

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

**BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

ITA NO. 5429/MUM/2018

A.Y : 2009-10

Income Tax Officer, Ward 2(1),
Thane (Appellant)

vs. Shri Arvind Ramgopal Saraf
2A, 202 Tirupati Darshan,
Balaji Nagar, Bhayander (W) 401 101.
PAN : AACPP2416K (Respondent)

Appellant by : Shri Akhtar H. Ansari
Respondent by : Shri Radhakant Saraf

Date of Hearing : 14/10/2019
Date of Pronouncement : 14/10/2019

ORDER

PER MAHAVIR SINGH, JUDICIAL MEMBER

This appeal is filed by the Revenue against the order of CIT(A)-3, Nashik (Camp office – Thane) dated 05.07.2018 for assessment year 2009-10 which in turn has arisen from order of Assessing Officer passed under Section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short 'the Act') dated 27.02.2015.

2. The only issue in this appeal of Revenue is against the order of CIT(A) restricting the addition by applying profit rate of 12.5% of the alleged bogus purchases. For this, Revenue has raised the following grounds: -

"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in

not appreciating the law correctly that once the purchases are unverifiable/not genuine/bogus, the same should have been disallowed in entirety?

2. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law by not appreciating the fact that the assessee could not establish the genuineness of the purchases from the non-existent vendors?*

3. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law by not appreciating the fact that the onus to justify the claim of expenses is on the assessee and the same has failed to discharge it in relation to the purchases made from the non-existent vendors?*

4. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law by ignoring the fact that the assessee could not substantiate its claim of purchases from non-existent vendors by means of relevant supporting documents related to movement and delivery of goods, stock register, etc. to arrive at disallowance at 12.5% of the purchases from the non-existent vendors?*

5. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in not appreciating the law correctly that once the purchases are unverifiable/not genuine/bogus, the same should have been disallowed in entirety, particularly in view of the ratio of the decision of the Hon'ble Gujarat High Court in Tax Appeal No. 242 of 2003 dated 20/06/2016 in the case of N.K. Proteins Ltd. against which the SLP was dismissed by the Hon'ble Apex Court?"*

3. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that the assessee is engaged in the business of printing of visiting cards, letterheads, envelopes, brochures, annual reports, etc. The Assessing Officer noted that the Department has received information from Sales Tax Department of Maharashtra that assessee had shown total purchases of Rs.4,06,978/- from the following parties: -

<i>Sr.No.</i>	<i>Hawala Tin</i>	<i>Hawala Name</i>	<i>Hawala PAN</i>	<i>FY</i>	<i>Amount</i>
1	27360547218V	Sangura Trading Private Limited	AAJCS8160R	2008-09	298298
2	27450611043V	U.V. Distributors Pvt. Ltd.	AAACU8942L	2008-09	100256
3	27920363580V	Sagar Enterprises	ACTPS9740C	2008-09	8424
				TOTAL	406978

According to the Assessing Officer, these parties are *hawala* parties in view of the information received from the Sales Tax Department of Maharashtra who are engaged in providing accommodation bills/bogus purchases to various beneficiaries. According to the Assessing Officer, assessee is a beneficiary of receiving these accommodation entries. The Assessing Officer issued notice under Section 133(6) of the Act to these parties, but none of the parties responded. According to the Assessing Officer, assessee is unable to prove these purchases, hence he added the entire alleged bogus purchases to the returned income of the assessee, amounting to Rs.4,06,978/-.

4. Aggrieved, the assessee preferred appeal before the CIT(A). The CIT(A) after considering the submissions of the assessee restricted the addition by applying profit rate of 12.5% by observing in para 7.4 as under: -

“7.4 With regard to the appellant’s reliance on various decisions, there are large number of cases, wherein the appellate authorities have held that it would not be appropriate to consider that purchases were genuine only because the assessee made the payment by cheque and the assessee received bills. It is held by various courts that where the assessee could show that he has made the purchases and there are corresponding sales against these purchases, it would be appropriate to tax the possible profit out of purchases made through non-genuine parties. In view of facts stated above, I am of the considered opinion that the appellant has made purchases of Rs.4,06,978/- in the open market against which there are corresponding sales. Further the verification in respect of these parties could not be made and assessee has also paid sales. It is not known at what price the appellant actually made the purchases from third parties. Under such circumstances the likelihood of the purchases being inflated cannot be ruled out and there is no material to dislodge such findings. In this process the appellant saved on the sales-tax/VAT and enhanced his profit by manipulating the purchases. On similar facts Sanjay Oil Mills 316 ITR 274 and Bhole Nath Poly Fab (P) Ltd., Smith P. Sheth 356 ITR 451, Gujarat, the courts have restricted addition of percentage basis. The appellate authorities have also stressed upon the reasonability of the profit shown by the purchaser while making any such disallowance. Keeping the GP of the assessee concern in mind and the facts of the case, it would be appropriate if the addition is restricted to 12.5% of bogus purchases of Rs.4,06,978/-, amounting to Rs.50,872/- is disallowed. This addition will be over and above the profits shown by the appellant in his return of income.”

Aggrieved, Revenue is in appeal before the Tribunal.

5. We noted that the Assessing Officer has not doubted the sales made out of the alleged bogus purchases. It is also a fact that the payments are made by cheques while making purchases and also received by cheques while making sales. We noted that the CIT(A) has rightly restricted the addition to the extent of 12.5% of the bogus purchases. Even before us, the learned senior DR could not dislodge the finding given by the CIT(A). Hence, we confirm the order of the CIT(A) and dismiss the appeal of the Revenue.

6. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 14th October, 2019.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Date : 14th October, 2019

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "SMC" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai