

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH MUMBAI  
BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER  
&  
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

**ITA No.5729/Mum/2018  
(Assessment Year :2009-10)**

ITO-27(1)(1) Tower No.6, 4 <sup>th</sup> Floor, RoomNO.406 Vashi Railway Station Complex Vashi, Navi Mumbai	Vs.	Amit Chandulal Mehta A-4/43A, Shantiniketan CHS, LBS Marg Ghatkopar(W), Mumbai-400 086
		<b>PAN/GIR No.AADPM2264K</b>
<b>Appellant)</b>	..	<b>Respondent)</b>

&

**C.O. No. 217/Mum/2019  
(Arising out of ITA No.5729/Mum/2018)  
(Assessment Year: 2009-10)**

Amit Chandulal Mehta A-4/43A, Shantiniketan CHS, LBS Marg Ghatkopar(W), Mumbai-400 086	Vs.	ITO-27(1)(1) Tower No.6, 4 <sup>th</sup> Floor, RoomNO.406 Vashi Railway Station Complex Vashi, Navi Mumbai
<b>PAN/GIR No. AADPM2264K</b>		
<b>(Appellant)</b>	..	<b>Respondent)</b>

Revenue by	R. Boopathi
Assessee by	Neelkanth Khandelwal
<b>Date of Hearing</b>	<b>01/10/2019</b>
<b>Date of Pronouncement</b>	<b>01 /10/2019</b>

**आदेश / O R D E R**

**PER G.MANJUNATHA (A.M):**

This appeal filed by the revenue and cross objection filed by the assessee are directed against the order of the Commissioner of Income Tax (Appeals)-24, Mumbai dated 22/06/2018 and they

pertains to the Assessment Year 2009-10. Since, the facts are identical and issues are common. For the sake of convenience, the appeal filed by the revenue and cross objection filed by assessee is disposed-off by this consolidated order.

**ITA.No.5729/Mum/2018:-**

2. The revenue has raised the following grounds of appeal:-

*1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 15,27,036 /-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 purchase and not on profit element embedded in such purchases.*

*2. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in estimating the profit from Hawala purchases by disallowing only Rs.2,24,606 /- being 12.5% of total 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.*

3. The brief facts of the case are that the assessee is engaged in the business of trading in Iron & Steel, filed his return of income for AY 2009-10 on 27/09/2009, declaring total income of Rs. 2,96,770/-. Thereafter, the case has been reopened u/s 147, on the basis of information received from DGIT, investigation, Mumbai, as per which, Sales Tax Authorities of Government of Maharashtra had taken actions against number of Hawala dealers, who had issued

bogus purchase bills to various parties in Mumbai to reduce or suppress profits. As per list of beneficiaries, the assessee is one of the beneficiary, who had taken accommodation bills of bogus purchases from various parties as listed by the AO in his assessment order amounting to Rs. 17,96,851/-. The case was selected for scrutiny and the assessment has been completed u/s. 143(3).r.w.s. 147 of the I.T.Act, 1961 on 27/11/2014 and determined total income of Rs. 20,68,560/-, after making 100% additions towards alleged bogus purchase from those parties and made additions of Rs. 17,51,642/-.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A), before the Ld.CIT(A), the assessee has reiterated his submissions made before the AO. The sum and substance of the arguments of the assessee before the Ld.CIT(A) are that purchase from the above parties is genuine, which is supported by necessary evidences. Therefore, no additions could be made on the basis of information received from third party. The Ld.CIT(A), after considering relevant submission of the assessee and also, on analysis of information collected during the course of search in case of hawala dealers and also by following the decision of Hon'ble Gujarat High Court, in the case of CIT vs. Simith P. Sheth (356 ITR 451) scaled down additions towards alleged bogus purchases to 12.50% profit. The relevant findings of the Ld.CIT(A) are as under:-

2.4 I have given my careful consideration to the rival submissions, perused the material on record and duly considered the factual matrix of the case as also the applicable legal position.

2.4. 1 The only effective ground is in respect of the action of the Ld. AO in not accepting the purchases of Rs 17,96,851/- 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 to have given bogus bill to certain assessee including the appellant company. The bogus bill was in respect of 11 parties. The appellant company was asked to submit the detail of purported purchases made and to show cause why the same should not be disallowed as bogus purchases. The appellant filed their reply stating that purchases were made from regular parties supported by 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 observed that these hawala operators were providing only accommodation entries and the appellant was also on the list of beneficiaries. Accordingly, the peak of purchases has been worked out after amalgamating the purchases made from the respective parties and the peak of purchases works out to Rs.17,51,642/- 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 me ITAT 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 2006-7 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 o/ 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- hold, yes [Paras 6,7 &9 ] [ in favour of assesses/" [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 ht purchase transactions The assessee instead submitted the ledger accounts of The above parties and bank statements extracts evidencing the payments through bank cheque In this case, the onus lies on the assessee to prove the genuineness of the purchases and the assessee had to prove that the suppliers were genuinely 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) slating 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 @ 100% 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 came 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 fink of involvement of appellant company getting bogus bills is established Even though there are catena of cases decided by The jurisdictional ITAT whish have decided the issue in favour of the assessee, they are not uniform in all the cases 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 m the case of Simit P Seth (Supra) Therefore, I hereby confirm the disallowance to the extent 12.5% amounting to Rs2,24,606/- of the so-called bogus purchases made by the Ld AO This ground is partly allowed.

5. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. We find that the Ld. AO has made 100% additions towards alleged bogus purchases, on the ground that the assessee is one of the beneficiary of accommodation entries of bogus purchase bills issued by Hawala dealers. According to the Ld. AO, although assessee has filed certain basic evidences, but failed to file further evidence in the backdrop of clear finding by the Sales Tax Department, Maharashtra that those parties are involved in providing accommodation entries without actual delivery of goods. The Ld. AO had also taken support from investigation conducted during the course of assessment proceedings, as per which notice issued u/s 133(6) to the parties were returned un-served by the postal authorities. Therefore, he came to the conclusion that purchase from the said parties is bogus in nature. It is the contentions of the assessee before the lower authorities that purchases from the above party are supported by necessary evidences. It has furnished all possible evidences, including books of accounts, stock details and bank statement to prove that payment against said purchases have been made through proper banking channels.

6 Having considered arguments of both sides and also, material available on record, we find that both the sides failed to prove the case in their favour with necessary evidences. Although, assessee has filed certain basic evidences, but failed to file further evidences to conclusively prove purchases to the satisfactions of the Ld.AO. At the same time, the Ld. AO had also failed to take the investigation to a logical conclusion by carrying out necessary enquires, but he

solely relied upon information received from investigation wing, which was further supported by information received from Maharashtra Sales Tax Department. Under these circumstances, it is difficult to accept arguments of both the sides. Further, various High Courts and Tribunals had considered an identical issue in light of investigation carried out by the Sales Tax Department and held that in case purchases claims to have been made from alleged hawala dealers, only profit element embedded in those purchases needs to be taxed, but not total purchase from those parties. The Hon'ble Gujarat High Court, in the case of CIT vs Simith P.Sheth 356 ITR 451 had considered a similar issue and held that at the time of estimation of profit from alleged bogus purchases no uniform yardsticks could be adopted, but it depends upon facts of each case. The ITAT, Mumbai, in number of cases had considered an identical issue and depending upon facts of each case, directed the Ld.AO to estimate profit of 10 to 15% on total alleged bogus purchases. In this case, considering the nature of business of the assessee the Ld. AO has made 100% addition, whereas the Ld.CIT(A) has scaled down addition to 12.50% profit on total alleged bogus purchase. Although, both authorities have taken different view for estimation of income from alleged bogus purchase, but no one could support said method with necessary evidences or any comparable cases. Therefore, considering facts and circumstances of this case and also consistent with view taken by the Co-ordinate Bench in number of cases, we are of the considered opinion that the Id. CIT(A) has taken one of the possible method to settle dispute between the parties and accordingly estimated 12.50% profit on alleged bogus purchase. Neither the assessee nor the reveune contrverted findings of facts

recorded by the Id. CIT(A) and hence, we are inclined to uphold order of the Id. CIT(A) and dismissed appeal filed by the Revenue..

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

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8. The assessee has filed cross objection against order of the Ld.CIT(A) and challenged 12.5% profit estimated on alleged bogus purchases, on the ground that the assessee had already included gross profit of 4.09% on alleged bogus purchases. Therefore, further addition of 12.5% on said bogus purchases is excessive and unreasonable. We find that the Tribunal has upheld findings of the Id. CIT(A) in estimate gross profit of 12.50% on alleged bogus purchases in appeal filed by the revenue. Therefore, we are of the considered view that there is no merit in cross objection filed by the assessee and hence, cross objection filed by the assessee is also dismissed.

9. As a result, appeal filed by the revenue is dismissed and cross objection filed by the assessee is also dismissed.

Order pronounced in the open court on this 01 /10/2019

**Sd/-**

**(RAM LAL NEGI)**  
JUDICIAL MEMBER

**Sd/-**

**(G. MANJUNATHA)**  
ACCOUNTANT MEMBER

Mumbai; Dated 01/10/2019  
Thirumalesh Sr.PS

**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.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai