

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“H” Bench, Mumbai**

**Before Shri Ravish Sood, Judicial Member  
and Shri N.K. Pradhan, Accountant Member**

**ITA No.6414/Mum/2018  
(Assessment Year: 2009-10)**

Kirtikumar Shantilal Chandan,  
59, Nanubhai Desai Road,  
Shop No. 57C, Opp. Islampura Street,  
Mumbai – 400004

ITO-19(2)(2)  
214, Matru Mandir,  
Vs. Mumbai - 400007

PAN – AAAPC9778R

**(Appellant)**

**(Respondent)**

Appellant by: Shri Nimesh K. Chothani &  
Shri Lajari Oswal, A.Rs

Respondent by: Shri K. Bhoopati, D.R

Date of Hearing: 14.11.2019

Date of Pronouncement: 15.11.2019

**ORDER**

**PER RAVISH SOOD, JM**

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-29, Mumbai, dated 06.05.2015, which in turn arises from the order passed by the A.O under Sec.143(3) r.w.s. 147 of the Income Tax Act, 1961 (for short 'Act'), dated 26.03.2015. The assessee has assailed the impugned order on the following grounds of appeal before us:

- “1. On the facts and circumstances of the case and in law, the Ld.CIT(A)-29, Mumbai erred in not treating the reassessment proceedings as invalid and bad in law.
2. On the facts and circumstances of the case and in law, the Ld. CIT(A)- 29, Mumbai erred in confirming the additions made by the Ld. AO at Rs.1,10,695/- being 12.5% of total alleged non-genuine purchases of Rs.8,85,560/- in spite of the fact that the appellant has established that the total purchases made of Rs. 8,85,560/- were genuine purchases.”

2. Briefly stated, the assessee had e-filed his return of income for A.Y. 2009-10 on 17.09.2009, declaring his total income at Rs.9,39,710/-. Return of income filed by the assessee

was processed as such under Sec.143(1) of the Act. Subsequently, on the basis of information received from the DGIT (Inv.), Mumbai, that the assessee as a beneficiary had obtained accommodation purchase bills amounting to Rs. 8,85,560/- from a hawala party viz. M/s Shree Sundha Steels Pvt. Ltd., his case was reopened under Sec.147 of the Act.

3. During the course of the assessment proceedings the A.O called upon the assessee to substantiate the authenticity of the purchases which were claimed to have been made from the aforementioned party i.e M/ Shree Sundha Steels Pvt. Ltd. In reply, the assessee placed on record certain documentary evidence in order to support the genuineness of the purchase transactions under consideration viz. (i) copies of the purchase invoices; (ii) copies of the bank statements evidencing payments made to the aforementioned party by account payee cheques; (iii) chart showing the details of purchases made from the aforesaid party; and (iv) quantitative tally in respect of purchases claimed to have been made from the aforementioned party along with the details as regards the corresponding sales. However, the A.O was not persuaded to accept the claim of the assessee that he had made genuine purchases from the aforementioned party. It was observed by the A.O that the notice issued under Sec.133(6) to the said party was returned by the postal authorities with the remarks "not found". Also, it was observed by the A.O, that the assessee despite having been specifically directed to produce the aforementioned party for examination, had failed to do so. On the basis of the aforesaid facts, the A.O was of the view that the assessee with an intent to suppress his true profits had booked bogus purchases. Apart therefrom, it was observed by the A.O that the assessee could not place on record any documentary evidence which could have irrefutably substantiated the authenticity of the purchase transactions under consideration viz. (i) delivery challans; (ii) transport receipts; (iii) octroi receipts (iv) receipt of weighbridge for weighing of goods; (v) gate pass; (vi) goods inward register maintained at godown/warehouse etc. Also, it was observed by the A.O, that the fact the payments made to the aforesaid party was through cheques could not be held as sacrosanct for evidencing the genuineness of the impugned purchases transactions. Accordingly, after characterising the aforesaid purchases claimed by the assessee to have been made from the aforementioned party as bogus, the A.O disallowed 12.5% of the aggregate value of such purchases aggregating to Rs.8,85,560/- and made a consequential addition of Rs.1,10,695/- in the hands of the assessee.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). However, the CIT(A) not being persuaded to subscribe to the contentions raised by the assessee dismissed the appeal.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. It was submitted by the Id. Authorised Representative (for short 'A.R') for the assessee, that as the assessee had substantiated the authenticity of the purchase transactions under consideration on the basis of sufficient documentary evidence, therefore, the lower authorities were not justified in stamping the purchases made by the assessee from the aforementioned party as bogus. The Id. A.R in his attempt to fortify his claim that no addition/disallowance in context of the purchase transactions under consideration was called for in the hands of the assessee, therein relied on the judgment of the Hon'ble Supreme Court in the case of CIT-7, New Delhi Vs. M/s Odeon Builders Pvt. Ltd. [Review petition (C)(diary No. 22394 of 2019)] in (Civil Appeal Nos. 9604 – 9605 of 2018). Alternatively, it was submitted by the Id. A.R, that the addition/disallowance to the extent of 12.5% of the aggregate value of the purchases made by the assessee from the aforementioned party was exorbitant. It was averred by the Id. A.R, that the addition in the hands of the assessee was liable to be restricted to the extent of bringing the G.P rate of such purchases at the same rate as that of other genuine purchases. In support of his aforesaid contention the Id. A.R had relied on the judgment of the Hon'ble High Court of Bombay in the case of Pr. Commissioner of Income Tax-17 Vs. M/s Mohommad Haji Adam & Company (ITA No.1004 of 2016, dated 11.02.2019).

6. Per contra, the Id. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities. It was submitted by the Id. D.R, that both the lower authorities had in all fairness already restricted the addition only to the extent of 12.5% of the aggregate value of the amount of unsubstantiated purchases under consideration. It was submitted by the Id. D.R, that as the lower authorities had already taken a liberal view, therefore, the appeal filed by the assessee being devoid and bereft of any merit was liable to be dismissed. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record. As is discernible from the orders of the lower authorities, we find, that the assessee had failed to substantiate the authenticity of the impugned purchases on the basis of irrefutable documentary evidence. As a matter of fact, even in the course of the

hearing of the appeal before us, the assessee despite specific direction could not adduce any documentary evidence as regards the mode of transport, lorry receipts etc. which would substantiate the fact that goods were actually received from the aforesaid party. In the backdrop of the aforesaid facts, we are in agreement with the view taken by the lower authorities that the assessee had not made any genuine purchases from the aforementioned party.

7. Insofar the reliance placed by the Id. A.R on the judgement of the Hon'ble Supreme Court in the case of M/s Odeon Builders Pvt. Ltd. (Supra) is concerned, we find that the same being distinguishable on facts would not assist the case of the assessee before us. As can be gathered from the aforesaid order of the Hon'ble Apex Court, the assessee in the said case had furnished sufficient documentary evidence before the lower authorities in order to substantiate the authenticity of the impugned purchases under consideration. It was thus after considering the aforesaid factual position, that the Hon'ble Apex Court had concluded that no disallowance of the purchases was called for in the hands of the assessee. Insofar the case before us is concerned, we find, that the assessee had failed to substantiate the authenticity of its claim of having made purchases from the aforesaid supplier party. Accordingly, we are of the considered view, that it can safely be concluded that the assessee had not purchased the goods from the aforesaid hawala party, but had in fact procured the same at a discounted value from undisclosed parties operating in open/grey market. Insofar the quantification of the profit element involved in making of such purchases from open/grey market is concerned, we find, that the **Hon'ble High Court of Bombay** in its recent judgement in the case of **Pr. Commissioner of Income Tax-17 Vs. M/s Mohhomad Haji Adam & Company (ITA No. 1004 of 2016, dated 11.02.2019)**, while upholding the order of the Tribunal, had observed, that the addition in the hands of the assessee as regards the bogus/unproved purchases was to be made to the extent of bringing the G.P rate of such purchases at the same rate as that of other genuine purchases. The Hon'ble High Court while concluding as hereinabove, had observed as under:

"8. In the present case, as noted above, the assessee was a trader of fabrics. The AO found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct

in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sale declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trade. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases. The decision of the Gujarat High Court in the case of N.K. Industries Ltd. (supra) cannot be applied without reference to the facts. In fact in paragraph 8 of the same Judgment the Court held and observed as under-

“So far as the question regarding addition of Rs.3,70,78,125/- as gross profit on sales of Rs.37.08 Crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular books during Financial Year 1997-98 is concerned, we are of the view that the assessee cannot be punished since sale price is accepted by the revenue. Therefore, even if 6 % gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as a result of which profit comes to 5.66% Therefore, considering 5.66 % of Rs.3,70,78,125/- which comes to Rs.20,98,62 1.88 we think it fit to direct the revenue to add Rs.20,98,621.88 as gross profit and make necessary deductions accordingly. Accordingly, the said question is answered partially in favour of the assessee and partially in favour of the revenue.”

9. In these circumstances, no question of law, therefore, arises. All Income Tax Appeals are dismissed, accordingly. No order at costs.”

As such, the Hon'ble jurisdictional High Court had observed that the addition in respect of purchases which were found to be bogus in the case of the assessee before them, who was a trader, was to be worked out by bringing the G.P. rate of such bogus purchases at the same rate as that of other genuine purchases. We thus respectfully following the aforesaid judgment of the Hon'ble High Court, therein direct the A.O to restrict the addition insofar the bogus/unproved purchases aggregating to Rs.8,85,560/- in the case before us are concerned, by bringing the G.P. rate on the amount of such bogus purchases at the same rate as that of other genuine purchases of the assessee. Needless to say, the assessee in the course of the 'set aside' proceedings shall furnish the requisite details before the A.O, who shall after making necessary verifications restrict the additions in terms of our aforesaid observations. Accordingly, the order passed by the CIT(A) is 'set aside' and the matter is restored to the file of the A.O to give effect to our aforesaid directions.

8. The appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 15.11.2019.

Sd/-  
(N.K. Pradhan)  
ACCOUNTANT MEMBER

Sd/-  
(Ravish Sood)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 15.11.2019  
PS. Rohit

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,  
Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai