

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

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA NO. 1133/MUM/2018 : A.Y : 2009-10**

ITO-31(2)(1),  
Mumbai (Appellant)

Vs. Jitendra S. Mamania  
1309-A, Agarwal Industries,  
S.V. Road, Jogeshwari (W),  
Mumbai 400 102. (Respondent)  
**PAN : ADDPM0623P**

**Appellant by : Smt. Samatha Mullamudi**

**Respondent by : Ms. Lajari K. Oswal**

**Date of Hearing : 05/11/2019**

**Date of Pronouncement : 15/11/2019**

**ORDER**

**PER VIKAS AWASTHY, JUDICIAL MEMBER**

This appeal by the Revenue is directed against the order of Commissioner of Income Tax – 42, Mumbai (hereinafter referred to as 'CIT(A)') dated 04.09.2017 for the assessment year 2009-10.

2. Ms. Lajari K. Oswal appearing on behalf of the assessee, at the outset, supported the order of CIT(A) in restricting the addition to 25% of the alleged bogus purchases. The learned AR submitted that in the assessment proceedings, Assessing Officer, without raising any doubt over the sales declared by the assessee, made addition of Rs.49,16,814/-, i.e. entire

purchases from suspicious dealers. The learned AR submitted that the Tribunal in various decisions has held that entire bogus purchases cannot be added where the sales of assessee have been accepted by the Department. The CIT(A) has restricted the addition to 25% of the alleged bogus purchases after considering facts of the case and decisions of the Hon'ble Gujarat High Court in the case of *Vijay Proteins Ltd. vs ITO*, [2015] 58 taxmann.com 44 (Gujarat) and *Sanjay Oilcake Industries v. CIT*, 316 ITR 274 (Guj.).

3. *Per contra*, Smt. Samatha Mulla mudu representing the Department vehemently defended the assessment order and prayed for reversing the finding of CIT(A). The learned DR submitted that the assessee has not been able to prove genuineness of purchases made and has failed to establish trail of goods. The assessee has entered into transactions with *hawala* dealers who are providing accommodation entries only.

4. We have heard the submissions made by rival sides and have perused the orders of authorities below. The Revenue in appeal has assailed the findings of CIT(A) in restricting the addition on account of bogus purchases to 25% of alleged bogus purchases over and above the profit declared by assessee on such sales. It is an undisputed fact that the Department has not raised any doubt over the sales declared by assessee. Without purchases there cannot be sales. In such circumstances, where assessee has failed to show trail of goods purchased and the genuineness of vendors/dealers, it can be presumed that assessee had made purchases from grey market, consequently, the entire alleged bogus purchases cannot be added, it is only the profit element embedded in suspicious purchases that can be brought to tax.

5. In the instant case, the CIT(A) after considering the Gross Profit declared by assessee and the decisions of Hon'ble Gujarat High Court (supra) has estimated Gross Profit on bogus purchases @ 25% over and above profit declared by assessee. We do not find any infirmity in the impugned order restricting the addition to 25% of such bogus purchases over and above the profit disclosed by assessee.

6. In the result, the impugned order is upheld and appeal of Revenue is dismissed *sans* merit.

Order pronounced in the open court on Friday, the 15<sup>th</sup> day of November, 2019.

Sd/-  
**(G. MANJUNATHA)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(VIKAS AWASTHY)**  
**JUDICIAL MEMBER**

Mumbai, Date : 15<sup>th</sup> November, 2019

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "F" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar  
I.T.A.T, Mumbai