



Swati Sunil Vorani  
Assessment Year-2009-10

**आयकर अपीलीय अधिकरण “जी” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“G” BENCH, MUMBAI**

श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं  
श्रीमती मधुमिता राय, न्यायिक सदस्य के समक्ष।  
**BEFORE SHRI MANOJ KUMAR AGGARWAL, AM**  
**AND SMT. MADHUMITA ROY, JM**

आयकर अपील सं./ I.T.A. No.6229/Mum/2018  
(निर्धारण वर्ष / Assessment Year: 2009-10)

<b>Income tax Officer-20(3)(4)</b> 616, 6 <sup>th</sup> Floor, Piramal Chambers, Lalbaug Mumbai-400 012.	<b>बनाम/</b> Vs.	<b>Swati Sunil Vorani</b> 17/3, Lohana Nivas Laxmi Narayana Lane Matunga C.R., Mumbai-400 019.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. <b>ACVPV-5341-A</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

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आयकर अपील सं./ I.T.A. No.6402/Mum/2018  
(निर्धारण वर्ष / Assessment Year: 2009-10)

<b>Swati Sunil Vorani</b> 17/3, Lohana Nivas Laxmi Narayana Lane Matunga C.R., Mumbai-400 019.	<b>बनाम/</b> Vs.	<b>Income tax Officer-20(3)(4)</b> 616, 6 <sup>th</sup> Floor, Piramal Chambers, Lalbaug Mumbai-400 012.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. <b>ACVPV-5341-A</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Ms. Ruchi M. Rathod-Ld. AR
<b>Revenue by</b>	:	Shri N. Padmanabhan – Ld. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	07/01/2020
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	07/01/2020



## आदेश / O R D E R

### Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid cross-appeals for Assessment Year [in short referred to as 'AY'] 2009-10 contest the order of Ld. Commissioner of Income-Tax (Appeals)-32, Mumbai, [in short referred to as 'CIT(A)'] Appeal No. CIT(A)-32/IT-410/ITO-20(3)(4)/2016-17 dated 20/07/2018. It is evident from grounds of appeal that the sole issue that arises for our consideration is addition on account of alleged bogus purchases. The legal grounds raised by assessee challenging reassessment proceedings have not been pressed by Ld. Authorized Representative for Assessee, during the hearing of the appeals.

2. We have carefully heard rival submissions, perused relevant material on record and deliberated on various judicial pronouncements being relied upon by both the representatives.

3.1 Facts on record would reveal that the assessee being resident individual stated to be engaged in trading of hardware material, was assessed for impugned AY u/s. 143(3) r.w.s. 147 on 21/11/2016 wherein the income of the assessee was determined at Rs.18.20 Lacs, after sole addition of alleged bogus purchases for Rs.14.95 Lacs as against returned income of Rs.3.25 Lacs e-filed by the assessee on 19/09/2009 which was processed u/s.143(1).

3.2 Pursuant to receipt of certain information from Sales Tax Department, Govt. of Maharashtra / DGIT (Investigation), it transpired that the assessee



obtained bogus purchases bills amounting to Rs.119.60 Lacs from as many as 22 entities, the details of which have already been extracted in para-4 of the quantum assessment order. Accordingly, the case was reopened as per due process of law and statutory notice were issued u/s 143(2) and 142(1) wherein the assessee was directed to substantiate the purchase transactions.

3.3 The assessee defended the purchases by furnishing copies of purchase invoices, bank statements evidencing payment to suppliers through banking channels. However, notices issued u/s 133(6) to all the entities, to confirm the transactions, were returned undelivered by the postal authorities. The assessee failed to produce any of the suppliers but relied on the documents furnished in support of the purchase transactions. The assessee also failed to provide the latest addresses of the suppliers. Finally, not satisfied with assessee's submissions / explanations, the stated purchases were treated as bogus purchases. Relying upon the decision of Hon'ble Gujarat High Court in **Simit P.Sheth (356 ITR 451)**, Ld. AO estimated the additions @12.5% against these purchases which resulted into an addition of Rs.14.95 Lacs in the hands of the assessee.

4. The learned CIT(A), after considering assessee's submissions including GP / NP rates reflected in various years, scaled down the estimation to 5%. The said adjudication has given rise to cross-appeals before us. The revenue is aggrieved by reduction in estimated additions wherein the assessee is aggrieved by addition of 5% as sustained by Ld. CIT(A).



5. After careful consideration of orders of lower authorities and after appreciating the arguments advanced by respective representatives, we are of the considered opinion that there could be no sale without actual purchase of material keeping in view the assessee's nature of business i.e. trading. Undisputedly the assessee was in possession of primary purchase documents and the payments to the suppliers were through banking channels. The assessee's books of accounts were subjected to audit. However, at the same time, the assessee miserably failed to substantiate the purchases and failed to produce any of the suppliers to confirm the transactions. Notices issued u/s 133(6) to all the entities elicited no response and therefore, the primary onus casted upon assessee, in this regard, remained undischarged.
6. The stated factual matrix, in our considered opinion, would make it a fit case to make estimated additions to account for profit element embedded in these purchase transactions to factorize for profit earned by assessee against possible purchase of material in the grey / unorganized market and undue benefit of VAT against such bogus purchases, which learned first appellate authority has rightly done so. Finding the estimation of 5% to be quite fair and reasonable, we find no reason to interfere in the impugned order.
7. The Ld. AR has relied upon the decision of this Tribunal in **Smt. Kanjubala N.Parekh V/s ITO (ITA No.6198/Mum/2018dated 27/11/2019)** for the submissions that additions could not be sustained merely because notices u/s 133(6) were unserved. However, upon perusal of the same, we



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find the same to be factually distinguishable since it was the observation therein that proper enquiries were not conducted by Ld.AO, which is not the case here. In our case, Ld.AO had issued notices u/s 133(6) to all the entities which were never responded to by any of the suppliers. The assessee failed to provide the latest whereabouts of any of the suppliers. Therefore, the said case law could not come to the rescue of the assessee.

8. Both the appeal stands dismissed.

*Order pronounced in the open court on 07<sup>th</sup> January, 2020.*

**Sd/-**

**(Madhumita Roy)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 07/01/2020  
Sr.PS:-Jaisy Varghese

**आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त/ CIT- concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)**  
**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai.**