



ITA No.5697/Mum/2018  
Uday Bhartkumar Mehta  
Assessment Year-2011-12

**आयकर अपीलीय अधिकरण “एक-सदस्य मजमल” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“SMC” BENCH, MUMBAI**

**मजनीय श्री शक्तिजीत दे, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI SAKTIJIT DEY, JM AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ I.T.A. No.5697/Mum/2018  
(निर्धारण वर्ष / Assessment Year:2011-12)

<b>ACIT- Circle-3 Kalyan</b> 2 <sup>nd</sup> Floor, Rani Mansion Murbad Road Kalyan (W)-421 301.	<b>बनाम/</b> Vs.	<b>Shri Uday Bhartkumar Mehta</b> Prop. Of M/s. Akshat Chemicals 2/B, Anant Apartment Senapati Bapat Marg Dombivli (E), Dist. Thane-421 201.
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AMQPM-4559-G</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )
अपीलार्थीकीओरसे/ <b>Appellant by</b>	:	Ms.K. Jothilakshmi Nayak–Ld. DR
प्रत्यर्थीकीओरसे/ <b>Respondent by</b>	:	Shri Marlon Rego- Ld. AR
सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	09/10/2019
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	09/10/2019

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member): -**

1. Aforesaid appeal by revenue for Assessment Year [in short referred to as ‘AY’] 2011-12 contest the order of Ld. Commissioner of Income-Tax (Appeals)-1, Thane, [in short referred to as ‘CIT(A)’], *Appeal No. ITA No.512/2014-15* dated 06/07/2018 on following grounds of appeal: -



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1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in not appreciating the law correctly that once the purchases are unverifiable/not genuine/bogus, the same should have been disallowed in entirety?".
2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law by not appreciating the fact that the assessee could not establish the genuineness of the purchases from the non-existent vendors?
3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law by not appreciating the fact that the onus to justify the claim of expenses is on the assessee and the same has failed to discharge it in relation to the purchases made from the non-existent vendors?
4. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law by ignoring, the fact that the assessee could not substantiate its claim of purchases from non-existent vendors by means of relevant supporting documents related to movement and delivery of goods, stock register, etc. to arrive at disallowance lower than 100% of the purchases from the non-existent vendors?
5. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in not appreciating the law correctly that once the purchases are unverifiable / not genuine / bogus, the same should have been disallowed in entirety, particularly in view of the ratio of the decision of the Hon'ble Gujarat High Court in Tax Appeal No. 242 of 2003 dated 20/06/2016 in the case of N. K. Proteins Ltd. against which the SLP was dismissed by the Hon'ble Apex Court?.

We have heard and considered the arguments advanced by both the representatives.

2.1 Facts on record would reveal that the assessee being resident individual stated to be engaged in the business of trading of chemicals under proprietorship concern namely M/s Akshat Chemicals, was assessed for impugned AY u/s. 143(3) on 05/03/2014 wherein the income of the assessee was determined at Rs.26.78 Lacs, after sole addition of *alleged bogus purchases* for Rs.21.29 Lacs as against returned income of Rs.5.48 Lacs filed by the assessee on 28/09/2011 which was initially processed u/s.143(1). The assessee reflected Gross profit rate of 1.87% on turnover of Rs.942.08 Lacs. The Gross Profit Rate shown in immediately preceding year was 1.82%.



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2.2 Pursuant to receipt of certain information from Sales tax Department, Govt. of Maharashtra, it transpired that the assessee stood beneficiary of alleged bogus purchases to the tune of Rs.21.29 Lacs from 7 entities, the details of which have already been extracted at para-4 in the quantum assessment order. Accordingly, the assessee was directed to substantiate the purchase transactions.

2.3 The assessee, in defense, submitted xerox copies of purchase invoices and submitted that the payments were through banking channels. However, the assessee failed to substantiate the delivery of material by production of transport /octroi receipts etc. During the course of assessment proceedings, the assessee, vide letter dated 03/03/2014, stated that with a view to buy peace of mind and to avoid further unnecessary litigations, the assessee was ready to pay tax on such purchases. Accordingly, the stated purchases were disallowed and added to the income of the assessee u/s 69C while framing the assessment.

