

**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. 1246/MUM/2018  
Assessment Year: 2009-10**

Income Tax Officer-27(2)(5),  
R. No. 421, 4<sup>th</sup> floor, Tower  
No. 6, Vashi Railway Station,  
Vashi, Navi Mumbai-400705.

Vs. Smt. Pankita J. Mehta, A/9, Jyoti  
Building, R B Mehta Road,  
Ghatkopar-East, Mumbai-400077.

**Appellant**

**PAN No. AACPM2507J  
Respondent**

Revenue by : Smt. JothilakshmiNayak, Sr. DR  
Assessee by : Shri KiritSanghvi, AR

Date of Hearing : 25/11/2019  
Date of pronouncement : 28/11/2019

**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').

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

- i. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.37,64,435/- on account of bogus purchases without appreciating the fact that the assessee had failed to produce supporting

documentary evidences to support of her claim and without considering the latest Apex court decision in the case of N. K. Proteins 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.

- ii. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in estimating the profit from Hawala purchases by disallowing only 12.5% of the bogus purchases as even the basic onus of producing transport bills, delivery challans, etc. were not fulfilled by the assessee.

3. Briefly stated, the facts of the case are that the assessee filed her return of income for the assessment year (AY) 2009-10 on 14.09.2009 declaring total income of Rs.2,18,100/-. The assessee trades in iron and steel, ferrous and non-ferrous metal. On receipt of information from the Sales Tax Department, Government of Maharashtra that the assessee had obtained bogus purchase bills amounting to Rs.43,02,211/- from Haji RajabaliChittalwala/Standard Metal Impex (PAN-AAEPC1110F) during the impugned assessment year, the Assessing Officer (AO) issued notice u/s 148 dated 30.03.2014 to the assessee to re-open the assessment. In response to it, the assessee submitted that the return filed on 14.09.2009 be treated as return filed u/s 148 of the Act. During the course of re-assessment proceedings, the AO issued notice u/s 133(6) to concerned party in the address given to verify the genuineness of the transaction. However, that notice was returned un-served by the postal authorities with the remark "unknown". Thereafter, in order to verify the identity of the party and genuineness of the purchases, the AO deputed the Inspector of Income Tax to make an inquiry and submit a report. It was reported by the Inspector that the said party does not exist in the address given. Thereafter, the AO asked the assessee to furnish the correct/new

address of the said party. However, in response to it, the assessee filed the earlier address. Again the notice issued by the AO u/s 133(6) was returned un-served by the postal authorities with the remarks “unknown”. The AO observed that though the said notice issued u/s 133(6) was returned un-served by the postal authorities, he received a reply from the concerned party on 14.10.2014. Again he deputed the Inspector to make inquiry and submit a report. It was reported by the Inspector that the said party did not exist in the given address. In view of the above facts, the AO made an addition of Rs.43,02,211/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that *vide* order dated 05.12.2017 the Ld. CIT(A), by relying on the decision of the Hon’ble Gujarat High Court in *CIT v. Simit P. Sheth* (ITA No. 553 of 2012) and *CIT v. BholanathPolyfab (P.) Ltd.* (ITA No. 63 of 2012) restricted the disallowance to 12.5% of the disputed purchases which comes to Rs.5,37,776/- and thereby deleted the balance amount of Rs.37,64,435/-.

5. Before us, the Ld. Departmental Representative (DR) submits that the notice issued by the AO u/s 133(6) in the address given by the assessee was returned un-served by the postal authorities with the remarks “unknown”. Further, the inquiry conducted by the Inspector indicated that the said party did not exist in the address furnished by the assessee. Thus the Ld. DR submits that the order passed by the AO making an addition of Rs.43,02,211/- be affirmed.

6. On the other hand, the Ld. counsel for the assessee submits that the order passed by the Ld. CIT(A), which is based on the facts and circumstances of the case be affirmed.

7. We have heard the rival submissions 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 assessee has filed before the AO the bank statements. In such a situation, the AO could have made certain inquiry to verify the genuineness of the transaction. We find that the AO has not made even a preliminary inquiry in this regard and thus the instant case is distinguishable from the decision in *N.K Proteins Ltd.* (supra). Therefore, considering the facts and circumstances of the case, we are of the considered view that the Ld. CIT(A) has rightly restricted the disallowance to 12.5% of

the disputed purchases which comes to Rs.5,37,776/- and deleted the balance amount of Rs.37,64,435/-. Thus we affirm the order of the Ld. CIT(A).

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

**Order pronounced in the open Court on 28/11/2019.**

Sd/-

(SAKTIJIT DEY)  
JUDICIAL MEMBER

Mumbai;

Dated: 28/11/2019

*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.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**