



**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"SMC" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

ITA no.5696/Mum./2018  
(Assessment Year : 2011-12)

Income Tax Officer  
Ward-3(5), Mumbai

..... Appellant

v/s

Shri Ramesh Shamji Patel  
A-9, Gitanjali CHS  
Manpada Road, Pandurang Wadi  
Dombivali (E), Mumbai 421 201  
PAN - AAXPP1908R

..... Respondent

C.O. no.230/Mum./2019  
(Arising out of ITA no.5696/Mum./2018)  
(Assessment Year : 2011-12)

Shri Ramesh Shamji Patel  
A-9, Gitanjali CHS  
Manpada Road, Pandurang Wadi  
Dombivali (E), Mumbai 421 201  
PAN - AAXPP1908R

..... Cross Objector  
(Original Respondent)

v/s

Income Tax Officer  
Ward-3(5), Mumbai

..... Respondent  
(Original Appellant)

Assessee by : Shri Rahul Hakani  
Revenue by : Smt. Jothi Lakshmi Nayak

Date of Hearing - 09.10.2019

Date of Order - 25.10.2019

**ORDER****PER SAKTIJIT DEY, J.M.**

Captioned appeal and cross objection by the Revenue and assessee respectively are against the order dated 20<sup>th</sup> July 2018, passed by the learned Commissioner of Income Tax (Appeals)-1, Thane, for the assessment year 2011-12.

2. The aforesaid appeal and cross objection have been filed on the common issue relating to the addition made on account of non-genuine purchases.

3. Brief facts are, the assessee, an individual, is carrying on business as re-seller in ball bearing, hardware and general merchandise through his Proprietary concern Willson Engineering Co. For the assessment year under consideration, the assessee filed his return of income on 20<sup>th</sup> September 2011, declaring total income of ₹ 5,82,147. The return of income filed by the assessee was initially processed under section 143(1) of the Income-tax Act, 1961 (for short "*the Act*"). Subsequently, on the basis of information received from the Sales Tax Department that the assessee is a beneficiary of accommodation bills provided by some parties in respect of alleged purchases made worth ₹ 7,66,041, the Assessing Officer re-opened the assessment under section 147 of the Act. In the course of

assessment proceedings, the Assessing Officer called upon the assessee to prove the genuineness of purchases. In response to the query raised by the Assessing Officer, the assessee furnished copies of purchase bills, bills of corresponding sales, delivery challans, transport bills, loan confirmation, etc. However, the assessee could not submit Octroi receipts since the goods were not subject to Octroi. Further, to ascertain the genuineness of purchases made, the Assessing Officer conducted independent enquiry by deputing the Inspector of Income Tax to gather information under section 133(6) of the Act from the concerned selling dealers. However, as reported by the Inspector, no such business activity was found to be carried out in the given address. In fact, notice issued under section 133(6) of the Act to one of the selling dealers also returned back un-served. The Assessing Officer observed, the assessee was unable to furnish day-to-day stock account and could only furnish year end closing stock inventory with value of closing stock. In view of the aforesaid, the Assessing Officer concluded that the Books of Account are not reliable, hence, rejected them under section 145(3) of the Act. Having done so, the Assessing Officer held that the purchases worth ₹ 7,66,041, are not genuine, hence, are to be treated as unexplained expenditure under section 69C of the Act and deserves to be disallowed. Accordingly, he added back the aforesaid amount to the income of the assessee. Being aggrieved,

the assessee challenged the addition before the first appellate authority.

4. Learned Commissioner (Appeals), after considering the submissions of the assessee in the context of facts and material on record as well as judicial precedents available before him, agreed with the Assessing Officer that the assessee was unable to prove the genuineness of purchases. Further, he also agreed with the Assessing Officer on the issue of rejection of Books of Account. Having held so, learned Commissioner (Appeals) referring to the decisions of the Hon'ble Supreme Court in *Kanchwala Gems Pvt. Ltd. v/s JCIT*, [2006] 288 ITR 10 (SC) and *CST Vs H.M. Esufali H.M. Abdulali*, [1973] 90 ITR 271 (SC), observed that since sales effected by the assessee have not been doubted, the entire purchases could not be added to the income of the assessee, but only profit element embedded in non-genuine purchases estimated at a reasonable percentage can be considered for addition. Accordingly, applying the gross profit rate of assessment year 2013-14, wherein no non-genuine purchases was there, learned Commissioner (Appeals), worked out the suppressed profit at ₹ 2,77,221. Whereas, the profit estimated on the quantum of bogus purchase works out to ₹ 1,91,510. Since, the profit worked out by adopting the gross profit rate for the assessment year 2013-14 was more, learned Commissioner (Appeals) restricted the addition to ₹

2,77,221. Being aggrieved with the aforesaid decision of learned Commissioner (Appeals), both, the Revenue as well as the assessee are in appeal before the Tribunal.

