

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

BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER

**ITA No. 6526/Mum/2018
(Assessment Year: 2009-10)**

I.T.O.-32(2)(2), Room No. 304, 3 rd Floor, C-11, Pratyakshakar Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai-400051.	Vs.	M/s Kawachi Group, 228/2 nd Flr, Neha Industrial Estate, Near Hyundai Service Station, Borivali-E- 66.
PAN/GIR No.AAAHK 6370 B		
(Appellant)	..	(Respondent)

Revenue by	Shri Kumar Padmapani Bora (Sr.DR)
Assessee by	None
Date of Hearing	05/12/2019
Date of Pronouncement	06/12/2019

आदेश / O R D E R

PER: R.C. SHARMA, A.M.

This is the appeal filed by the revenue against the order of the Id. CIT(A)-44, Mumbai dated 14/08/2018 for the A.Y. 2009-10 in the matter of order passed U/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short, the Act).

2. No body appeared on behalf of the assessee in spite of service of notice, therefore, the Bench decided to dispose off the appeal after hearing the Id. DR and considering the material placed on record.

3. In this appeal, the revenue is aggrieved by the action of the Id. CIT(A) for restricting the addition on account of bogus purchases to the extent of 12.5% in place of 100% addition made by the A.O.

4. I have gone through the orders of the authorities below and found that on the basis of information from the Sales tax Department, the A.O. added entire purchases alleged to be bogus in assessee's income. By the impugned order, the Id. CIT(A) restricted the addition to the extent of 12.5% of bogus purchases after having the following observation:

“6.3.29 The facts in the present case are similar to the facts in the above mentioned case. In the present case, the Ld. AO has shown that the party in question was nonexistent. The appellant has not been able to disprove the findings of the Ld. AO regarding the non-existence of the party. However, Ld. AO after examining the evidences did not give any adverse finding that the appellant had not shown consumption/ sales of the goods and that it had not offered the income on such sale of goods. In this case, Ld. A.O. not having doubted the genuineness of sales could not have gone ahead and made addition in respect of the entire purchases as it would lead to absurd profits. Thus, the issue would boil down to finding out the element of suppressed profit embedded in purchases which the appellant would have made from some unknown or bogus entities. Hence, following the decision of the Hon'ble Gujarat High Court in Bholanath Polyfab Pvt. Ltd. (supra), the estimated suppressed profit margin embedded in such amounts of purchases could only be disallowed and subjected to tax.”

6.3.30 *Similarly, in yet another decision of Hon'ble Gujarat High Court in the case of CIT vs. Simit Sheth (2013) 38 Taxmann.com 385 (Guj), Hon'ble Court was seized with a similar issue where the A.O. had found that some of the alleged suppliers of steel to the assessee had not supplied any goods but had only provided sale bills and hence, purchases from the said parties were held to be bogus. The A.O. in that case added the entire amount of purchases to gross profit of the assessee. Ld. CIT(A) having found that the assessee had indeed purchased though not from named parties but other parties from grey market, partially sustained the addition as probable profit of the assessee. The Tribunal however, partly sustained the addition. Taking into account the above facts, the Hon'ble Gujarat High Court held that since the purchases were not bogus, but were made from parties other than those mentioned in books of accounts, only the profit element embedded in such purchases could be added to the assessee's income and as such no question of law arose in such estimation. While arriving at the above conclusion, the Hon'ble Court also relied on the decision in the case of Vijay M. Mistry Construction Ltd. 355 ITR 498 (Guj.) and further approved the decision of Ahmedabad Bench, ITAT in the case of Vijay Proteins 58 ITD 428.*

6.3.31 *In the case of Vijay Proteins (supra), the Hon'ble ITAT was seized with a case of bogus suppliers of oil cakes where 33 parties were found to be bogus by the departmental authorities even though payments were made to the said parties by cross cheques and in fact the A.O. in that case had brought adequate material on record to prove that the cross cheques had not been given to parties from whom supplies were allegedly procured but these were encashed from a bank account in the name of another entity, possibly hawala dealer. Subsequently, the money deposited in*

that account was withdrawn in cash almost on the same day. The Tribunal however, held that if the purchases were made from open Market without insisting for genuine bills, the suppliers may be willing to sell the product at a much less rate as compared to a rate which they may charge in which the dealer has to give genuine sale invoice in respect of that sale. Keeping all such factors in mind, the Tribunal estimated an element of profit percentage of the overall purchase price accounted for in the books of accounts through fictitious invoices.

6.3.32 *As narrated earlier, the A.O. in this case has held that the parties from which the purchases were made by the appellant were found to be bogus and that is the reason for which it was not produced during the assessment proceedings. Not having doubted the consumption/sales, the motive behind obtaining bogus bills thus, appears to be inflation of purchase price so as to suppress true profits. Considering the facts of the case as well as the various case laws cited (supra), I estimate the suppressed profit to the extent of 12.5% of the purchases made from the bogus entities, as the suppressed profit element embedded in such purchases. This estimation is in addition to the GP shown by the appellant. Thus, addition of Rs.93,600/- (being 12.5% of Rs.7,48,800/-) is confirmed and the balance is deleted. Accordingly, grounds of appeal raised by the appellant are partly allowed. ”*

5. I have gone through the orders of the authorities below and found that the A.O. has made addition after getting information from the Sales Tax Department regarding the assessee taking accommodation bill in respect of purchases without taking physical delivery of the goods. By the impugned order, the Id. CIT(A) after

recording a finding to the effect that the total sales made by the assessee has not been disputed by the A.O. and after considering the various judicial pronouncements, he restricted the addition to the extent of 12.5%. Nothing was brought on record by the Id DR so as to persuade me to deviate from the findings of the Id. CIT(A) for restricting the addition to the extent of 12.5%. Accordingly, I do not find any infirmity in the order of the Id. CIT(A) in restricting the addition to the extent of 12.5%. I uphold the same.

6. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 06th December, 2019.

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 06/12/2019

*Ranjan

Copy of the Order forwarded to :

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

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai