

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI  
Before Shri Shamim Yahya (AM) & Shri Pawan Singh (JM)

ITA No. 6162/Mum/2018(Assessment year : 2007-08)

Income-tax Officer Ward 2(4), Thane, Room No. 12, "B" Wing, 6 <sup>th</sup> Floor, Ashar I.T. Park, Wagle Industrial Estate Road No. 16Z, Ambika Nagar, Thane- 400604	Vs	Vinod D Vagasia Poonam Nagar, Bldg No.C-25 CHS Ltd, Flat No.102 Mira Road-401 107 PAN : ABEPV3863H
<b>APPELLANT</b>		<b>RESPONDEDNT</b>

Appellant by	Ms. Samatha Mulla mudh (DR)
Respondent by	None
Date of hearing	15-10-2019
Date of pronouncement	23-10-2019

**ORDER**

Per Pawan Singh, JM :

1. This appeal by revenue is directed against the order of Id. CIT(A)-1, Thane dated 13.08.2018 for Assessment Year 2007-08. The revenue has raised the following grounds of appeal:

"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 at 25% 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 and also decision of Hon'ble Supreme Court in case of Kanchwala Gems V/s JCIT 288 ITR 10 (SC)?”

2. Brief facts of the case are that the assessee is in the business of trading in cut and polished diamonds, filed his return of income for AY 2007-08 on 30-07-2007 declaring total income at Rs.1,20,790/-. In a search action u/s 132 carried out in the case of Rajendra Jain, Sanjay Choudhary group and Dharmichand Jain group & others by the DDIT(Inv), Mumbai on 03-10-2013 revealed that the assessee was running the business activity of trading in cut & polished diamonds from the premises of Poonam Nagar, Bldg No.CX-25, Flat No.102, Mira Road, Thane 401 107. The purchases and sale bills alongwith the documentary evidences were verified. On verification it was seen that the purchase bills supplied by M/s Sun Diam were bare bills without any goods received note (GRN), purchase order, delivery challan, entry in gate inward register, etc. The assessing officer, therefore, observed that the purchases shown were bogus purchases as the bills did not establish the delivery of materials. On the basis of

this, 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 29.03.2014 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 gross receipts from sale was at Rs.13,47,926/- on which gross profit was shown at Rs.1,14,656 which gave a gross profit rate of 8.50%. During the year under consideration total turnover was Rs.13,47,926/- out of that assessee had made purchases of Rs.5,19,550/- from Sun Diam which was the suspicious purchase which is about 40% of the total turnover of the assessee. The AR of the assessee was accordingly asked to produce the copies of purchase bills in respect of M/s Sun Diam alongwith copies of goods received note (GRN), purchase order, delivery challan, gate inward register and stock register etc for verification. Though the AR of the assessee filed copies of purchase bills, but was unable to provide details like purchase order, delivery challan, gate inward register and stock register, etc. for verification. The assessing officer, therefore, held that assessee has not purchased any material amounting to Rs.5,19,550/- including VAT of Rs.5,144/- from M/s Sun Diam and in fact obtained bogus purchase bills and

debited expenses to the P&L account. Therefore, he disallowed the amount of Rs.5,19,550/- u/s 69C of the Act and added the same to the total income.

3. On appeal, the Ld.CIT(A) reduced the addition to the extent of 25% of alleged bogus purchases or to the extent of fall in gross profit, whichever was higher and not 100% as has been disallowed by the AO. Aggrieved, the revenue filed this appeal.
4. Before us, none appeared on behalf of the assessee despite service of notice through registered post nor was any application for adjournment filed. Therefore, we heard the Ld. DR for the revenue, who supported the order of the assessing officer and submitted that the Ld. CIT(A) erred in directing the assessing officer to restrict the addition to the extent of 25% of alleged bogus purchases. The ld. DR prayed for sustaining the disallowance of 100% of the purchases.
5. We have considered the submissions of the Ld. DR and perused the material available on record. The assessing officer made the additions of 100% of the purchases shown from the bogus entry provider. Before, ld CIT(A) the assessee urged that the purchases made by the assessee are genuine and furnished the copy of the bank statement showing that the payment of the materials was made through banking channel. The ld CIT(A) himself conducted the inquiry to find out the veracity of the purchases. The ld CIT(A) asked the assessee to provide

the details of the purchases and the sale of the material on the format, which is reproduced by him in para 6.1 of his order. And after considering the information and the evidences furnished by the assessee the books of account of assessee was rejected. After rejecting the books of accounts the Id CIT(A) estimated the profit on the alleged bogus purchases and also took account of the Gross Profit declared by the assessee in earlier assessment years. The Id CIT(A) concluded that the assessee has suppressed the profit by showing the purchases from hawala dealers and mainly relying upon the decision of Ahmedabad Tribunal in the case of Vijay Proteins Ltd vs ACIT 58 ITD 428 (Ahd) which has been upheld by the Hon'ble Supreme Court, restricted the disallowance @25% out of bogus purchases as reasonable. The Ld. DR before us, could not show any material so as to arrive at a different conclusion than the one arrived at by the Ld. CIT(A). Therefore, we do not see any infirmity in the order of CIT (A). We uphold the same and dismiss the appeal filed by the revenue.

6. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 23-10-2019.

Sd/-

Sd/-

(Shamim Yahya)	(Pawan Singh)
ACCOUNTANT MEMBER	JUDICIALMEMBER

Mumbai, Dt :23 October, 2019

Pk/-

Copy to :

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

/True copy/

By order

Asstt. Registrar, ITAT, Mumbai