

**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. 6235/MUM/2018
Assessment Year: 2009-10**

ACIT-27(3), R. No. 423, 4th
floor, Tower No. 6, Vashi
Railway Station, Vashi, Navi
Mumbai-400703.

Vs. Shri Shivkumar M. Vishwakarma,
Room No. 2, Kamal Kunj Housing
Society, Near Link Road, Asalfa
Village, Ghatkopar (West),
Mumbai-400084.

Appellant

**PAN No. AACPV6070D
Respondent**

Revenue by : Smt. JothilakshmiNayak, DR
Assessee by : None

Date of Hearing : 26/11/2019
Date of pronouncement : 29/11/2019

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').

Though the case was fixed for hearing on 09.09.2019 and 26.11.2019, neither the assessee nor his authorized representative appeared before the Bench on the above date. As there is non-compliance on the part of the

assessee, we are proceeding to dispose off this appeal on merits, after examining the documents available on record.

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.33,866/- made by the Assessing Officer on account of bogus purchases without appreciating the fact that the assessee had failed to produce supporting documentary evidences to support of his 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 Rs.4,838/- being 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 his return of income of the assessment year (AY) 2009-10 on 28.09.2009 declaring total income at Rs.12,83,405/-. The same was processed u/s 143(1) of the Act. On receipt of information from the Sales Tax Department, Government of Maharashtra that the assessee had obtained bogus purchase bills of Rs.38,704/- from M/s Neda Enterprises, the Assessing Officer (AO) re-opened the assessment by issuing notice u/s 148 of the Act. In response to it, the assessee submitted that the return filed on 28.09.2009 be treated as return in response to notice u/s 148 of the Act. During the course of re-assessment proceedings, the AO issued notice u/s 133(6) to the above party in order to verify the genuineness of the purchases. However, that notice was returned

un-served by the postal authorities. Considering the facts of the case and the inquiry done by the Sales Tax Department, Government of Maharashtra, the AO made an addition of Rs.38,704/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that *vide* order dated 17.08.2018, the Ld. CIT(A) by following the judgment of the Hon'ble Gujarat High Court in the case of *Simit P. Sheth* (ITA No. 553 of 2012) estimated the profit @ 12.5% which comes to Rs.4,838/-.

5. Before us, the Ld. Departmental Representative (DR) submits that as the notice u/s 133(6) issued by the AO to M/s Neda Enterprises was returned un-served by the postal authorities and the inquiry by the Sales Tax Department, Government of Maharashtra establishes that the assessee had indulged in bogus purchases, the addition of Rs.38,704/- made by the AO be restored.

6. We have heard the Ld. DR 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.

However, considering the facts and circumstances of the present case, we agree with the Ld. CIT(A) that only the profit element embedded in such purchases be brought to tax. Rightly, he has relied on the decision on *Simit P. Sheth* (supra) and estimated the profit @ 12.5% of the disputed purchases. 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 29/11/2019.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER
Mumbai;
Dated: 29/11/2019
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