

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” Bench, Mumbai**

**Before Shri Ravish Sood, Judicial Member  
and Shri N.K. Pradhan, Accountant Member**

**ITA No.5694/Mum/2018  
(Assessment Year: 2009-10)**

Assistant Commissioer of  
Income Tax-27(3),  
R. No. 423, 4<sup>th</sup> Floor, Tower No.6  
Vashi Railway Station, Vashi,  
Navi Mumbai – 400703

M/s Vindeep Oiltex Exports  
A-67, M.I.D.C., Taloja,  
Navi Mumbai -410 208  
Vs.

PAN – AACFV3377M

**(Appellant)**

**(Respondent)**

Appellant by: Smt. Jothilakshmi Nayak

Respondent by: None

Date of Hearing: 07.10.2019

Date of Pronouncement: 16.10.2019

**ORDER**

**PER RAVISH SOOD, JM**

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-25, Mumbai, dated 11.07.2018, which in turn arises from the order passed by the A.O under Sec. 143(3) r.w.s 147 of the Income Tax Act, 1961 (for short 'Act'), dated 24.03.2015 for A.Y. 2009-10. The revenue has assailed the impugned order on the following grounds of appeal:

- “(i) On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.13,83,200/- made by the Assessing Officer on account of bogus purchases, without appreciating the fact that the assessee had failed to produce bills, vouchers and other documentary evidences in support of his claim and without considering the latest Apex Court decision in the case of N.K.Protiens Ltd. wherein it is held that once it is proved that the purchases are bogus then addition should be made on entire purchases and not on profit element embedded in such purchases.

- (ii) On the facts and circumstances of case and in law, the Ld. CIT(A) erred in estimating the profit from Hawala purchases by disallowing only Rs.1,97,600/- being 12.5% of the bogus purchases as even the basic onus of producing delivery challans, transport bills etc. were not fulfilled by the assessee.
- (iii) The appellant prays that the order of the CIT(A) on the above grounds be reversed and that of the Assessing Officer be restored.
- (iv) The appellant craves leave to amend, modify and alter any grounds of appeal during the course of hearing of this case.”

2. Briefly stated, the assessee firm which is engaged in the business of local trading and export of machinery and spare parts for oil processing units had filed its return of income for A.Y. 2009-10 on 27.09.2009, declaring its total income at Rs.19,97,660/-. The return of income filed by the assessee was processed as such under Sec.143(1) of the Act. Subsequently, on the basis of information received from the DGIT(Inv.), Mumbai, that the assessee was one of the beneficiary which had obtained bogus purchase bills from certain hawala dealers, its case was reopened under Sec. 147 of the Act.

3. During the course of the assessment proceedings it was observed by the A.O that the assessee had claimed to have made purchases aggregating to Rs.15,80,800/- from the following two tainted parties:

Sr. No.	Hawala PAN	Name of the Hawala Supplier	Amount (Rs.)
1.	AACCN4274G	Navpad Exports Pvt. Ltd.	7,85,200/-
2.	AACCT2855M	Top Shop Trading Company Pvt. Ltd.	7,95,600/-
		Total	15,80,800/-

As the assessee failed to substantiate the authenticity of the purchase transactions, therefore, the A.O concluded that the assessee had not made any genuine purchases from the aforementioned parties and had in fact procured the goods from open/grey market. Observing, that the assessee in order to avoid disallowance under Sec.40A(3) of the Act, would have obtained bogus bills from the hawala operators to whom payments were shown to have been made by cheques, the A.O was of the view, that the said amount would thereafter have been received back in cash by the assessee from the said hawala parties, as no purchases were made from them. On the basis of his aforesaid observations, the A.O held a conviction that the said amount would have thereafter been utilised by the assessee for making cash purchases from the undisclosed parties. Accordingly, the A.O was of the view that the amount standing in the name of the bogus parties was to be added as an unexplained expenditure under Sec.69C

of the Act. Backed by his aforesaid conviction, the A.O made an addition of Rs.15,80,800/- as an unexplained expenditure under Sec.69C of the Act.

