the CIT (A)'), pertaining to the assessment year 2009-10, whereby the Ld. CIT (A) has partly allowed the appeals filed by the

assessee against the assessment orders passed u/s 143 (3) r.w.s. 147 of the Income Tax Act, 1961 (for short the 'Act').

**ITA No. 178/MUM/2018 (Assessment Year: 2009-10)**

Brief facts of the case are that the assessee engaged in the business of manufacturing and trading of textile fabrics and trading in shares, filed its return of income for the assessment year under consideration declaring the total income at Rs. 3,25,820/-. The return was processed u/s 143 (1) of the Act. Subsequently, the case was reopened by issue notice u/s 148 of the Act on the basis of information received from the DGIT (Inv.) that during the previous year, the assessee obtained accommodation entries from seven bogus parties in order to show purchase amounting to Rs. 1,76,27,365/-. In response to notice u/s 143 (2) and 142(1) the authorized representative of the assessee appeared before the AO and discussed the case.

2. During the course of assessment proceedings, the AO asked the assessee to produce the details such as address of the parties, purchase details, invoice/bills, copies of ledger account, details of transportation of goods, details of payment made etc., however, the assessee could not produce any of the details. The AO further asked the assessee to produce the parties from whom the assessee had shown purchases, but the assessee failed to do so. Since, the assessee failed to produce documentary evidence including delivery challan, transport receipt, octroi receipt, goods inward register etc., the AO rejected the books of account and proceeded to estimate the GP on these purchases @ 100% and made addition of the said amount to the income of the assessee. The assessee challenged the assessment order before the Ld. CIT (A). The Ld. CIT (A) after hearing the assessee restricted the addition to 12.5% of the total amount of bogus purchases determined by the AO.

3. The assessee has challenged the impugned order passed by the Ld. CIT (A) by raising the following grounds:-

1. *“In the facts and circumstances of the case and in law, the Ld. CIT (A) has erred by estimating 12.5% of gross purchase of Rs. 1,76,27,365 thereby confirming an addition of Rs. 22,03,420=63.*
2. *In the facts and circumstances of the case and in law, the Ld. CIT (A) failed to appreciate that the AO had neither provided copy of materials and statements relied upon by him nor allowed any opportunity to the Appellant to cross examine those parties who have been alleged to have provided the accommodation entries of such purchases, thereby violating the principles of natural justice (SC case of Piraai Choodi 334 ITR 262). In fact the CIT appeal treated these issues as less relevant in para 4.3.4.*
3. *In the facts and circumstances of the case and in law and without prejudice the Ld. CIT (A) failed to take into cognizant the existing profit ratio of the appellant in his trading business whilst making an estimation at 12.5%.*
4. *In the facts and circumstances of the case and in law, the Ld. CIT (A) failed to appreciate the various case law’s relied upon by the appellant.*

4. Before us, the Ld. counsel for the assessee submitted that the Ld. CIT (A) has wrongly sustained the addition of 12.5% of the total amount of bogus purchases without appreciating that the AO had neither provided copy of material and statement relied upon nor afforded any opportunity to cross examine the witnesses whose statements were relied upon. The Ld. counsel further pointed out that the Ld. CIT (A) has failed to consider the existing profit ratio of the assessee in his trading business and confirmed the addition of 12.5% of the total amount of the purchases in question. The Ld. counsel submitted that the assessee has produced the statement of bank accounts to prove that the payments were made through banking channels, list of purchases and corresponding sales along with challan bill and ledger account as a sample. The assessee has also furnished the comparative figures of GP pertaining to the assessment year 2008-09, 2009-10 and 2010-11. The Ld. counsel placing reliance on the judgment of the Hon’ble Bombay High Court in

the case of the *PCIT vs. M/s Mohammad Haji Adam & Company, Income Tax Appeal No. 104 of 2016, 1013 of 2016, 1059 of 2016, 1064 of 2016, 1075 of 2016, 1095 of 2016, 1204 of 2016 and 1012 of 2016* in which the Hon'ble High Court has upheld the decision of the Tribunal to make addition to the extent of bringing the GP rate on purchases at the same rate of other genuine purchases. In the light of the said judgment, the Ld. counsel for the assessee submitted that the impugned order passed by the Ld. CIT (A) is erroneous and liable to be set aside.

5. On the other hand, the Ld. Departmental Representative (DR) relying on the assessment order passed by the Ld. CIT (A) submitted that since the addition made by the AO is in accordance with the ratio of law laid down by the Hon'ble Supreme Court in the case of *N.K. Proteins Ltd. vs. CIT (2017 TIOL 23 SC-IT)*, *Pr. CIT vs. NRA Iron & Steel Pvt. Ltd. Civil Appeal No. ....*, the judgments of the Hon'ble Delhi High Court in the case of *CIT vs. Arun Malhotra 363 ITR 195 (Delhi)*, *CIT vs. La Medica 250 ITR 575 (Delhi)* *Pr. CIT vs. NDR Promoters Pvt. Ltd. ITA No. 49 of 2018* and the decision of the Hon'ble Gujarat High Court in the case of *Vijay Proteins Ltd. vs. AICT (2015) 58 taxmann.com 44 (Guj)*. The Ld. DR further pointed out that the revenue has challenged the impugned order by filing cross appeal on the ground that the findings of the Ld. CIT (A) are not in accordance with the decision of the Hon'ble Gujarat High Court in the case of *N.K. Protein Ltd. vs. DCIT* confirmed by the Hon'ble Supreme Court.

6. We have heard the rival submissions and also gone through the entire material on record in the light of the rival contentions of the parties. We notice that the Ld. CIT (A) has restricted the addition to 12.5% of the total amount of bogus purchases by following the decision of the Hon'ble Gujarat High Court in the case of *CIT vs. Simit P. Sheth 356 ITR 451 (Guj)*. We further notice that the AO has not rejected the sale shown by the assessee. Under these circumstances, the Ld. CIT (A) has rightly held that profit from business cannot be ascertained without deducting cost of purchase from sales. So far as the estimation of profit is concerned, the Hon'ble jurisdictional High Court in the

case of the *Pr.CIT vs. Mohammad Haji Adam & Company* (supra) has upheld the findings of the Tribunal whereby the Tribunal had restricted the addition to the extent of bringing the GP rate on purchases at the same rate of other genuine purchases. The findings of the Hon'ble High Court read as under:-

*“8 In the present case, as noted above, the assessee was a trader of fabrics. The A.O. found three-entities who were indulging 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 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 sales 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 trader. 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 deduction 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 as to costs.*

7. As pointed out by the Ld. counsel, in the case of *Pr. CIT vs. M/s Mohommad Haji Adam & Company* (supra), the assessee is a dealer of fabrics and the assessee in the present case is also engaged in the business of manufacturing and trading of textile fabrics. Since, the facts and the issue involved in the present case are similar to the facts of the case and the issues involved in the case of *Pr.CIT vs. M/s Mohommad Haji Adam & Company* (supra), we respectfully following the ratio laid down by the Hon'ble jurisdictional High Court, modify the impugned order passed by the Ld. CIT (A) and restrict the addition to the extent of bringing the GP rate on purchases at the same rate of the other genuine purchases. Accordingly, we direct the AO to make addition to the extent of bringing the GP rate on purchase at the same rate of other genuine purchases in accordance with the judgment of the Hon'ble jurisdictional High Court discussed above.

**ITA No. 427/MUM/2018 (Assessment Year: 2009-10)**

The revenue has challenged the impugned order passed by the Ld. CIT (A) by raising the following effective grounds:-

1. *“Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in directing the AO to restrict the addition to the extent of 12.5% of the total non-genuine purchases amounting to Rs. 1,76,27,365/- from eight parties in spite of the fact that the assessee did not discharge his duty to prove that the purchases made from eight parties*

*were genuine and failed to establish one-to-one co-relation of the purchases debited against the eight parties.*

2. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in directing the AO to restrict the addition to the extent of 12.5% instead of 100% of the total non-genuine purchases without accepting the fact that on similar grounds in the case of N K Protein Ltd. Vs. DCIT (SLA-CC No. 769 of 2017 dated 16.01.2017), the Hon'ble Supreme Court has confirmed the decision of High Court for addition of entire income on account of bogus purchases."*

2. Since, we have partly allowed the appeal of the assessee and directed the AO to limit the addition to the extent of bringing the GP rate on purchases at the same rate of the other genuine purchases by following the ratio laid down by the Hon'ble jurisdictional High Court discussed above, the cross appeal filed by the revenue has become infructuous. Hence, we dismiss the appeal of the revenue.

In the result, the assessee's appeal is partly allowed and the revenue's appeal is dismissed.

Order pronounced in the open court on 19<sup>th</sup> July, 2019.

Sd/-  
(RAJESH KUMAR)

ACCOUNTANT MEMBER

Sd/-  
(RAM LAL NEGI)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 19/07/2019

*Alindra PS*

**आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-

4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**