

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

**BEFORE SHRI S. RIFAUR RAHMAN (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 5743/MUM/2018  
Assessment Year: 2010-11**

Pragram J. Patel, 67/26, 2 <sup>nd</sup> Floor, Kholsawala Building, Dr. M.G. Mahimtura Marg, 3 <sup>rd</sup> Kumbharwada, Mumbai – 400004 PAN: AACPP1462B	<b>Vs.</b>	The ITO 19(2)(5), Room No. 210, Matru Mandir, Tardeo Road, Mumbai - 400007
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : None

Revenue by : Shri C.S. Sharma (DR)

Date of Hearing: 26/09/2019  
Date of Pronouncement: 30/09/2019

**ORDER**

**PER RAM LAL NEGI, JM**

This appeal has been filed by the assessee against the order dated 26.07.2018 passed by the Commissioner of Income Tax (Appeals)-4 (for short 'the CIT(A), Mumbai, for the assessment year 2010-11, whereby the Ld. CIT(A) has dismissed the appeal filed by the assessee against the assessment order passed u/s 143(3) r.w.s 147 of the Income Tax Act, 1961 (for short the 'Act').

2. The assessee firm filed its return of income for the assessment year under consideration declaring the total income of Rs.3,57,970/-. Since, the AO received information from DGIT (Inv.) that the assessee during the previous year had obtained bogus bills from five hawala dealers amounting to Rs. 74,88,178/-, without actual purchasing goods. On the basis of the said information, the AO reopened the assessment after issuing notice u/s 148 of the Act to the assessee after recording the reasons for reopening of the return. Accordingly, the AO issued notice u/s 142 (1) and 143 (2) of the Act. In

response thereof, the authorized representative of the assessee appeared before the AO furnished the details and discussed the case. The assessee pleaded that that the purchases were genuine and the goods were actually supplied by the parties. However, AO rejecting the contention of the assessee made addition of 12.5% of total amount of bogus purchases and determined the total income of the assessee at Rs. 12,93,990/-The assessee challenged the assessment order before the CIT(A). The Ld. CIT(A) after hearing the assessee confirmed the addition to 12.5% . Against the said order, the assessee is in appeal before the Tribunal.

3. The assessee has challenged the impugned order passed by the Ld. CIT (A) on the following effective ground:-

*“The Ld. CIT (Appeals) erred in upholding the disallowance of Rs. 9,36,022/- calculated at 12.50% margin on 74,88,178/- on arbitrary basis.”*

4. This case was fixed for hearing on 26.09.2019. However, on the said date, when the case was called out for hearing, none appeared on behalf of the assessee. From the record, we observed that the assessee has not appeared on the said date despite service of notice. Even no application for adjournment was received. The notice issued on 24.08.19 has not received back. Hence, we are of the considered view that no purpose would be served in case the appeal is adjourn and fresh notices is issued. We accordingly decided to dispose of the appeal on the basis of material on record after hearing the Departmental Representative (DR).

5. The Ld. DR submitted before us that since the assessee had failed to discharge the onus of proving genuineness of the transaction of purchase by adducing cogent evidence, the Ld. CIT(A) has rightly confirmed the addition made by the AO in accordance with the law laid down by the Hon'ble Gujarat High Court in the case of *CIT vs. Simit P. Seth 356 ITR 451(Guj)*. The Ld. DR further submitted that Since the Ld. CIT(A) has confirmed the addition

considering the profit embedded in the questioned transaction, there is no infirmity in the order of the Ld CIT(A) to interfere with the same.

6. We have carefully gone through the relevant record including the cases relied upon by the authorities below. We are convinced from the material on record that the assessee has failed to establish the genuineness of the purchases in question by adducing cogent and convincing evidence. The notices issued by the AO were received back un-served. The assessee also failed to produce the parties before the AO for verification. Hence, in our considered view, the AO has rightly concluded that the assessee has not made the questioned purchases from the parties mentioned in the books of account of the assessee. However, the AO has not rejected the sale of the goods so purchased. The above-mentioned facts give rise to the conclusion that the assessee had purchased the goods in question from grey market and evaded the tax applicable during the relevant period. Under these circumstances, the AO had no option but to make an addition on estimation basis considering the applicable rate of VAT or other taxes and the profit embedded in the said transaction. In the first appeal, the Ld. CIT(A) has confirmed the addition of 12.5%, holding that the estimate reached at by the AO is reasonable and in accordance with the law laid down by the Hon'ble Gujarat High Court.

7. The Ld CIT(A) has sustained the addition of 12.5%, by following the ratio of the Hon'ble Gujarat High Court in the case *CIT vs. Simit P. Seth 356 ITR 451(Guj)*, In the said case, the Hon'ble Court upheld the decision of the Tribunal and sustained the addition 12.5% of the total bogus purchases determined by the Tribunal, holding that only profit element embedded in such purchases can be added to income of the assessee. Hence, in our considered view, the order passed by the Ld. CIT(A) is based on the principles of law down by the Hon'ble Gujarat High Court in the said case. Accordingly, we uphold the order of the Ld. CIT (A) and dismiss the appeal of the assessee

In the result, appeal filed by the assessee for assessment year 2010-2011 is dismissed.

Order pronounced in the open court on 30<sup>th</sup> September, 2019.

Sd/-

(S. RIFAUR RAHMAN)  
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 30/09/2019

Sd/-

(RAM LAL NEGI)  
JUDICIAL MEMBER

Alindra, PS

**आदेश 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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai