

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 5864/MUM/2018 (A.Y: 2009-10)

Income Tax Officer – 32(1)(5) Room No. 203, 2 nd Floor C-11, Pratyakshakar Bhavan Bandra Kurla Complex, Bandra (E) Mumbai – 400 051	v.	Smt Indu Hasmukh Panchal A/9/401, Siddharth Nagar Katau Mills Compound Highway, Borivali (E) Mumbai – 400 066 PAN: AGSPP7461Q
(Appellant)		(Respondent)

Assessee by : Ms. Nikita Sanghavi

Department by : Shri Ram Tiwari

Date of Hearing : 19.09.2019

Date of Pronouncement : 29.10.2019

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals) – 44, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 09.07.2018 for the A.Y. 2009-10 in partly sustaining the addition made towards bogus purchases.

2. Briefly stated the facts are that, the assessee is engaged in the business of "Fabrics", filed return of income on 25.09.2009 for the

A.Y.2009-10 declaring income of ₹.3,28,070/- and the return was processed u/s. 143(1) of the Act. Subsequently, Assessing Officer received information from the DGIT(Inv.), Mumbai about the accommodation entries provided by various dealers and assessee was also one of the beneficiary from those dealers. The assessment was reopened u/s. 147 of the Act based on the information received from DGIT (Inv.), Mumbai, that the assessee has availed accommodation entries from various dealers who are all providing accommodation entries without there being transportation of any goods. In the re-assessment proceedings, the assessee was required to prove the genuineness of the purchases made from various parties which were referred to in the Assessment Order. The assessee produced copies of bills, bank statements, copies of VAT challans, ledger copies and submitted that the purchases made are genuine. Not convinced with the submissions of the assessee the Assessing Officer treated the purchases of ₹.4,27,832/- as non-genuine and he was of the opinion that assessee had obtained only accommodation entries without there being any transportation of materials and the assessee might have made purchases in the gray market. It is the finding of the Assessing Officer since the purchases made by the assessee and claimed as expenses in his Profit and Loss Account are not genuine, the purchases to that extent remained unverifiable as the notices issued u/s. 133(6) of the Act were returned unserved by the Postal

Authorities. He also observed that the dealers from whom the assessee made purchases stated that they have issued only accommodation bills. Therefore, he treated the purchases of ₹.4,27,832/- as non-genuine and added to the income of the assessee. On appeal the Ld.CIT(A) considering the evidences and various submissions of the assessee restricted the disallowance to the extent 16.96% of the non-genuine purchases.

3. Ld. DR vehemently supported the order of the Assessing Officer.

4. We have heard the rival submissions, perused the orders of the authorities below. On a perusal of the order of the Ld.CIT(A), we find that the Ld.CIT(A) considered this aspect of the matter elaborately with reference to the submissions of the assessee and the averments in the Assessment Order and following the decision of the Hon'ble Gujarat High Court in the case of CIT v. Simit P. Sheth [356 ITR 451], Bholanath Polyfab Pvt. Ltd., [355 ITR 290] and various other decisions restricted the disallowance to 16.96% of the non-genuine purchases, while holding so, the Ld.CIT(A) observed as under: -

“6.1.27. In Bholanath Polyfab Pvt. Ltd. 355 ITR 290 (Guj), the facts of the case were that the assessee was engaged in the business of trading in finished fabrics. For the A.Y. 2005-06, the Assessing Officer held that the purchases worth Rs.40,69,546/- were unexplained. He, therefore, disallowed such expenditure claimed by the assessee and computed the total income of Rs.41,10,187/-. The issue was carried in appeal by the assessee before the Ld. CIT(A) who rejected the appeal, upon which the assessee went in further

appeal before the Hon'ble Tribunal. The Hon'ble Tribunal substantially allowed the assessee's appeal. In so far as the question of bogus purchase is concerned, the Hon'ble Tribunal concurred with the Revenue's views that such purchases were made from bogus parties. The Tribunal noted that the Assessing Officer had issued notice to all parties from whom such purchases were allegedly made. Such notices were returned unserved by the postal authorities with the remark that the address was incomplete. The Inspector deputed by the Income-tax Department also could not find any of the parties available at the given addresses. The assessee was unable to produce any confirmation from any of the parties. Though the assessee had claimed to have made payment by account payee cheques, upon verification it was found that the cheques were encashed by some other parties and not by the supposed sellers.

6.1.28. Having come to such a conclusion, however, the Tribunal was of the opinion that the purchases may have been made from bogus parties, nevertheless, the purchases themselves were not bogus. The Tribunal adverted to the facts and data on record and came to the conclusion that the entire quantity of opening stock, purchases and the quantity manufactured during the year under consideration were sold by the assessee. The purchases of the entire 1,02,514 meters of cloth were sold during the year under consideration. The Hon'ble Tribunal, therefore, accepted the assessee's contention that the finished goods were purchased by the assessee, may be not from the parties shown in the accounts, but from other sources. In that view of the matter, the Tribunal was of the opinion that not the entire amount, but the profit margin embedded in such amount would be subjected to tax. The Tribunal relied on its earlier decision in the case of *Sanket Steel Traders vs. ITO* [IT appeal Nos. 2801 & 2937 (Ahd) of 2008, dated 20-05-2011] and also made reference to the Tribunal's decision in the case of *Vijay Proteins Ltd. vs. Asstt. CIT* [1996] 58 ITD 428 (Ahd). On appeal by the Department, the Hon'ble Gujarat High Court held as follows :

"We are of the opinion that the Tribunal committed no error. Whether the purchases themselves were bogus or whether the parties from whom such purchases were allegedly made were bogus is essentially a question of fact. The Tribunal having examined the evidence on record came to the conclusion that the assessee did purchase the cloth and sell the finished goods. In that view of the matter, as natural corollary, not the entire amount covered under such purchase, but the profit element embedded therein would be subject to tax. This was the view of this Court in the case of *San jay Oilcake Industries Vs. CIT* (2009) 316 ITR 274 (Guj). Such decision is also followed by this Court in a judgment dated

August 16, 2011, in Tax Appeal No. 679 of 2010 in the case of CIT vs. Kishor Amrutlal Patel In the result, tax appeal is dismissed".

6.1.29. The facts in the present case are similar to the facts in the above mentioned case. In the present case, the Ld. AO has shown that the party in question was nonexistent. The appellant has not been able to disprove the findings of the Ld. AO regarding the non-existence of the party. However, Ld. AO after examining the evidences did not give any adverse finding that the appellant had not shown consumption/sales of the goods and that it had not offered the income on such sale of goods. In this case, Ld. A.O. not having doubted the genuineness of sales could not have gone ahead and made addition in respect of the entire purchases as it would lead to absurd profits. Thus, the issue would boil down to finding out the element of suppressed profit embedded in purchases which the appellant would have made from some unknown or bogus entities. Hence, following the decision of the Hon'ble Gujarat High Court in Bholanath Polyfab Pvt. Ltd. (supra), the estimated suppressed profit margin embedded in such amounts of purchases could only be disallowed and subjected to tax.

6.1.30 Similarly, in yet another decision of Hon'ble Gujarat High Court in the case of CIT vs. Simit Sheth (2013) 38 Taxmann.com 385 (Guj), Hon'ble Court was seized with a similar issue where the A.O. had found that some of the alleged suppliers of steel to the assessee had not supplied any goods but had only provided sale bills and hence, purchases from the said parties were held to be bogus. The A.O. in that case added the entire amount of purchases to gross profit of the assessee. Ld. CIT(A) having found that the assessee had indeed purchased though not from named parties but other parties from grey market, partially sustained the addition as probable profit of the assessee. The Tribunal however, partly sustained the addition. Taking into account the above facts, the Hon'ble Gujarat High Court held that since the purchases were not bogus, but were made from parties other than those mentioned in books of accounts, only the profit element embedded in such purchases could be added to the assessee's income and as such no question of law arose in such estimation. While arriving at the above conclusion, the Hon'ble Court also relied on the decision in the case of Vijay M. Mistry Construction Ltd. 355 ITR 498 (Guj.) and further approved the decision of Ahmedabad Bench, IT AT in the case of Vijay Proteins 58 ITD 428.

6.1.31 In the case of Vijay Proteins (supra), the Hon'ble IT AT was seized with a case of us suppliers of oil cakes where 33 parties were found to be bogus by the departmental authorities even though payments were made to the said parties by cross cheques and in fact the A.O. in that case had brought adequate material on record

to prove that the cross cheques had not been given to parties from whom supplies were allegedly procured but these were encashed from a bank account in the name of another entity, possibly hawala dealer. Subsequently, the money deposited in that account was withdrawn in cash almost on the same day. The Tribunal however, held that if the purchases were made from the open market without insisting for genuine bills, the suppliers maybe willing to sell the product at a much less rate as compared to a rate which they may charge in which the dealer has to give genuine sale invoice in respect of that sale. Keeping all such factors in mind, the Therefore estimated an element of profit percentage of the overall purchase price accounted for in the books of accounts through fictitious invoices.

6.1.32. As narrated earlier, the A.O. in this case has held that the parties from which the purchases were made by the appellant were found to be bogus and that is the reason for which it was not produced during the assessment proceedings. Not having doubted the consumption/ sales, the motive behind obtaining bogus bills thus, appears to be inflation of purchase price so as to suppress true profits. Considering the facts of the case as well as the various case laws cited (supra), I estimate the suppressed profit to the extent of 16.96% of the purchases made from the bogus entities, as the suppressed profit element embedded in such purchases. This estimation is in addition to the GP shown by the appellant. Thus, addition of Rs.72,560/- (being 16.96% of Rs.4,27,832/-) is confirmed and the balance is deleted. Accordingly, grounds of appeal raised by the appellant are partly allowed.”

5. On a careful perusal of the order of the Ld.CIT(A) and the reasons given therein, we do not find any infirmity in the order passed by the Ld.CIT(A). None of the findings and observations of the Ld.CIT(A) have been rebutted with evidences by the Revenue and thus we do not see any infirmity in the order passed by the Ld.CIT(A) in sustaining the addition/disallowance to the extent of 16.96% of the purchases. We

sustain the order of the Ld.CIT(A) and reject the grounds raised by the Revenue.

6. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on the 29th October, 2019

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER
Mumbai / Dated 29/10/2019
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file. //True Copy//

BY ORDER
(Asstt. Registrar)
ITAT, Mum