

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

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

**ITA No.6413/Mum/2018
(Assessment Year: 2009-10)**

Income Tax Officer-32(1)(5)
Room No.203, 2nd Floor, C-11,
Pratyakshakar Bhavan,
Bandra Kurla Complex,
Bandra (East),
Mumbai – 400 051

Vs.

Shri Haribansh B. Gupta
B/11, Ramdeo Park IIID,
Chandavarkar Lane,
Borivali (W),
Mumbai – 400 066

PAN – AABPG8625N

(Appellant)

(Respondent)

Appellant by: Shri K. Bhoopati, D.R
Respondent by: Shri K. Radhey Shyam Singhania, A.R
Date of Hearing: 14.11.2019
Date of Pronouncement: 15.11.2019

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-45, Mumbai, dated 11.07.2018, which in turn arises from the order passed by the A.O under Sec. 143(3) r.w.s 147, dated 25.02.2015 for A.Y. 2009-10. The assessee has assailed the impugned order by raising before us the following grounds of appeal:

- “(i) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition @12.5% to Rs.72,867/- on account of bogus purchases, without appreciating that the fact that the assessee has not produced any cogent evidence to substantiate that he had taken actual delivery of goods purchased from the parties and the notices u/s. 133(6) issued to the parties, from whom alleged bills were received. were returned undelivered by the postal authorities with the remark unknown' and the assessee has also failed to produce the purchase parties before the AO.
- “(ii) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the ratio of the decision of Gujarat High Court in the case of N.K Proteins Ltd. Wherein it was confirmed that in the event of bogus purchases, the addition on the

whole of such purchases was required to be made and this particular ratio was confirmed by the Hon'ble Supreme Court in SLP No.CC No 769 of 2017 dated 16.01 .2017, by dismissing the SLP of that assessee.

- (iii) The appellant prays that the order of the Ld. CIT(A) on the above grounds be set aside and that of the AO be restored.
- (iv) The appellant craves leave to amend or alter any ground or add a new ground."

2. Briefly stated, the assessee who is engaged in the business of manufacturing of cement precast items i.e Paver Blocks, Pipes, R.C.C, Manhole Covers etc. had e-filed his return of income for A.Y. 2009-10 on 30.09.2009, declaring his total income at Rs.9,88,709/-. 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 bogus purchase bills aggregating to Rs.5,82,934/- from the following parties:

TIN	Name of the Party	Amount (Rs.)
27680272629V	SHIV INDUSTRIES	1,00,007
27910508261V	GULAB TRADING CO.	2,19,673
27260546012V	MARUTI STEEL TRADERS	2,37,424
	TOTAL	5,82,934/-

, his case was reopened under Sec.147 of the Act. In order to verify the genuineness and veracity of the aforesaid purchases claimed by the assessee to have been made from the aforementioned parties, the A.O called upon the assessee to submit the details of purchases, evidence of transportation of goods, and confirmations from the aforesaid parties. In reply, the assessee submitted ledger accounts of the parties, bank statements evidencing payment to the aforementioned parties by cheques, and the copies of the purchase bills. Further, it was submitted by the assessee that it was not maintaining any stock register. As the assessee failed to produce the delivery challans evidencing transportation of the goods which were claimed to have been purchased from the aforementioned parties, therefore, the A.O was of the view that no genuine purchase were made by the assessee from the said parties. Insofar the claim of the assessee that payments were made to the aforementioned parties by cheques was concerned, it was observed by the A.O that the said fact on a standalone basis would not conclusively prove the authenticity of the purchase transactions. Apart therefrom, it was observed by the A.O that the notices under Sec. 133(6) which were issued to the aforementioned parties were returned by the postal authorities with the remarks "unclaimed". In

the backdrop of the aforesaid facts, the A.O in order to verify the genuineness of the purchase transactions directed the assessee to produce the aforementioned parties along with inward register, lorry receipt etc. However, the assessee failed to comply with the directions and did not produce either of the aforementioned party for necessary examination before the A.O. Observing, that the assessee had failed to substantiate the authenticity of the purchase transactions under consideration, the A.O held a conviction that the assessee had not made any genuine purchases from the aforementioned hawala parties. Accordingly, the A.O added the impugned purchases of Rs.5,82,934/- as an unexplained expenditure under Sec.69C in the hands of the assessee.

3. Aggrieved, the assessee carried the matter in appeal before the CIT(A). Observing, that though the assessee could not substantiate the authenticity of the purchase transactions to the satisfaction of the A.O, however, the CIT(A) was of the view that merely on the basis of the information received from the sales tax department the A.O could not have treated the entire purchases as bogus. It was observed by the CIT(A), that the assessee in order to substantiate the authenticity of the purchase transactions had placed on record certain documentary evidence, which though did not conclusively prove the authenticity of the purchase transactions, however, the same could also not be ignored. Accordingly, in the totality of the facts of the case, the CIT(A) in all fairness restricted the addition to 12.5% of the aggregate value of the impugned purchases of Rs.5,82,934/- and sustained the addition to the extent of Rs.72,867/-.

4. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. It was averred by the Id. Departmental Representative (for short 'D.R'), that as the assessee had failed to substantiate the authenticity of the purchase transactions, therefore, the A.O had rightly added the entire purchases of Rs.5,82,934/- under Sec.69C of the Act. It was submitted by the Id. D.R, that the CIT(A) had erred in confining the addition only to the extent of 12.5% of the aggregate value of purchases of Rs.5,82,934/-, and therein sustaining the same to the extent of Rs.72,867/-.

5. Per contra, the Id. Authorized Representative (for short 'A.R') relied on the order of the CIT(A). We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. Admittedly, as is discernible from

the orders of the lower authorities, the assessee had failed to substantiate on the basis of irrefutable documentary evidence the authenticity of the purchases which were claimed to have been made from the aforementioned parties. In sum and substance, the assessee had failed to discharge the 'onus' that was cast upon him as regards proving his claim of having made genuine purchases from the aforementioned parties. Accordingly, we are in agreement with the view taken by the lower authorities that the assessee had not made any genuine purchases from the aforementioned parties. However, we are unable to persuade ourselves to subscribe to the view taken by the A.O, who we find had added the entire purchase consideration of Rs.5,82,934/- as unexplained expenditure under Sec.69C in the hands of the assessee. As the source of purchases claimed by the assessee to have been made from the aforementioned parties is duly recorded in its 'books of accounts', therefore, we are unable to comprehend as to how the said purchase consideration could have been stamped as an unexplained expenditure under Sec.69C of the Act. In fact, we are in agreement with the view taken by the CIT(A), that merely for the reason that the assessee could not substantiate the authenticity of the purchase transactions on the basis of supporting documentary evidence to the satisfaction of the A.O, the said fact on a standalone basis could not have justified addition of the entire amount of purchases in the hands of the assessee. In our considered view, the CIT(A) has rightly concluded that the addition in respect of the aforesaid unsubstantiated purchases was liable to be restricted only to the extent of the profit embedded in making of such purchases by the assessee from the undisclosed sources operating in the open/grey market. Insofar, the quantification of the aforesaid profit element is concerned, we are of the considered view that the CIT(A) had in all fairness adopted the same at 12.5% of the aggregate value of the impugned purchase transactions. Accordingly, finding no infirmity in the order of the CIT(A), we uphold the same.

6. The appeal filed by the revenue is dismissed.

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