

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH MUMBAI**  
**BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER**  
**&**  
**SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**  
**ITA No.5470/Mum/2018**  
**(Assessment Year :2009-10)**

ITO, Ward-24(2)(3) Room No.609, 6 <sup>th</sup> Floor Piramal Chambers, Parel Mumbai-400 012	Vs.	Kailash S Makhija 405, Basera Lokhandwala Complex Andheri(West) Mumbai-400 053
		<b>PAN/GIR No.AACPM4315L</b>
<b>Appellant)</b>	<b>..</b>	<b>Respondent)</b>

Revenue by	Akhtar H. Ansari
Assessee by	M.K.Patel
<b>Date of Hearing</b>	<b>15/10/2019</b>
<b>Date of Pronouncement</b>	<b>15/10/2019</b>

**आदेश / ORDER**

**PER BENCH:**

This appeal filed by the revenue is directed against, the order of the Commissioner of Income Tax (Appeals)-36, Mumbai, dated 31/05/2018 and it pertains to Assessment Year 2009-10.

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

1. "Whether on the facts and in the circumstances of the case and in law, the Ld, CIT (A) was justified in restricting the addition to 8% as against 12.5% made by the AO, notwithstanding that the assessee's name was listed by the Sales Tax Department as a "beneficiary" of accommodation entries provided by bogus dealers/sellers and that, during the course of assessment proceedings, the assessee was unable produce the impugned parties or to furnish substantiating evidence in the form of lorry receipts, Stock register, etc to prove the genuineness of the purchases."

3. The brief facts of the case are that the assessee is engaged in the business of manufacturing and trading of all types of Leather goods, like ladies/Gents Purses, Bags, Belt etc, filed its return of income for AY 2009-10 on 29/09/2009, declaring total income of Rs. 6,29,090/-. 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. 17,52,504/-. 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 10/10/2016 and determined total income of Rs. 8,48,150/-, after making additions towards alleged bogus purchase @ 12.50% of total purchases from those parties and made additions of Rs. 2,19,063/-.

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 8% 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 LaMadica, Sri Ganesh Rice Mills, Vicky Poods (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., Bholtatath Poly Fab Pvt. Lid., Simit P. Sheth, Sanker Steel Traders. Satyanarayan P. Rathietc.) addition was upheld in the range of 25%(as in Vijay Proteins case) to 12.5% to augment the possible suppression in GP applying real income theory 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 Nikunj Eximp Enterprises (P.) Lid (High Court as well as 1TAT), M. K Brothers, Nangala Fabrics Pvt. Ltd., Rajiv G. Kalathii, Permanand, Sagar Bose, 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., 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 sales 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 the restricted to 8 percent of the bogus purchases of Rs. 1752,504/- which*

*amounts to Rs.140200/-. 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 and 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 @ 12.50% 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 12.50% profit, whereas the Ld.CIT(A) has scaled down estimation of profit to 8% 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 Reveune..

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

Order pronounced in the open court on this 15 /10/2019

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

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

Mumbai; Dated 15/10/2019  
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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