3.1 However, subsequently, the assessee agitated the stated additions before learned first appellate authority by submitting that the whole amount could not be added back to the income of the assessee rather the additions should be restricted to some reasonable estimations. Reliance was placed on various judicial pronouncements to support the said submissions.

3.2 The Ld. CIT(A), in terms of decision of Hon'ble Delhi High Court rendered in **CIT V/s Jansampark Advertising & Marketing Pvt. Ltd. [2015 56 Taxmann.com 286]**, afforded fresh opportunity to the assessee and directed the assessee to establish the genuineness of the purchases



by filing the requisite information / documentary evidences. However, the assessee again failed to furnish the required details in prescribed format i.e. qualitative / quantitative details, item-wise / party-wise, material purchased etc. with a plea that the same were not maintained in the required manner. The party could not file any confirmation of accounts and also failed to produce any of the supplier for confirmation of the accounts.

3.3 The Ld. first appellate authority after considering factual matrix in the light of various judicial pronouncements, as enumerated in the impugned order, rejected assessee's books of accounts u/s 145(3) and noticed the Gross Profit Rates of various years, which could be tabulated in the following manner: -

Year	Purchases (Rs.)	Sales (Rs.)	GP Rate (%)
2009-10	--	Rs.243.64 Lacs	2.08%
2010-11	Rs.672.30 Lacs	Rs.680.18 Lacs	1.82%
2011-12	Rs. 911.53 Lacs	Rs.942.08 Lacs	1.87%
2012-13	Rs.1054.06 Lacs	Rs.1091.70 Lacs	2.45%
2013-14	Rs.2082.94 Lacs	Rs.2144.04 Lacs	2.53%

Applying the GP rate of 2013-14 i.e. non-hawala year to the turnover of year under consideration, Ld. CIT(A) worked out suppressed Gross Profit (GP) of Rs.6.21 Lacs. The same was justified in the light of 25% disallowance made in assessee's own case for AY 2009-10. Finally, the impugned addition of Rs.21.29 Lacs was restricted to Rs.6.21 Lacs which translated into disallowance of purchases to the extent of approx. 29%. Aggrieved, the revenue is in further appeal before us.

4. After careful consideration of orders of lower authorities and after appreciating the arguments advanced by respective representatives, we are



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of the considered opinion there could be no sale without actual purchase of material keeping in view the assessee's nature of business i.e. trading. Undisputedly the assessee was in possession of primary purchase documents and the payments to the supplier was through banking channels. However, at the same time, the assessee miserably failed to substantiate the delivery of material during assessment as well as appellate proceedings. The assessee failed to produce any of the suppliers to confirm the transactions and the onus casted upon assessee, in this regard, remained undischarged. Under such circumstances, the additions which could be sustained, was to account for profit element embedded in these purchase transactions to factorize for profit earned by assessee against possible purchase of material in the grey market and undue benefit of VAT against such bogus purchases. The learned first appellate authority has rejected the books and applied Gross Profit Rate of non-hawala year on gross turnover reflected by the assessee. The disallowance of purchases, in this manner, translated into addition of approx. 29% of alleged bogus purchases. The said estimation, in our opinion, was quite fair and reasonable under the facts and circumstances of the case and we find no reason to interfere in the same. So far as the decision of Hon'ble Gujarat High Court rendered in **N.K. Industries Ltd. Vs DCIT [72 Taxmann.com 289]** is concerned, we find that the facts of that case has already been distinguished by Hon'ble Bombay High Court in **Pr.CIT Vs. M/s Mohommad Haji Adam & Co. [ITA No.1004 & others of 2016, dated 11/02/2019]** wherein Hon'ble Court has approved the estimation, on similar



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factual matrix, based on Gross Profit Rate. Therefore, concurring with the approach of Ld. CIT(A), we dismiss the appeal.

5. Resultantly, the appeal stands dismissed.

*Order pronounced in the open court on 09<sup>th</sup> October, 2019.*

**Sd/-**

**(Saktijit Dey)**

न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated : 09/10/2019

Sr.PS:-Jaisy Varghese

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)**  
**आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**