

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

**BEFORE SHRI R.C.SHARMA, AM & SHRI VIKAS AWASTHY, JM**

**ITA No. 6802/Mum/2018  
(Assessment Year: 2011-12)**

A.C.I.T.-17(1), Mumbai Room No. 117, Aayakar Bhavan, M.K. Marg, Mumbai-400020.	Vs.	Akbar Abdul Ali, Faiz & Co., Unit No. 5, Alahibaug, 75, A.R. Street, Mumbai-400009.
<b>PAN/GIR No.AABPA 6866 F</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

**C.O. No. 265/Mum/2019  
(Arising out of ITA No. 6802/Mum/2018)  
(Assessment Year: 2011-12)**

Akbar Abdul Ali, Faiz & Co., Unit No. 5, Alahibaug, 75, A.R. Street, Mumbai-400009.	Vs.	A.C.I.T.-17(1), Mumbai Room No. 117, Aayakar Bhavan, M.K. Marg, Mumbai-400020.
<b>PAN/GIR No. AABPA 6866 F</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Revenue by	Shri Kumar Padmapani Bora (Sr.DR)
Assessee by	Shri N.R. Agarwal (AR)
<b>Date of Hearing</b>	<b>12/12/2019</b>
<b>Date of Pronouncement</b>	<b>19/12/2019</b>

**आदेश / O R D E R**

**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)-55, Mumbai dated 04/09/2018 for the A.Y. 2011-12 in the matter of order passed U/s 143(3) of the Income Tax Act, 1961 (in short, the Act).

2. In this appeal, the revenue is aggrieved by the action of the Id. CIT(A) for reducing the profit estimated on bogus purchases at 12.5% from 15% whereas the assessee in the C.O. is aggrieved for upholding the addition on account of bogus purchases estimated profit at 12.5%.
3. At the outset, the Id AR of the assessee placed on record the order of the Tribunal in assessee's own case for the A.Y.2009-10 dated 30/10/2015 wherein under similar facts and circumstances, the addition made on account of bogus purchases was deleted by the Tribunal.
4. On the other hand, the Id Sr.DR has relied on the order passed by the A.O.
5. We have considered the rival submissions and carefully gone through the orders of the authorities below and found from the record that to prove the genuineness of purchases, the assessee has filed details of chart of movement of goods so purchased, their invoice with LR, bank statement for payment, sales invoice etc.. It was also submitted that all the suppliers were registered under sales/VAT laws which were displaced on their invoices. The assessee has also verified the registration numbers from Sales Tax Department, which was also found to be correct. As per the Id AR, the assessee, as a prudent business man, had received goods, made payment by account payee cheques and purchased and sold the material again for which payments

were received. All these facts were accepted by the A.O., accordingly, no addition is warranted.

6. From the record we also found that exactly similar issue of bogus purchases was before the Tribunal in assessee's own case for the A.Y. 2009-10 and vide order dated 30/10/2015, the Tribunal after having the following observation have deleted the entire addition so made by the A.O. as under:

*"11. We have considered the rival contentions of both the parties and perused the material available on record. We are of the considered view that since the transaction has been made by the assessee with the respective parties through A/c payee cheques and has placed on record purchase bills, delivery challans and transport receipts. The assessee has also proved and placed on record the respective sale tax registration numbers of all the parties. Therefore, this clearly shows that the goods had actually been purchased and received by the assessee, therefore, these purchases should not have, by any stretch of imagination, be treated as bogus purchases. Nothing contrary has been brought to record to show that these invoice were self-made or fabricated and by placing on record all the aforementioned documents, the initial onus has already been sufficiently discharged by the assessee and once the initial onus is discharged then automatically onus shifts upon the other party to rebut and prove the documents to be forged or fabricated but in this respect no evidence has been led, therefore, keeping in view the aforementioned citation and respectfully following the same, we accept the Ground No. 1 in favour of assessee and set aside the order of CIT(A) thereby disallowing 15% of the purchases.*

*Hence, the present ground of appeal of the assessee is accepted and the ground of appeal of the revenue is dismissed.”*

As the facts and circumstances during the year under consideration are pari materia, respectfully following the order of the Tribunal dated 30/10/2015 in assessee's own case, we delete the addition so made by the A.O.

7. In the result, appeal of the revenue is dismissed and cross objection of the assessee is allowed.

Order pronounced in the open court on 19<sup>th</sup> December, 2019.

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

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

Mumbai; Dated 19/12/2019  
\*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**