5. The learned Departmental Representative submitted, once the purchases have been accepted as non-genuine, there is no justification in restricting the addition to the profit rate. She submitted, the assessee having failed to prove the purchases, the entire amount representing such purchases has to be added.

6. The learned Authorised Representative submitted, the assessee has furnished all documentary evidences including quantitative details of purchase and sales, delivery challan, etc., to prove the purchases. He submitted, only because the selling dealers could not be produced, the purchases cannot be added to the income fully. The learned Authorised Representative submitted, in course of assessment proceedings, though, the assessee had objected to the re-opening of assessment, the Assessing Officer without disposing of the objections of the assessee independently, has concluded the assessment. Thus, he submitted, the assessment order passed without disposing of the objection of the assessee is invalid, hence, deserves to be quashed. Without prejudice, the learned Authorised Representative submitted, since the assessee wants end of litigation, he would be happy if the

profit on non genuine purchases is estimated at a reasonable rate and would not contest the legal issue relating to re-opening of assessment.

7. We have considered rival submissions and perused material on record. Undisputedly, the Assessing Officer had received specific information from the Income Tax Department indicating that purchases worth ₹ 7,66,041, claimed to have been made from certain parties are not genuine. It is evident, in response to the query raised by the Assessing Officer to prove the genuineness of purchases, the assessee filed copies of purchase bills, corresponding sales, delivery challan, transport bills, etc. On a perusal of the assessment order, it appears that the Assessing Officer has not made any adverse observation with regard to the authenticity or genuineness of the documentary evidences filed before him. The Assessing Officer has held the purchases to be non-genuine primarily because the enquiry made under section 133(6) of the Act did not bear any result due to un-availability of the parties in the address and secondly, the assessee failed to furnish the day-to-day stock inventory. It is further evident, learned Commissioner (Appeals), at his level, wanted to verify the genuineness of purchases, hence, called for various information from the assessee. As could be seen, in response to the query raised by learned Commissioner (Appeals), the assessee again furnished purchase bills, details of party-wise purchases and corresponding

sales, ledger accounts, copies of bank statement. However, it is alleged by learned Commissioner (Appeals) that the assessee failed to produce current confirmation of purchases made from the concerned parties and was unable to produce concerned parties for examination. Therefore, he proceeded to add the profit element embedded in non-genuine purchases. Thus, from the aforesaid facts, it becomes clear that the assessee did produce some evidence including delivery challans which indicate delivery of goods at the premises of the assessee. No adverse inference of the Assessing Officer vis-a-vis the documentary evidence furnished by the assessee is discernible from the assessment order. Further, the assessee had furnished quantitative details of purchases and sales both before the Assessing Officer as well as the learned Commissioner (Appeals). In fact, learned Commissioner (Appeals) has recorded a factual finding that the assessee had effected corresponding sales against the purchases. On the aforesaid premises, learned Commissioner (Appeals) has rightly held that the addition of the entire non-genuine purchases cannot be made. This is so, because in the absence of purchases, the assessee could not have effected the corresponding sales. In such circumstances, one can come to a logical conclusion that the assessee must have purchased the goods from grey market to avoid payment of Sales Tax / VAT and to regularize such purchases, the assessee might

have obtained accommodation bills from hawala operators. In such scenario, the profit element embedded in the non-genuine purchases can be considered for addition. After considering the overall facts and circumstances of the case and nature of business carried on by the assessee as well as consistent view of the Tribunal and different High Courts in such types of cases, we are of the considered opinion that profit estimated @ 12.5% of the non-genuine purchases can reasonably be considered for the purpose of addition. Accordingly, we direct the Assessing Officer to restrict the addition to 12.5% of the non-genuine purchases. Before parting, we must observe, the learned Departmental Representative had strongly relied upon the decision of the Hon'ble Supreme Court in N.K. Protein Ltd. However, upon careful consideration of the decision of the Hon'ble Gujarat High Court in the said case as well as the order of the Hon'ble Supreme Court in dismissing the SLP, we are of the view that the said decision would not apply to the facts of the present case since in the said case in course of a search and seizure operation conducted in assessee's business premises incriminating materials were found prima-facie indicating that the assessee was indulging in bogus transaction in an organized manner by keeping with him blank cheque books of various entities. However, no such fact is involved in the present case. In view of the aforesaid, we do not find the aforesaid decision of the Hon'ble

Supreme Court applicable to the facts of the present case. Accordingly, grounds raised by the Revenue are dismissed. Whereas, the grounds raised on merits by the assessee in the cross objections are partly allowed ground raised on the validity of reopening under section 147 of the Act is dismissed as not pressed.

8. In the result, Revenue's appeal is dismissed and assessee's cross objection is partly allowed.

Order pronounced in the open Court on 25.10.2019

**Sd/-**  
**MANOJ KUMAR AGGARWAL**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 25.10.2019**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury  
Sr. Private Secretary

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai