

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "G" MUMBAI**

**BEFORE SHRI RAJESH KUMAR, HON. ACCOUNTANT MEMBER &
SHRI AMARJIT SINGH, HON. JUDICIAL MEMBER**

**ITA No. 6156/MUM/2018
(Asst. Year : 2011-12)**

M/s. Gajanan Builders,
Office No. 20, Patel Industrial
Estate, Opp. Veena Dalwai
Industrial Estate, Navpada
Road, Jogeshwari (W),
Mumbai.

Vs.

ITO-31(1)(5),
Room NO. 307, C-13,
3rd Floor, BCK, Bandra
(E) Mumbai.

PAN No. AAGFG 1193 G
(Appellant)

(Respondent)

**ITA No. 5790/MUM/2018
(Asst. Year : 2011-12)**

ITO-31(1)(5),
Room NO. 307, C-13,
3rd Floor, BCK, Bandra (E)
Mumbai.

Vs.

M/s. Gajanan Builders,
Office No. 20, Patel
Industrial Estate, Opp.
Veena Dalwai Industrial
Estate, Navpada Road,
Jogeshwari (W), Mumbai.

(Appellant)

PAN No. AAGFG 1193 G
(Respondent)

Assessee by : Shri Kiran Mehta, FCA &
Shri Ravi Dasija, FCA

Department By : Shri V. Vinod Kumar, Sr.DR

Date of hearing : 04/12/2019.

Date of pronouncement : 17/12/2019.

ORDER**PER RAJESH KUMAR, ACCOUNTANT MEMBER**

These cross appeals by the assessee and the Revenue are directed against the order of Commissioner of Income Tax (Appeals)-42, Mumbai, dated 09/06/2018 for the A.Y. 2011-12.

ITA No. 6156/MUM/2018

2. The issue challenged by the assessee in this appeal is against the confirmation of addition to the tune of Rs. 10,72,944/- is based on the peak theory as against Rs. 30,01,930/- disallowance of bogus purchases made by the AO. The addition confirmed under this ground by CIT(A) comes to 35.75% of the total purchases.

3. Facts of the case in brief are that the assessee filed its return of income on 24/07/2011 declaring total income of Rs.20,01,165/- which was processed u/s. 143(1) of the Act. Thereafter, the case of the assessee was selected for scrutiny under CASS and statutory notices were duly issued and served on the assessee. During the course of assessment proceedings, the AO noted that the assessee has made total purchases of Rs. 2.21 crores and

accordingly asked the assessee to file the details of purchases which were submitted on 26/12/2013. In order to verify these purchases, the AO issued notices u/s. 133(6) of the Act to some parties, however, the notices issued to four parties were returned unserved from whom the purchases to the extent of Rs.30,01,930/- were made by the assessee during the year. The AO also observed that names of these parties appeared in the list of *hawala* dealers as brought by the Sales-tax Department, Government of Maharashtra. The AO called upon the assessee to prove the genuineness of these transactions by filing necessary evidences. The assessee vide letter dated 25/02/2014 filed copies of ledger accounts, copies of purchase invoices and details of payments and submitted that notices issued u/s. 133(6) could not be served on these parties as they have shifted from their original place of business. The AO finally treated the purchases as bogus and disallowed the entire amount and added the same to the income of the assessee.

4. In the appellate proceedings, the Id.CIT(A) partly allowed the appeal of the assessee by sustaining the addition to the extent of Rs. 10,72,944/- calculated on the basis of peak theory which comes approximately to 35.75% of the total purchases.

5. Aggrieved by the order of the Id.CIT(A), the assessee is in appeal before this Tribunal.

6. After hearing the rival contentions of both the parties and perusing the material on record, we observe that in this case, undisputedly the assessee is beneficiary of *hawala* transactions of purchases. The Id.CIT(A) has accepted the fact that the assessee has made purchases from grey market and thus sustained the part disallowance based on the peak theory which worked out to 35.75% of the total purchases. The Id.AR prayed for the Bench that in view of the decision of the Hon'ble Bombay High Court in the case of PCIT Vs M/S Mohommad Haji Adam & Co. ITA No. 1004 of 2016 and others vide order dated 11.2.2019, the percentage should be applied to assess the bogus purchases after deducting the gross profit rate of the assessee.

7. However, on the other hand, Id. DR relied on the orders decision of the Coordinate Bench in assessee's own case in the earlier year in ITA No.3570/MUM/2015 for the A.Y. 2010-11 wherein, the Tribunal confirmed the addition on peak basis as worked out by the Id.CIT(A). The assessee has made the purchased goods from the grey market by obtaining the bogus bills from *hawala parties*. Under these facts and circumstances,

we find force in the argument of the Id. DR that after the decision of the Hon'ble Bombay High Court in the case of PCIT Vs M/S Mohommad Haji Adam & Co. ITA No. 1004 of 2016 and others (supra), the percentage should be applied on the bogus purchases after deducting the profit declared by the assessee in order to bring bogus purchases to tax. Accordingly, we direct the AO to decide the issue in terms of Bombay High Court decision in the case of PCIT Vs M/S Mohommad Haji Adam & Co. ITA No. 1004 of 2016 and others (supra). Thus, this ground of appeal raised by the assessee is partly allowed.

8. Ground No.3 raised by the assessee is against the order of the Id.CIT(A) in not accepting the plea of the assessee that addition made on account of purchases which go to reduce the work-in-progress and no separate addition can be made, as the assessee is following project completion method.

9. After hearing the rival contentions of the parties and perusing the material on record, we do not find merit in the contentions of the assessee that bogus purchases should go reduce the work-in-progress on the ground that these are bogus purchases which are to be brought to tax and therefore there is no question of adjusting the profit in the alleged bogus purchases

against WIP of the assessee. Accordingly, this ground of appeal is dismissed.

ITA No.5790/MUM/2018

10. At the outset, Id.AR submitted that the tax effect involved in this appeal is below Rs. 50.00 lakhs and as per the latest CBDT Circular No. 17/2019, dated 08/08/2019, this appeal is not maintainable and prayed for dismissal.

11. Ld.DR fairly accepted the contentions of the Id.AR.

12. In view of the statement given by the Id.AR, we find that tax effect involved in this appeal is below Rs. 50.00 lakhs and as per CBDT Circular No. 17/2019, dated 08/08/2019, this appeal is not maintainable and hence, dismissed.

13. In the result, appeal of the assessee is partly allowed and that of Revenue is dismissed.

Order Pronounced in the open Court on 17th December, 2019

Sd/-
(AMARJIT SINGH)
Judicial Member

Sd/-
(RAJESH KUMAR)
Accountant Member

Dated : 17th December, 2019.

vr/-

Copy to:

1. *The Assessee – M/s. Gajanan Builders, Office No. 20, Patel Industrial Estate, Opp. Veena Dalwai Industrial Estate, Navpada Road, Jogeshwari (W), Mumbai.*
2. *The Revenue – ITO-31(1)(5), Room NO. 307, C-13, 3rd Floor, BCK, Bandra (E) Mumbai.*
3. *The Pr.CIT-31, Mumbai.*
4. *The CIT(A)-42, Mumbai.*
5. *The D.R., Mumbai.*
6. *Guard file.*

By order

//True Copy//

Assistant Registrar
I.T.A.T., Mumbai