

**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. 5629/MUM/2018
Assessment Year: 2010-11**

Income Tax Officer-27(1)(4),
Tower No. 6, 4th floor, Room
No. 409, Vashi Rly. Station
Complex, Vashi, Navi Mumbai.

Vs. Dimple D. Shah (HUF), C-7
Apartment, Tilak Road,
Ghatkopar (E), Mumbai-400077

Appellant

**PAN No. AAEHD0414P
Respondent**

Revenue by : Mr. Bhera Ram, DR
Assessee by : Mr. Tanzil R. Padvekar, AR

Date of Hearing : 20/11/2019
Date of pronouncement : 25/11/2019

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the Revenue. The relevant assessment year is 2010-11. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-24, 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 :

1. On the facts and circumstances of the case and in law. the Ld. CIT(A) erred in deleting the addition of Rs.8,78,887/- made by the Assessing Officer on account of bogus purchases, without appreciating the fact that the assesses had failed to

produce bills, vouchers and other documentary evidences in support of his claim and without considering the latest Apex Court decision in the case of N K 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.1,25,555/-, being 12.5% of the bogus purchases as even the basic onus of producing transport documents, inward registers etc. were not fulfilled by the assessee.

3. Briefly stated, the facts of the case are that the assessee filed its return of income for the assessment year (AY) 2010-11 on 23.09.2010 declaring total income of Rs.5,88,253/-. The Assessing Officer (AO) received information from the Sales Tax Department, Government of Maharashtra that the assessee had taken accommodation bill for purchase through parties declared as hawala operators. The amount involved was Rs.10,04,442/-. Therefore, he reopened the assessment by issuing notice u/s 148 on 19.03.2015. During the course of reassessment proceedings, the AO asked the assessee to produce the said parties for verification. In response to it the assessee submitted that the purchases have been made through traders and payments have been made by account payee cheques. The AO noted that the assessee failed to furnish evidence such as delivery challans, transportation details etc. to substantiate its claim of purchases from the aforesaid parties. Further the AO observed that the assessee failed to produce the said parties in spite of specific opportunity given to it. Therefore, the AO held the transactions as non-genuine and made an addition of Rs.10,04,442/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the CIT(A). We find that the Ld. CIT(A) by following the decision of the Hon'ble Gujarat High Court in the case of *Simit P. Seth* 356 ITR 451 confirmed the disallowance to the extent of 12.5% of the disputed purchases of Rs.10,04,442/- which comes to Rs.1,25,555/-.

5. Before us, the Ld. Departmental Representative (DR) relies on the order of the Hon'ble Supreme Court in *N.K. Protein Ltd.* and submits that the order passed by the AO be confirmed.

On the other hand, the Ld. counsel for the assessee submits that considering the facts and circumstances of the case, the Ld. CIT(A) has rightly restricted the disallowance to 12.5% of the disputed purchases of Rs.10,04,442/- and the resultant amount of Rs.1,25,555/- be affirmed.

6. 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 furnished before the AO copies of bank statements and substantiated that the purchases made are genuine because the payments have been made through banking channel. However, the assessee failed to file before the AO evidence such as delivery challans, transportation details etc. Also the assessee failed to produce before the AO for verification the parties from whom purchases had been made.

As the assessee filed before the AO the bank statements, the AO could have made certain inquiries and verifications. He has not done any inquiry or verification.

Considering the above facts, we find that the instant case is distinguishable from the decision in *N.K. Protein Ltd.* (supra) relied on by the Ld. DR.

On the other hand, we find that the decision in *Simit P. Seth* (supra) relied on by the Ld. CIT(A) is applicable to the instant case. Therefore, 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 25/11/2019.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER
Mumbai;
Dated: 25/11/2019

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

Rahul Sharma. Sr. P.S.

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