

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND  
SHRI MANOJ KUMAR AGGARWAL, HON'BLE ACCOUNTANT MEMBER**

**ITA NOs. 5581, 5582 & 5583/MUM/2018  
(A. Ys: 2009-10, 2010-11 & 2011-12)**

Shri Ravindra P. Jadhav Prop. M/s. Raviraj Chemicals A-102, Silver Coin Near Bhanu Nagar Bhagatsingh Road, Dombivli (E) Thane – 421201  <b>PAN: AARPJ3618E</b>	v.	Income Tax Officer, Ward 3(5) Rani Mansion, Murbad Road Kalyan (W) - 421301
<b>(Assessee)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	<b>:</b>	<b>None</b>
<b>Department by</b>	<b>:</b>	<b>Shri Akhtar H. Ansari</b>
<b>Date of Hearing</b>	<b>:</b>	<b>14.11.2019</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>22.11.2019</b>

**ORDER**

**PER C.N. PRASAD (JM)**

1. These appeals are filed by the assessee against common order of the Ld. Commissioner of Income-tax (Appeals)-1, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 30.08.2018 for the A.Ys. 2009-10, 2010-11 and 2011-12 in sustaining the addition made by the Assessing Officer towards bogus purchases.

2. In spite of issue of notice none appeared on behalf of the assessee nor any adjournment was sought by the assessee. Therefore, we proceed to dispose off these appeals on hearing the Ld. DR on merits.

3. Ld. DR vehemently supported the order of the Ld.CIT(A). Ld. DR submitted that the assessee is engaged in the business of "Manufacturer and Trading in Chemicals", filed return of income declaring income of ₹.7,60,200/-, ₹.13,33,990/- and ₹.17,99,880/- for the A.Ys. 2009-10, 2010-11 & 2011-12 respectively and the returns were processed u/s.143(1) of the Act. Subsequently, Assessing Officer received information from the DGIT(Inv.), Mumbai about the accommodation entries provided by various dealers and assessee was also one of the beneficiary from those dealers. The assessment was reopened based on the information received from DGIT (Inv.), Mumbai, that the assessee has availed accommodation entries from various dealers who are all providing accommodation entries without there being transportation of any goods. It is submitted that the assessee could not produce the parties. However, vide letter dated 05.09.2013 copies of the invoices were furnished to establish that the assessee made genuine purchases from the suppliers. Since assessee did not produce the suppliers and no delivery challans were produced for the movement of goods, the Assessing Officer added

the entire purchases as bogus and brought to tax. It is submitted that the Ld.CIT(A) sustained the addition made by the Assessing Officer.

4. We have heard Ld. DR, perused the orders of the authorities below. On a perusal of the Assessment Order, we find that the addition was made based on the information received from the DGIT(Inv.), Sales Tax Department, Mumbai, that certain dealers were providing only accommodation entries. This was confronted to the assessee and the assessee submitted that the transactions are genuine. Assessee filed copies of invoices to prove that the purchases were genuine. Assessee also in its reply dated 05.09.2013 apart from furnishing copies of bills of purchases from the parties, it was also stated that there are no transport bills as the purchasers and sellers are local and the goods were hand delivered. We observe from the assessment order that the Assessing Officer treated the purchases as non-genuine mainly for the reason that assessee was unable to submit the transport, octroi payment receipts and also produced the parties. However, the lower authorities have not doubted the sales made by the assessee, without there being purchases there cannot be any sales. Further, the Hon'ble Gujarat High Court in the case of Bholanath Polyfab Pvt. Ltd [355 ITR 290] held that when the assessee made purchases and sold the finished goods as a natural corollary not the entire amount covered under such purchases would be

subject to tax but only the profit element embedded therein. Similar view has been taken by the Hon'ble Gujarat High Court in the case of CIT v. Simit P. Seth [38 taxman.com 385]. Simply because the parties were not produced the entire purchases cannot be added as held by the Bombay High Court in the case of CIT v. Nikunj Eximp [216 Taxman.com 171].

5. Further the Hon'ble Bombay High Court in the case of PCIT v. M/s. Mohommad Haji Adam and Company in Income Tax Appeal No. 1004 of 2016 dated 11.02.2019 upheld the order of the Tribunal in restricting the addition towards bogus purchases limiting to the extent of bringing Gross Profit rate on purchases as shown by the assessee on other genuine purchases, observing as under: -

*“8. In the present case, as noted above, the assessee was a trader of fabrics. The A.O. 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 sales 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 trader. 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.20,98,621.88 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 as to costs."*

6. Thus, respectfully following the said decision of the Hon'ble Jurisdictional High Court we direct the Assessing Officer to restrict the addition towards bogus purchases by estimating the Gross Profit on non-genuine purchases at the rate at which the assessee has shown the Gross Profit on the other genuine purchases made by it during the Assessment Years under consideration.

7. In the result appeals of the assessee are partly allowed.

Order pronounced in the open court on the 22<sup>nd</sup> November 2019

Sd/-  
**(MANOJ KUMAR AGGARWAL)**  
**ACCOUNTANT MEMBER**

Mumbai / Dated 22/11/2019  
Giridhar, Sr.PS

Sd/-  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to:**

1. The Assessee
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**