

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

BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER  
&  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA No.5488 & 5489/Mum/2018  
(Assessment Years :2010-11 & 2011-12)

ITO-24(3)(5) 5 <sup>th</sup> Floor, Piramal Chambers Lalbaug, Mumbai-400 012	Vs.	Rajnish Madan Mehra Prop. Capricom Securities Solutions, C-312, 3 <sup>rd</sup> Floor Twin Arcade, Military Road Marol Andheri(E) Mumbai-400 059
		<b>PAN/GIR No.AFRPM7812G</b>
<b>Appellant)</b>	..	<b>Respondent)</b>

Assessee by	Ketki Rajesh irke
Revenue by	Akhtar H.Ansari
<b>Date of Hearing</b>	<b>16/10/2019</b>
<b>Date of Pronouncement</b>	<b>16/10/2019</b>

**आदेश / O R D E R**

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

These two appeals filed by the revenue are directed against common order passed by the Ld. Commissioner of Income Tax (Appeals) -36, Mumbai, dated 23/05/2018 for the Assessment Years (AY) 2010-11 & 2011-12. Since, the facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are disposed-off by this consolidated order.

2. The revenue has, more or less filed common grounds of appeal for both Assessment Year's. Therefore, for the sake of

brevity, grounds of appeal filed for AY 2010-11 are reproduced as under:-

- 1.) *“Whether on facts and circumstances of the case and in law, the Ld.CIT(A) was justified in restricting the disallowance made by the AO to only 12.5% of the total bogus purchases of Rs. 472304 notwithstanding that the assessee failed to establish the genuineness of the purchases, and could not produce/furnish the supplier parties/quantity wise description of goods purchased and also the evidence of transportation of goods to its premises.”*
- 2.) *“The appellant prays that the order of the CIT(Appeals) on the above ground be set-aside and that of the AO be restored.*
- 3.) *The appellant craves leave to amend or alter any ground or to submit additional new ground which may be necessary.*

**ITA.No.5488/Mum/2018:-**

3. The brief facts of the case are that, the assessee is engaged in the business of dealer in CCTV and Surveillance systems, filed its return of income on 28/09/2010 for AY 2010-11, declaring total income of Rs.825420/-. 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. 4,72,304/-. 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 12/02/2016 and determined total income of Rs. 9,83,360/-, after making additions towards alleged bogus purchase @ 33.34% of total purchases from those parties and made additions of Rs. 1,57,938/-.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has filed elaborated written submissions, on the issue, which has been reproduced at Para 3 on pages 3 to 5 of Ld.CIT(A) order. The sum and substance of the arguments of the assessee before the Ld.CIT(A) are that purchase from the above party 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 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 addition to 12.50% profit on alleged bogus purchases. The relevant findings of the Ld.CIT(A) are as under:-

*4.2.6 Thus, a study of different cases, wherein addition on account of bogus purchases has been dealt with by various Courts and Tribunals shows that such additions have been upheld in their entirety only in a few cases including decisions rendered in the cases of La Medica, Sri Ganesh Rice Mills, Vicky Foods (P.) Ltd. etc. where apart from various other factors there was lack of reliable record with reference to quantitative details etc, and where evidence produced for payment was found lacking. In other cases, where the full quantitative details are not available or details produced were not fully reliable inasmuch as consumption of material was shown but yield was too low and payments were also doubtful (including the cases of Vijay Proteins Ltd., Bholnath Poly Fab Pvt. Ltd., Simit P. Sheth, Sanket Steel Traders, Sathyanarayana P. Rathitec.) addition was upheld in the range of 25% (as in Vijay Proteins depending on the facts of the case. However, perusal of decisions of Tribunals and High courts on this issue shows that all such cases are decided on the basis of facts and involve no uniform question of law. From the above decisions, the ground-rule that emerges is that where suppliers are not available, the presence of reasonable quantitative details and payments by account payee cheques are primary tests on when the genuineness of purchases is required to be tested. In addition, from cases like NikunjEximp Enterprises (P.) Ltd (High Court as well as ITAT), M. K, Brothers, Nangalia Fabrics Pvt.. Ltd, Rajiv G. Kalathil, Permanand, Sagar Boss, Diagnostics etc., it emerges that other*

*aspects such as statements of hawala providers recorded by Sales Tax Authorities; affidavits filed by such suppliers before Sales Tax Authorities; absence of evidence in support of transportation/delivery of material etc., have been held less relevant as mere indicators and not decisive factors, to draw a conclusion regarding genuineness of purchases. Thus, in essence, the benefit derived by the assessee by showing purchases: from such bogus parties is the lowering of GP that would have been earned by the assessee had such purchases and corresponding rates been removed from the accounts. In other words, the effective lowering of the GP is the real additional income of the assessee by showing such purchases and only such component would therefore be taxable.*

*4.2.7. Keeping in mind the totality of the facts and circumstances and the guidelines laid down in judicial decisions discussed above, it would be adequate to meet the ends of justice, if the disallowance is to be restricted to 12.5 percent of the bogus purchases of Rs. 4,72,304/- which amounts to Rs. 59,038/-. The AO is, therefore, directed to restrict the disallowance as above. AO is directed to give appeal effect keeping in mind appellant's objection-after examination of record end law. The grounds of appeal are treated as disposed.*

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 additions towards alleged bogus purchases @ 33.34% of such purchases, on the ground that the assessee 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 the investigation conducted during the course of assessment proceedings, as per which notice issued u/s 133(6) to the party were returned un-served by the postal authorities. Therefore, he came to the conclusion that purchase from the said party is bogus in nature. It is the contentions of the assessee before the lower authorities that a purchase from the above party is 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 the Ld. DR 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 satisfactions of the Ld.AO. At the same time, the Ld. AO had also failed to take the investigation to a logical conclusion by carry 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 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 estimated 33.34% profit, whereas the Ld.CIT(A) has scaled down estimation of

profit to 12.50% on total alleged bogus purchase. Although, both authorities have taken different rate of profit for estimation of income from alleged bogus purchase, but no one could support said rate of gross profit with necessary evidences or any comparable cases. Therefore, considering facts and circumstances of this case and 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 for estimation of profit to settle dispute between the parties and hence, we are inclined to uphold order of the Id. CIT(A) and dismiss appeal filed by the Revenue

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

**ITA.No.5489/Mum/2018:-**

8. The facts and issues involved in this appeal are identical to facts and issues, which we have already considered in ITA.No.5488/Mum/2018. The reasons given by us in preceding paragraph in ITA No. 5488/Mum/2018 shall mutatis mutandis apply to this appeal also. Therefore, for similar reasons, we dismiss appeal filed by the revenue.

9. As a result, both appeals filed by the revenue for AY's 2010-11 & 2011-12 are dismissed.

Order pronounced in the open court on this 16 /10/2019

**Sd/-**  
**(MAHAVIR SINGH)**  
JUDICIAL MEMBER

**Sd/-**  
**(G. MANJUNATHA)**  
ACCOUNTANT MEMBER

Mumbai; Dated 16/10/2019  
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

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