

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH,  
MUMBAI**

**BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. Nos. 4964 & 4965/Mum/2018  
(निर्धारण वर्ष / Assessment Years: 2010-11 & 2011-12)

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| ITO-27(1)(1)<br>Tower No.6, 4 <sup>th</sup> Floor, Room<br>No. 406, Vashi Rly. Station<br>Complex, Vashi, Navi<br>Mumbai. | <b>बनाम/</b><br>Vs.         | Shri Ankit Ajit Doshi<br>13/B, Vallabh CHSL, Tilak<br>Road, Opp. Ashirwad Heart<br>Hospital, Ghatkopar,<br>Mumbai-77. |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AIDPD8631P   |                             |   |
| (अपीलार्थी /Appellant)  | ..                          | (प्रत्यर्थी / Respondent)   |
| Revenue by:   | Shri Chaitanya Anjaria (DR) |   |
| Assessee by:  | None                        |   |

सुनवाई की तारीख / Date of Hearing: 05/09/2019  
घोषणा की तारीख /Date of Pronouncement: 16/10/2019

**आदेश / ORDER**

**PER AMARJIT SINGH, JM:**

The revenue has filed the above mentioned appeals against the different order passed by the Commissioner of Income Tax (Appeals) -24, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Ys. 2010-11 & 2011-12.

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2. The revenue has filed the present appeal against the order dated 07.05.2018 passed by the Commissioner of Income Tax (Appeals) -24, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2010-11.



**3. The assessee has raised the following grounds: -**

- “1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.1,79,174/- 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. Protein 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.
2. On the facts and circumstances of the case, the Ld. CIT(A) erred in estimating the profit from Hawala purchases by disallowing only Rs.3,00,406/- being 12.5% of the bogus purchases as even the basic onus of producing transport bills, delivery challans, etc. were not fulfilled by the assessee.
3. The appellant prays that the order of the CIT(A) on the above grounds be reversed and that of the Assessing Officer be restored.
4. The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.”

**4.** The brief facts of the case are that the assessee filed his return of income on 14.10.2010 declaring total income to the tune of Rs.2,29,560/- for the A.Y.2010-11. The assessment of the assessee was reopened on the basis of the information received from the DGIT(Inv.), Mumbai in which it was conveyed that the assessee has taken the accommodation entries of bogus purchase in sum of Rs.24,03,249/- from the M/s. Anmol Industries, M/s. Raj Traders, M/s. Asian Steel, M/s. Anshu Mercantile Pvt. Ltd., M/s. T4M Trading Company, M/s. Kushal Steel Corporation, M/s. Newzone Multi-trade Pvt. Ltd and M/s. Donear Trading Pvt. Ltd.

**5.** After the reply of the assessee, the AO raised the addition in sum of Rs.4,79,600/- u/s 69C of the I.T. Act. The addition was raised on the basis of working of the peak of the cumulative outstanding of the above said



parties. After certain other disallowances, the income of the assessee was assessed in sum of Rs.7,21,460/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who restricted the addition to the extent of 12.5% of the total bogus purchase but the revenue was not satisfied, therefore, the assessee has filed the present appeal before us.

**6.** We have heard the argument advanced by the Ld. Representative of the department and have gone through the case carefully. Before going further, we deem it necessary to advert the finding of the CIT(A) on record.:-

“2.4.1 The only effective Ground is in respect of the action of the Ld. AO in not accepting the purchases of Rs.24,03,249/- as genuine purchases based on the information received from Income Tax authorities. Briefly stated, the appellant is a company engaged in the business of trading. Ld. AO made the addition on the basis of information received from the investigation wing of Income Tax Department, Mumbai that the Sales Tax Department had recorded the statements of certain hawala operators who had confirmed have given bogus bill to certain assessee including the appellant company. The bogus bill was in respect of 8 parties. The appellant company asked to submit the details of purported purchases made and to show cause why the same should not be disallowed as bogus purchases. The appellant filed the reply stating that purchases were made from regular parties supported a proper bills and the accounting entries and the payments were made by account payee cheques. The Ld. AO was not in agreement with the submissions of the appellant and observed that the appellant failed to furnish the supporting documentary evidence to establish that the purchase was actually made by them from these parties such as transportation documents inward register etc. The investigation Wing of Mumbai had provided a list of hawala bill racketeers who were involved in issuing bills and also the list of beneficiaries. The Sales Tax Department of Mumbai had investigated all these cases thoroughly and prepared a list of such hawala operators and their beneficiaries which have been uploaded in their Website. The Ld. AO, ongoing through the submissions and contentions of the appellant, has submitted the working of the peak of the cumulative outstanding of the 8 panics and it was seen that the same amounts to Rs.4,79,600/- as bogus purchase and added the same to the total income of the appellant.



