

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

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 5649/MUM/2018
Assessment Year: 2009-10**

ITO-27(2)(5), 4th floor, Tower
No. 6, Vashi Railway Station
Complex, Vashi, Navi Mumbai.

Vs. Pritesh A Shah, 1001,
MahaveerAuram, Opp. Kukreja
Palace, Garodiya Nagar,
Ghatkopar (E), Mumbai-
400077.

Appellant

**PAN No. AIIPS4743B
Respondent**

Revenue by : Mr. Bhera Ram, DR
Assessee by : None

Date of Hearing : 21/11/2019
Date of pronouncement : 27/11/2019

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the Revenue. The relevant assessment year is 2009-10. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-25, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) r.w.s. 147 of the Income Tax Act 1961, (the 'Act'). Though the case was fixed for hearing on 21.11.2019, neither the assessee nor his authorized representative appeared before the Bench on the above date. As there is non-compliance on the part of the assessee, we are proceeding to dispose off this appeal on merits, after examining the documents available on record.

2. The grounds of appeal filed by the revenue read as under :

1. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in deleting the addition of Rs.8,58,946/- on account of bogus purchases, without appreciating the fact that the assessee had failed to produce bills, vouchers and others documentary evidences in support of his claim and without considering the latest Apex court decision in the case of NK Protein Ltd. wherein it is held that once it is proved that the purchases are bogus then addition should be made on entire purchases and not on profit element embedded in such purchases.
2. On the facts and circumstances of the case, the Ld. CIT(A) erred in estimating the profit from Hawala purchases by disallowing only Rs.1,22,707/-, being 12.5% of the bogus purchases as even the basic onus of producing transport bills, delivery challans, transport bills etc. were not fulfilled by the assessee.

3. Briefly stated, the facts of the case are that the assessee filed his return of income for the assessment year (AY) 2009-10 on 31.07.2019 declaring total income of Rs.7,44,900/-. On receipt of information from the Sales Tax Department, Government of Maharashtra that the assessee had obtained accommodation entries through hawala operators, the Assessing Officer (AO) re-opened the assessment by issuing notice u/s 148 dated 30.03.2014. In response to it, the assessee filed a reply stating that the return filed earlier on 31.07.2009 may be treated as having been filed in response to notice u/s 148 of the Act.

Disputed amount of purchases herein is Rs.9,81,653/-. During the course of re-assessment proceedings, the AO issued notice u/s 133(6) to the concerned four parties for the purpose of ascertaining the genuineness of purchases. However, the notices issued by him were returned un-served by the postal authorities with a remark "left". Thereafter, the AO deputed the

Inspector of Income Tax to make inquiry. The AO has mentioned that the inquiry done by the Inspector could not locate the whereabouts of the parties. This fact was brought by the AO to the notice of the assessee during the course of assessment proceedings. Simultaneously, the AO asked the assessee to produce the said parties before him so that the transactions could be verified. In response to it, the assessee filed a written submission stating that the purchases are genuine and payments have been made through account payee cheques. Further it was stated before the AO that the assessee had paid the VAT liability in order to avoid litigation.

However, the AO was not convinced with the above explanation of the assessee for the reason that the assessee failed to produce any of the suppliers, brokers or transporters before him, inspite of opportunity being granted. On the basis of the above facts, the AO made an addition of the entire amount of purchases i.e. Rs.9,81,653/- to the total income shown by the assessee.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that *vide* order dated 03.07.2018, the Ld. CIT(A) following the judgment of the Hon'ble Gujarat High Court in *CIT v. Simit P. Sheth* (ITA No. 553 of 2012) directed the AO to estimate profit @ 12.5% of the alleged bogus purchases of Rs.9,81,653/- which comes to Rs.1,22,707/-.

5. Before us, the Ld. Departmental Representative (DR) submits that as in the instant appeal the assessee failed to produce any of the suppliers, brokers or transporters before the AO for examination, though sufficient opportunity was granted and also the fact that the notices issued by the AO u/s 133(6) were returned back as un-served by the postal authorities with the remarks

“left”, the order passed by the AO be confirmed. It is stated that the inquiry conducted by the Inspector of Income Tax found that no such party was there in the given address. Therefore, the Ld. DR submits that the order passed by the Ld. CIT(A) be set aside and the one passed by the AO be restored.

6. We have heard the Ld. DR and perused the relevant materials on record. In the case of *N.K Proteins Ltd.* (supra), there was search proceedings conducted by the Revenue at the office premises of the assessee wherein blank signed cheque books and voucher of number of concerns were found. Accordingly, the purchases made from these concerns were treated as bogus by the AO and the entire deposits in bank accounts of these parties were treated as assessee’s income on protective basis. On appeal, the ITAT restricted the addition on account of alleged bogus purchases at 25% i.e. Rs.73,23,322/- of the total purchases amounting to Rs.2,92,93,288/-. On further appeal, the Hon’ble High Court modified the order of the Tribunal and directed for addition of entire bogus purchases. After hearing the counsels, the Hon’ble Supreme Court dismissed the SLP filed by the assessee and confirmed the decision of the High Court for addition of entire income on account of bogus purchases.

In the instant case, the notices issued by the AO u/s 133(6) of the Act were returned un-served by the postal authorities with the remark “left”. The assessee failed to produce the parties before the AO for examination. However, we find that the assessee had filed copies of bank statements before the AO. The AO could have made inquiries and verifications of the transactions entered into by the assessee. However, he has not done even an elementary inquiry of the transactions entered into by the assessee through banks. In

such a scenario, the Ld. CIT(A) has rightly directed the AO to estimate the profit @ 12.5% of the disputed amount of Rs.9,81,653/- which comes to Rs.1,22,707/-.

In view of the above factual scenario, we affirm the order of the Ld. CIT(A).

7. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open Court on 27/11/2019.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER
Mumbai;
Dated: 27/11/2019
Rahul Sharma. Sr. P.S.

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai