

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

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

**ITA Nos.6282 to 6284/Mum/2018  
(Assessment Years: 2009-10 to 2011-12)**

Income Tax Officer-29(2)(1)  
Bldg. No. C-10, 2<sup>nd</sup> Floor,  
Room No.201, Pratyakshakar  
Bhavan, Bandra Kurla Complex,  
Bandra (East), Mumbai – 400 051

Vs.

M/s Kuldeep Glass & Aluminium  
Shop No. 16, Hansa Villa,  
Opp. Vijay Nagar, Mulund (W)  
Mumbai – 400 080

PAN – AAAPK6708M

**(Appellant)**

**(Respondent)**

Appellant by: Shri K. Bhoopati, D.R  
Respondent by: None

Date of Hearing: 13.11.2019  
Date of Pronouncement: 15.11.2019

**ORDER**

**PER RAVISH SOOD, JM**

The present appeals filed by the revenue are directed against the respective orders passed by the CIT(A)-40, Mumbai, dated 24.07.2018 for A.Ys. 2009-10, 2010-11 & 2011-12, which in turn arises from the respective assessments framed under Sec.143(3) r.w.s 147 of the Income Tax Act, 1961 (for short 'Act'), dated 15.03.2014. As a common issue is involved in the captioned appeals, therefore, we shall take up and dispose off the same by way of a consolidated order. We shall first advert to the appeal of the revenue for A.Y. 2009-10. The revenue has assailed the impugned order by raising before us the following grounds of appeal:

- “1. Whether, on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in restricting the addition of Rs. 1,85,30,373/- being 100% to Rs.23,16,297/- being 12.5% of bogus purchases from hawala parties to ignoring the fact that assessee had failed to produce the parties ?
2. Whether, on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in restricting the addition of Rs.1,85,30,373/- being 100% to Rs.23,16,297/- being 12.5% of bogus purchases in view of the decision of the Hon'ble Supreme Court in the case of N.K.

Proteins Ltd., wherein the Apex Court has dismissed the SLP filed against the High Court's decision of upholding the 100% addition made by the A.O. on account of Bogus purchases?

3. The appellant craves leave to add, to amend, alter, substitute or modify any of the above ground or add a fresh ground as and when found necessary either before or at the time of hearing.

2. Briefly stated, the assessee firm which is engaged in the business of trading in Aluminium, Channels, Angles, Sheets etc. had e-filed its return of income for A.Y. 2009-10 on 26.09.2009, declaring its total income at Rs.63,890/-. 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 was one of the beneficiary which had received accommodation purchase bills aggregating to Rs.1,85,30,373/- from the following 11 hawala parties:

Sr. No.	Name of the party	PAN	A.Y.	Amount (Rs.)
1.	Manav Impex	AGNPP1236C	2009-10	4,61,700
2.	Maa Chamunda sales	AABPR3931M	2009-10	5,26,063
3.	Shah Industries		2009-10	10,48,030
4.	Subhiksha Enterprises	BJEPS2250N	2009-10	2,68,484
5.	N.B. Enterprises	AAAYPL7154J	2009-10	17,56,827
6.	Naman Enterprises	AQEPK5024G	2009-10	4,12,439
7.	Om Corporation	AYZPS5296B	2009-10	18,14,634
8.	Parasnath Enterprises	AIXPJ1600J	2009-10	27,83,066
9.	Jainam Trade Corporation	APUPS9556G	2009-10	33,85,395
10.	Nageshwar Enterprises	ANMPP9773E	2009-10	26,41,272
11.	Nikhil Enterprises	AKWPM0095R	2009-10	34,32,462
			Total	1,85,30,373

, the case of the assessee was reopened under Sec.147 of the Act.

