

**IN THE INCOME TAX APPELLATE TRIBUNAL "E", BENCH MUMBAI
BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER
&
SHRI RAVISH SOOD, JUDICIAL MEMBER**

**ITA No.4911/Mum/2017
(Assessment Year: 2010-11)**

ACIT-15(3)(1) 4th Floor, Room No.451 Aaykar Bhavan, M K Road Mumbai-400020	Vs.	Ten Constructions (India) Private Limited, 3 rd Floor, Shop No. J-219, Tower No. 5, Vashi Railway Station, Navi Mumbai-400705
		PAN:AABCE1303J
Appellant)	..	Respondent)

Revenue by	Shri. Arun Pratap Singh-DR
Assessee by	None
Date of Hearing	10/10/2019
Date of Pronouncement	10/10/2019

आदेश / ORDER

PER G.MANJUNATHA (A.M):

This appeal filed by the revenue is directed against, order of the Commissioner of Income Tax (Appeals)-24, Mumbai, dated 28/04/2017 and it pertains to Assessment Year 2010-11.

2. The brief facts of the case are that the assessee is engaged in the business of construction activities, filed its return of income for AY 2010-11 on 26/09/2010, declaring total income of Rs. 81,06,573/- 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. As per list of beneficiaries, the assessee is one of the beneficiary, who had taken accommodation bills of bogus purchases from 14 parties as listed by the AO in para 2 of assessment order amounting to Rs. 1,40,64,522/-. 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 30/03/2016 and determined total income of Rs. 2,21,71,095/, after making 100% additions towards alleged bogus purchases from those parties and made additions of Rs. 1,40,64,522/-.

3. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has filed elaborate written submissions, on the issue, which has been reproduced at Para 2.3.1 on pages 5 to 15 of Ld.CIT(A) order. The sum and substance of arguments of the assessee before the Ld.CIT(A) are that purchase from the above parties are genuine, which are 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 by following certain judicial pronouncements including the decision of ITAT, Mumbai in case of Vinod.S Deora vs. DCIT in ITA No. 7723/Mum/2014 deleted addition made by the AO towards alleged bogus purchases.

4. None appeared for the assessee. We have heard the Ld. DR, perused the material available on record and gone through orders of the authorities below. We find that the Ld. AO has made additions towards alleged bogus purchases @ 100% of such 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, Govt. of Maharashtra that those parties are involved in providing accommodation entries without actual delivery of goods. The Ld. AO had also taken support from the investigation conducted during the course of assessment proceedings to come 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 parties 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.

5 Having considered arguments of the Ld. DR and also, material available on record, we find that both the sides has 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 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 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 10 to 15% profit on total alleged bogus purchases. In this case, considering the nature of business of the assessee, the Ld. AO has estimated 100% profit, whereas the Ld.CIT(A) has completely deleted addition made towards alleged bogus purchases. Although, Id. CIT(A) completely deleted addition made towards alleged bogus purchases, but failed to give reasons for arriving at such conclusion. We, further, noted that the Id. CIT(A) had also failed to give his findings as to how the assessee has explained purchases from those parties, more particularly in the backdrop of findings of sales tax department. Accordingly, we are not inclined to concur with findings of the Id. CIT (A). Under these circumstances, the only option left with us is to estimate profit on alleged bogus purchases which is supported by the decision of Hon'ble Gujarat High Court, in the case of CIT vs Simith P.Sheth 356 ITR 451.

6. Therefore, considering facts and circumstances of this case and also consistent with view taken by the Co-ordinate Bench in number of cases, we direct the AO to reduce addition made towards alleged bogus purchase to 12.50% profit such purchases.

7. In the result, appeal filed by the revenue is partly allowed.

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

Sd/-

(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-

(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated 10 /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