

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

**BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER**

**ITA No. 6396/Mum/2018  
(Assessment Year: 2009-10)**

Income Tax Officer 33(1)(2), Mumbai.	Vs.	Smt. Bhikhadevi J Patel, C-312, Rashmi Avenue, Thakur Complex, Kandivali (East), Mumbai-400101.
<b>PAN/GIR No. AEDPP 3340 M</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

**C.O. No. 236/Mum/2019  
(Arising out of ITA No. 6396/Mum/2018)  
(Assessment Year: 2009-10)**

Smt. Bhikhadevi J Patel, C-312, Rashmi Avenue, Thakur Complex, Kandivali (East), Mumbai-400101.	Vs.	Income Tax Officer 33(1)(2), Mumbai.
<b>PAN/GIR No. AEDPP 3340 M</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Revenue by	Shri Kumar Padmapani Bora (Sr.DR)
Assessee by	Shri Bhupendra Shah (AR)
<b>Date of Hearing</b>	<b>04/12/2019</b>
<b>Date of Pronouncement</b>	<b>06/12/2019</b>

**आदेश / ORDER**

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

The appeal filed by the revenue and cross objection filed by the assessee are directed against the order of the Id. CIT(A)-45, Mumbai dated 02/07/2018 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. Rival contentions have been heard and record perused. Facts in brief are that the assessee is engaged in the trading of ferrous and non-ferrous metals. The A.O. got information from the DGIT(Inv.), Mumbai/Sales Tax Department regarding the assessee being engaged in taking accommodation entries with regard to purchases. After making enquiry with the supplier of goods, the A.O. found that the assessee has taken bogus purchase bills of Rs. 19,09,152/- which was added by him in the income of the assessee. By the impugned order, the Id. CIT(A) restricted the addition on account of bogus purchases to the extent of 12.5%, against which, the revenue is in appeal and the assessee has filed C.O. before the ITAT.

3. I have considered the rival submissions and carefully gone through the orders of the authorities below and found from the record that the assessee was found to be engaged in business of reselling in ferrous and non-ferrous metals. Information was received from DGIT(Inv.), Mumbai/Sales tax Department that the assessee has made bogus purchases and dealing from various parties amounting to Rs. 19,09,152/. After making detailed inquiry, the A.O. found the purchases to be bogus, made without taking physical delivery of goods, accordingly, same was added by the A.O. to the assessee's income. By the impugned order, the Id. CIT(A) after considering the fact that the department has accepted

the sale of the goods alleged to be purchased without delivery, restricted the addition to the extent of 12.5% of such purchases.

4. I have considered the rival contentions and carefully gone through the orders of the authorities below. With respect to issue regarding addition in respect of bogus purchases, the Hon'ble Jurisdictional High Court in the case of Pr.CIT Vs M/s Mohommad Haji Adam & Co. in ITA No. 1004 of 2016 vide its order dated 11/02/2019 have held as under:

*"8. In the present case, as noted above, the assessee was a trader of fabrics. The A.O. found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assesses additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sales declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases. The decision of the Gujarat High Court in the case of N.K. Industries Ltd.. (supra) cannot be applied without reference to the facts. In fact in paragraph 8 of the same Judgment the Court held and observed as under-*

*So far as the question regarding addition of Rs.3,70,78,125/- as gross profit on sales of Rs.37.08 Crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular books during Financial Year 1997-98 is concerned, we are of the view that the assessee cannot be punished since sale price is accepted by the revenue. Therefore, even if 6 % gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as a result of which profit comes to 5.66%. Therefore, considering 5.66 % of Rs.3,70,78,125/which comes to Rs.2098.62 1.88 we think it fit to direct the revenue to add Rs.20,98.621.88 as <sup>g</sup>ross profit and make necessary deductions accordingly. Accordingly, the said question is answered partially in favour of the assessee and partially in favour of the revenue."*

5. The Coordinate Bench of the ITAT, Mumbai in the case of Shri Rameshkumar Daulatraj Vs ITO in ITA No. 4192/Mum/2018 order dated 07/05/2019 after following the above decision of Hon'ble Bombay High Court held as under:

*"9. When these facts were confronted to the learned Sr. DR, he requested for application of reasonable profit rate and according to him the profit rate applied by the AO and confirmed by CIT(A) is quite reasonable in view of the decision of Hon'ble Gujarat High court in the case of Smith P.Seth (supra). We have considered the rival contentions ITA No. 4192/Mum/2018 and are of the view that Hon'ble Bombay High Court in the case of Mohammad Haji Adam & Co. and Ors. (supra) has considered this issue and respectfully following the same, we direct the AO to restrict the profit rate only to the extent of differential percentage as declared on the bogus purchases and as declared on the regular purchases, Hence, we direct the AO accordingly."*

6. It is clear from the above decisions that in case of bogus purchases where sales are accepted, the addition is required to be made only to the extent of difference between the GP declared by the

assessee on normal purchases vis a vis bogus purchases. Respectfully following the order of the Hon'ble Jurisdictional High Court and the Coordinate Bench of the ITAT, Mumbai, I direct the A.O. to restrict the addition to the extent of lower GP declared by the assessee in respect of bogus purchases as compared to GP on normal purchases. The assessee is also directed to give full details to the A.O. with regard to GP earned on normal purchases and also GP earned on alleged bogus purchases. I direct accordingly.

7. In the result, appeal of the revenue is dismissed whereas the C.O. of assessee is allowed in part.

Order pronounced in the open court on 06<sup>th</sup> 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.

BY ORDER,

सत्यापित प्रति //True Copy//

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