

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

ITA No. 5399/Mum/2018  
(Assessment year : 2009-10)

Income-tax Officer Ward 2(4), Mumbai	vs	Parth Traders 63, Mira Co-op Housing Society Near Asmita Super Market, Maya Nagar, Mira Road (E), Thane 401 107 PAN : AABFP4130F
<b>APPELLANT</b>		<b>RESPONDEDNT</b>

Appellant by	Shri Akhtar H Ansari Sr DR
Respondent by	None
Date of hearing	10-10-2019
Date of pronouncement	14-10-2019

### O R D E R

Per Pawan Singh, Judicial Member:

1. This appeal by revenue is directed against the order of ld. CIT(A)-2, Nasik dated 02.07.2018 for Assessment Year 2009-10. The revenue has raised the following grounds of appeal:

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 un verifiable/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 Jaw 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 at 12.5% 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?"

2. Brief facts of the case are that the assessee filed return of income for AY 2009-10 on 12-09-2009 declaring total income at Rs.4,41,9503. 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 were 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. The assessee allegedly made the purchases of Rs.40,70,920/- from such hawala dealers. 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. Notice under section 148 dated 07.05.2013 was issued and served upon the assessee. Reasons

recorded were supplied to the assessee. The Assessing Officer after serving notice under section 143(2) dated 21.07.2014 proceeded for re-assessment. During the assessment, the Assessing Officer noted that the assessee has shown purchases from the following parties, which was declared as hawala dealers by the Sale Tax Department, Government of Maharashtra.

	<b>Name of the parties</b>	<b>Bill amount (Rs.)</b>
1	M/s Adijin Enterprises	Rs.72,314
2	M/s Shah Industries	Rs.5,98,218
3	M/s Payal Enterprises	7,29,052
4.	Smartlink Tradex Pvt Ltd	26,71,336
	<b>Total</b>	<b>40,70,920</b>

3. In order to verify the transaction the assessing officer issued notice under section 133(6) to all the parties. The notices sent to the parties were returned back by the postal authorities with the remark 'left or not known'. The assessee was asked to substantiate the purchases and issued show-cause notice as to why the aforesaid transaction should not be treated as non-genuine. The assessee filed its explanation and furnished the copy of ledger account and proof of payment through cheques. The Assessing Officer not accepted the explanation furnished by assessee and noted that the assessee has not produced Lorry Receipt, Transportation details and Octroi challan etc. The Assessing Officer on the basis of the material

before him and after referring the report of the investigation of Sales Tax authorities added the entire amount of alleged bogus purchases to the total income amounting to Rs.40,70,920. On appeal, the Id. CIT(A), relying upon a plethora of judgements, restricted the addition to the extent of 12.5% of the alleged bogus purchases. Aggrieved by the order of Id. CIT(A), the revenue has filed the present appeal before us.

4. None appeared on behalf of the assessee before us despite service of notice through registered post. Therefore, we heard the Id. Departmental Representative (DR) for the revenue and perused the material available on record. We find that the Assessing Officer made the disallowance of 100% of the alleged bogus purchases as the assessee could not produce the parties for verification as also that assessee could not produce any delivery challan, transport challan, octroi challan, etc. concerning of the alleged bogus purchases. The Id. CIT(A) relying upon a various decisions of superior courts held that addition is warranted only to the extent of profit element embedded in such purchases. Therefore, he maintained addition @12.5% on the alleged bogus purchases. The assessee has not appeared before us to explain its position. From

the order of Ld.CIT(A) we find that he has relied upon the following judgements while arriving at his conclusion:-

1. CIT vs Sun Engineering Works (P) Ltd 198 ITR 197 (SC)
2. ITAT, Mumbai Bench "G" (Third Member in M/s Grindwell Norton Ltd vs DCIT (2004) 91 ITD 412 (Mum)(TM)
3. CIT vs Simit P Sheth (2013) 38 Taxmann.385 (Guj)
5. The Ld. DR before us could not show any contrary decision to come to a different conclusion than the one arrived at by the Ld.CIT(A). Therefore, we affirm the decision arrived at by the Ld.CIT(A).
6. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 14-10-2019.

Sd/-

Sd/-

(Shamim Yahya)	(Pawan Singh)
ACCOUNTANT MEMBER	JUDICIALMEMBER

Mumbai, Dt : 14<sup>th</sup> October, 2019

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Asstt. Registrar, ITAT, Mumbai