3. During the course of the assessment proceedings the A.O in order verify the genuineness and veracity of the purchases claimed by the assessee to have been made from the aforementioned parties, therein issued notices under Sec.133(6) to all of the abovementioned parties. However, in most of the cases the notices issued under Sec.133(6) were returned unserved, while for in some cases the parties concerned did not respond to the notices. In the backdrop of the aforesaid facts, the A.O directed the assessee to produce the aforesaid parties for necessary examination. However, the assessee failed to comply with the aforesaid direction and did not produce either of the aforesaid party for examination before the A.O. In order to substantiate the authenticity of the impugned purchase transactions, the

assessee furnished certain documentary evidence viz. (i) ledger accounts of the abovementioned parties; (ii) copies of the purchase bills along with the delivery challans; (iii) photocopies of bank statement showing payments made to the aforesaid parties; (iv) tax audit report; and (v) VAT audit report showing the name of the aforementioned parties. Apart therefrom, the assessee in order to fortify the genuineness of the purchase transactions under consideration submitted the "affidavits" of some of the aforementioned parties, wherein they had admitted of having entered into business transactions with the assessee, as under :

Sr. No.	Name of the party	PAN	Amount (Rs.)
1.	Maa Chamunda Sales	AABPR5831M	5,26,063
2.	Subhiksha Enterprise	BJEPS2250N	2,68,484
3.	N.B. Enterprise	AAIPL7154J	17,56,827
4.	OM Corporation	AYZPS5296B	18,14,634
5.	Parasnath Enterprises	AIXPJ1600J	27,83,066
6.	Jainam Trade Corporation	APUPS9556G	33,85,395
7.	Nageshwar Enterprises	ANMPP9773E	26,41,272
		Total	1,31,75,741

In respect of the remaining 4 parties, it was submitted by the assessee that as it had not carried out any business transactions with them for the last 2 years, therefore, it was not able to trace them. However, the A.O was not inspired with the documentary evidence which was furnished by the assessee to substantiate the authenticity of the purchase transactions under consideration. In fact, it was observed by the A.O, that no details evidencing mode of transportation of goods through a particular carrier i.e Truck or Tempo etc was produced by the assessee before him. Observing, that the assessee had failed to establish the genuineness of the impugned purchase transactions on the basis of supporting documentary evidence, therefore, the A.O was of the view that the 'onus' that was so cast upon the assessee had remained undischarged. Also, it was observed by the A.O, that as the assessee was not maintaining a stock register, therefore, no evidence was placed on record which would substantiate the fact that goods claimed to have been purchased from the aforementioned parties were actually delivered to the assessee. Apart therefrom, it was observed by the A.O, that despite having been afforded sufficient opportunity the assessee could not produce the aforementioned parties for necessary examination before him. On the basis of his aforesaid observations, the AO was of the view that the assessee had not made any purchases from the aforementioned parties during the year under consideration. In fact, the A.O held a conviction,

that the assessee in order to inflate the purchases had procured the accommodation bills from the aforementioned parties with an intent to suppress its profits. Accordingly, not inspired with the books results of the assessee the A.O rejected its books of accounts under Sec.145(3) of the Act. On the basis of his aforesaid deliberations, the A.O holding a conviction that as the assessee had failed to satisfactorily explain the source from where it had incurred an expenditure of Rs.1,85,30,373/- for purchase of goods from the aforesaid parties, therefore, he added the same as an unexplained expenditure under Sec.69C in the hands of the assessee. Alternatively, holding a conviction that the assessee might be having undisclosed stock of goods with him, and would had arranged the bogus bills from the aforesaid hawala parties for supporting their sales, the A.O concluded that the addition towards purchase of such undisclosed stock of goods was also sustainable under Sec.69 of the Act. In the backdrop of his aforesaid deliberations, the A.O after making an addition towards unexplained expenditure under Sec. 69C of Rs.1,85,30,373/- assessed the income of the assessee at Rs.1,85,94,260/- vide his order passed under Sec. 143(3) r.w.s. 147, dated 15.03.2014.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). Insofar the view taken by the A.O that the assessee had not made any genuine purchases from the aforementioned parties was concerned, the CIT(A) after necessary deliberations was persuaded to subscribe to the same. However, taking cognizance of the fact that as largely the impugned purchases and sales were matching, therefore, the CIT(A) was of the view that disallowance of 100% of the impugned purchases was not justified. As the A.O had not brought on record any material which would reveal that the impugned purchases were made by the assessee from the open/grey market out of undisclosed sources, therefore, the CIT(A) was not persuaded to subscribe to the addition of the entire amount of purchases that was made by the A.O under Sec. 69C of the Act. On the basis of his aforesaid observations, the CIT(A) was of the view that as the assessee had purchased the goods from the open/grey market, therefore, the addition in its hands was liable to be restricted only to the extent of the profit embedded in making of such purchases at a discounted value. Accordingly, on the basis of his aforesaid deliberations, the CIT(A) quantifying the profit which the assessee could have made by procuring the goods from the open/grey market, therein sustained the addition to the extent of 12.5% of the aggregate value of the impugned purchases.

5. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. We find that as the assessee despite having put to notice as regards the fixation of the appeal had failed to put up an appearance before us, therefore, we proceed with the appeal as per Rule 25 of the Appellate Tribunal Rules, 1962, and dispose off the same after hearing the appellant revenue and perusing the orders of the lower authorities.

5. The Id. Departmental Representative (for short 'D.R') relied on the order passed by the A.O. It was submitted by the Id. D.R, that as the assessee had failed to substantiate the authenticity of the impugned purchase transactions, therefore, the A.O had rightly concluded that as the source of incurring of the aforesaid expenditure of Rs.1,85,30,373/- was not satisfactorily explained by the assessee, thus, the same was liable to be added as an unexplained expenditure under Sec. 69C of the Act.

6. We have heard the Id. D.R, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by him. Admittedly, as is discernible from the facts available on record, the assessee had failed to substantiate the authenticity of the impugned purchase transactions on the basis of irrefutable documentary evidence. 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. At the same time, we are in agreement with the view taken by the CIT(A) that as the A.O had not brought on record any material which would reveal that the purchases made by the assessee from the open/grey market were out of undisclosed funds, therefore, no addition under Sec.69C was called for in the hands of the assessee. In fact, in our considered view, as the source of the purchases claimed by the assessee to have been made from the aforementioned parties is duly recorded in its "books of accounts", therefore, it is difficult for us to comprehend as to how any addition under Sec.69C in respect of the impugned purchases could have been made in the hands of the assessee. We are in agreement with the view taken by the CIT(A), that as the impugned purchases are matching against the corresponding sales of the assessee, therefore, the addition in the hands of the assessee was liable to be restricted only to the extent of the profit embedded in making of such purchases by the assessee from the open/grey market. Insofar, quantification of such profit element is concerned, we find that the CIT(A) had in all

fairness rightly estimated the same at 12.5% of the aggregating value of such purchases. Accordingly, finding no infirmity in the view taken by the CIT(A), we uphold his order.

7. Resultantly, the appeal filed by the revenue is dismissed.

**ITA No. 6282/Mum/2018**  
**A.Y. 2010-11**

8. Briefly stated, the assessee firm had e-filed its return of income for A.Y. 2010-11 on 17.09.2010, declaring its total income at Rs.91,339/-. On the basis of information received from the DGIT(Inv.), Mumbai, that the assessee was one of the beneficiary who had obtained accommodation purchase bills aggregating to Rs.1,78,64,806/- from the following 10 parties:

Sr. No.	Name of the party	PAN	A.Y.	Amount (Rs.)
1.	Prakash Enterprises	AVGPS5468P	2010-11	1,15,277
2.	Jainam Trade Corporation	APUPS9556G	2010-11	35,66,941
3.	Parasnath Enterprises	AIXPJ1600J	2010-11	31,14,852
4.	Om Corporation	AYZPS5296B	2010-11	21,63,157
5.	Hans Trading Co.	AADHN5216L	2010-11	21,54,518
6.	Nikhil Enterprises	AKWPM0095P	2010-11	21,54,518
7.	N.B. Enterprises	AAIPL7154J	2010-11	30,84,154
8.	Navdeep Trading Corporation	AAAPV4787A	2010-11	1,06,815
9.	P.K. Trading Co.	AAIPF6144J	2010-11	5,54,138
10.	Ankit Enterprises	AZLPS1666G	2010-11	2,10,078
			Total	1,78,64,806

, its case was reopened under Sec.147 of the Act.

9. As the assessee failed to substantiate the genuineness and veracity of the purchases aggregating to Rs.1,78,64,806/- which were claimed to have been made from the aforementioned 10 parties, therefore, the A.O added the same under Sec.69C of the Act. Alternatively, the A.O was also of the view that the aforesaid bills might have been procured by the assessee to support the sales of the undisclosed stock of goods that might have been lying with it. Accordingly, the A.O observed that the addition of the aforesaid purchases of Rs.1,78,64,806/- was also sustainable under Sec.69 of the Act.

10. Aggrieved, the assessee assailed the matter in appeal before the CIT(A). Observing, that as the sales corresponding to the impugned purchases were recorded by the assessee in its books of account, the CIT(A) concluded that the addition in the hands of the assessee was

liable to be restricted only to the extent of 12.5% of the aggregate value of the impugned purchases.

11. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. We find that as the facts and the issue involved in the present appeal remains the same as were there before us in the appeal of the revenue for the immediately preceding year i.e A.Y. 2009-10 in ITA No. 6284/Mum/2018, therefore, our order therein passed shall apply *mutatis mutandis* for disposal of the present appeal. Accordingly, in terms of our aforesaid observations recorded while disposing off the appeal of the revenue for A.Y. 2009-10 in ITA No.6284/Mum/2018, the present appeal of the revenue for A.Y. 2010-11 in ITA No.6282/Mum/2018 is dismissed in the same terms.

12. The appeal of the revenue is dismissed.

**ITA No. 62823/Mum/2018**  
**A.Y. 2011-12**

13. Briefly stated, the assessee firm had e-filed its return of income for A.Y. 2011-12 on 08.09.2011, declaring its total income at Rs.41,109/-. On the basis of information received from the DGIT(Inv.), Mumbai, that the assessee being one of the beneficiary had obtained accommodation purchase bills aggregating to Rs.98,25,374/- from the following 8 parties:

Sr. No.	Name of the Party	PAN	A.Y.	Amount (Rs.)
1.	Jainam Trade Corporation	APUPS9556G	2011-12	4,82,748
2.	Parasnath Enterprises	AIXPJ1600J	2011-12	16,25,250
3.	Hans Trading Co.	AADHN5216L	2011-12	35,03,097
4.	Vardhman Traders	AGZPD8018Q	2011-12	4,90,429
5.	Vihol Enterprises	AFFPV2972L	2011-12	5,59,863
6.	Navdeep Trading Corporation	AAAPV4487A	2011-12	2,49,982
7.	Maa Chamunda Sales Pvt. Ltd.	AAFCM7845P	2011-12	27,97,731
8.	Ankit Enterprises	AZLPS1666G	2011-12	1,16,274
			Total	98,25,374

, the case of the assessee was reopened under Sec.147 of the Act.

14. As the assessee failed to substantiate the authenticity of the purchase transactions claimed to have been made from the aforementioned parties, therefore, the AO made an addition of the aggregate value of such purchases of Rs.98,25,374/- under Sec.69C of the Act.

Alternatively, the A.O holding a conviction that the assessee might have arranged the aforesaid bogus bills for supporting the sales of the undisclosed stock of goods lying with it, therefore, was of the view that the addition was also sustainable under Sec.69 of the Act.

15. Aggrieved, the assessee carried the matter in appeal before the CIT(A). Observing, that as the sales corresponding to the impugned purchases were recorded by the assessee in its books of account, the CIT(A) concluded that the addition in the hands of the assessee was liable to be restricted only to the extent of 12.5% of the aggregate value of the impugned purchases.

16. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. We find that as the facts and the issue involved in the present appeal remains the same as were there before us in the appeal of the revenue for A.Y. 2009-10 in ITA No. 6284/Mum/2018, therefore, our order therein passed shall apply *mutatis mutandis* for the disposal of the present appeal of the revenue for A.Y. 2011-12 in ITA No. 6283/Mum/2018. Accordingly, in the same terms the appeal of the revenue is dismissed.

17. The appeals of the revenue for A.Y. 2009-10 in ITA No.6284/Mum/2018, A.Y. 2010-11 in ITA No.6282/Mum/2018 and A.Y. 2011-12 in ITA No. 6283/Mum/2018 are dismissed.

Order pronounced in the open court on 15.11.2019

Sd/-

(N.K. Pradhan)  
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 15.11.2019

PS. Rohit

Sd/-

(Ravish Sood)  
JUDICIAL MEMBER

**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.

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आदेशानुसार/ BY ORDER,

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

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai