

IN THE INCOME-TAX APPELLATE TRIBUNAL "SMC" BENCH MUMBAI  
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND  
SHRI PAWAN SINGH JUDICIAL MEMBER

ITA No. 5296/Mum/2018 (Assessment Year 2010-11)

ITO 28(1)(1) Room No. 329, 3 <sup>rd</sup> Floor, Tower No.6, Vashi Railway Station Complex, Vashi, Navi Mumbai-400705.	Vs.	Anil Narayan Lokre (Prop. Anil Trading Co.), 205, Bhagtani Enclave, Behind Asian Paints, Off. L.B.S.Marg, Bhandup (W), Mumbai-400078. <b>PAN: AAPPL1426L</b>
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Appellant

Respondent

Appellant by : Shri Akhtar A. Ansari (DR)

Respondent by : Ms. Lazari Oswal with  
Shri Nimesh Chottani (AR)

Date of Hearing : 01.10.2019

Date of Pronouncement : 01.10.2019

**ORDER UNDER SECTION 254(1) OF INCOME TAX ACT**

**PER PAWAN SINGH, JUDICIAL MEMBER;**

1. This appeal by revenue is directed against the order of Id. CIT(A)-26, Mumbai dated 28.06.2018 for Assessment Year 2010-11 The revenue has raised the following grounds of appeal:

(1) "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in directing the A.O. in restricting the addition to 15% of Rs.15,30,070/- as against 25% addition of Rs.15,30,070/- made by the Assessing Officer on account of bogus purchases, without appreciating the fact that assessee had failed to discharge the onus to establish the genuineness of the transactions and also failed to furnish corroborative evidences in support of his claim and without considering the latest Apex Court decision in the case of N.K. Proteins Ltd wherein it was held that

addition on the basis of bogus purchase could not be restricted to certain percentage when entire transaction was found as bogus.

(2) The appellant prays that information with regard to bogus purchases has been received from external sources i.e from Sales Tax Department now known as Director General of GST Intelligence (DGGI) and the issue is squarely covered under clause (e) of amended Para 10 of the Circular No.3 of 2018 dated 11.07.2018 which was issued vide Notification / Circular F.No.279/Misc 142/2007-ITJ (Pt) dated 20.08.2018.

(3) The appellant prays that the order of Ld. CIT (A) on the above grounds be reversed and that of the Assessing officer be restored.

2. Brief facts of the case are that the assessee is proprietor of M/s Anil Trading Company engaged in the business of manufacturing of transformer, brushing parties for electricity power supply , filed its return of income for Assessment Year 2010-11 on 09.10.2010 declaring total income of Rs. 3,95,937/-. The return of income was processed under section 143(1). The assessment was re-opened under section 147 on the basis of information received from Sale Tax Department, Government of Maharashtra that certain hawala operators are indulging in providing accommodation bills without actual delivery of goods. The Sale Tax Department, Government of Maharashtra referred the list of such hawala dealers and the beneficiary to the DGIT (Investigation), Mumbai. The name of assessee appeared in the list of beneficiary. On the basis of information, the Assessing Officer made a belief that the income of the assessee escaped assessment, therefore, re-opened the assessment under section 147. The notice under section 148

dated 25.03.2015 was served upon the assessee. The assessee in response to the notice under section 148 filed its reply dated 01.06.2015 and requested for supply of reasons recorded. The Assessing Officer after serving notice under section 143(2) proceeded for re-assessment. During the assessment, the Assessing Officer noted that the assessee has shown purchases of Rs. 15,30,070/- from the following parties, which were declared as hawala dealers by the Sale Tax Department, Government of Maharashtra.

	<b>Name of the party</b>	<b>Bill amount (Rs.)</b>
1	M/s Prayosha Trading Co.	5,47,831/-
2	M/s Somnath International	2,67,956/-
3	M/s. G.R. Trade Link	2,55,058/-
4	M/s. Shraddha Trading Co.	2,07,454/-
5	M/s Shree Trading Corporation	1,51,847/-
6	M/s Varun Enterprises	99,924/-
<b>Total</b>		<b>15,30,070</b>

3. The Assessing Officer in order to verify the transaction issued notice under section 133(6) to all the parties. The notice sent through registered post was returned back with the remark "Left". The assessee was asked to show-cause as to why the purchases shown from all the parties should not be treated as non-genuine. The assessee in order to substantiate the purchases stated that the goods were delivered by the said parties and are reflected in the books of account. The payments were made through cheques only. After considering the submission of

assessee, the Assessing Officer concluded that the assessee not been able to furnish evidence of transportation details and delivery challans. The assessee furnished the Books of account, purchases bills. The Assessing Officer after considering the reply of assessee, copies of bills and on the basis of report of Investigation Wing of Sale Tax Department disallowed 25% of aggregate of purchases shown from the said hawala parties (i.e. Rs. 3,82,517/-, being 25% of Rs. 15,30,070/-) in the assessment order dated 24.11.2015 passed under section 143(3) r.w.s 147.

4. On appeal before the addition was restricted to the extent of 15%. The Id. CIT(A) while restricting the disallowances relied upon the decision of Hon'ble Gujarat High Court in case of Simith P. Seth (356 ITR 451). The Id. CIT(A) also concluded that the assessee has shown the GP ratio for last three years ranging from 6.01% to 12.63%, the Assessing Officer estimated the profit @ 25% which is on higher side. Thus, aggrieved by the order of Id. CIT(A), the revenue has filed the present appeal before us.
5. We have heard the submission of Id. Departmental Representative (DR) for the revenue and Id. Authorized Representative (AR) of the assessee and perused the material available on record. The Id. DR for the revenue supported the order of Assessing Officer. The Id. DR further submits that Investigation Wing of Income-tax Department has

made full-fledged investigation in respect of hawala traders. The hawala traders were/are engaged in providing bogus bill without actual delivery of goods. The assessee has shown bogus purchases only to inflate the profit. The ld. DR for the revenue submits that the Assessing Officer has brought sufficient material on record to prove that the purchases shown by assessee were bogus. The assessee is not entitled for any relief. The ld. DR for the revenue prayed for setting-aside the order of ld. CIT(A) and to restore the order of Assessing Officer.

6. On the other hand, the ld. AR of the assessee submits that the assessee furnished complete details of purchases and the corresponding sales made against the purchases. The Assessing Officer has not rejected the books of account. The Assessing Officer made the disallowance of 25% of the alleged bogus purchases. The Assessing Officer has not considered the Gross Profit Ratio for earlier years as well as for the year under consideration. The additions made on account of alleged bogus purchases by Assessing Officer was unreasonable. The ld. CIT(A) after considering the Gross Profit declared in three earlier consecutive years restricted the disallowance to 15%. Though, the purchases of assessee are genuine, however, the assessee accepted it to buy peace. The ld. AR prayed for dismissal of present appeal.
7. We have considered the submissions of both the representatives and perused the record. The Assessing Officer made the disallowance of

25% of the alleged bogus purchases. The Assessing Officer has not disputed the sales of the assessee. The Assessing Officer solely relied upon the report of Investigation Wing of Sale Tax Department. The Assessing Officer has not rejected the books of account of the assessee. Before the Id. CIT(A), the assessee urged that the purchases shown by assessee are genuine. The payments of purchases were made through account payee cheques. The goods were received by assessee and quantitative details and corresponding sales of shown. The assessee also urged that Assessing Officer has not considered the various documentary evidences furnished by assessee. The assessee relied upon the decision of Hon'ble Gujarat High Court in Simith P. Seth (supra). The Id. CIT(A) after considering the material placed before him and the ratio of the decisions including the decision of Simith P. Seth concluded that the assessee has shown Gross Profit ratio in last three years ranging from 6.01% to 12.63% and that the estimation of profit made by Assessing Officer @ 25% is on higher side. The Id. CIT(A) directed the Assessing Officer to scale down the disallowance of bogus purchases to 15% of the alleged purchases to cover up the profit element embedded in the impugned purchases. We are also of the view that under Income Tax Act, the revenue is entitled to tax the profit element only and not the transaction, therefore, we affirm the order of Id. CIT(A).

8. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 01/010/2019.

**Sd/-**  
**SHAMIM YAHYA**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**PAWAN SINGH**  
**JUDICIAL MEMBER**

Mumbai, Date: 01.10.2019

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**Copy of the Order forwarded to :**

1. Assessee
3. The concerned CIT(A)
5. DR "SMC" Bench, ITAT, Mumbai
6. Guard File

2. Respondent
4. The concerned CIT

**BY ORDER,**

**Dy./Asst. Registrar**  
**ITAT, Mumbai**