Under similar circumstances the Hon'ble High Court of Gujarat in the case of Simit P Seth, 2013 (356 ITR 451) had on occasion to deliver its judgment by confirming the decision of the FIAT which has estimated the disallowance at: 12.5% of the disputed bogus purchases to meet-the end of Justice. The head- note of the decision is reproduced as under-

'Section 145 of the Income-Tax Act, 1961- Method of Accounting- Estimation of Profits [ Bogus Purchases]- Assessment year 2006-17 assessee was engaged in business of trading in steel on wholesale basis- Assessing Officer having found that some alleged suppliers of steel to assessee had not supplied steel to assessee but had only provided sale bills, held that purchases made from said parties were bogus He accordingly, added entire amount purchases to gross profit of assessee Commissioner (Appeals) having found that assessee had indeed made purchases though not from named parties but other parties from grey Market, sustained addition to extent of 30% of purchase cost as probable profit of assessee- Tribunal however, sustained addition to extent of 12.5%- Whether since purchases were not bogus but were made from parties other than those mentioned in books of account, only profit element embedded in such purchases could be added to assessee's income- Held, yes whether hence, order of tribunal needed no interference- held, yes (Paras 6,7, & 9) in favour of the assessee's [emphasis supplied]

Based on the evidence in hand in the form of a report from DIT (Inv). Mumbai the AO has asked the assessee to produce the parties along with evidence in order to verify the genuineness of the purchase transactions The assessee instead SUDI111tn1 the ledger accounts of the above parties and ban] statements extracts evidencing the payments through bank cheque. In the case, the onus lies on the assessee to prove the genuineness of the purchases and the assessee had to prove that the suppliers were genuine') existing. The assessee has not made any efforts to discharge the onus and failed to produce any of the parties, in spite of the opportunities given by the Ld. AO. The assessee could not satisfactorily substantiate and establish the fact that there were genuine purchases from these parties. There was a report from SIT(inv) stating that all the seller parties as per the list supplied by them are bogus including the parties appearing in the books of the appellant company and as stated above, the assessee has not made counter submission to show that those parties are really existing. The AO has brought to tax the bogus purchases by. adopting. the method peak of such purchases keeping in view the gain made by the appellant due to purchases of material in grey market without bills and adjusting the purchases with the invoices taken from the hawala traders under



discussions. Under These circumstances the AO cannot be found fault on this count. Even though the AO could not prove substantively that the amounts given to the sellers in cheque from have come back to the appellant, the activities of accommodation entries in the trading community is not unheard of further, the investigations carried out by the Sales Tax Department, another Government Agency, with regard to VAT violation cannot be lost sight of. Further, as some of the names of the so- called bogus sellers out of the list supplied by-the Sales Tax Department are appearing in the books of the appellant company, the link of involvement of appellant company getting bogus bills is established. Even though there are catena of cases decided by the jurisdictional ITAT which have decided issue in favour of the. assessee, they are not uniform in all the case as they were decided as per facts and circumstances of that particular case before them.

I am of the opinion that the facts and circumstances of the present case are more akin to the case decided by the Hon'ble Gujarat High Court in the case of Simit P Seth (Supra). Therefore, I hereby confirm the disallowance to the extent 12.5% amounting to Rs.3,00,406/- of the so-called bogus purchases made by the Ld. AO. The appellant succeeds partially and get a relief of Rs.1,79,174/-. This ground is partly allowed."

7. On appraisal of the above said finding, we noticed that the CIT(A) has decided the matter of controversy on the basis of the decision of Hon'ble Gujarat High Court in the case of **Simit P. Sheth (2013) (356 ITR 451) (Guj)**. The facts are not distinguishable at this stage. However, the assessee did not appear before us but on appraisal of the finding of the CIT(A), we are of the view that the CIT(A) has rightly restricted the addition to the extent of 12.5% of the total bogus purchase. Accordingly, the finding of the CIT(A) is not required to be interfere with at this appellate stage, hence, we decide the issue in favour of the assessee against the revenue.

In the result, this appeal filed by the revenue is hereby dismissed.

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8. The facts of the present case are quite similar to the fact of the case as narrated above while deciding the ITA. No.4964/M/2018, therefore, there is no need to repeat the same. However, the figure is different. The matter of controversy is also the same. The finding given above while deciding the appeal of the assessee bearing ITA. No.4964/M/2018 is quite applicable to the facts of the present case as mutatis mutandis. Accordingly, the appeal of the revenue is hereby dismissed.

9. In the result, the appeals filed by the revenue are **hereby ordered to be dismissed.**

Order pronounced in the open court on 16/10/2019.

Sd/-

(SHAMIM YAHYA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 16/10/2019

Vijay Sr. P.S.

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



ITA Nos. 4964 & 4965/M/2018  
A.Ys. 2010-11 & 2011-12

**आदेश की 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,**

(Assistant Registrar)

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**