4. Aggrieved, the assessee assailed the matter in appeal before the CIT(A). On the basis of necessary deliberations, the CIT(A) after drawing support from certain judicial pronouncements restricted the addition to the extent of the profit which the assessee would had generated from purchasing the goods from the open/grey market. Relying on the judgment of the Hon'ble High Court of Gujarat in the case of CIT Vs. Simit P. Sheth, ITA No.553 of 2012, dated 16.01.2013, the CIT(A) worked out the profit element so involved in making of such bogus purchases by the assessee from undisclosed sources at 12.5% of the aggregate value of the purchase transactions under consideration. As such, the CIT(A) restricted the addition to the extent of Rs.1,97,600/-

5. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. We find that the assessee despite having been put to notice as regards the hearing of the appeal had failed to put up an appearance before us. Accordingly, we are constrained to proceed with the matter as per Rule 25 of the Appellate Tribunal Rule 1963, and therein dispose off the appeal after hearing the appellant revenue and perusing the orders of the lower authorities.

6. The Id. Department Representative (for short 'D.R') took us through the facts of the case. It was submitted by the Id. D.R, that as the assessee had failed to discharge the 'onus' that was cast upon it as regards proving the authenticity of the purchase transactions, therefore, the A.O had rightly added the entire value of such purchases under Sec. 69C of the Act. It was averred by the Id. D.R, that the CIT(A) without providing any cogent reason had whimsically restricted the addition to 12.5% of the aggregate value of such purchases.

7. We have heard the Id. D.R, and have also perused the orders of the lower authorities. Admittedly, the purchases claimed by the assessee to have been made from the aforementioned tainted parties, in the absence of supporting documentary evidence were rightly held by the A.O to be in the nature of bogus purchases. At the same time, as the goods claimed by the assessee to have been purchased from the aforementioned parties were shown

to have been entered in the 'stock register', and also their corresponding sales were accounted for by the assessee in its regular books of accounts, therefore, the entire value of such purchases could not have been held to be the income of the assessee. We have perused the order of the A.O, and are unable to comprehend, as to on what basis the expenditure incurred by the assessee for making the purchases under consideration had been characterised as an unexplained expenditure under Sec.69C of the Act. As is discernible from the records, the A.O was of the view, that the payments made by the assessee to the hawala operators by cheques against the value of the bogus purchases, would thereafter be received back by it in cash from the aforesaid parties as no purchases were made from them. Accordingly, it was observed by the A.O, that the cash so received back by the assessee from the hawala parties would thereafter have been utilised for financing the subsequent purchases from the undisclosed parties operating in the open/grey market. In the backdrop of the aforesaid observations of the A.O, wherein he had categorically admitted that the source of the purchases made by the assessee from the undisclosed parties in cash was out of the funds which had moved out of its regular 'books of accounts', therefore, we have no hesitation to observe, that it is beyond our comprehension as to how the purchases under consideration had been brought within the sweep of an unexplained expenditure under Sec.69C by the A.O. In sum and substance, now when the A.O had not doubted the fact that the funds from the regular 'books of accounts' of the assessee had finally been utilized for making of cash purchases from the undisclosed parties, therefore, in our considered view, the source of such purchases by no means could have been held to be in the nature of an unexplained expenditure within the meaning of under Sec.69C of the Act. We find that the CIT(A) had rightly concluded that the addition in respect of the purchases claimed by the assessee to have been made from the aforementioned parties, in the backdrop of the fact that their corresponding sales were duly recorded in its regular books of accounts, was liable to be restricted only to the extent of the profit involved in making of such purchases at a discounted value from the open/grey market. We find that the CIT(A) after drawing support from the judgment of the **Hon'ble High Court of Gujarat** in the case of **CIT-1, Vs. Simit P. Sheth, ITA No.553 of 2012, dated 16.01.2013**, had confined the addition to the extent of 12.5% of the aggregate value of the purchases under consideration, and resultantly scaled down the addition to an amount of Rs.1,97,600/-. In our considered view, no infirmity emerges from the order of the CIT(A), who we find had rightly concluded that the addition in the

hands of the assessee in respect of its unsubstantiated purchases was to be confined only to the extent of the profit element involved in procuring of such goods at a discounted value. Also, we find, that the CIT(A) had in all fairness estimated the profit element involved in making of such bogus purchases at 12.5% of the aggregate value of the impugned purchases. Accordingly, finding no infirmity in the view taken by the CIT(A), we uphold his order.

8. The appeal filed by the revenue is dismissed.

Order pronounced in the open court on 16.10.2019

Sd/-  
(N.K. Pradhan)  
ACCOUNTANT MEMBER  
मुंबई Mumbai; दिनांक 16.10.2019  
PS. Rohit

Sd/-  
(Ravish Sood)  
JUDICIAL MEMBER

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

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

सत्यापितप्रति //True Copy//

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